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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–3661; Directorate Identifier 2015–NE–24–AD; Amendment 39–18422; AD 2016–05–04]

RIN 2120–AA64

Airworthiness Directives; Dowty Propellers Constant Speed Propellers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Dowty Propellers R352/6–123–F/1, R352/6–123–F/2, and R410/6–123–F/35 model propellers. This AD was prompted by reports of dowel hole cracks in the face of the rear hub half. This AD requires installing dowel hole liners as necessary. We are issuing this AD to prevent loss of structural integrity of the propeller hub, which could result in damage to the propeller and damage to the airplane.

DATES: This AD becomes effective April 15, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 15, 2016.

ADDRESSES: For service information identified in this final rule, contact Dowty Propellers, 114 Powers Court, Sterling, VA 20166; phone: 703–421–4434; fax: 703–450–0087; email: *technicalsupport@dowty.com;* Internet: *http://dowty.com/services/repair-and-overhaul.* You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7125. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3661.

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–2015–3661; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Michael Schwetz, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7761; fax: 781–238–7898; email: *michael.schwetz@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to the specified products. The NPRM was published in the **Federal Register** on October 13, 2015 (80 FR 61330). The NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> Cracking around the hub location dowel holes in the face of the rear hub half has occurred sporadically. Previous investigations found no manufacturing defects in cracked hubs and concluded that the hub cracking was caused by damage to the dowel holes during propeller installation.
>
> Since that original SB was issued, three hubs have been found to show cracking around the location dowel holes. The hubs were all found cracked within a short period of time and all had low time since new.
>
> This condition, if not detected, can adversely affect the structural integrity of the propeller hub, with possible damage to the propeller and to the aeroplane.

You may obtain further information by examining the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3661.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (80 FR 61330, October 13, 2015).

However, we changed paragraph (e) Actions and Compliance to revise the compliance times to read, ''(1) At the next removal of the propeller from the airplane, after the effective date of this AD, install liners into the hub location dowel holes and identify the hub P/N.

(2) Use Dowty Propellers Alert Service Bulletin (ASB) No. F50–61–A165, Revision 2, dated July 28, 2015 to install the liners and identify the hub.''

We removed Component Maintenance Manual (CMM) 61–10–34, Repair No. 53, dated May 15, 2013, from the Other Related Service Information paragraph of this AD.

We removed Component Maintenance Manual (CMM) 61–10–34, Repair No. 53, dated May 15, 2013, which relates to repair scheme 650510057, from the Credit for Previous Actions paragraph (f)(2) of this AD.

We removed CMM 61–10–34, Repair No. 53, dated May 15, 2013, from the Related Information paragraph (h) of this AD.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting this AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Related Service Information Under 1 CFR Part 51

Dowty Propellers has issued (ASB) No. F50–61–A165, Revision 2, dated July 28, 2015. The service information describes procedures for installing liners in the hub location dowel holes in the face of the rear hub half and identifying the hub with the repair number. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this final rule.

Costs of Compliance

We estimate that this AD affects 4 propellers installed on airplanes of U.S. registry. We also estimate that it will take about 5 hours per propeller to comply with this AD. The average labor rate is $85 per hour. Required parts cost about $322 per propeller. Based on these figures, we estimate the cost of this AD on U.S. operators to be $2,988.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

(3) Will not affect intrastate aviation in Alaska 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.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2016–05–04 Dowty Propellers: Amendment 39–18422; Docket No. FAA–2015–3661; Directorate Identifier 2015–NE–24–AD.

(a) Effective Date

This AD becomes effective April 15, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Dowty Propellers R352/6–123–F/1, R352/6–123–F/2, and R410/6–123–F/35 model propellers, part numbers (P/Ns) 660715001, 660715004, and 660715005 with hub P/Ns 660715201, 660715255, 660720217, 660720241, 660720252, 660720260, and 660720288, installed.

(d) Reason

This AD was prompted by reports of dowel hole cracks in the face of the rear hub half. We are issuing this AD to prevent loss of structural integrity of the propeller hub, which could result in damage to the propeller and damage to the airplane.

(e) Actions and Compliance

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

(1) At the next removal of the propeller from the airplane, after the effective date of this AD, install liners into the hub location dowel holes and identify the hub P/N.

(2) Use Dowty Propellers Alert Service Bulletin (ASB) No. F50–61–A165, Revision 2, dated July 28, 2015 to install the liners and identify the hub.

(f) Credit for Previous Actions

You may take credit for the actions required by paragraph (e) of this AD if you performed those actions before the effective date of this AD using Dowty Propellers ASB No. F50–61–A165, Revision 1, dated May 12, 2015; or initial issue, dated November 19, 2012.

(g) Alternative Methods of Compliance (AMOCs)

The Manager, Boston Aircraft Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

(h) Related Information

(1) For more information about this AD, contact Michael Schwetz, Aerospace Engineer, Boston Aircraft Certification Office, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7761; fax: 781–238–7898; email: *michael.schwetz@faa.gov.*

(2) Refer to MCAI European Aviation Safety Agency AD 2015–0158, dated July 30, 2015, for more information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2015–3661.

(i) Material Incorporated by Reference

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

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

(i) Dowty Propellers Alert Service Bulletin No. F50–61–A165, Revision 2, dated July 28, 2015.

(ii) Reserved.

(3) For Dowty Propellers service information identified in this AD, contact Dowty Propellers, 114 Powers Court, Sterling, VA 20166; phone: 703–421–4434; fax: 703–450–0087; email: *technicalsupport@dowty.com;* Internet: *http://dowty.com/services/repair-and-overhaul.*

(4) You may view this service information at FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

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

Issued in Burlington, Massachusetts, on February 24, 2016.

Robert J. Ganley,

Acting Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2016–05460 Filed 3–10–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–7205; Directorate Identifier 2015–CE–025–AD; Amendment 39–18419; AD 2016–05–01]

RIN 2120–AA64

Airworthiness Directives; Piper Aircraft, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 96–12–12, which applies to certain Piper Aircraft, Inc. Models PA–31, PA–31–300, PA–31–325, and PA–31–350 airplanes. AD 96–12–12 requires a one-time inspection of the bulkhead assembly at fuselage station (FS) 317.75 for cracks and the installation of one of two reinforcement kits determined by whether cracks were found during the inspection. This new AD requires repetitive inspections of the bulkhead assembly at FS 317.75 for cracks, repair of cracks as necessary, and the installation of a reinforcement modification. This AD was prompted by cracks found in the FS 317.75 upper bulkhead. We are issuing this AD to correct the unsafe condition on these products.

DATES: This AD is effective April 15, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 15, 2016.

ADDRESSES: For service information identified in this final rule, contact Piper Aircraft, Inc. 2926 Piper Drive, Vero Beach, FL 32960; telephone: (415) 330–9500; email: *sales@atp.com;* and Internet: *http://www.piper.com/technical-publications/.* You may view this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–7205.

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–2015–7205; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Gregory ''Keith'' Noles, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office (ACO), 1701 Columbia Avenue, College Park, Georgia 30337; phone: (404) 474–5551; fax: (404) 474–5606; email: *gregory.noles@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 96–12–12, Amendment 39–9654 (61 FR 28732, June 6, 1996) (''AD 96–12–12''). AD 96–12–12 applied to certain Piper Aircraft, Inc. Models PA–31, PA–31–300, PA–31–325, and PA–31–350 airplanes. The NPRM published in the **Federal Register** on December 9, 2015 (80 FR 76398). The NPRM was prompted by cracks found in the fuselage station (FS) 317.75 upper bulkhead, which could cause structural failure of the vertical fin forward spar and lead to loss of control. The NPRM proposed to require repetitive inspections of the bulkhead assembly at FS 317.75 for cracks, repair of cracks as necessary, and the installation of a reinforcement modification to prevent cracks from developing. We are issuing this AD to correct the unsafe condition on these products.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comment received on the NPRM (80 FR 76398, December 9, 2015) and the FAA's response to the comment.

Request

Erin Talbott of Hageland Aviation Service commented that the estimated labor of 8 work-hours to install the reinforcement modification was incorrect. The commenter's company installed the modification on 3 of their airplanes, and the correct estimated work-hours for installation of the reinforcement modification was 32 work-hours.

We infer from the comment that the commenter requests we change the number of work-hours to more accurately state the estimated labor cost.

The FAA agrees with this comment, and we have revised the estimated Cost of Compliance section to reflect this change.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (80 FR 76398, December 9, 2015) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (80 FR 76398, December 9, 2015).

Related Service Information Under 1 CFR Part 51

We reviewed Piper Aircraft, Inc. Service Bulletin No. 1273A, dated October 22, 2015. The service bulletin describes procedures for inspecting the bulkhead assembly at FS 317.75, repairing any cracks found, and installation of a reinforcement modification to prevent cracks from developing. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this final rule.

Costs of Compliance

We estimate that this AD affects 977 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection of the bulkhead assembly	2 work-hours × $85 per hour = $170	Not applicable	$170	$166,090
Repair/reinforcement of bulkhead assembly.	32 work-hours × $85 per hour = $2,720	500	3,220	3,145,940

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 96–12–12, Amendment 39–9654 (61 FR 28732, June 6, 1996), and adding the following new AD:

2016–05–01 Piper Aircraft, Inc.: Amendment 39–18419; Docket No. FAA–2015–7205; Directorate Identifier 2015–CE–025–AD.

(a) Effective Date

This AD is effective April 15, 2016.

(b) Affected ADs

This AD replaces 96–12–12, Amendment 39–9654 (61 FR 28732, June 6, 1996) (''AD 96–12–12'').

(c) Applicability

This AD applies to the following Piper Aircraft, Inc. airplanes listed in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category:

(1) Models PA–31, PA–31–300, and PA–31–325: Serial numbers 31–2 through 31–900 and 31–7300901 through 31–8312019; and

(2) Model PA–31–350: Serial numbers 31–5001 through 31–5004 and 31–7305005 through 31–8553002.

Note 1 to paragraph (c)(1) of this AD: The Model PA–31 may also be identified as a PA–31–310, even though the PA–31–310 is not a model recognized by the Federal Aviation Administration (FAA) on the type certificate data sheet.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by bulkhead cracks found on airplanes that had complied with AD 96–12–12 and on additional airplanes not affected by AD 96–12–12. We are issuing this AD to prevent structural failure of the vertical fin forward spar caused by cracks in the fuselage station (FS) at 317.75 upper bulkhead, which could lead to loss of control.

(f) Compliance

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

(g) Inspection/Repair

(1) Before or upon accumulating 2,000 hours time-in-service (TIS) or within the next 100 hours TIS after April 15, 2016 (the effective date of this AD), whichever occurs later, and repetitively thereafter at intervals not to exceed 100 hours TIS, inspect the bulkhead assembly at FS 317.75 for cracks following Part I of the Instructions in Piper Aircraft, Inc. Service Bulletin No. 1273A, dated October 22, 2015.

(2) If any cracks are found during the inspection required in paragraph (g)(1) of this AD, before further flight, repair the cracks and install the reinforcement modification following Part I of the Instructions in Piper Aircraft, Inc. Service Bulletin No. 1273A, dated October 22, 2015. This repair/modification terminates the requirements for the repetitive inspections required in paragraph (g)(1) of this AD.

(3) You may do the modification required in paragraph (h) of this AD to terminate the repetitive inspections required in paragraph (g)(1) of this AD.

(h) Modification

Unless already done as a repair for cracks found in the inspection required in paragraph (g)(1) of this AD, before or upon accumulating 2,500 hours TIS or within the next 500 hours after April 15, 2016 (the effective date of this AD), whichever occurs later, install the reinforcement modification following Part II of the Instructions in Piper Aircraft, Inc. Service Bulletin No. 1273A, dated October 22, 2015. This modification terminates the repetitive inspections required in paragraph (g)(1) of this AD.

(i) Credit for Actions Accomplished in Accordance With Previous Service Information

This AD allows credit for the inspection required in paragraph (g)(1) of this AD and the repair required in paragraph (g)(2) of this AD, if done before April 15, 2016 (the effective date of this AD), following Part I of the Instructions in Piper Aircraft, Inc. Service Bulletin No. 1273, dated June 4, 2015. This AD also allows credit for the modification required in paragraph (h) of this AD, if done before April 15, 2016 (the effective date of this AD), following Part II of the Instructions in Piper Aircraft, Inc. Service Bulletin No. 1273, dated June 4, 2015.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(k) Related Information

For more information about this AD, contact Gregory ''Keith'' Noles, Aerospace Engineer, FAA, Atlanta ACO, 1701 Columbia Avenue, College Park, Georgia 30337; phone: (404) 474–5551; fax: (404) 474–5606; email: *gregory.noles@faa.gov*.

(l) Material Incorporated by Reference

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

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

(i) Piper Aircraft, Inc. Service Bulletin No. 1273A, dated October 22, 2015.

(ii) Reserved.

(3) For Piper Aircraft, Inc. service information identified in this AD, contact Piper Aircraft, Inc. 2926 Piper Drive, Vero Beach, FL 32960; telephone: (415) 330–9500; email: *sales@atp.com;* and Internet: *http://www.piper.com/technical-publications/.*

(4) You may view this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

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

Issued in Kansas City, Missouri, on February 24, 2016.

Robert P. Busto,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–04417 Filed 3–10–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–4280; Directorate Identifier 2016–SW–008–AD; Amendment 39–18429; AD 2016–05–11]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for Sikorsky Aircraft Corporation (Sikorsky) Model S–92A helicopters. This AD requires certain inspections of the main rotor and tail rotor control pushrods (pushrods). This AD is prompted by a Sikorsky investigation that indicated that some pushrods may have incorrectly installed locking mechanisms. These AD actions are intended to detect an incorrectly installed locking mechanism, which if not corrected, could result in a loose jam nut, failure of the pushrod, loss of main rotor or tail rotor flight control, and consequent loss of helicopter control.

DATES: This AD becomes effective March 28, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain document listed in this AD as of March 28, 2016.

We must receive comments on this AD by May 10, 2016.

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

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–4280; or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, any incorporated by reference service information, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this final rule, contact Sikorsky Aircraft Corporation, Customer Service Engineering, 124 Quarry Road, Trumbull, CT 06611; telephone 1–800-Winged-S or 203–416–4299; email *sikorskywcs@sikorsky.com.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–4280.

FOR FURTHER INFORMATION CONTACT: Blaine Williams, Aerospace Engineer, Boston Aircraft Certification Office, Engine & Propeller Directorate, 1200 District Avenue, Burlington, Massachusetts 01803; telephone (781) 238–7161; email *blaine.williams@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments prior to it becoming effective. However, we invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that resulted from adopting this AD. The most helpful comments reference a specific portion of the AD, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit them only one time. We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking during the comment period. We will consider all the comments we receive and may conduct additional rulemaking based on those comments.

Discussion

We propose to adopt a new AD for Sikorsky Model S–92A helicopters with certain main rotor or tail rotor control pushrods installed. After a review of a failed pushrod, Sikorsky investigated the airworthiness of pushrods installed on its helicopters. The investigation indicates that the pushrods installed on Model S–92A helicopters may have incorrect safety cable routing, incorrect jam nut torque, and/or incorrect locking device serrations and key engagement. This AD consequently requires inspecting the pushrods for safety cable routing, engagement of serrations of the locking device, engagement of keys on the locking device, thread engagement, and jam nut torque. This AD requires either repairing or replacing the pushrod assembly, depending on the inspection's outcome. These AD actions are intended to detect and correct an incorrectly installed locking mechanism resulting in a loose jam nut, failure of the pushrods, loss of main rotor or tail rotor flight control, and consequent loss of helicopter control.

FAA's Determination

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs.

Related Service Information Under 1 CFR Part 51

We reviewed Sikorsky S–92 Helicopter Alert Service Bulletin ASB 92–67–006, Revision A, dated February 19, 2016 (ASB), which specifies a one-time inspection of the pushrod assemblies for safety cable routing, engagement of serrations of the locking device, engagement of keys on the locking device, thread engagement, and torque of the jam nuts. The ASB also specifies documenting any non-compliant inspection results and, if any discrepancies are found during the inspection, removing, reworking, and reinstalling or replacing the pushrod. The ASB specifies performing a rig check as required.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

AD Requirements

This AD requires within 5 hours time-in-service (TIS):

- For each pushrod adjustable end, except for the upper deck quadrant pushrod, removing the safety cable and using finger pressure, inspecting each jam nut for movement. If a jam nut moves with finger pressure, removing the pushrod assembly from service.
  - Inspecting to determine whether a 0.02 inch diameter safety wire can pass through the inspection hole. If the safety wire passes through the inspection hole, repairing the pushrod, which is terminating action for that adjustable end.
  - Inspecting for correct engagement of serrations and keys of the locking device. If a locking device is not correctly engaged, repairing the locking device, which is terminating action for that adjustable end.
  - Torqueing each jam nut and installing the safety cable, making sure the right-hand threads have safety cable correctly routed, and the left-hand threads have safety cable correctly routed.
- For the upper deck quadrant pushrod, this AD requires determining whether there is any gap between the jam nut, locking device, and the adjustable end. It also requires:
  - If there is a gap, gaining access to the pushrod, removing the safety cable and using finger pressure, inspecting the jam nut for movement. If the jam nut moves with finger pressure, removing the pushrod assembly from service. If the jam nut does not move, performing corrective actions.
  - If there is no gap, visually inspecting the adjustable end for correct safety cable routing, correct engagement of serrations and keys of the locking device, and determining whether any thread is visible in the inspection hole. If the safety cable is routed incorrectly, if the locking device is not correctly engaged, or if there is no thread in the inspection hole, gaining access to the pushrod. Using finger pressure, inspecting the jam nut for movement. If the jam nut moves with finger pressure, removing the pushrod assembly from service. If the jam nut does not move with finger pressure, performing corrective actions.

Differences Between This AD and the Service Information

Sikorsky specifies compliance by May 16, 2016. We require compliance within 5 hours TIS. We also do not require you to contact Sikorsky or record information on the Pushrod Data Sheet.

Costs of Compliance

We estimate that this AD will affect 80 helicopters of U.S. Registry and labor costs average $85 per work-hour. Based on these estimates, we expect the following costs:

- Inspecting all pushrod assemblies requires 2 work-hours for a labor cost of $170. No parts are needed for a total fleet cost of $13,600.
- Replacing a pushrod requires 2 work-hours for a labor cost $170. Parts cost an average of $2,500 for a total cost of $2,670 per pushrod.
- Repairing a pushrod requires an average 2 work-hours per helicopter for a labor cost of $170 and minimal part costs.

FAA's Justification and Determination of the Effective Date

Providing an opportunity for public comments prior to adopting these AD requirements would delay implementing the safety actions needed to correct this known unsafe condition. Therefore, we find that the risk to the flying public justifies waiving notice and comment prior to the adoption of this rule because the required corrective actions must be accomplished within 5 hours TIS.

Since an unsafe condition exists that requires the immediate adoption of this AD, we determined that notice and opportunity for prior public comment before issuing this AD are impracticable and contrary to the public interest and that good cause exists to make this AD effective in less than 30 days.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify that this AD:

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

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

3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2016–05–11 Sikorsky Aircraft Corporation (Sikorsky): Amendment 39–18429; Docket No. FAA–2016–4280; Directorate Identifier 2016–SW–008–AD.

(a) Applicability

This AD applies to Sikorsky Model S–92A helicopters, serial numbers 920006 through 920291, with a main rotor or tail rotor servo input pushrod with a part number (P/N) listed in Table 1 to paragraph (a) of this AD, certificated in any category.

TABLE 1 TO PARAGRAPH (a)

Name	P/N	Torque value
Yaw Boost Input Pushrod	92400–04801–108	60–100 inch pounds.
Pitch Boost Input Pushrod	92400–04801–107	43 inch pounds.
Collective Boost Input Pushrod	92400–04801–107	350 inch pounds.
Roll Boost Input Pushrod	92400–04801–109	43 inch pounds.
Yaw Boost Out Pushrod	92400–04802–109	40–46 inch pounds.
Roll Boost Out Pushrod	92400–04803–103	40–46 inch pounds.
Pitch Boost Out Pushrod	92400–04803–102	40–46 inch pounds.
Collective Boost Out Pushrod	92400–04802–108	40–46 inch pounds.
Limiter Pushrod	92400–04803–106	40–46 inch pounds.
Pitch to Roll Pushrod	92400–04803–107	40–46 inch pounds.
Left Hand Main Rotor Servo Pushrod	92400–04801–110	350 inch pounds.
Forward Main Rotor Servo Pushrod	92400–04801–111	350 inch pounds.
Right Hand Main Rotor Servo Pushrod	92400–04801–112	350 inch pounds.
Upper Deck Quadrant Pushrod	92400–04802–105	60–100 inch pounds.
Tail Rotor Servo Input Pushrod	92400–04802–107	40–46 inch pounds.

(b) Unsafe Condition

This AD defines the unsafe condition as an incorrectly installed locking mechanism resulting in a loose jam nut. This condition, if not detected and corrected, could result in failure of the main rotor or tail rotor control pushrod, loss of main rotor or tail rotor flight control and consequent loss of helicopter control.

(c) Effective Date

This AD becomes effective March 28, 2016.

(d) Compliance

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

(e) Required Actions

Within 5 hours time-in-service:

(1) For each control input pushrod (pushrod) adjustable end, except for the upper deck quadrant pushrod:

(i) Remove the safety cable and using finger pressure, inspect each jam nut for movement. If a jam nut moves with finger pressure, remove the pushrod assembly from service.

(ii) Inspect to determine whether a 0.02 inch diameter safety wire can pass through the inspection hole. If the safety wire passes through the inspection hole, repair the pushrod in accordance with the Accomplishment Instructions, paragraphs C.(2)(b) through C.(2)(l) of Sikorsky S–92 Helicopter Alert Service Bulletin ASB 92–67–006, Revision A, dated February 19, 2016 (ASB), which is terminating action for that adjustable end.

(iii) Where locking devices are used, inspect for correct engagement of serrations and keys of the locking device as shown in Figure 4 of the ASB. If a locking device is not correctly engaged, repair the locking device in accordance with the Accomplishment Instructions, paragraphs C.(3)(c) through C.(3)(f) of the ASB, which is terminating action for that adjustable end.

(iv) Torque each jam nut using the torque values listed in Table 1 to paragraph (a) of this AD. Install the safety cable, making sure the right-hand threads have safety cable routed as shown in Figure 2 of the ASB, and the left-hand threads have safety cable routed as shown in Figure 3 of the ASB.

(2) For the upper deck quadrant pushrod, determine whether there is any gap between the jam nut, locking device, and adjustable end.

(i) If there is a gap, gain access to the pushrod, remove the safety cable, and using finger pressure, inspect the jam nut for movement. If the jam nut moves with finger pressure, remove the pushrod assembly from service. If the jam nut does not move, perform the actions in paragraphs (e)(1)(ii) through (e)(1)(iv) of this AD.

(ii) If there is no gap, visually inspect the adjustable end for correct safety cable routing as shown in Figure 2 of the ASB, correct engagement of serrations and keys of the locking device as shown in Figure 4 of the ASB, and to determine whether any thread is visible in the inspection hole. If the safety cable is routed incorrectly, if the locking device is not correctly engaged, or if there is no thread in the inspection hole, gain access to the pushrod. Using finger pressure, inspect the jam nut for movement. If the jam nut moves with finger pressure, remove the pushrod assembly from service. If the jam nut does not move with finger pressure, perform the actions in paragraphs (e)(1)(ii) through (e)(1)(iv) of this AD.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Boston Aircraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Blaine Williams, Aerospace Engineer, Boston Aircraft Certification Office, Engine & Propeller Directorate, 1200 District Avenue, Burlington, Massachusetts 01803; telephone (781) 238–7161; email *blaine.williams@faa.gov.*

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

(g) Subject

Joint Aircraft Service Component (JASC) Code: 6700, Rotorcraft Flight Control.

(h) Material Incorporated by Reference

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

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

(i) Sikorsky S–92 Helicopter Alert Service Bulletin ASB 92–67–006, Revision A, dated February 19, 2016.

(ii) Reserved.

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

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

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call

(202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Fort Worth, Texas, on March 2, 2016.

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2016–05258 Filed 3–10–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–3658; Directorate Identifier 2014–SW–039–AD; Amendment 39–18427; AD 2016–05–09]

RIN 2120–AA64

Airworthiness Directives; MD Helicopters, Inc. (MDHI) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain MDHI Model 369A (Army OH–6A), 369H, 369HE, 369HM, 369HS, 369D, 369E, 369F, 369FF, and 500N helicopters. This AD requires inspecting the auxiliary fuel pump (fuel pump) wire routing in the left-hand fuel cell and corrective action, if necessary. This AD also requires installing a warning decal on the left-hand fuel cell access cover. This AD was prompted by accidents resulting from incorrectly positioned fuel pump wiring within the fuel tank interfering with the operation of the fuel quantity sensor float, which caused an erroneous fuel quantity indication in the cockpit. The actions are intended to detect and correct routing of the fuel pump wiring to prevent interference with the fuel quantity sensor float, an erroneous fuel quantity indication in the cockpit, and subsequent fuel exhaustion and emergency landing.

DATES: This AD is effective April 15, 2016.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of April 15, 2016.

ADDRESSES: For service information identified in this final rule, contact MD Helicopters, Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615, Mesa, AZ 85215–9734; telephone 1–800–388–3378; fax 480–346–6813; or at *http://www.mdhelicopters.com.* You may review a copy of the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3658.

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–2015–3658; or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, any incorporated-by-reference service information, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations Office, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Danny Nguyen, Aerospace Engineer, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, FAA, 3960 Paramount Blvd., Lakewood, California 90712; telephone (562) 627–5247; email *danny.nguyen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On September 2, 2015, at 80 FR 53030, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 by adding an AD that would apply to certain MDHI Model 369A (Army OH–6A), 369H, 369HE, 369HM, 369HS, 369D, 369E, 369F, 369FF, and 500N helicopters. The NPRM proposed to require inspecting the routing of the fuel pump wiring to determine whether the fuel pump wire is properly wrapped around the fuel inlet hose and correcting the routing of the wiring if it is not. The NPRM also proposed to require installing a decal regarding correct installation of the fuel pump wiring. The NPRM was prompted by two accidents and one incident that occurred on Model 369D helicopters resulting from an incorrectly positioned fuel pump wire within the fuel tank interfering with the operation of the fuel quantity sensor float, which caused an erroneous fuel quantity reading in the cockpit. Because the fuel pump is installed on all the affected model helicopters, we are including them in the applicability. According to MDHI, because maintenance personnel caused the incorrect wire routing by failing to follow procedures for installing the fuel pump, it is also necessary to install a decal on the left-hand fuel cell access cover to refer maintenance personnel to the appropriate manual procedures. The proposed requirements were intended to detect and correct routing of the fuel pump wiring to prevent interference with the fuel quantity sensor float, an erroneous fuel quantity indication in the cockpit, and subsequent fuel exhaustion and emergency landing.

Comments

We gave the public the opportunity to participate in developing this AD, but we did not receive any comments on the NPRM (80 FR 53030, September 2, 2015).

FAA's Determination

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

Related Service Information Under 1 CFR Part 51

MD Helicopters issued one service bulletin on April 30, 2014, with five different numbers: SB369H–255, SB369E–111, SB500N–049, SB369D–213, and SB369F–098. The service bulletin specifies a one-time inspection of the routing of the fuel pump wire in the left-hand fuel cell and corrective action, if necessary. The service bulletin also specifies installing a warning decal on the left-hand fuel cell access cover that refers personnel to the procedures for routing the fuel pump wire that is contained in the appropriate maintenance manual. The service bulletin states that recent field incidents have occurred where maintenance personnel have not followed the procedures for installation of the fuel pump. Also, the service bulletin states that an incorrectly installed fuel pump wire can interfere with the fuel quantity sensor float, which can result in erroneous fuel quantity indications. To prevent this situation, the service information states that the fuel pump wire must be wrapped around the fuel inlet hose as shown in the applicable maintenance manual.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD will affect 833 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. Labor costs are estimated at $85 per work-hour. Inspecting the fuel pump wire routing and installing a decal will take 3 work-hours, and parts will cost $20 for a total cost of $275 per helicopter and $229,075 for the U.S. fleet. If required, rerouting the wiring will require 1 work-hour for a total cost of $85 per helicopter.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2016–05–09 MD Helicopters, Inc.: Amendment 39–18427; Docket No. FAA–2015–3658; Directorate Identifier 2014–SW–039–AD.

(a) Applicability

This AD applies to the following helicopters, certificated in any category:

(1) Model 369A (Army OH–6A), 369H, 369HE, 369HM, 369HS, and 369D;

(2) Model 369E with a serial number (S/N) 0001E through 0620E;

(3) Model 369F and 369FF with a S/N 0001FF through 0212FF, 0600FF, 0601FF, 0602FF, and 0700FF through 0711FF and with an auxiliary fuel pump part number (P/N) 369A8143–3 installed; and

(4) Model 500N with a S/N LN001 through LN0111.

(b) Unsafe Condition

This AD defines the unsafe condition as incorrect routing of the auxiliary fuel pump (fuel pump) wiring. This condition could result in an erroneous fuel quantity indication in the cockpit and subsequent fuel exhaustion and emergency landing.

(c) Effective Date

This AD becomes effective April 15, 2016.

(d) Compliance

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

(e) Required Actions

Within 100 hours time-in-service:

(1) Remove the fuel quantity sensor by following the Accomplishment Instructions, paragraph 2.B., of MD Helicopters Service Bulletin SB369H–255, SB369E–111, SB500N–049, SB369D–213, or SB369F–098, dated April 30, 2014, as applicable to your model helicopter. Using a mirror and light, inspect the routing of the fuel pump wire in the area depicted in Figure 2 of MD Helicopters Service Bulletin SB369H–255, SB369E–111, SB500N–049, SB369D–213, or SB369F–098, dated April 30, 2014, as applicable to your model helicopter, and determine whether the fuel pump wire is wrapped around the left-hand fuel cell fuel inlet hose assembly a minimum of one revolution.

(i) If the fuel pump wire is wrapped around the left-hand fuel cell fuel inlet hose a minimum of one revolution, install the fuel quantity sensor and perform a fuel quantity sensor functional test for proper fuel float arm function.

(ii) If the fuel pump wire is not wrapped around the left-hand fuel cell fuel inlet hose a minimum of one revolution, install the fuel quantity sensor, route the fuel pump wire around the left-hand fuel cell fuel inlet hose by following paragraphs 2.E.(1) through 2.E.(8) of MD Helicopters Service Bulletin SB369H–255, SB369E–111, SB500N–049, SB369D–213, or SB369F–098, dated April 30, 2014 as applicable to your model helicopter, and perform a fuel quantity sensor functional test for proper fuel float arm function.

(2) Install start pump warning decal, P/N MHS5861–66 or equivalent, on the left-hand fuel cell cover by following paragraph 2.G. of MD Helicopters Service Bulletin SB369H–255, SB369E–111, SB500N–049, SB369D–213, or SB369F–098, dated April 30, 2014 as applicable to your model helicopter.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles Aircraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Danny Nguyen, Aerospace Engineer Transport Airplane Directorate, FAA, 3960 Paramount Blvd., Lakewood, California 90712; telephone (562) 627–5247; email *9-ANM-LAACO-AMOC-REQUESTS@faa.gov*.

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

(g) Subject

Joint Aircraft Service Component (JASC) Code: 2840 Fuel Quantity Indicating System.

(h) Material Incorporated by Reference

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

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

(i) MD Helicopters Service Bulletin SB369D–213, dated April 30, 2014.

(ii) MD Helicopters Service Bulletin SB369E–111, dated April 30, 2014.

(iii) MD Helicopters Service Bulletin SB369F–098, dated April 30, 2014.

(iv) MD Helicopters Service Bulletin SB369H–255, dated April 30, 2014.

(v) MD Helicopters Service Bulletin SB500N–049, dated April 30, 2014.

Note 1 to paragraph (h)(2): MD Helicopters Service Bulletin SB369D–213, SB369E–111, SB369F–098, SB369H–255, and SB500N–

049, dated April 30, 2014, are co-published as one document.

(3) For MD Helicopters service information identified in this final rule, contact MD Helicopters, Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615, Mesa, AZ 85215–9734; telephone 1–800–388–3378; fax 480–346–6813; or at *http://www.mdhelicopters.com.*

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

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

Issued in Fort Worth, Texas, on March 1, 2016.

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2016–04982 Filed 3–10–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–4381; Directorate Identifier 2015–SW–009–AD;Amendment 39–18428; AD 2016–05–10]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for Airbus Helicopters Model AS 365 N3, EC 155B, and EC155B1 helicopters with certain external life rafts. This AD requires installing a sheath kit on the left-hand and right-hand raft deployment control systems. This AD is prompted by a report that the life raft deployment control could not be adjusted due to problems with the life raft deployment linkage. This unsafe condition, if not corrected, could result in failure of the external life raft to deploy and prevent evacuation of passengers during an emergency.

DATES: This AD becomes effective March 28, 2016.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of March 28, 2016.

We must receive comments on this AD by May 10, 2016.

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

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–4381; or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the European Aviation Safety Agency (EASA) AD, any incorporated by reference service information, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this final rule, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.airbushelicopters.com/techpub.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177. It is also on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–4381.

FOR FURTHER INFORMATION CONTACT: David Hatfield, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy, Fort Worth, TX 76177; telephone (817) 222–5116; email *david.hatfield@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments prior to it becoming effective. However, we invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that resulted from adopting this AD. The most helpful comments reference a specific portion of the AD, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit them only one time. We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking during the comment period. We will consider all the comments we receive and may conduct additional rulemaking based on those comments.

Discussion

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD No. 2015–0048, dated March 17, 2015, to correct an unsafe condition for Airbus Helicopters Model AS 365 N3, EC 155B, and EC155B1 helicopters. EASA advises that after installation of a new life raft on a helicopter, the travel of the life raft deployment control could not be properly adjusted, putting at risk proper life raft inflation. According to a technical analysis, the varying positions of the life raft inflation cylinder inside the bag containing the life raft, as well as the varying positions of the bag within the life raft container, may cause the life raft deployment control cable to loosen and travel insufficiently.

This condition could result in failure of the external life raft to deploy after a ditching, impeding or preventing the safe evacuation of helicopter occupants, EASA states. EASA consequently requires alteration of the life raft deployment control by installing a sheath kit, which Airbus Helicopters identifies as Modification 365A084711.00 and 365A084711.01.

FAA's Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, its technical representative, has notified us of the unsafe condition described in the EASA AD. We are issuing this AD because we evaluated all information

provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs.

Related Service Information Under 1 CFR Part 51

We reviewed Airbus Helicopters Alert Service Bulletin (ASB) No. AS365–25.01.45 and ASB No. EC155–25A128, both Revision 1, and both dated February 2, 2015. The service information reports that the position of the life raft inflation cylinder may slacken the deployment control cable for new life rafts installed on Model AS 365 N3, EC 155B, and EC155B1 helicopters. In one instance, travel of the life raft deployment control could not be adjusted as stated in the maintenance manual. This anomaly is due to the varying positions of the inflation cylinder inside the bag that contains the life raft, and the varying positions of the bag inside the container, related to the installation and removal of optional equipment, calendar overhauls, life raft storage, shock impacts, and in-flight vibrations. Airbus Helicopters consequently developed modification 365A084711.00 and 365A084711.01, which ensure sufficient travel of the life raft deployment control cable in all positions of the inflation cylinder by installing an improved sheath kit on the left hand and right hand deployment controls.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

AD Requirements

This AD requires, before the next flight over water, installing a sheath kit on the left-hand and right-hand raft deployment controls.

Differences Between This AD and the EASA AD

The EASA AD requires installing a sheath kit on the left-hand and right-hand raft deployment controls within 110 hours time-in-service or before further flight for helicopters required to have life rafts, whichever occurs later. This AD requires installing a sheath kit on the left-hand and right-hand raft deployment controls before the next flight over water.

Costs of Compliance

We estimate that this proposed AD affects 23 helicopters of U.S. Registry and that labor costs average $85 per work-hour. Based on these estimates, we expect that installing the sheath kits requires 4 work-hours and a parts cost of $50 for a total cost of $390 per helicopter and $8,970 for the U.S. fleet.

FAA's Justification and Determination of the Effective Date

Providing an opportunity for public comments prior to adopting these AD requirements would delay implementing the safety actions needed to correct this known unsafe condition. Therefore, we find that the risk to the flying public justifies waiving notice and comment prior to the adoption of this rule because many of the affected helicopters are located along major waterways, and the required corrective actions must be accomplished before the next flight over water.

Since an unsafe condition exists that requires the immediate adoption of this AD, we determined that notice and opportunity for prior public comment before issuing this AD are impracticable and contrary to the public interest and that good cause exists to make this AD effective in less than 30 days.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify that this AD:

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

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

3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2016–05–10 Airbus Helicopters: Amendment 39–18428; Docket No. FAA–2015–4381; Directorate Identifier 2015–SW–009–AD.

(a) Applicability

This AD applies to Airbus Helicopters Model AS 365 N3, EC 155B, and EC155B1 helicopters with an external life raft part number 245431–0, 245431–1, 245434–0, or 245434–1 installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as an external life raft's failure to deploy. This condition could prevent the safe evacuation of helicopter occupants during an emergency landing in water.

(c) Effective Date

This AD becomes effective March 28, 2016.

(d) Compliance

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

(e) Required Actions

Before the next flight over water, install a sheath kit on each left-hand and right-hand life raft deployment control in accordance with the Accomplishment Instructions, paragraph 3.B.2, of Airbus Helicopters Alert Service Bulletin (ASB) No. AS365–25.01.45, Revision 1, dated February 2, 2015, or ASB No. EC155–25A128, Revision 1, dated February 2, 2015, whichever is applicable to your helicopter.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: David Hatfield, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy, Fort Worth, TX 76177; telephone (817) 222–5116; email *9-ASW-FTW-AMOC-Requests@faa.gov.*

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

(g) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2015–0048, dated March 17, 2015. You may view the EASA AD on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2015–4381.

(h) Subject

Joint Aircraft Service Component (JASC) Code: Life Raft, 2564.

(i) Material Incorporated by Reference

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

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

(i) Airbus Helicopters Alert Service Bulletin No. AS365–25.01.45, Revision 1, dated February 2, 2015.

(ii) Airbus Helicopters Alert Service Bulletin No. EC155–25A128, Revision 1, dated February 2, 2015.

(3) For Airbus Helicopters service information identified in this final rule, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.airbushelicopters.com/techpub.*

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

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

Issued in Fort Worth, Texas, on February 29, 2016.

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2016–04981 Filed 3–10–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–0248; Directorate Identifier 2014–NM–143–AD; Amendment 39–18410; AD 2016–04–16]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2013–08–23 for all The Boeing Company Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, MD–10–30F, MD–11, and MD–11F airplanes. AD 2013–08–23 required adding design features to detect electrical faults and to detect a pump running in an empty fuel tank. This new AD would clarify certain requirements and remove a terminating action. This new AD would also provide an optional method of compliance for the proposed actions. This AD was prompted by a determination that it is necessary to clarify the requirements for the design features and to remove a terminating action for certain inspections. We are issuing this AD to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

DATES: This AD is effective April 15, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 15, 2016.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, CA 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0248.

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–2015–0248; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Serj Harutunian, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5254; fax: 562–627–5210; email: *serj.harutunian@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2013–08–23, Amendment 39–17441 (78 FR 24037, April 24, 2013). AD 2013–08–23 applied to all The Boeing Company Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, MD–10–30F, MD–11, and MD–11F airplanes. The NPRM published in the **Federal Register** on March 27, 2015 (80 FR 16321). The NPRM was prompted by a determination that it is necessary to clarify the requirements for the design features and to remove a terminating action for certain inspections. The NPRM proposed to clarify certain requirements and remove a terminating action. The NPRM also proposed to provide an optional method of compliance for the proposed actions. We are issuing this AD to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM (80 FR 16321, March 27, 2015) and the FAA's response to each comment.

Support for the NPRM (80 FR 16321, March 27, 2015)

Boeing stated that it supports the NPRM (80 FR 16321, March 27, 2015).

Request for Clarification

FedEx requested that we clarify paragraph (h)(3) of the proposed AD (80 FR 16321, March 27, 2015) because it is unclear and confusing.

FedEx explained that paragraphs (h)(1) and (h)(2) of the proposed AD (80 FR 16321, March 27, 2015) propose to mandate compliance with Boeing Alert Service Bulletin MD11–28A133, dated June 5, 2014; Boeing Service Bulletin MD11–28–137, dated June 24, 2014; Boeing Alert Service Bulletin DC10–28A253, dated June 5, 2014; and Boeing Service Bulletin DC10–28–256, dated June 24, 2014. This service information, in addition to describing procedures for airframe modifications, specifies revising Airworthiness Limitation Instructions (ALI) 28–1, Trijet Fuel Pump Fault Current Detector Functional Check; ALI 28–2, DC–10/KDC–10 Uncommanded On Circuit Functional Check; ALI 28–3, MD–10 Uncommanded On Circuit Functional Check; and ALI 28–4, MD–11 Uncommanded On Circuit Functional Check, Boeing Trijet Special Compliance Item Report MDC–02K1003, Revision M, dated July 25, 2014. FedEx stated that paragraph (h)(3) of the proposed AD creates confusion because Appendixes B and C of Boeing Trijet Special Compliance Item Report MDC–02K1003, Revision M, dated July 25, 2014, also change/affect Critical Design Configuration Control Limitation (CDCCL) 20–9, Trijet Wing Root Area Lightning Protection, (Boeing Service Bulletin DC10–28–262, Revision 1, dated June 9, 2010, which was mandated by AD 2010–21–13, Amendment 39–16473 (75 FR 63040, October 14, 2010), and has nothing to do with the intent of this NPRM, which supersedes AD 2013–08–23, Amendment 39–17441 (78 FR 24037, April 24, 2013).

FedEx also noted that paragraph (h)(3) of the proposed AD (80 FR 16321, March 27, 2015) states that revising the maintenance or inspection program terminates the requirements in paragraphs (g) and (h) of AD 2008–06–21 R1, Amendment 39–16100 (74 FR 61504, November 25, 2009). FedEx requested that we identify the requirements in AD 2008–06–21 R1 that would be terminated. FedEx reasoned that paragraphs (g) and (h) of AD 2008–06–21 R1 cannot be terminated because CDCCLs and ALIs are constantly revised or new items added to meet safety requirements, so latent failures must be addressed in the fuel system design.

We agree that clarification is necessary. AD 2010–21–13, Amendment 39–16473 (75 FR 63040, October 14, 2010), requires installing a support bracket and coupler on the left and right wing-to-fuselage transition, and metallic overbraid on the left and right leading edge wire assembly but it does not require revising the maintenance or inspection program to incorporate a corresponding CDCCL. Paragraph (h)(3) of this AD includes incorporating CDCCL 20–9, Trijet Wing Root Area Lightning Protection, as part of the maintenance or inspection program. Notwithstanding any other maintenance or operational requirements, components that have been identified as airworthy or installed on the affected airplanes before accomplishing the revision of the airplane maintenance or inspection program specified in this AD, do not need to be reworked in accordance with the CDCCLs. However, once the airplane maintenance or inspection program has been revised as required by this AD, future maintenance actions on these components must be done in accordance with the CDCCLs.

In regards to FedEx's comment on terminating action, we note that AD 2008–06–21 R1, Amendment 39–16100 (74 FR 61504, November 25, 2009) requires incorporation of Boeing Trijet Special Compliance Item Report, MDC–02K1003, Revision C, dated July 24, 2007. Paragraph (h)(3) of this AD requires a revision of the maintenance or inspection program to include Boeing Trijet Special Compliance Item (SCI) Report MDC–02K1003, Revision M, dated July 25, 2014. We are requiring the actions specified in Appendixes B, C, and D of Boeing Trijet Special Compliance Item Report MDC–02K1003, Revision M, dated July 25, 2014, because they include the latest CDCCLs, ALIs, and short-term extensions. Therefore, accomplishing the revision required by paragraph (h)(3) of this AD would terminate the requirements in paragraphs (g) and (h) of AD 2008–06–21 R1. Accomplishing paragraph (h)(3) of this AD would replace the existing requirements with updated requirements. We have not changed this AD in this regard.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (80 FR 16321, March 27, 2015) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (80 FR 16321, March 27, 2015).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Related Service Information Under 1 CFR Part 51

We reviewed the following service information.

- Boeing Alert Service Bulletin DC10–28A253, dated June 5, 2014; and Boeing Alert Service Bulletin MD11–28A133, dated June 5, 2014. This service information describes procedures for replacing the fuel pump control relays with fault current detectors and changing the fuel tank boost/transfer pump wire termination.
- Boeing Service Bulletin DC10–28–256, dated June 24, 2014; and Boeing Service Bulletin MD11–28–137, dated June 24, 2014; which describe procedures for changing the fuel pump control and indication system wiring.
- Boeing Trijet Special Compliance Item Report MDC–02K1003, Revision M, including Appendices A through D, dated July 25, 2014, which includes CDCCLs, ALIs, and short-term extensions in Appendices B, C, and D, respectively.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 341 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Installing design features using a method approved by the FAA [retained action from AD 2013-08-23, Amendment 39-17441 (78 FR 24037, April 24, 2013)].	152 work-hours × $85 per hour = $12,920.	$137,500	$150,420	$51,923,220
Installing design features using service information specified in paragraph (h) of this AD (including revising the maintenance/inspection program) [new option of this AD].	98 work-hours × $85 per hour = $8,330.	109,000	117,330	40,009,530

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2013–08–23, Amendment 39–17441 (78 FR 24037, April 24, 2013), and adding the following new AD:

2016–04–16 The Boeing Company: Amendment 39–18410; Docket No. FAA–2015–0248; Directorate Identifier 2014–NM–143–AD.

(a) Effective Date

This AD is effective April 15, 2016.

(b) Affected ADs

(1) This AD replaces AD 2013–08–23, Amendment 39–17441 (78 FR 24037, April 24, 2013).

(2) This AD affects AD 2008–06–21 R1, Amendment 39–16100 (74 FR 61504, November 25, 2009).

(3) This AD affects AD 2002–13–10, Amendment 39–12798 (67 FR 45053, July 8, 2002).

(4) This AD affects AD 2011–11–05, Amendment 39–16704 (76 FR 31462, June 1, 2011).

(c) Applicability

This AD applies to all The Boeing Company airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F airplanes.

(2) Model MD–10–10F, MD–10–30F, MD–11, and MD–11F airplanes.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a fuel system review conducted by the manufacturer. We are issuing this AD to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

(f) Compliance

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

(g) Retained Criteria for Operation, With Clarifications and New Compliance Time

This paragraph restates the actions required by paragraph (g) of AD 2013–08–23, Amendment 39–17441 (78 FR 24037, April 24, 2013), with clarification of actions for airplanes with auxiliary fuel tanks removed, clarification of the pumps that must have a protective device installed, and a new compliance time. Except as provided by paragraph (h) of this AD: As of 48 months after the effective date of this AD, no person may operate any airplane affected by this AD unless an amended type certificate or supplemental type certificate that incorporates the design features and requirements described in paragraphs (g)(1) through (g)(4) of this AD has been approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, and those design features are installed on the airplane to meet the criteria specified in section 25.981(a) and (d) of the Federal Aviation Regulations (14 CFR 25.981(a) and (d), at Amendment 25–125 (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgFAR.nsf/0/339DAEE3E0A6379D862574CF00641951?OpenDocument*)). For airplanes on which Boeing-installed auxiliary fuel tanks are removed, the actions specified in this AD for the auxiliary fuel tanks are not required.

(1) For all airplanes: Each electrically powered alternating current (AC) fuel pump installed in any fuel tank that normally empties during flight and each pump that is partially covered by a lowering fuel level—such as main tanks, center wing tanks, auxiliary fuel tanks installed by the airplane manufacturer, and tail tanks—must have a protective device installed to detect electrical faults that can cause arcing and burn through of the fuel pump housing and pump electrical connector. The same device must shut off the pump by automatically removing electrical power from the pump when such faults are detected. When a fuel pump is shut off resulting from detection of an electrical fault, the device must stay latched off, until the fault is cleared through maintenance action and the pump is verified safe for operation.

(2) For airplanes with a 2-person flightcrew: Additional design features, if not originally installed by the airplane manufacturer, must be installed to meet 3 criteria: To detect a running fuel pump in a tank that is normally emptied during flight, to provide an indication to the flightcrew that the tank is empty, and to automatically shut off that fuel pump. The prospective pump indication and shutoff system must automatically shut off each pump in case the flightcrew does not shut off a pump running dry in an empty tank within 60 seconds after each fuel tank is emptied. An airplane flight manual supplement (AFMS) that includes flightcrew manual pump shutoff procedures in the Limitations section of the AFMS must be submitted to the Los Angeles ACO, FAA, for approval.

(3) For airplanes with a 3-person flightcrew: Additional design features, if not originally installed by the airplane manufacturer, must be installed to detect when a fuel pump in a tank that is normally emptied during flight is running in an empty fuel tank, and to provide an indication to the flightcrew that the tank is empty. The flight engineer must manually shut off each pump running dry in an empty tank within 60 seconds after the tank is emptied. The AFMS Limitations section must be revised to specify that this pump shutoff must be done by the flight engineer.

(4) For all airplanes with tanks that normally empty during flight: Separate means must be provided to detect and shut off a pump that was previously commanded to be shut off automatically or manually but remained running in an empty tank during flight.

(h) New Optional Method of Compliance

In lieu of doing the requirements of paragraph (g) of this AD, do the applicable actions specified in paragraphs (h)(1), (h)(2), and (h)(3) of this AD.

(1) For MD–11 and MD–11F airplanes: Do the actions specified in paragraphs (h)(1)(i) and (h)(1)(ii) of this AD.

(i) As of 48 months after the effective date of this AD, change the fuel pump control and indication system wiring, in accordance with the Accomplishment Instructions of Boeing Service Bulletin MD11–28–137, dated June 24, 2014.

(ii) Prior to or concurrently with accomplishing the actions specified in paragraph (h)(1)(i) of this AD: Replace the fuel pump control relays with fault current detectors, and change the fuel tank boost/transfer pump wire termination, in accordance with Accomplishment Instructions of Boeing Alert Service Bulletin MD11–28A133, dated June 5, 2014.

(2) For Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F airplanes: Do the actions specified in paragraphs (h)(2)(i) and (h)(2)(ii) of this AD.

(i) As of 48 months after the effective date of this AD, change the fuel pump control and indication system wiring, in accordance with the Accomplishment Instructions of Boeing Service Bulletin DC10–28–256, dated June 24, 2014.

(ii) Prior to or concurrently with accomplishing the actions specified in paragraph (h)(2)(i) of this AD: Replace the fuel pump control relays with fault current detectors, and change the fuel tank boost/transfer pump wire termination, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin DC10–28A253, dated June 5, 2014.

(3) For all airplanes: Within 30 days after accomplishing the actions required by paragraph (h)(1) or (h)(2) of this AD, or within 30 days after the effective date of this AD, whichever occurs later, revise the maintenance or inspection program, as applicable, to incorporate the Critical Design Configuration Control Limitations (CDCCLs), Airworthiness Limitation Instructions (ALIs), and short-term extensions specified in Appendices B, C, and D of Boeing Trijet Special Compliance Item (SCI) Report MDC–02K1003, Revision M, dated July 25, 2014. The initial compliance time for accomplishing the actions specified in the ALIs is at the later of the times specified in paragraphs (h)(3)(i) and (h)(3)(ii) of this AD. Revising the maintenance or inspection program required by this paragraph terminates the requirements in paragraphs (g) and (h) of AD 2008–06–21 R1, Amendment 39–16100 (74 FR 61504, November 25, 2009).

(i) At the applicable time specified in Appendix C of Boeing Trijet SCI Report MDC–02K1003, Revision M, dated July 25, 2014, except as provided by Appendix D of Boeing Trijet SCI Report MDC–02K1003, Revision M, dated July 25, 2014.

(ii) Within 30 days after accomplishing the actions required by paragraph (h)(1) or (h)(2) of this AD, as applicable; or within 30 days after the effective date of this AD; whichever occurs later.

(i) No Alternative Actions, Intervals, or CDCCLs

If the option in paragraph (h)(3) of this AD is accomplished: After the maintenance or inspection program has been revised as provided by paragraph (h)(3) of this AD, no alternative actions (*e.g.,* inspections), intervals, or CDCCLs may be used unless the actions, intervals, or CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (k) of this AD.

(j) Compliance Time Extension in Related ADs

Accomplishment of the actions specified in paragraphs (h)(1), (h)(2), and (h)(3) of this AD, as applicable, extends the 18-month repetitive inspections and tests required by paragraph (a) of AD 2002–13–10, Amendment 39–12798 (67 FR 45053, July 8, 2002); and the 18-month repetitive inspections required by paragraph (j) of AD 2011–11–05, Amendment 39–16704 (76 FR 31462, June 1, 2011); to 24-month intervals for pumps affected by those ADs, regardless if the pump is installed in a tank that normally empties, provided the remaining actions required by those two ADs have been accomplished.

(k) Alternative Methods of Compliance (AMOCs)

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

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

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

(4) AMOCs approved for AD 2013–08–23, Amendment 39–17441 (78 FR 24037, April 24, 2013), are approved as AMOCs for the corresponding provisions of this AD.

(l) Related Information

For more information about this AD, contact Serj Harutunian, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5254; fax: 562–627–5210; email: *serj.harutunian@faa.gov.*

(m) Material Incorporated by Reference

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

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

(i) Boeing Alert Service Bulletin DC10–28A253, dated June 5, 2014.

(ii) Boeing Alert Service Bulletin MD11–28A133, dated June 5, 2014.

(iii) Boeing Service Bulletin DC10–28–256, dated June 24, 2014.

(iv) Boeing Service Bulletin MD11–28–137, dated June 24, 2014.

(v) Boeing Trijet Special Compliance Item Report MDC–02K1003, Revision M, including Appendices A through D, dated July 25, 2014.

(3) For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, CA 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; Internet *https://www.myboeingfleet.com.*

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

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

Issued in Renton, Washington, on February 8, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–04564 Filed 3–10–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–7489; Airspace Docket No. 15–ASW–20]

Amendment of Class D and E Airspace; Enid Vance AFB, OK; Enid Woodring Municipal Airport, Enid, OK; and Enid, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date, correction.

SUMMARY: This action changes the effective date of a final rule published in the **Federal Register** of February 19, 2016, amending Class E surface area airspace, Class E airspace designated as an extension, and Class E airspace extending upward from 700 feet above the surface, in the Enid, OK, area to allow additional time for charting. This correction adds the part-time Notice to Airmen (NOTAM) language inadvertently removed from the Class E surface area description for Vance AFB, and Woodring Municipal Airport, Enid, OK. Adjustment of the geographic coordinates are also made to the Vance VHF Omnidirectional Range Tactical Air Navigation (VORTAC) listed in the Class E airspace area designated as an extension to the Class D surface area.

DATES: This correction is effective 0901 UTC, July 21, 2016, and the effective date of the rule amending 14 CFR part 71 published on February 19, 2016 (81 FR 8389), is delayed to 0901 UTC July 21, 2016.

The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX, 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

History

The **Federal Register** published a final rule amending Class E surface area airspace, Class E airspace designated as an extension, and Class E airspace extending upward from 700 feet above the surface, at Vance AFB, Enid, OK; and Woodring Municipal Airport, Enid, OK (81 FR 8389, February 19, 2016) Docket No. FAA–2015–7489. Subsequent to publication, the FAA determined that the part-time NOTAM language in the Class E surface area description was inadvertently removed in error. Potential safety concerns were identified due to the possibility for confusion in determining the operating rules and equipment requirements in the Vance AFB and Woodring Municipal Airport terminal areas. The concerns were based on the opportunity for part-time Class D surface area airspace and continuous Class E surface area airspace to be active at the same time.

To resolve these concerns, the FAA is keeping the part-time NOTAM language in the Class E surface area description to retain it as part-time airspace supplementing the existing part-time Class D surface area airspace at Vance AFB and Woodring Municipal Airport. The regulatory text is rewritten for clarity. A minor adjustment is also made to the geographic coordinates of the Vance VORTAC listed in Class E airspace area designated as an extension to Class D. These are administrative corrections and do not affect the controlled airspace boundaries or operating requirements supporting operations in the Vance AFB and Woodring Municipal Airport terminal areas.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, in the **Federal Register** of February 19, 2016 (81 FR 8389) FR Doc. 2016–03365, Amendment of Class D and E Airspace; Enid Vance AFB, Ok; Enid Woodring Municipal Airport, Enid, OK; and Enid, OK, is corrected as follows:

§ 71.1 [Amended]

ASW OK E2 Enid, OK [Corrected]

■ On page 8390, column 3, beginning on line 42, remove the following text:

''Within a 5.1-mile radius of Vance AFB, and within a 4.1-mile radius of Woodring Municipal Airport.'', and add in its place:

''Within a 5.1-mile radius of Vance AFB, and within a 4.1-mile radius of Woodring Municipal Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.''

ASW OK E4 Enid Vance AFB, OK [Corrected]

■ On page 8390, column 3, line 54, remove ''(lat. 36°20′42″ N., long. 97°55′07″ W.)'' and add in its place ''(lat. 36°20′42″ N., long. 97°55′06″ W.)''

Issued in Fort Worth, Texas, on March 1, 2016.

Vonnie Royal

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2016–05395 Filed 3–10–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 19

[Docket No. 150902806–5806–01]

RIN 0605–AA40

Commerce Debt Collection

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

ACTION: Final rule.

SUMMARY: The Department of Commerce (Commerce Department) hereby revises its debt collection regulations as a result of, and to conform to, an amendment made by the Digital Accountability and Transparency Act of 2014 (DATA Act). Specifically, the law, as amended by the DATA Act, requires Commerce Department to refer to the Secretary of the Treasury all past due, legally enforceable nontax debt that are over 120 days delinquent, including nontax debt administered by a third party acting as an agent for the Federal Government, for purposes of administrative offset. These revised debt collection regulations also provide updated references to the Bureau of the Fiscal Service as the agency within the Department of the Treasury to which Commerce Department refers delinquent debts to reflect a reorganization made by the Department of the Treasury.

DATES: This rule is effective April 11, 2016.

FOR FURTHER INFORMATION CONTACT: Gordon T. Alston, Acting Deputy Chief Financial Officer and Director for Financial Management, Office of Financial Management, at (202) 482–1207, Department of Commerce, 1401 Constitution Avenue NW., Room D200, Washington, DC 20230. The Commerce Department debt collection regulations are available for downloading from Commerce Department, Office of Financial Management's Web site at the following address: *http://www.osec.doc.gov/ofm/OFM_Publications.html.*

SUPPLEMENTARY INFORMATION:

Background

This final rule revises and replaces Commerce Department debt collection regulations found at 15 CFR part 19 to conform to the Debt Collection Improvement Act of 1996 (DCIA), Public Law 104–134, 110 Stat. 1321, 1358 (Apr. 26, 1996), the revised Federal Claims Collection Standards, 31 CFR Chapter IX Parts 900 through 904, and other laws applicable to the collection of non-tax debt owed to the Government. Commerce Department made revisions to 15 CFR part 19 to merely update Commerce Department regulations on debt collection to conform with an amendment to 31 U.S.C. 3716(c)(6) made by Section 5 of the DATA Act. That amendment requires that Commerce Department refer to the Secretary of the Treasury all past due, legally enforceable nontax debt that are over 120 days delinquent, including nontax debt administered by a third party acting as an agent for the Federal Government, for purposes of administrative offset. Accordingly, the regulations at 15 CFR part 19 are being updated to reflect current law. Agency debts which are more than 120 days delinquent and have not been timely referred to the Department of the Treasury shall be reported to the Congress by the Secretary of the Treasury. These revised debt collection regulations also provide updated references to the Bureau of the Fiscal Service as the agency within the Department of Treasury to which Commerce Department refers delinquent debts to reflect a reorganization made by the Department of the Treasury.

These regulations provide procedures for the collection of non-tax debts owed to Commerce Department entities. Commerce Department adopts the government-wide debt collection standards promulgated by the Departments of the Treasury and Justice, known as the Federal Claims Collection Standards (FCCS), as revised on November 22, 2000 (31 CFR Chapter IX parts 900–904), and supplements FCCS by prescribing procedures consistent with FCCS, as necessary and appropriate for Commerce Department operations. These regulations also provide the procedures for the collection of debts owed to other Federal agencies when a request for offset is received by Commerce Department.

These regulations do not contain a section regarding the delegation of debt collection authority within Commerce Department. The delegation is contained in the Commerce Department Credit and Debt Management Operating Standards and Procedures Handbook, available at *http://www.osec.doc.gov/ofm/credit/cover.html,* and does not need to be included in the regulations.

Nothing in these regulations precludes the use of collection remedies not contained in these regulations. For example, Commerce Department entities may collect unused travel advances through offset of an employee's pay under 5 U.S.C. 5705. Commerce Department entities and other Federal agencies may simultaneously use multiple collection remedies to collect a debt, except as prohibited by law.

Commerce Department entities may, but are not required to, promulgate additional policies and procedures consistent with these regulations, FCCS, and other applicable Federal laws, policies, and procedures, subject to the approval of the Deputy Chief Financial Officer and Director for Financial Management.

Classification

These revisions to Commerce Department debt collection regulations at 15 CFR part 19 relate only to agency procedure and practice and do not affect any public right, interest, or remedy otherwise available. This action makes no substantive changes and does not change or impose additional requirements that necessitate adjustments by entities subject to the debt collection regulations. Instead, it merely updates delinquent debt day count figures and a Department of the Treasury bureau title in the existing regulations to bring the regulations into line with the DATA Act's debt referral requirements and the current Department of the Treasury bureau title, over which Commerce Department has no discretion. To the extent that this rule updates these regulations to reflect the changes to the Department of the Treasury's organization, it will help reduce confusion regarding the correct entity to contact.

Accordingly, notice and comment are not required for this rule, pursuant to Section 553(b)(A) of the Administrative Procedure Act (5 U.S.C. 551, *et seq.*).

Paperwork Reduction Act

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

Regulatory Analysis

E.O. 12866 and 13563, Regulatory Review

This rule is not a significant regulatory action as defined in Executive Orders 12866 and 13563.

Regulatory Flexibility Act

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

List of Subjects in 15 CFR Part 19

Administrative practice and procedure, Claims, Debts, Garnishment of wages, Federal Government employee, Hearing and appeal procedures, Pay administration, Salaries, Wages.

Dated: March 4, 2016.

Gordon T. Alston,

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

Authority and Issuance

For the reasons stated in the preamble, Commerce Department revises 15 CFR part 19 to read as follows:

PART 19—COMMERCE DEBT COLLECTION

Subpart A—General Provisions

Sec.

19.1 What definitions apply to the regulations in this part?
19.2 Why did the Commerce Department issue these regulations and what do they cover?
19.3 Do these regulations adopt the Federal Claims Collection Standards (FCCS)?

Subpart B—Procedures to Collect Commerce Debts

19.4 What notice will Commerce entities send to a debtor when collecting a Commerce debt?
19.5 How will Commerce entities add interest, penalty charges, and administrative costs to a Commerce debt?
19.6 When will Commerce entities allow a debtor to pay a Commerce debt in installments instead of one lump sum?
19.7 When will Commerce entities compromise a Commerce debt?
19.8 When will Commerce entities suspend or terminate debt collection on a Commerce debt?
19.9 When will Commerce entities transfer a Commerce debt to the Treasury Department's Bureau of the Fiscal Service for collection?
19.10 How will Commerce entities use administrative offset (offset of non-tax Federal payments) to collect a Commerce debt?
19.11 How will Commerce entities use tax refund offset to collect a Commerce debt?
19.12 How will Commerce entities offset a Federal employee's salary to collect a Commerce debt?
19.13 How will Commerce entities use administrative wage garnishment to collect a Commerce debt from a debtor's wages?
19.14 How will Commerce entities report Commerce debts to credit bureaus?
19.15 How will Commerce entities refer Commerce debts to private collection agencies?
19.16 When will Commerce entities refer Commerce debts to the Department of Justice?
19.17 Will a debtor who owes a Commerce or other Federal agency debt, and persons controlled by or controlling such debtors, be ineligible for Federal loan assistance, grants, cooperative agreements, or other sources of Federal funds or for Federal licenses, permits, or privileges?
19.18 How does a debtor request a special review based on a change in circumstances such as catastrophic illness, divorce, death, or disability?
19.19 Will Commerce entities issue a refund if money is erroneously collected on a Commerce debt?

Subpart C—Procedures for Offset of Commerce Department Payments To Collect Debts Owed to Other Federal Agencies

19.20 How do other Federal agencies use the offset process to collect debts from payments issued by a Commerce entity?
19.21 What does a Commerce entity do upon receipt of a request to offset the salary of a Commerce entity employee to collect a debt owed by the employee to another Federal agency?

Authority: 31 U.S.C. 3701, *et seq.*

Subpart A—General Provisions

§ 19.1 What definitions apply to the regulations in this part?

As used in this part:

Administrative offset or offset means withholding funds payable by the United States (including funds payable by the United States on behalf of a state government) to, or held by the United States for, a person to satisfy a debt owed by the person. The term ''administrative offset'' can include, but is not limited to, the offset of Federal salary, vendor, retirement, and Social Security benefit payments. The terms ''centralized administrative offset'' and ''centralized offset'' refer to the process by which the Treasury Department's Bureau of the Fiscal Service offsets Federal payments through the Treasury Offset Program.

Administrative wage garnishment means the process by which a Federal agency orders a non-Federal employer to withhold amounts from a debtor's wages to satisfy a debt, as authorized by 31 U.S.C. 3720D, 31 CFR 285.11, and this part.

Agency or Federal agency means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of the Federal Government, including government corporations.

Bureau of the Fiscal Service means the Bureau of the Fiscal Service, a bureau of the Treasury Department, which is responsible for the centralized collection of delinquent debts through the offset of Federal payments and other means.

Commerce debt means a debt owed to a Commerce entity by a person.

Commerce Department means the United States Department of Commerce.

Commerce entity means a component of the Commerce Department, including offices or bureaus. Commerce offices currently include the Office of the Secretary of Commerce, and the Office of Inspector General. Commerce bureaus currently include the Bureau of Industry and Security, the Economics and Statistics Administration (including the Bureau of Economic Analysis, and the Bureau of the Census), the Economic Development Administration, the International Trade Administration, the Minority Business Development Agency, the National Oceanic and Atmospheric Administration, the National Telecommunications and Information Administration, the U.S. Patent and Trademark Office, and the Technology Administration (including the National Institute of Standards and Technology, and the National Technical Information Service).

Creditor agency means any Federal agency that is owed a debt.

Day means calendar day except when express reference is made to business day, which reference shall mean Monday through Friday. For purposes of time computation, the last day of the period provided will be included in the calculation unless that day is a Saturday, a Sunday, or a Federal legal holiday; in which case, the next business day will be included.

Debt means any amount of money, funds or property that has been determined by an appropriate official of the Federal Government to be owed to the United States by a person. As used in this part, the term ''debt'' can include a Commerce debt but does not include debts arising under the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*).

Debtor means a person who owes a debt to the United States.

Delinquent debt means a debt that has not been paid by the date specified in the agency's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement) unless other satisfactory payment arrangements have been made.

Delinquent Commerce debt means a delinquent debt owed to a Commerce entity.

Disposable pay has the same meaning as that term is defined in 5 CFR 550.1103.

Employee or Federal employee means a current employee of the Commerce Department or other Federal agency, including a current member of the uniformed services, including the Army, Navy, Air Force, Marine Corps, Coast Guard, Commissioned Corps of the National Oceanic and Atmospheric Administration, and Commissioned Corps of the Public Health Service, including the National Guard and the reserve forces of the uniformed services.

FCCS means the Federal Claims Collection Standards, which were jointly published by the Departments of the Treasury and Justice and codified at 31 CFR parts 900–904.

Payment agency or Federal payment agency means any Federal agency that transmits payment requests in the form of certified payment vouchers, or other similar forms, to a disbursing official for disbursement. The payment agency may be the agency that employs the debtor. In some cases, the Commerce Department may be both the creditor agency and payment agency.

Person means an individual, corporation, partnership, association, organization, State or local government or any other type of entity other than a Federal agency.

Salary offset means a type of administrative offset to collect a debt under 5 CFR part 5514 by deductions(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

Secretary means the Secretary of Commerce.

Tax refund offset is defined in 31 CFR 285.2(a).

§ 19.2 Why did the Commerce Department issue these regulations and what do they cover?

(a) *Scope.* This part provides procedures for the collection of Commerce Department debts. This part also provides procedures for collection of other debts owed to the United States when a request for offset of a payment for which Commerce Department is the payment agency is received by Commerce Department from another agency (for example, when a Commerce Department employee owes a debt to the United States Department of Education).

(b) *Applicability.* (1) This part applies to Commerce Department when collecting a Commerce Department debt, to persons who owe Commerce Department debts, to persons controlled by or controlling persons who owe Federal agency debts, and to Federal agencies requesting offset of a payment issued by Commerce Department as a payment agency (including salary payments to Commerce Department employees).

(2) This part does not apply to tax debts nor to any debt for which there is an indication of fraud or misrepresentation, as described in section 900.3 of the FCCS, unless the debt is returned by the Department of Justice to Commerce Department for handling.

(3) Nothing in this part precludes collection or disposition of any debt under statutes and regulations other than those described in this part. *See,* for example, 5 U.S.C. 5705, Advancements and Deductions, which authorizes Commerce entities to recover travel advances by offset of up to 100 percent of a Federal employee's accrued pay. *See,* also, 5 U.S.C. 4108, governing the collection of training expenses. To the extent that the provisions of laws, other regulations, and Commerce Department enforcement policies differ from the provisions of this part, those provisions of law, other regulations, and Commerce Department enforcement policies apply to the remission or mitigation of fines, penalties, and forfeitures, and to debts arising under the tariff laws of the United States, rather than the provisions of this part.

(c) *Additional policies and procedures.* Commerce entities may, but are not required to, promulgate additional policies and procedures consistent with this part, the FCCS, and other applicable Federal law, policies, and procedures, subject to the approval of Deputy Chief Financial Officer.

(d) *Duplication not required.* Nothing in this part requires a Commerce entity to duplicate notices or administrative proceedings required by contract, this part, or other laws or regulations, including but not limited to those required by financial assistance awards such as grants, cooperative agreements, loans or loan guarantees.

(e) *Use of multiple collection remedies allowed.* Commerce entities and other Federal agencies may simultaneously use multiple collection remedies to collect a debt, except as prohibited by law. This part is intended to promote aggressive debt collection, using for each debt all available and appropriate collection remedies. These remedies are not listed in any prescribed order to provide Commerce entities with flexibility in determining which remedies will be most efficient in collecting the particular debt.

§ 19.3 Do these regulations adopt the Federal Claims Collection Standards (FCCS)?

This part adopts and incorporates all provisions of the FCCS (31 CFR Chapter IX parts 900–904). This part also supplements the FCCS by prescribing procedures consistent with the FCCS, as necessary and appropriate for Commerce Department operations.

Subpart B—Procedures To Collect Commerce Debts

§ 19.4 What notice will Commerce entities send to a debtor when collecting a Commerce debt?

(a) *Notice requirements.* Commerce entities shall aggressively collect Commerce debts. Commerce entities shall promptly send at least one written notice to a debtor informing the debtor of the consequences of failing to pay or otherwise resolve a Commerce debt. The notice(s) shall be sent to the debtor at the most current address of the debtor in the records of the Commerce entity collecting the Commerce debt. Generally, before starting the collection actions described in §§ 19.5 and 19.9 through 19.17 of this part, Commerce entities will send no more than two written notices to the debtor. The notice(s) explain why the Commerce debt is owed, the amount of the Commerce debt, how a debtor may pay the Commerce debt or make alternate repayment arrangements, how a debtor may review non-privileged documents related to the Commerce debt, how a debtor may dispute the Commerce debt, the collection remedies available to Commerce entities if the debtor refuses or otherwise fails to pay the Commerce debt, and other consequences to the debtor if the Commerce debt is not paid. Except as otherwise provided in paragraph (b) of this section, the written notice(s) shall explain to the debtor:

(1) The nature and amount of the Commerce debt, and the facts giving rise to the Commerce debt;

(2) How interest, penalties, and administrative costs are added to the Commerce debt, the date by which payment should be made to avoid such charges, and that such assessments must be made unless excused in accordance with 31 CFR 901.9 (*see* § 19.5 of this part);

(3) The date by which payment should be made to avoid the enforced collection actions described in paragraph (a)(6) of this section;

(4) The Commerce entity's willingness to discuss alternative payment arrangements and how the debtor may enter into a written agreement to repay the Commerce debt under terms acceptable to the Commerce entity (*see* § 19.6 of this part);

(5) The name, address, and telephone number of a contact person or office within the Commerce entity;

(6) The Commerce entity's intention to enforce collection by taking one or more of the following actions if the debtor fails to pay or otherwise resolve the Commerce debt:

(i) *Offset.* Offset the debtor's Federal payments, including income tax refunds, salary, certain benefit payments (such as Social Security), retirement, vendor, travel reimbursements and advances, and other Federal payments (*see* §§ 19.10 through 19.12 of this part);

(ii) *Private collection agency.* Refer the Commerce debt to a private collection agency (*see* § 19.15 of this part);

(iii) *Credit bureau reporting.* Report the Commerce debt to a credit bureau (*see* § 19.14 of this part);

(iv) *Administrative wage garnishment.* Garnish the individual debtor's wages through administrative wage garnishment (*see* § 19.13 of this part);

(v) *Litigation.* Refer the Commerce debt to the Department of Justice to initiate litigation to collect the Commerce debt (*see* § 19.16 of this part);

(vi) *Treasury Department's Bureau of the Fiscal Service.* Refer the Commerce debt to the Bureau of the Fiscal Service for collection (*see* § 19.9 of this part);

(7) That Commerce debts over 120 days delinquent must be referred to the

Bureau of the Fiscal Service for the collection actions described in paragraph (a)(6) of this section (*see* § 19.9 of this part);

(8) How the debtor may inspect and copy non-privileged records related to the Commerce debt;

(9) How the debtor may request a review of the Commerce entity's determination that the debtor owes a Commerce debt and present evidence that the Commerce debt is not delinquent or legally enforceable (*see* §§ 19.10(c) and 19.11(c) of this part);

(10) How a debtor who is an individual may request a hearing if the Commerce entity intends to garnish the debtor's private sector (*i.e.,* non-Federal) wages (*see* § 1 9.13(a) of this part), including:

(i) The method and time period for requesting a hearing;

(ii) That a request for a hearing, timely filed on or before the 15th business day following the date of the mailing of the notice, will stay the commencement of administrative wage garnishment, but not other collection procedures; and

(iii) The name and address of the office to which the request for a hearing should be sent.

(11) How a debtor who is an individual and a Federal employee subject to Federal salary offset may request a hearing (*see* § 19.12(e) of this part), including:

(i) The method and time period for requesting a hearing;

(ii) That a request for a hearing, timely filed on or before the 15th day following receipt of the notice, will stay the commencement of salary offset, but not other collection procedures;

(iii) The name and address of the office to which the request for a hearing should be sent;

(iv) That the Commerce entity will refer the Commerce debt to the debtor's employing agency or to the Bureau of the Fiscal Service to implement salary offset, unless the employee files a timely request for a hearing;

(v) That a final decision on the hearing, if requested, will be issued at the earliest practical date, but not later than 60 days after the filing of the request for a hearing, unless the employee requests and the hearing official grants a delay in the proceedings;

(vi) That any knowingly false or frivolous statements, representations, or evidence may subject the Federal employee to penalties under the False Claims Act (31 U.S.C. 3729–3731) or other applicable statutory authority, and criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002, or other applicable statutory authority;

(vii) That unless prohibited by contract or statute, amounts paid on or deducted for the Commerce debt which are later waived or found not owed to the United States will be promptly refunded to the employee; and

(viii) That proceedings with respect to such Commerce debt are governed by 5 U.S.C. 5514 and 31 U.S.C. 3716.

(12) How the debtor may request a waiver of the Commerce debt, if applicable. *See,* for example, §§ 19.5 and 19.12(f) of this part.

(13) How the debtor's spouse may claim his or her share of a joint income tax refund by filing Form 8379 with the Internal Revenue Service (*see http://www.irs.gov*);

(14) How the debtor may exercise other rights and remedies, if any, available to the debtor under programmatic statutory or regulatory authority under which the Commerce debt arose.

(15) That certain debtors and, if applicable, persons controlled by or controlling such debtors, may be ineligible for Federal Government loans, guaranties and insurance, grants, cooperative agreements or other sources of Federal funds (*see* 28 U.S.C. 3201(e); 31 U.S.C. 3720B, 31 CFR 285.13, and § 19.17(a) of this part);

(16) If applicable, the Commerce entity's intention to deny, suspend or revoke licenses, permits or privileges (see § 19.17(b) of this part); and

(17) That the debtor should advise the Commerce entity of a bankruptcy proceeding of the debtor or another person liable for the Commerce debt being collected.

(b) *Exceptions to notice requirements.* A Commerce entity may omit from a notice to a debtor one or more of the provisions contained in paragraphs (a)(6) through (17) of this section if the Commerce entity, in consultation with its legal counsel, determines that any provision is not legally required given the collection remedies to be applied to a particular Commerce debt.

(c) *Respond to debtors; comply with FCCS.* Commerce entities should respond promptly to communications from debtors and comply with other FCCS provisions applicable to the administrative collection of debts. *See* 31 CFR part 901.

§ 19.5 How will Commerce entities add interest, penalty charges, and administrative costs to a Commerce debt?

(a) *Assessment and notice.* Commerce entities shall assess interest, penalties and administrative costs on Commerce debts in accordance with the provisions of 31 U.S.C. 3717 and 31 CFR 901.9. Interest shall be charged in accordance with the requirements of 31 U.S.C. 3717(a). Penalties shall accrue at a rate of not more than 6% per year or such other higher rate as authorized by law. Administrative costs, that is, the costs of processing and handling a delinquent debt, shall be determined by the Commerce entity collecting the debt, as directed by the Office of the Deputy Chief Financial Officer. Commerce entities may have additional policies regarding how interest, penalties, and administrative costs are assessed on particular types of debts, subject to the approval of the Deputy Chief Financial Officer. Commerce entities are required to explain in the notice to the debtor described in § 19.4 of this part how interest, penalties, costs, and other charges are assessed, unless the requirements are included in a contract or other legally binding agreement.

(b) *Waiver of interest, penalties, and administrative costs.* Unless otherwise required by law or contract, Commerce entities may not charge interest if the amount due on the Commerce debt is paid within 30 days after the date from which the interest accrues. *See* 31 U.S.C. 3717(d). Commerce entities may, with legal counsel approval, waive interest, penalties, and administrative costs, or any portion thereof, when it would be against equity and good conscience or not in the United States' best interest to collect such charges, in accordance with Commerce guidelines for such waivers. (*See* Commerce Department Credit and Debt Management Operating Standards and Procedures Handbook, available at *http://www.osec.doc.gov/ofm/credit/cover.html.)*

(c) *Accrual during suspension of debt collection.* In most cases, interest, penalties and administrative costs will continue to accrue during any period when collection has been suspended for any reason (for example, when the debtor has requested a hearing). Commerce entities may suspend accrual of any or all of these charges when accrual would be against equity and good conscience or not in the United States' best interest, in accordance with Commerce guidelines for such waivers. (*See* Commerce Department Credit and Debt Management Operating Standards and Procedures Handbook, available at *http://www.osec.doc.gov/ofm/credit.cover.html.*)

§ 19.6 When will Commerce entities allow a debtor to pay a Commerce debt in installments instead of one lump sum?

If a debtor is financially unable to pay the Commerce debt in one lump sum, a Commerce entity may accept payment of a Commerce debt in regular

installments, in accordance with the provisions of 31 CFR 901.8 and the Commerce entity's policies and procedures.

§ 19.7 When will Commerce entities compromise a Commerce debt?

If a Commerce entity cannot collect the full amount of a Commerce debt, the Commerce entity may, with legal counsel approval, compromise the Commerce debt in accordance with the provisions of 31 CFR part 902 and the Commerce entity's policies and procedures. (*See* Commerce Department Credit and Debt Management Operating Standards and Procedures Handbook, available at *http://www.osec.doc.gov/ofm/credit.cover.html.*)

§ 19.8 When will Commerce entities suspend or terminate debt collection on a Commerce debt?

If, after pursuing all appropriate means of collection, a Commerce entity determines that a Commerce debt is uncollectible, the Commerce entity may, with legal counsel approval, suspend or terminate debt collection activity in accordance with the provisions of 31 CFR part 903 and the Commerce entity's policies and procedures. Termination of debt collection activity by a Commerce entity does not discharge the indebtedness. (*See* Commerce Department Credit and Debt Management Operating Standards and Procedures Handbook, available at *http://www.osec.doc.gov/ofm/credit/cover.html.*)

§ 19.9 When will Commerce entities transfer a Commerce debt to the Treasury Department's Bureau of the Fiscal Service for collection?

(a) Commerce entities will transfer any Commerce debt that is more than 120 days delinquent to the Bureau of the Fiscal Service for debt collection services, a process known as ''cross-servicing.'' *See* 31 U.S.C. 3711(g), 31 CFR 285.12, and 31 U.S.C. 3716(c)(6). Commerce entities may transfer Commerce debts delinquent 120 days or less to the Bureau of the Fiscal Service in accordance with the procedures described in 31 CFR 285.12. The Bureau of the Fiscal Service takes appropriate action to collect or compromise the transferred Commerce debt, or to suspend or terminate collection action thereon, in accordance with the statutory and regulatory requirements and authorities applicable to the Commerce debt and the collection action to be taken. *See* 31 CFR 285.12(b) and 285.12(c)(2). Appropriate action can include, but is not limited to, contact with the debtor, referral of the Commerce debt to the Treasury Offset Program, private collection agencies or the Department of Justice, reporting of the Commerce debt to credit bureaus, and administrative wage garnishment.

(b) At least sixty (60) days prior to transferring a Commerce debt to the Bureau of the Fiscal Service, Commerce entities will send notice to the debtor as required by § 19.4 of this part. Commerce entities will certify to the Bureau of the Fiscal Service, in writing, that the Commerce debt is valid, delinquent, legally enforceable, and that there are no legal bars to collection. In addition, Commerce entities will certify their compliance with all applicable due process and other requirements as described in this part and other Federal laws. *See* 31 CFR 285.12(i) regarding the certification requirement.

(c) As part of its debt collection process, the Bureau of the Fiscal Service uses the Treasury Offset Program to collect Commerce debts by administrative and tax refund offset. *See* 31 CFR 285.12(g). The Treasury Offset Program is a centralized offset program administered by the Bureau of the Fiscal Service to collect delinquent debts owed to Federal agencies and states (including past-due child support). Under the Treasury Offset Program, before a Federal payment is disbursed, the Bureau of the Fiscal Service compares the name and taxpayer identification number (TIN) of the payee with the names and TINs of debtors that have been submitted by Federal agencies and states to the Treasury Offset Program database. If there is a match, the Bureau of the Fiscal Service (or, in some cases, another Federal disbursing agency) offsets all or a portion of the Federal payment, disburses any remaining payment to the payee, and pays the offset amount to the creditor agency. Federal payments eligible for offset include, but are not limited to, income tax refunds, salary, travel advances and reimbursements, retirement and vendor payments, and Social Security and other benefit payments.

§ 19.10 How will Commerce entities use administrative offset (offset of non-tax Federal payments) to collect a Commerce debt?

(a) *Centralized administrative offset through the Treasury Offset Program.* (1) In most cases, the Bureau of the Fiscal Service uses the Treasury Offset Program to collect Commerce debts by the offset of Federal payments. *See* § 19.9(c) of this part. If not already transferred to the Bureau of the Fiscal Service under § 19.9 of this part, Commerce entities will refer Commerce debt over 120 days delinquent to the Treasury Offset Program for collection by centralized administrative offset. *See* 31 U.S.C. 3716(c)(6); 31 CFR part 285, subpart A; and 31 CFR 901.3(b). Commerce entities may refer to the Treasury Offset Program for offset any Commerce debt that has been delinquent for 120 days or less.

(2) At least sixty (60) days prior to referring a Commerce debt to the Treasury Offset Program, in accordance with paragraph (a)(1) of this section, Commerce entities will send notice to the debtor in accordance with the requirements of § 19.4 of this part. Commerce entities will certify to the Bureau of the Fiscal Service, in writing, that the Commerce debt is valid, delinquent, legally enforceable, and that there are no legal bars to collection by offset. In addition, Commerce entities will certify their compliance with the requirements described in this part.

(b) *Non-centralized administrative offset for Commerce debts.* (1) When centralized administrative offset through the Treasury Offset Program is not available or appropriate, Commerce entities may collect past-due, legally enforceable Commerce debts through non-centralized administrative offset. *See* 31 CFR 901.3(c). In these cases, Commerce entities may offset a payment internally or make an offset request directly to a Federal payment agency. If the Federal payment agency is another Commerce entity, the Commerce entity making the request shall do so through the Deputy Chief Financial Officer as described in § 19.20(c) of this part.

(2) At least thirty (30) days prior to offsetting a payment internally or requesting a Federal payment agency to offset a payment, Commerce entities will send notice to the debtor in accordance with the requirements of § 19.4 of this part. When referring a Commerce debt for offset under this paragraph (b), Commerce entities making the request will certify, in writing, that the Commerce debt is valid, delinquent, legally enforceable, and that there are no legal bars to collection by offset. In addition, Commerce entities will certify their compliance with these regulations concerning administrative offset. *See* 31 CFR 901.3(c)(2)(ii).

(c) *Administrative review.* The notice described in § 19.4 of this part shall explain to the debtor how to request an administrative review of a Commerce entity's determination that the debtor owes a Commerce debt and how to present evidence that the Commerce debt is not delinquent or legally enforceable. In addition to challenging the existence and amount of the Commerce debt, the debtor may seek a review of the terms of repayment. In

most cases, Commerce entities will provide the debtor with a ''paper hearing'' based upon a review of the written record, including documentation provided by the debtor. Commerce entities shall provide the debtor with a reasonable opportunity for an oral hearing when the debtor requests reconsideration of the Commerce debt and the Commerce entity determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the Commerce debt turns on an issue of credibility or veracity. Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary hearing, although Commerce entities should carefully document all significant matters discussed at the hearing. Commerce entities may suspend collection through administrative offset and/or other collection actions pending the resolution of a debtor's dispute.

(d) *Procedures for expedited offset.* Under the circumstances described in 31 CFR 901.3(b)(4)(iii), Commerce entities may, with legal counsel approval, effect an offset against a payment to be made to the debtor prior to sending a notice to the debtor, as described in § 19.4 of this part, or completing the procedures described in paragraph (b)(2) and (c) of this section. Commerce entities shall give the debtor notice and an opportunity for review as soon as practicable and promptly refund any money ultimately found not to have been owed to the Government. (*See* Commerce Department Credit and Debt Management Operating Standards and Procedures Handbook, available at *http://www.osec.doc.gov/ofm/credit.cover.html*.)

§ 19.11 How will Commerce entities use tax refund offset to collect a Commerce debt?

(a) *Tax refund offset.* In most cases, the Bureau of the Fiscal Service uses the Treasury Offset Program to collect Commerce debts by the offset of tax refunds and other Federal payments. *See* § 19.9(c) of this part. If not already transferred to the Bureau of the Fiscal Service under § 19.9 of this part, Commerce entities will refer to the Treasury Offset Program any past-due, legally enforceable Commerce debt for collection by tax refund offset. *See* 26 U.S.C. 6402(d), 31 U.S.C. 3720A and 31 CFR 285.2.

(b) *Notice.* At least sixty (60) days prior to referring a Commerce debt to the Treasury Offset Program, Commerce entities will send notice to the debtor in accordance with the requirements of § 19.4 of this part. Commerce entities will certify to the Bureau of the Fiscal Service's Treasury Offset Program, in writing, that the Commerce debt is past due and legally enforceable in the amount submitted and that the Commerce entities have made reasonable efforts to obtain payment of the Commerce debt as described in 31 CFR 285.2(d). In addition, Commerce entities will certify their compliance with all applicable due process and other requirements described in this part and other Federal laws. *See* 31 U.S.C. 3720A(b) and 31 CFR 285.2.

(c) *Administrative review.* The notice described in § 19.4 of this part shall provide the debtor with at least 60 days prior to the initiation of tax refund offset to request an administrative review as described in § 19.10(c) of this part. Commerce entities may suspend collection through tax refund offset and/or other collection actions pending the resolution of the debtor's dispute.

§ 19.12 How will Commerce entities offset a Federal employee's salary to collect a Commerce debt?

(a) *Federal salary offset.* (1) Salary offset is used to collect debts owed to the United States by Commerce Department and other Federal employees. If a Federal employee owes a Commerce debt, Commerce entities may offset the employee's Federal salary to collect the Commerce debt in the manner described in this section. For information on how a Federal agency other than a Commerce entity may collect debt from the salary of a Commerce Department employee, *see* §§ 19.20 and 19.21, subpart C, of this part.

(2) Nothing in this part requires a Commerce entity to collect a Commerce debt in accordance with the provisions of this section if Federal law allows otherwise. *See,* for example, 5 U.S.C. 5705 (travel advances not used for allowable travel expenses are recoverable from the employee or his estate by setoff against accrued pay and other means) and 5 U.S.C. 4108 (recovery of training expenses).

(3) Commerce entities may use the administrative wage garnishment procedure described in § 19.13 of this part to collect a Commerce debt from an individual's non-Federal wages.

(b) *Centralized salary offset through the Treasury Offset Program.* As described in § 19.9(a) of this part, Commerce entities will refer Commerce debts to the Bureau of the Fiscal Service for collection by administrative offset, including salary offset, through the Treasury Offset Program. When possible, Commerce entities should attempt salary offset through the Treasury Offset Program before applying the procedures in paragraph (c) of this section. *See* 5 CFR 550.1108 and 550.1109.

(c) *Non-centralized salary offset for Commerce debts.* When centralized salary offset through the Treasury Offset Program is not available or appropriate, Commerce entities may collect delinquent Commerce debts through non-centralized salary offset. *See* 5 CFR 550.1109. In these cases, Commerce entities may offset a payment internally or make a request directly to a Federal payment agency to offset a salary payment to collect a delinquent Commerce debt owed by a Federal employee. If the Federal payment agency is another Commerce entity, the Commerce entity making the request shall do so through the Deputy Chief Financial Officer as described in § 19.20(c) of this part. At least thirty (30) days prior to offsetting internally or requesting a Federal agency to offset a salary payment, Commerce entities will send notice to the debtor in accordance with the requirements of § 19.4 of this part. When referring a Commerce debt for offset, Commerce entities will certify to the payment agency, in writing, that the Commerce debt is valid, delinquent and legally enforceable in the amount stated, and there are no legal bars to collection by salary offset. In addition, Commerce entities will certify that all due process and other prerequisites to salary offset have been met. *See* 5 U.S.C. 5514, 31 U.S.C. 3716(a), and this section for a description of the due process and other prerequisites for salary offset.

(d) *When prior notice not required.* Commerce entities are not required to provide prior notice to an employee when the following adjustments are made by a Commerce entity to a Commerce employee's pay:

(1) Any adjustment to pay arising out of any employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less;

(2) A routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the four pay periods preceding the adjustment, and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and point of contact for contesting such adjustment; or

(3) Any adjustment to collect a Commerce debt amounting to $50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

(e) *Hearing procedures.* (1) *Request for a hearing.* A Federal employee who has received a notice that his or her Commerce debt will be collected by means of salary offset may request a hearing concerning the existence or amount of the Commerce debt. The Federal employee also may request a hearing concerning the amount proposed to be deducted from the employee's pay each pay period. The employee must send any request for hearing, in writing, to the office designated in the notice described in § 19.4. *See* § 19.4(a)(11). The request must be received by the designated office on or before the 15th day following the employee's receipt of the notice. The employee must sign the request and specify whether an oral or paper hearing is requested. If an oral hearing is requested, the employee must explain why the matter cannot be resolved by review of the documentary evidence alone. All travel expenses incurred by the Federal employee in connection with an in-person hearing will be borne by the employee. *See* 31 CFR 901.3(a)(7).

(2) *Failure to submit timely request for hearing.* If the employee fails to submit a request for hearing within the time period described in paragraph (e)(1) of this section, the employee will have waived the right to a hearing, and salary offset may be initiated. However, Commerce entities should accept a late request for hearing if the employee can show that the late request was the result of circumstances beyond the employee's control or because of a failure to receive actual notice of the filing deadline.

(3) *Hearing official.* Commerce entities must obtain the services of a hearing official who is not under the supervision or control of the Secretary. Commerce entities may contact the Deputy Chief Financial Officer as described in § 19.20(c) of this part or an agent of any Commerce agency designated in Appendix A to 5 CFR part 581 (List of Agents Designated to Accept Legal Process) to request a hearing official.

(4) *Notice of hearing.* After the employee requests a hearing, the designated hearing official shall inform the employee of the form of the hearing to be provided. For oral hearings, the notice shall set forth the date, time and location of the hearing. For paper hearings, the notice shall notify the employee of the date by which he or she should submit written arguments to the designated hearing official. The hearing official shall give the employee reasonable time to submit documentation in support of the employee's position. The hearing official shall schedule a new hearing date if requested by both parties. The hearing official shall give both parties reasonable notice of the time and place of a rescheduled hearing.

(5) *Oral hearing.* The hearing official will conduct an oral hearing if he or she determines that the matter cannot be resolved by review of documentary evidence alone (for example, when an issue of credibility or veracity is involved). The hearing need not take the form of an evidentiary hearing, but may be conducted in a manner determined by the hearing official, including but not limited to:

(i) Informal conferences with the hearing official, in which the employee and agency representative will be given full opportunity to present evidence, witnesses and argument;

(ii) Informal meetings with an interview of the employee by the hearing official; or

(iii) Formal written submissions, with an opportunity for oral presentation.

(6) *Paper hearing.* If the hearing official determines that an oral hearing is not necessary, he or she will make the determination based upon a review of the available written record, including any documentation submitted by the employee in support of his or her position. *See* 31 CFR 901.3(a)(7).

(7) *Failure to appear or submit documentary evidence.* In the absence of good cause shown (for example, excused illness), if the employee fails to appear at an oral hearing or fails to submit documentary evidence as required for a paper hearing, the employee will have waived the right to a hearing, and salary offset may be initiated. Further, the employee will have been deemed to admit the existence and amount of the Commerce debt as described in the notice of intent to offset. If the Commerce entity representative fails to appear at an oral hearing, the hearing official shall proceed with the hearing as scheduled, and make his or her determination based upon the oral testimony presented and the documentary evidence submitted by both parties.

(8) *Burden of proof.* Commerce entities will have the initial burden to prove the existence and amount of the Commerce debt. Thereafter, if the employee disputes the existence or amount of the Commerce debt, the employee must prove by a preponderance of the evidence that no such Commerce debt exists or that the amount of the Commerce debt is incorrect. In addition, the employee may present evidence that the proposed terms of the repayment schedule are unlawful, would cause a financial hardship to the employee, or that collection of the Commerce debt may not be pursued due to operation of law.

(9) *Record.* The hearing official shall maintain a summary record of any hearing provided by this part. Witnesses will testify under oath or affirmation in oral hearings. *See* 31 CFR 901.3(a)(7).

(10) *Date of decision.* The hearing official shall issue a written opinion stating his or her decision, based upon documentary evidence and information developed at the hearing, as soon as practicable after the hearing, but not later than 60 days after the date on which the request for hearing was received by the Commerce entity. If the employee requests a delay in the proceedings, the deadline for the decision may be postponed by the number of days by which the hearing was postponed. When a decision is not timely rendered, the Commerce entity shall waive interest and penalties applied to the Commerce debt for the period beginning with the date the decision is due and ending on the date the decision is issued.

(11) *Content of decision.* The written decision shall include:

(i) A statement of the facts presented to support the origin, nature, and amount of the Commerce debt;

(ii) The hearing official's findings, analysis, and conclusions; and

(iii) The terms of any repayment schedules, if applicable.

(12) *Final agency action.* The hearing official's decision shall be final.

(f) *Waiver not precluded.* Nothing in this part precludes an employee from requesting waiver of an overpayment under 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or other statutory authority. Commerce entities may grant such waivers when it would be against equity and good conscience or not in the United States' best interest to collect such Commerce debts, in accordance with those authorities, 5 CFR 550.1102(b)(2), and Commerce policies and procedures. (*See* Commerce Department Credit and Debt Management Operating Standards and Procedures Handbook, available at *http://www.osec.doc.gov/ofm/credit/cover.html.*)

(g) *Salary offset process*—(1) *Determination of disposable pay.* The Deputy Chief Financial Officer will consult with the appropriate Commerce

entity payroll office to determine the amount of a Commerce Department employee's disposable pay (as defined in § 19.1 of this part) and will implement salary offset when requested to do so by a Commerce entity, as described in paragraph (c) of this section, or another agency, as described in § 19.20 of this part. If the debtor is not employed by Commerce Department, the agency employing the debtor will determine the amount of the employee's disposable pay and will implement salary offset upon request.

(2) *When salary offset begins.* Deductions shall begin within three official pay periods following receipt of the creditor agency's request for offset.

(3) *Amount of salary offset.* The amount to be offset from each salary payment will be up to 15 percent of a debtor's disposable pay, as follows:

(i) If the amount of the Commerce debt is equal to or less than 15 percent of the disposable pay, such Commerce debt generally will be collected in one lump sum payment;

(ii) Installment deductions will be made over a period of no greater than the anticipated period of employment. An installment deduction will not exceed 15 percent of the disposable pay from which the deduction is made unless the employee has agreed in writing to the deduction of a greater amount or the creditor agency has determined that smaller deductions are appropriate based on the employee's ability to pay.

(4) *Final salary payment.* After the employee has separated either voluntarily or involuntarily from the payment agency, the payment agency may make a lump sum deduction exceeding 15 percent of disposable pay from any final salary or other payments pursuant to 31 U.S.C. 3716 in order to satisfy a Commerce debt.

(h) *Payment agency's responsibilities.* (1) As required by 5 CFR 550.1109, if the employee separates from the payment agency from which a Commerce entity has requested salary offset, the payment agency must certify the total amount of its collection and notify the Commerce entity and the employee of the amounts collected. If the payment agency is aware that the employee is entitled to payments from the Civil Service Retirement Fund and Disability Fund, the Federal Employee Retirement System, or other similar payments, it must provide written notification to the payment agency responsible for making such payments that the debtor owes a Commerce debt, the amount of the Commerce debt, and that the Commerce entity has complied with the provisions of this section. Commerce entities must submit a properly certified claim to the new payment agency before the collection can be made.

(2) If the employee is already separated from employment and all payments due from his or her former payment agency have been made, Commerce entities may request that money due and payable to the employee from the Civil Service Retirement Fund and Disability Fund, the Federal Employee Retirement System, or other similar funds, be administratively offset to collect the Commerce debt. Generally, Commerce entities will collect such monies through the Treasury Offset Program as described in § 19.9(c) of this part.

(3) When an employee transfers to another agency, Commerce entities should resume collection with the employee's new payment agency in order to continue salary offset.

§ 19.13 How will Commerce entities use administrative wage garnishment to collect a Commerce debt from a debtor's wages?

(a) Commerce entities are authorized to collect Commerce debts from an individual debtor's wages by means of administrative wage garnishment in accordance with the requirements of 31 U.S.C. 3720D and 31 CFR 285.11. This part adopts and incorporates all of the provisions of 31 CFR 285.11 concerning administrative wage garnishment, including the hearing procedures described in 31 CFR 285.11(f). Commerce entities may use administrative wage garnishment to collect a delinquent Commerce debt unless the debtor is making timely payments under an agreement to pay the Commerce debt in installments (*see* § 19.6 of this part). At least thirty (30) days prior to initiating an administrative wage garnishment, Commerce entities will send notice to the debtor in accordance with the requirements of § 19.4 of this part, including the requirements of § 19.4(a)(10) of this part. For Commerce debts referred to the Bureau of the Fiscal Service under § 19.9 of this part, Commerce entities may authorize the Bureau of the Fiscal Service to send a notice informing the debtor that administrative wage garnishment will be initiated and how the debtor may request a hearing as described in § 19.4(a)(10) of this part. If a debtor makes a timely request for a hearing, administrative wage garnishment will not begin until a hearing is held and a decision is sent to the debtor. *See* 31 CFR 285.11(f)(4). Even if a debtor's hearing request is not timely, Commerce entities may suspend collection by administrative wage garnishment in accordance with the provisions of 31 CFR 285.11(f)(5). All travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor.

(b) This section does not apply to Federal salary offset, the process by which Commerce entities collect Commerce debts from the salaries of Federal employees (*see* § 19.12 of this part).

§ 19.14 How will Commerce entities report Commerce debts to credit bureaus?

Commerce entities shall report delinquent Commerce debts to credit bureaus in accordance with the provisions of 31 U.S.C. 3711(e), 31 CFR 901.4, and the Office of Management and Budget Circular A–129, ''Policies for Federal Credit Programs and Non-tax Receivables.'' For additional information, *see* Bureau of the Fiscal Service's ''Guide to the Federal Credit Bureau Program,'' available at *https://www.fiscal.treasury.gov/fsreports/fs_reference.htm.* At least sixty (60) days prior to reporting a delinquent Commerce debt to a consumer reporting agency, Commerce entities will send notice to the debtor in accordance with the requirements of § 19.4 of this part. Commerce entities may authorize the Bureau of the Fiscal Service to report to credit bureaus those delinquent Commerce debts that have been transferred to the Bureau of the Fiscal Service under § 19.9 of this part.

§ 19.15 How will Commerce entities refer Commerce debts to private collection agencies?

Commerce entities will transfer delinquent Commerce debts to the Bureau of the Fiscal Service to obtain debt collection services provided by private collection agencies. *See* § 19.9 of this part.

§ 19.16 When will Commerce entities refer Commerce debts to the Department of Justice?

(a) *Compromise or suspension or termination of collection activity.* Commerce entities shall refer Commerce debts having a principal balance over $100,000, or such higher amount as authorized by the Attorney General, to the Department of Justice for approval of any compromise of a Commerce debt or suspension or termination of collection activity. *See* §§ 19.7 and 19.8 of this part; 31 CFR 902.1; 31 CFR 903.1.

(b) *Litigation.* Commerce entities shall promptly refer to the Department of Justice for litigation delinquent Commerce debts on which aggressive collection activity has been taken in accordance with this part and that should not be compromised, and on

which collection activity should not be suspended or terminated. *See* 31 CFR part 904. Commerce entities may authorize the Bureau of the Fiscal Service to refer to the Department of Justice for litigation those delinquent Commerce debts that have been transferred to the Bureau of the Fiscal Service under § 19.9 of this part.

§ 19.17 Will a debtor who owes a Commerce or other Federal agency debt, and persons controlled by or controlling such debtors, be ineligible for Federal loan assistance, grants, cooperative agreements, or other sources of Federal funds or for Federal licenses, permits, or privileges?

(a) Delinquent debtors are ineligible for and barred from obtaining Federal loans or loan insurance or guaranties. As required by 31 U.S.C. 3720B and 31 CFR 901.6, Commerce entities will not extend financial assistance in the form of a loan, loan guarantee, or loan insurance to any person delinquent on a debt owed to a Federal agency. Commerce Department may issue standards under which Commerce Department may determine that persons controlled by or controlling such delinquent debtors are similarly ineligible in accordance with 31 CFR 285.13(c)(2). This prohibition does not apply to disaster loans. Commerce entities may extend credit after the delinquency has been resolved. *See* 31 CFR 285.13. Waivers of ineligibility may be granted by the Secretary or designee on a person by person basis in accordance with 31 CFR 285.13(g). However, such authority may not be delegated below the Deputy Chief Financial Officer.

(b) A debtor who has a judgment lien against the debtor's property for a debt to the United States is not eligible to receive grants, loans or funds directly or indirectly from the United States until the judgment is paid in full or otherwise satisfied. This prohibition does not apply to funds to which the debtor is entitled as beneficiary. Commerce Department may promulgate regulations to allow for waivers of this ineligibility. *See* 28 U.S.C. 3201(e).

(c) Suspension or revocation of eligibility for licenses, permits, or privileges. Unless prohibited by law, Commerce entities with the authority to do so under the circumstances should deny, suspend or revoke licenses, permits, or other privileges for any inexcusable or willful failure of a debtor to pay a debt. The Commerce entity responsible for distributing the licenses, permits, or other privileges will establish policies and procedures governing suspension and revocation for delinquent debtors. If applicable, Commerce entities will advise the debtor in the notice required by § 19.4 of this part of the Commerce entities' ability to deny, suspend or revoke licenses, permits or privileges. *See* § 19.4(a)(16) of this part.

(d) To the extent that a person delinquent on a Commerce debt is not otherwise barred under § 19.17(a) and § 19.17 (c) of this part from becoming or remaining a recipient of a Commerce Department grant or cooperative agreement, it is Commerce Department policy that no award of Federal funds shall be made to a Commerce Department grant or cooperative agreement applicant who has an outstanding delinquent Commerce debt until:

(1) The delinquent Commerce debt is paid in full,

(2) A negotiated repayment schedule acceptable to Commerce Department is established and at least one payment is received, or

(3) Other arrangements satisfactory to Commerce Department are made.

§ 19.18 How does a debtor request a special review based on a change in circumstances such as catastrophic illness, divorce, death, or disability?

(a) *Material change in circumstances.* A debtor who owes a Commerce debt may, at any time, request a special review by the applicable Commerce entity of the amount of any offset, administrative wage garnishment, or voluntary payment, based on materially changed circumstances beyond the control of the debtor such as, but not limited to, catastrophic illness, divorce, death, or disability.

(b) *Inability to pay.* For purposes of this section, in determining whether an involuntary or voluntary payment would prevent the debtor from meeting essential subsistence expenses (*e.g.,* costs incurred for food, housing, clothing, transportation, and medical care), the debtor shall submit a detailed statement and supporting documents for the debtor, his or her spouse, and dependents, indicating:

(1) Income from all sources;

(2) Assets;

(3) Liabilities;

(4) Number of dependents;

(5) Expenses for food, housing, clothing, and transportation;

(6) Medical expenses;

(7) Exceptional expenses, if any; and

(8) Any additional materials and information that the Commerce entity may request relating to ability or inability to pay the amount(s) currently required.

(c) *Alternative payment arrangement.* If the debtor requests a special review under this section, the debtor shall submit an alternative proposed payment schedule and a statement to the Commerce entity collecting the Commerce debt, with supporting documents, showing why the current offset, garnishment or repayment schedule imposes an extreme financial hardship on the debtor. The Commerce entity will evaluate the statement and documentation and determine whether the current offset, garnishment, or repayment schedule imposes extreme financial hardship on the debtor. The Commerce entity shall notify the debtor in writing of such determination, including, if appropriate, a revised offset, garnishment, or payment schedule. If the special review results in a revised offset, garnishment, or repayment schedule, the Commerce entity will notify the appropriate Federal agency or other persons about the new terms.

§ 19.19 Will Commerce entities issue a refund if money is erroneously collected on a Commerce debt?

Commerce entities shall promptly refund to a debtor any amount collected on a Commerce debt when the Commerce debt is waived or otherwise found not to be owed to the United States, or as otherwise required by law. Refunds under this part shall not bear interest unless required by law.

Subpart C—Procedures for Offset of Commerce Department Payments To Collect Debts Owed to Other Federal Agencies

§ 19.20 How do other Federal agencies use the offset process to collect debts from payments issued by a Commerce entity?

(a) *Offset of Commerce entity payments to collect debts owed to other Federal agencies.* (1) In most cases, Federal agencies submit debts to the Treasury Offset Program to collect delinquent debts from payments issued by Commerce entities and other Federal agencies, a process known as ''centralized offset.'' When centralized offset is not available or appropriate, any Federal agency may ask a Commerce entity (when acting as a ''payment agency'') to collect a debt owed to such agency by offsetting funds payable to a debtor by the Commerce entity, including salary payments issued to Commerce entity employees. This section and § 19.21 of this subpart C apply when a Federal agency asks a Commerce entity to offset a payment issued by the Commerce entity to a person who owes a debt to the United States.

(2) This subpart C does not apply to Commerce debts. *See* §§ 19.10 through

19.12 of this part for offset procedures applicable to Commerce debts.

(3) This subpart C does not apply to the collection of non-Commerce debts through tax refund offset. *See* 31 CFR 285.2 for tax refund offset procedures.

(b) *Administrative offset (including salary offset); certification.* A Commerce entity will initiate a requested offset only upon receipt of written certification from the creditor agency that the debtor owes the past-due, legally enforceable debt in the amount stated, and that the creditor agency has fully complied with all applicable due process and other requirements contained in 31 U.S.C. 3716, 5 U.S.C. 5514, and the creditor agency's regulations, as applicable. Offsets will continue until the debt is paid in full or otherwise resolved to the satisfaction of the creditor agency.

(c) *Where a creditor agency makes requests for offset.* Requests for offset under this section shall be sent to the Department of Commerce, ATTN: Deputy Chief Financial Officer, 1401 Constitution Avenue NW., Room D200, Washington, DC 20230. The Deputy Chief Financial Officer will forward the request to the appropriate Commerce entity for processing in accordance with this subpart C.

(d) *Incomplete certification.* A Commerce entity will return an incomplete debt certification to the creditor agency with notice that the creditor agency must comply with paragraph (b) of this section before action will be taken to collect a debt from a payment issued by a Commerce entity.

(e) *Review.* A Commerce entity is not authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(f) *When Commerce entities will not comply with offset request.* A Commerce entity will comply with the offset request of another agency unless the Commerce entity determines that the offset would not be in the best interests of the United States, or would otherwise be contrary to law.

(g) *Multiple debts.* When two or more creditor agencies are seeking offsets from payments made to the same person, or when two or more debts are owed to a single creditor agency, the Commerce entity that has been asked to offset the payments may determine the order in which the debts will be collected or whether one or more debts should be collected by offset simultaneously.

(h) *Priority of debts owed to Commerce entity.* For purposes of this section, debts owed to a Commerce entity generally take precedence over debts owed to other agencies. The Commerce entity that has been asked to offset the payments may determine whether to pay debts owed to other agencies before paying a debt owed to a Commerce entity. The Commerce entity that has been asked to offset the payments will determine the order in which the debts will be collected based on the best interests of the United States.

§ 19.21 What does a Commerce entity do upon receipt of a request to offset the salary of a Commerce entity employee to collect a debt owed by the employee to another Federal agency?

(a) *Notice to the Commerce employee.* When a Commerce entity receives proper certification of a debt owed by one of its employees, the Commerce entity will begin deductions from the employee's pay at the next officially established pay interval. The Commerce entity will send a written notice to the employee indicating that a certified debt claim has been received from the creditor agency, the amount of the debt claimed to be owed by the creditor agency, the date deductions from salary will begin, and the amount of such deductions.

(b) *Amount of deductions from Commerce employee's salary.* The amount deducted under § 19.20(b) of this part will be the lesser of the amount of the debt certified by the creditor agency or an amount up to 15 percent of the debtor's disposable pay. Deductions shall continue until the Commerce entity knows that the debt is paid in full or until otherwise instructed by the creditor agency. Alternatively, the amount offset may be an amount agreed upon, in writing, by the debtor and the creditor agency. *See* § 19.12(g) (salary offset process).

(c) *When the debtor is no longer employed by the Commerce entity*—(1) *Offset of final and subsequent payments.* If a Commerce entity employee retires or resigns or if his or her employment ends before collection of the debt is complete, the Commerce entity will continue to offset, under 31 U.S.C. 3716, up to 100 percent of an employee's subsequent payments until the debt is paid or otherwise resolved. Such payments include a debtor's final salary payment, lump-sum leave payment, and other payments payable to the debtor by the Commerce entity. *See* 31 U.S.C. 3716 and 5 CFR 550.1104(l) and 550.1104(m).

(2) *Notice to the creditor agency.* If the employee is separated from the Commerce entity before the debt is paid in full, the Commerce entity will certify to the creditor agency the total amount of its collection. If the Commerce entity is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, Federal Employee Retirement System, or other similar payments, the Commerce entity will provide written notice to the agency making such payments that the debtor owes a debt (including the amount) and that the provisions of 5 CFR 550.1109 have been fully complied with. The creditor agency is responsible for submitting a certified claim to the agency responsible for making such payments before collection may begin. Generally, creditor agencies will collect such monies through the Treasury Offset Program as described in § 19.9(c) of this part.

(3) *Notice to the debtor.* The Commerce entity will provide to the debtor a copy of any notices sent to the creditor agency under paragraph (c)(2) of this section.

(d) *When the debtor transfers to another Federal agency*—(1) *Notice to the creditor agency.* If the debtor transfers to another Federal agency before the debt is paid in full, the Commerce entity will notify the creditor agency and will certify the total amount of its collection on the debt. The Commerce entity will provide a copy of the certification to the creditor agency. The creditor agency is responsible for submitting a certified claim to the debtor's new employing agency before collection may begin.

(2) *Notice to the debtor.* The Commerce entity will provide to the debtor a copy of any notices and certifications sent to the creditor agency under paragraph (d)(1) of this section.

(e) *Request for hearing official.* A Commerce entity will provide a hearing official upon the creditor agency's request with respect to a Commerce entity employee. *See* 5 CFR 550.1107(a).

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

General Regulations Under the Commodity Exchange Act

CFR Correction

In Title 17 of the Code of Federal Regulations, Parts 1 to 40, revised as of April 1, 2015, on page 12, in § 1.3, remove the second paragraph (aa)(3)(ii).

[FR Doc. 2016–05576 Filed 3–10–16; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 3

Registration

CFR Correction

In Title 17 of the Code of Federal Regulations, Parts 1 to 40, revised as of April 1, 2015, on page 205, in § 3.45, revise paragraph (b) to read as follows:

§ 3.45 Restrictions upon activities.

* * * * *

(b) An applicant for registration as an introducing broker who has received a temporary license may be guaranteed by a futures commission merchant or retail foreign exchange dealer other than the futures commission merchant or retail foreign exchange dealer which provided the initial guarantee agreement described in § 3.44(a)(1) of this subpart: *Provided,* That, at least 10 days prior to the effective date of the termination of the existing guarantee agreement in accordance with the provisions of § 1.10 (j)(5) of this chapter, or such other period of time as the National Futures Association may allow for good cause shown, the applicant files with the National Futures Association—

(1) Written notice of such termination and

(2) A new guarantee agreement with another futures commission merchant or retail foreign exchange dealer effective the day following the last effective date of the existing guarantee agreement.

* * * * *

[FR Doc. 2016–05580 Filed 3–10–16; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 3

Registration

CFR Correction

In Title 17 of the Code of Federal Regulations, Parts 1 to 40, revised as of April 1, 2015, on page 188–189, in § 3.10, revise paragraph (b) to read as follows:

§ 3.10 Registration of futures commission merchants, retail foreign exchange dealers, introducing brokers, commodity trading advisors, commodity pool operators, swap dealers, major swap participants and leverage transaction merchants.

* * * * *

(b) *Duration of registration.* (1) A person registered as a futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant in accordance with paragraph (a) of this section will continue to be so registered until the effective date of any revocation or withdrawal of such registration. Such person will be prohibited from engaging in activities requiring registration under the Act or from representing himself to be a registrant under the Act or the representative or agent of any registrant during the pendency of any suspension of such registration.

(2) A person registered as an introducing broker who was a party to a guarantee agreement with a futures commission merchant or retail foreign exchange dealer in accordance with § 1.10(j) of this chapter will have its registration cease thirty days after the termination of such guarantee agreement unless the procedures set forth in § 1.10(j)(8) of this chapter are followed.

* * * * *

[FR Doc. 2016–05577 Filed 3–10–16; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

Organization; Conduct and Ethics; and Information and Requests

CFR Correction

In Title 17 of the Code of Federal Regulations, Parts 200 to 239, revised as of April 1, 2015, on page 19, in § 200.24, remove the words ''Associate Executive Director of the Office of the Comptroller'' and add in their place the words ''Chief Financial Officer''.

[FR Doc. 2016–05581 Filed 3–10–16; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–77104; File No. S7–06–15]

RIN 3235–AL73

Security-Based Swap Transactions Connected With a Non-U.S. Person's Dealing Activity That Are Arranged, Negotiated, or Executed by Personnel Located in a U.S. Branch or Office or in a U.S. Branch or Office of an Agent; Security-Based Swap Dealer De Minimis Exception

Correction

In rule document 2016–03178, appearing on pages 8598–8637, in the issue of Friday, February 19, 2016, make the following corrections:

1. On page 8604, at the bottom of the page, footnotes 55, 56, 57, 58, and 59 were inadvertently duplicated and these duplicate set of footnotes should not have appeared in the published document.

2. On page 8605, in the second column, the heading titled ''e. Current Estimates of Number of Security-Based Wwap Dealers'' should read ''e. Current Estimates of Number of Security-Based Swap Dealers''.

3. On page 8606, at the bottom page, footnote 75 was inadvertently duplicated and this duplicate footnote should not have appeared in the published document.

4. On page 8606, at the bottom of the page, footnote 77 was inadvertently omitted and it should have appeared as follows:

''[77] Commission staff analysis of TIW transaction records indicates that approximately 99 percent of single-name CDS price-forming transactions in 2014 involved an ISDA-recognized dealer.''

5. On page 8611, at the bottom of the page, in the first column, footnote 107, should read:

''[107] *See* Section II.A.3, *supra,* for an analysis of the proportion of the security-based swap market that constitutes interdealer transactions. For the purposes of this analysis we classify any security-based swap transaction between two ISDA-recognized dealers as interdealer activity.''

[FR Doc. C1–2016–03178 Filed 3–10–16; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket Number USCG–2012–0806]

RIN 1625–AA01

Anchorage Regulations; Connecticut River, Old Saybrook, CT

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing three special anchorage areas in the Connecticut River in the vicinity Old Saybrook, CT. This action is necessary to facilitate safe navigation in that area and provide safe and secure anchorages for vessels less than 20 meters in length. This action is intended to increase the safety of life and property in the Connecticut River in the vicinity of Old Saybrook, improve the safety of anchored vessels, and provide for the overall safe and efficient flow of vessel traffic and commerce.

DATES: This rule is effective April 11, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2012–0806 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Craig Lapiejko, Waterways Management at Coast Guard First District, telephone 617–223–8351, email *craig.d.lapiejko@uscg.mil* or Chief Petty Officer Ian Fallon, Waterways Management Division at Coast Guard Sector Long Island Sound, telephone 203–468–4565, email *ian.m.fallon@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

On February 28, 2012, the Old Saybrook Harbor Management Commission sent a request to the Coast Guard to permanently establish new special anchorages on the Connecticut River. In response, on November 25, 2015, the Coast Guard published a NPRM titled, Anchorage Regulations; Connecticut River, Old Saybrook, CT (80 FR 73689). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to these anchorage areas. During the comment period that ended December 28, 2015, we received no comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 471, 1221 through 1236, 2071; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1. The purpose of this rule is reduce the risk of vessel collisions and to promote safe and efficient travel in the navigable channels of the Connecticut River adjacent to Calves Island, and also to aid the town of Old Saybrook in enforcing its mooring and boating regulations by clearly defining the mooring fields currently established by the town.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published November 25, 2015. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes three new special anchorage areas, referred to as special anchorage areas A, B, and C in the Connecticut River in the vicinity of the Old Saybrook, CT. Special anchorage area A is approximately 680,800 sq. yards and is located between Ferry Point and Calves Island, upstream of the I–95/US RT 1 Baldwin Bridge. Special anchorage area B is approximately 51,200 sq. yards and located just east of North Cove. Special anchorage area C is approximately 185,400 sq. yards located in North Cove west of the navigable channel. Illustrations showing the locations of these special anchorage areas are available in the docket.

Vessels less than 20 meters in length are not required to sound signals under Rule 35 of the Inland Navigation Rules (33 CFR 83.35) nor exhibit anchor lights or shapes under Rule 30 of the Inland Navigation Rules (33 CFR 83.30) when at anchor in a special anchorage area. Additionally, mariners using these anchorage areas are encouraged to contact local and state authorities, such as the local harbormaster, to ensure compliance with any additional applicable state and local laws. Such laws may involve, for example, compliance with direction from the local harbormaster when placing or using moorings within the anchorage.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

We expect minimal additional cost impacts on fishing, or recreational boats anchoring because this rule would not affect normal surface navigation. Although this regulation may have some impact on the public, the potential impact will be minimized for the following reasons: (1) Normal surface navigation will not be affected, as these three areas in the Connecticut River in the vicinity of the eastern portion of Old Saybrook have been historically used as a mooring field by the town of Old Saybrook; (2) this rule would simply permit eligible vessels, in the existing mooring areas, to not use sound signals or exhibit anchor lights or shapes when at anchor; (3) it encourages the use of these special anchorage areas; and (4) the number of vessels using these special anchorage areas is limited due to water depth (less than or equal to 18 feet).

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this

rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of special anchorage grounds. It is categorically excluded from further review under paragraph 34(f) of Figure 2–1 of Commandant Instruction M16475.lD. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

■ 1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471; 1221 through 1236, 2071; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 110.55b to subpart A to read as follows:

§ 110.55b Connecticut River, Old Saybrook, Connecticut.

(a) *Special anchorage area A.* All of the waters enclosed by a line beginning at latitude 41°19′54.75″ N., longitude 072°21′08.40″ W.; thence to latitude 41°19′21.50″ N., longitude 072°20′49.65″ W.; thence to latitude 41°19′17.80″ N., longitude 072°20′49.25″ W.; thence to latitude 41°19′17.05″ N., longitude 72°20′59″ W.; thence to latitude 41°19′25.40″ N., longitude 72°21′00.95″ W.; thence to latitude 41°19′29.50″ N., longitude 72°21′17.60″ W.; thence to latitude 41°19′35.40″ N., longitude 72°21′22.90″ W.; thence to latitude 41°19′52.35″ N., longitude 72°21′26.10″ W.; thence to the point of beginning.

(b) *Special anchorage area B.* All of the waters enclosed by a line beginning at latitude 41°17′26″ N., longitude 072°21′04″ W.; thence to latitude 41°17′24.60″ N., longitude 072°21′16″ W.; thence to latitude 41°17′20″ N., longitude 072°21′09″ W.; thence to latitude 41°17′16″ N., longitude 072°21′05″ W.; thence to latitude 41°17′16″ N., longitude 072°21′03″ W.; thence to latitude 41°17′21.5″ N., longitude 072°21′04.5″ W.; thence to the point of beginning.

(c) *Special anchorage area C.* All of the waters enclosed by a line beginning at latitude 41°17′27″ N., longitude 072°21′35″ W.; thence to latitude 41°17′24″ N., longitude 072°22′01″ W.; thence to latitude 41°17′16″ N., longitude 072°22′00″ W.; thence to latitude 41°17′19″ N., longitude 072°21′33″ W.; thence to the point of beginning.

Note to § 110.55b: All coordinates referenced use datum NAD 83. All anchoring in the areas is under the supervision of the town of Old Saybrook Harbor Master or other such authority as may be designated by the authorities of the town of Old Saybrook, Connecticut. Mariners using these special anchorage areas are encouraged to contact local and state authorities, such as the local harbormaster, to ensure compliance with any additional applicable state and local laws. This area is principally for use by recreational craft. Temporary floats or buoys for marking anchors or moorings in place are allowed in this area. Fixed mooring piles or stakes are not allowed. All moorings or anchors shall be placed well within the anchorage areas so that no portion of the hull or rigging will at any time extend outside of the anchorage.

Dated: February 26, 2016.

L.L. Fagan,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 2016–05561 Filed 3–10–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0126]

Drawbridge Operation Regulation; Barnegat Bay, Seaside Heights, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the S37 Bridge across the Barnegat Bay, mile 14.1, New Jersey Intracoastal Waterway, at Seaside Heights, NJ. This deviation is necessary to perform bridge maintenance and repairs. This deviation allows the bridge to remain in the closed-to-navigation position.

DATES: This deviation is effective from 8 p.m. on March 31, 2016 to 8 p.m. on April 17, 2016.

ADDRESSES: The docket for this deviation, [USCG–2016–0126] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH''. Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Hal R. Pitts, Bridge Administration Branch Fifth District, Coast Guard, telephone 757–398–6222, email *Hal.R.Pitts@uscg.mil.*

SUPPLEMENTARY INFORMATION: The New Jersey Department of Transportation, that owns and operates the S37 Bridge, has requested a temporary deviation from the current operating regulations to continue performing a maintenance and repair project on the bridge that commenced at 8 a.m. on December 1, 2015 and was scheduled to cease at 8 p.m. on March 31, 2016. The bridge is a bascule draw bridge and has a vertical clearance in the closed position of 30 feet above mean high water.

The current operating schedule as set out in 33 CFR 117.733(c) allows the bridge to remain in the closed-to-navigation position from 8 a.m. December 1, 2015 until 8 p.m. March 31, 2016. Under this temporary deviation, the bridge will continue to remain in the closed-to-navigation position from 8 p.m. on March 31, 2016 to 8 p.m. on April 17, 2016.

The Barnegat Bay on the New Jersey Intracoastal Waterway is used by a variety of vessels including small government and public vessels, small commercial vessels, and recreational vessels. The Coast Guard has carefully considered the nature and volume of vessel traffic on the waterway in publishing this temporary deviation.

Vessels able to safely pass through the bridge in the closed position may do so at any time. The bridge will not be able to open for emergencies and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transit to minimize any impact caused by the temporary deviation.

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

Dated: March 8, 2016.

Hal R. Pitts,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2016–05549 Filed 3–10–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0181]

Drawbridge Operation Regulation; North Landing River, Chesapeake, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the S165 (North Landing Road) Bridge across the North Landing River, mile 20.2, at Chesapeake, VA. This deviation is necessary to perform emergency bridge repairs. This deviation allows the bridge to remain in the closed-to-navigation position.

DATES: This deviation is effective without actual notice from March 11, 2016 through 6 p.m. on June 30, 2016. For the purposes of enforcement, actual notice will be used from March 8, 2016 at 8:45 a.m., until March 11, 2016.

ADDRESSES: The docket for this deviation, [USCG–2016–0181] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH''. Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Hal R. Pitts, Bridge Administration Branch Fifth District, Coast Guard, telephone 757–398–6222, email *Hal.R.Pitts@uscg.mil.*

SUPPLEMENTARY INFORMATION: The United States Army Corps of Engineers, Norfolk District Office, that owns and operates the S165 (North Landing Road) Bridge, has requested a temporary deviation from the current operating regulations to perform emergency repairs to the south swing span of the bridge due to damage sustained as a result of a vessel allision with the bridge. The bridge is a double swing draw bridge and has a vertical clearance in the closed position of 6 feet above mean high water.

The current operating schedule is set out in 33 CFR 117.1021. Under this temporary deviation, the north span of the bridge will open-to-navigation on the hour and half hour, upon request, from 6 a.m. to 7 p.m., and on demand from 7 p.m. to 6 a.m. The North and South spans of the bridge will open to navigation concurrently, with the south span only opening partially due to damage, upon request, for scheduled openings at 10 a.m., noon and 2 p.m., Monday through Friday. The horizontal clearance of the bridge with the south span closed-to-navigation is 38 feet and the horizontal clearance of the bridge with the south span partially open-to-navigation is 70 feet.

The North Landing River is used by a variety of vessels including small U. S. government and public vessels, small commercial vessels, tug and barge, and recreational vessels. The Coast Guard has carefully considered the nature and volume of vessel traffic on the waterway in publishing this temporary deviation.

During the closure times there will be limited opportunity for vessels able to safely pass through the bridge in the closed position to do so. Vessels able to safely pass through the bridge in the closed position may do so, after receiving confirmation from the bridge tender that it is safe to transit through the bridge. The north span of the bridge will be able to open for emergencies. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transit to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular

operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: March 8, 2016.

Hal R. Pitts,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2016–05540 Filed 3–10–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[EPA–R10–OAR–2015–0847; FRL–9943–54–Region 10]

Announcement of the Delegation of Partial Administrative Authority for Implementation of Federal Implementation Plan for the Confederated Tribes of the Colville Reservation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority; technical amendment.

SUMMARY: This action announces that on October 26, 2015, EPA Region 10 and the Confederated Tribes of the Colville Reservation, entered into a Partial Delegation of Administrative Authority agreement to carry out certain day-to-day activities associated with implementation of the Federal Implementation Plan for the Colville Reservation (Colville FIP). A note of this partial delegation is being added to the Colville FIP in the Code of Federal Regulations.

DATES: This rule is effective March 11, 2016.

The partial delegation of administrative authority was effective October 26, 2015.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R10–OAR–2015–0847. The delegation agreement and other docket materials are available electronically at the EPA's electronic public docket and comment system, found at *http://www.regulations.gov* or in hard copy from Andra Bosneag, Office of Air, Waste and Toxics, AWT–150, EPA Region 10, Suite 900, 1200 Sixth Avenue, Seattle, WA 98101, or via email at *bosneag.andra@epa.gov*. Additional information may also be obtained from the Colville Tribe by contacting Kris Ray, Confederated Tribes of the Colville Reservation, P.O. Box 150, Nespelem, WA 99155 or via email at *Kris.Ray@colvilletribes.com*.

All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Andra Bosneag at (206) 553–1226, *bosneag.andra@epa.gov,* or the EPA Region 10 address.

SUPPLEMENTARY INFORMATION: The purpose of this action is to announce that on October 26, 2015, EPA Region 10, delegated partial administrative authority for implementation of certain provisions of the Colville FIP to the Confederated Tribes of the Colville Reservation. See 40 CFR part 49, subpart M, sections 9951 through 9960, as authorized by 40 CFR 49.122 of the Federal Air Rules for Reservations (FARR), 40 CFR part 49, subpart C.

I. Authority To Delegate

Federal regulations at 40 CFR 49.122 provide the EPA authority to delegate to Indian Tribes partial administrative authority to implement provisions of the FARR, 40 CFR part 49, subpart C. Tribes must submit a request to the Regional Administrator that meets the requirements of 40 CFR 49.122.

II. Request for Delegation

On May 21, 2014, Chaitna Sinha of the Office of the Reservation Attorney of the Confederated Tribes of the Colville Reservation submitted to the Regional Administrator a request for delegation of certain provision of the Colville FIP. That request included all the information and demonstrations required by the FARR for delegation. A copy of all documentation is on file at the EPA Region 10, Seattle, Washington office (see addresses above).

The Confederated Tribes of the Colville Reservation requested delegation for the following provisions: 40 CFR 49.9960(b) Rule for limiting visible emissions, 40 CFR 49.9960(i) General rule for open burning, and 40 CFR 49.9960(k) Rule for air pollution episodes.

III. EPA Response to the Request for Delegation

The EPA and the Confederated Tribes of the Colville Reservation signed a delegation agreement that specifies the provisions and authorities delegated. The Confederated Tribes of the Colville Reservation are delegated the following provisions; 40 CFR 49.9960(b) Rule for limiting visible emissions, 40 CFR 49.9960(i) General rule for open burning, and 40 CFR 49.9960(k) Rule for air pollution episodes. In addition, the agreement delegates to the Tribe authority to investigate complaints and assist the EPA in inspections. The agreement also includes terms and conditions applicable to the delegation. A copy of the agreement is kept at EPA Region 10 at the address above.

Prior to entering into the Delegation Agreement, the EPA solicited by letter, advice and insight on the proposed delegation from Okanogan County, Ferry County, City of Okanogan, Town of Nespelem, Town of Coulee Dam, Electric City, City of Omak, Lake Roosevelt National Recreation Area, Bureau of Land Management, and the United States Forest Service. One comment supporting delegation was received.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because the EPA is merely informing the public of partial delegation of administrative authority to the Confederated Tribes of the Colville Reservation and making a technical amendment to the Code of Federal Regulations (CFR) by adding a note announcing the partial delegation. Thus, notice and public procedure are unnecessary. The EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

Moreover, since today's action does not create any new regulatory requirements, the EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3).

IV. Statutory and Executive Order Reviews

Under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011), this action

is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely makes a technical amendment and gives notice of a partial delegation of administrative authority. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' Under section 5(b) of Executive Order 13175, the EPA may not issue a regulation that has tribal 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 tribal governments, or the EPA consults with tribal officials early in the process of developing the proposed regulation. Under section 5(c) of Executive Order 13175, the EPA may not issue a regulation that has tribal implications and that preempts tribal law, unless the Agency consults with tribal officials early in the process of developing the regulation. The EPA has concluded that this rule may have tribal implications. The EPA's action fulfills a requirement to publish a notice announcing partial delegation of administrative authority to the Confederated Tribes of the Colville Reservation and noting the partial delegation in the CFR. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law. Thus, the requirements of sections 5(b) and 5(c) of the Executive Order do not apply to this rule.

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This technical amendment merely notes that partial delegation of administrative authority to the Confederated Tribes of the Colville Reservation is in effect. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 10, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2))

List of Subjects in 40 CFR Part 49

Environmental protection, Administrative practice and procedure, Air pollution control, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: February 29, 2016.

Dennis J. McLerran,

Regional Administrator, Region 10.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 49—INDIAN COUNTRY; AIR QUALITY PLANNING AND MANAGEMENT

■ 1. The authority citation for part 49 continues to read as follows:

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

Subpart M—Implementation Plans for Tribes—Region X

■ 2. Section 49.9960 is amended by adding a note to the end of the section to read as follows:

§ 49.9960 Federally-promulgated regulations and Federal implementation plans.

* * * * *

Note to § 49.9960: The EPA entered into a Partial Delegation of Administrative Authority with the Confederated Tribes of the Colville Reservation on October 26, 2015 for the rules listed in paragraphs (b), (i), and (k) of this section.

[FR Doc. 2016–05556 Filed 3–10–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 101206604–1758–02]

RIN 0648–XE406

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; 2016 Commercial Run-Around Gillnet Closure

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements an accountability measure (AM) through this temporary rule for commercial harvest of king mackerel in the Florida

west coast southern subzone of the eastern zone of the Gulf of Mexico (Gulf) exclusive economic zone (EEZ) using run-around gillnet gear. NMFS has determined that the commercial annual catch limit (ACL; commercial quota) for king mackerel using run-around gillnet gear in the Florida west coast southern subzone of the Gulf EEZ will be reached by March 11, 2016. Therefore, NMFS closes the Florida west coast southern subzone to commercial king mackerel fishing using run-around gillnet gear in the Gulf EEZ. This closure is necessary to protect the Gulf king mackerel resource.

DATES: The closure is effective from 12:01 p.m., eastern standard time, March 11, 2016, until 6 a.m., eastern standard time, January 17, 2017.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *susan.gerhart@noaa.gov.*

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, and cobia) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Gulf migratory group king mackerel's Florida west coast subzone of the Gulf eastern zone is divided into northern and southern subzones, each with separate commercial quotas. From November 1 through March 31, the southern subzone encompasses an area of the EEZ south of a line extending due west of the Lee and Collier County, FL, boundary on the Florida west coast, and south of a line extending due east of the Monroe and Miami-Dade County, FL, boundary on the Florida east coast, which includes the EEZ off Collier and Monroe Counties, FL. From April 1 through October 31, the southern subzone is reduced to the EEZ off Collier County, and the EEZ off Monroe County becomes part of the Atlantic migratory group area (50 CFR 622.369(a)(1)(ii)(A)(*2*)).

The commercial quota for the Gulf migratory group king mackerel in the Florida west coast southern subzone is 551,448 lb (250,133 kg) for vessels using run-around gillnet gear (50 CFR 622.384(b)(1)(i)(B)(*1*)), for the current fishing year, July 1, 2015, through June 30, 2016.

Regulations at 50 CFR 622.8(b) and 622.388(a)(1) require NMFS to close any segment of the king mackerel commercial sector when its quota has been reached, or is projected to be reached, by filing a notification with the Office of the Federal Register. NMFS has determined that the commercial quota of 551,448 lb (250,133 kg) for Gulf group king mackerel for vessels using run-around gillnet gear in the Florida west coast southern subzone will be reached by March 11, 2016. Accordingly, commercial fishing using such gear in the Florida west coast southern subzone is closed at 12:01 p.m., eastern standard time, March 11, 2016, until 6 a.m., eastern standard time, January 17, 2017, the beginning of the next fishing season, *i.e.,* the day after the 2017 Martin Luther King, Jr. Federal holiday. Accordingly, the operator of a vessel that has been issued a Federal commercial permit to harvest Gulf migratory group king mackerel using run-around gillnet gear in the Florida west coast southern subzone must have landed ashore and bartered, traded, or sold such king mackerel prior to 12:01 p.m., eastern standard time, March 11, 2016.

Persons aboard a vessel for which a commercial permit for king mackerel has been issued, except persons who also possess a king mackerel gillnet permit, may fish for or retain Gulf group king mackerel harvested using hook-and-line gear in the Florida west coast southern subzone unless the commercial quota for hook-and-line gear has been met and the hook-and-line segment of the commercial sector has been closed. A person aboard a vessel that has a valid charter vessel/headboat permit for coastal migratory pelagic fish may continue to retain king mackerel in or from closed zones or subzones under the bag and possession limits set forth in 50 CFR 622.382(a)(1)(ii) and (a)(2), provided the vessel is operating as a charter vessel or headboat. A charter vessel or headboat that also has a commercial king mackerel permit is considered to be operating as a charter vessel or headboat when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

During the closure, king mackerel harvested using run-around gillnet gear in the Florida west coast southern subzone may not be purchased or sold. This prohibition does not apply to king mackerel harvested using run-around gillnet gear in the Florida west coast southern subzone that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of Gulf migratory group king mackerel and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.8(b) and 622.388(a)(1) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best scientific information available. The Assistant Administrator for Fisheries, NOAA (AA), finds that the need to immediately implement this action to close the segment of the fishery that uses run-around gillnet gear constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), because prior notice and opportunity for public comment on this temporary rule is unnecessary and contrary to the public interest. Such procedures are unnecessary, because the rule implementing the commercial quota and the associated requirement for closure of the commercial harvest when the commercial quota is reached or projected to be reached has already been subject to notice and comment, and all that remains is to notify the public of the closure. Prior notice and opportunity for public comment is contrary to the public interest, because any delay in the closure of the commercial harvest could result in the commercial quota being exceeded. There is a need to immediately implement this action to protect the king mackerel resource, because the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment on this action would require time and would potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in effectiveness under 5 U.S.C. 553(d)(3).

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

Dated: March 7, 2016.

Emily H. Menashes,

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

[FR Doc. 2016–05482 Filed 3–8–16; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120404257–3325–02]

RIN 0648–XE489

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; 2016 Commercial Accountability Measure and Closure for South Atlantic Golden Tilefish Longline Component

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements an accountability measure for the commercial longline component for golden tilefish in the exclusive economic zone (EEZ) of the South Atlantic. Commercial longline landings for golden tilefish are projected to reach the longline component's commercial annual catch limit (ACL) on March 15, 2016. Therefore, NMFS closes the commercial longline component for golden tilefish in the South Atlantic EEZ on March 15, 2016, and it will remain closed until the start of the next fishing year, January 1, 2017. This closure is necessary to protect the golden tilefish resource.

DATES: This rule is effective 12:01 a.m., local time, March 15, 2016, until 12:01 a.m., local time, January 1, 2017.

FOR FURTHER INFORMATION CONTACT: Nikhil Mehta, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *nikhil.mehta@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic includes golden tilefish and is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On April 23, 2013, NMFS published a final rule to implement Amendment 18B to the FMP (78 FR 23858). Amendment 18B to the FMP established a longline endorsement program for the commercial golden tilefish component of the snapper-grouper fishery and allocated the commercial golden tilefish ACL (equivalent to the commercial quota) between two gear groups, the longline and hook-and-line components as commercial quotas.

The commercial quota for the longline component for golden tilefish in the South Atlantic is 405,971 lb (184,145 kg), gutted weight, for the current fishing year, January 1 through December 31, 2016, as specified in 50 CFR 622.190(a)(2)(iii).

Under 50 CFR 622.193(a)(1)(ii), NMFS is required to close the commercial longline component for golden tilefish when the longline component's commercial quota has been reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. After the commercial quota for the longline component is reached or projected to be reached, golden tilefish may not be fished for or possessed by a vessel with a golden tilefish longline endorsement. NMFS has determined that the commercial quota for the longline component for golden tilefish in the South Atlantic will be reached on March 15, 2016. Accordingly, the commercial longline component for South Atlantic golden tilefish is closed effective 12:01 a.m., local time, March 15, 2016, until 12:01 a.m., local time, January 1, 2017.

During the commercial longline closure, golden tilefish may still be harvested commercially using hook-and-line gear. However, a vessel with a golden tilefish longline endorsement is not eligible to fish for or possess golden tilefish using hook-and-line gear under the hook-and-line trip limit, as specified in 50 CFR 622.191(a)(2)(ii). The operator of a vessel with a valid commercial vessel permit for South Atlantic snapper-grouper and a valid commercial longline endorsement for golden tilefish having golden tilefish on board must have landed and bartered, traded, or sold such golden tilefish prior to 12:01 a.m., local time, March 15, 2016. During the commercial longline closure, the bag limit and possession limits specified in 50 CFR 622.187(b)(2)(iii) and (c)(1), respectively, apply to all harvest or possession of golden tilefish in or from the South Atlantic EEZ by a vessel with a golden tilefish longline endorsement. The sale or purchase of longline-caught golden tilefish taken from the EEZ is prohibited during the commercial longline closure. The prohibition on sale or purchase does not apply to the sale or purchase of longline-caught golden tilefish that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, March 15, 2016, and were held in cold storage by a dealer or processor. Additionally, the bag and possession limits and the sale and purchase provisions of the commercial closure apply to a person on board a vessel with a golden tilefish longline endorsement, regardless of whether the golden tilefish are harvested in state or Federal waters, as specified in 50 CFR 622.190(c)(1).

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of South Atlantic golden tilefish and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.193(a)(1)(ii) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act, because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best scientific information available. The Assistant Administrator for Fisheries, NOAA (AA), finds that the need to immediately implement this action to close the commercial longline component for golden tilefish constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures for this temporary rule would be unnecessary and contrary to the public interest. Such procedures are unnecessary, because the regulations at 50 CFR 622.193(a)(1)(ii) have already been subject to notice and comment, and all that remains is to notify the public of the closure. Prior notice and opportunity for public comment on this action are contrary to the public interest, because there is a need to immediately implement this action to protect the golden tilefish resource since the capacity of the fishing fleet allows for rapid harvest of the commercial quota for the longline component. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established commercial quota for the longline component.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: March 8, 2016.

Emily H. Menashes,

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

[FR Doc. 2016–05552 Filed 3–8–16; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 141021887–5172–02]

RIN 0648–XE494

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season apportionment of the 2016 Pacific cod total allowable catch allocated to trawl catcher vessels in the BSAI.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), March 9, 2016, through 1200 hours, A.l.t., April 1, 2016.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season apportionment of the 2016 Pacific cod total allowable catch (TAC) allocated to trawl catcher vessels in the BSAI is 36,732 metric tons (mt) as established by the final 2015 and 2016 harvest specifications for groundfish in the BSAI (80 FR 11919, March 5, 2015) and inseason adjustment (81 FR 184, January 5, 2016).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the A season apportionment of the 2016 Pacific cod TAC allocated to trawl catcher vessels in the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 36,000 mt and is setting aside the remaining 732 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and § 679.25(c)(1)(ii) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for Pacific cod by catcher vessels using trawl gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 7, 2016.

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

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: March 8, 2016.

Emily H. Menashes,

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

[FR Doc. 2016–05528 Filed 3–8–16; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 141021887–5172–02]

RIN 0648–XE495

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pollock in the Bering Sea and Aleutian Islands

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

ACTION: Temporary rule.

SUMMARY: NMFS is reallocating the projected unused amounts of the Aleut Corporation pollock directed fishing allowance from the Aleutian Islands subarea to the Bering Sea subarea. This action is necessary to provide opportunity for harvest of the 2016 total allowable catch of pollock, consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 11, 2016 through 2400 hrs Alaska Local time, December 31, 2016.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In the Aleutian Islands subarea, the portion of the 2016 pollock total allowable catch (TAC) allocated to the Aleut Corporation directed fishing allowance (DFA) is 14,700 metric tons (mt) as established by the final 2015 and 2016 harvest specifications for groundfish in the BSAI (80 FR 11919, March 5, 2015), and as adjusted by an inseason adjustment (81 FR 184, January 5, 2016).

As of March 4, 2016, the Administrator, Alaska Region, NMFS, (Regional Administrator) has determined that 5,000 mt of the Aleut Corporation pollock DFA in the

Aleutian Islands subarea will not be harvested. Therefore, in accordance with § 679.20(a)(5)(iii)(B)(*4*), NMFS reallocates 1,991 mt of A season pollock DFA and 3,009 mt of B season pollock DFA from the Aleutian Islands subarea to the 2016 Bering Sea subarea DFAs. The 5,000 mt of the Aleut Corporation pollock DFA is added to the 2016 Bering Sea non-CDQ DFAs. As a result, the 2016 harvest specifications for pollock in the Aleutian Islands subarea included in the final 2015 and 2016 harvest specifications for groundfish in the BSAI (80 FR 11919, March 5, 2015), and as adjusted by an inseason adjustment (81 FR 184, January 5, 2016) are revised as follows: 9,700 mt to the annual Aleut Corporation pollock DFA and 9,700 mt to the A season Aleut Corporation pollock DFA. Furthermore, pursuant to § 679.20(a)(5), Table 5 of the final 2015 and 2016 harvest specifications for groundfish in the Bering Sea and Aleutian Islands (80 FR 11919, March 5, 2015, and 81 FR 184, January 5, 2016), is revised to make 2016 pollock allocations consistent with this reallocation. This reallocation results in adjustments to the 2016 pollock allocations established at § 679.20(a)(5).

TABLE 5—FINAL 2016 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) [1]

[Amounts are in metric tons]

Area and sector	2016 allocations	2016 A season [1]		2016 B season [1]
		A season DFA	SCA harvest limit [2]	B season DFA
Bering Sea subarea TAC [1]	1,346,900	n/a	n/a	n/a
CDQ DFA	135,900	54,360	38,052	81,540
ICA [1]	48,240	n/a	n/a	n/a
AFA Inshore	581,380	232,552	162,786	348,828
AFA Catcher/Processors [3]	465,104	186,042	130,229	279,062
Catch by C/Ps	425,570	170,228	n/a	255,342
Catch by CVs [3]	39,534	15,814	n/a	23,720
Unlisted C/P Limit [4]	2,326	930	n/a	1,395
AFA Motherships	116,276	46,510	32,557	69,766
Excessive Harvesting Limit [5]	203,816	n/a	n/a	n/a
Excessive Processing Limit [6]	349,398	n/a	n/a	n/a
Total Bering Sea DFA	1,162,760	465,104	325,573	697,656
Aleutian Islands subarea ABC	32,227	n/a	n/a	n/a
Aleutian Islands subarea TAC [1]	12,100	n/a	n/a	n/a
CDQ DFA	0	0	n/a	0
ICA	2,400	1,200	n/a	1,200
Aleut Corporation	9,700	9,700	n/a	0
Area harvest limit [7]				
541	9,668	n/a	n/a	n/a
542	4,834	n/a	n/a	n/a
543	1,611	n/a	n/a	n/a
Bogoslof District ICA [8]	500	n/a	n/a	n/a

[1] Pursuant to § 679.20(a)(5)(i)(A), the BS subarea pollock, after subtracting the CDQ DFA (10 percent) and the ICA (4.0 percent), is allocated as a DFA as follows: Inshore sector—50 percent, catcher/processor sector (C/P)—40 percent, and mothership sector—10 percent. In the BS subarea, 40 percent of the DFA is allocated to the A season (January 20–June 10) and 60 percent of the DFA is allocated to the B season (June 10–November 1). Pursuant to § 679.20(a)(5)(iii)(B)(*2*)(*i*) and (*ii*), the annual AI pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second the ICA (2,400 mt), is allocated to the Aleut Corporation for a pollock directed fishery. In the AI subarea, the A season is allocated 40 percent of the ABC and the B season is allocated the remainder of the pollock directed fishery.

[2] In the BS subarea, no more than 28 percent of each sector's annual DFA may be taken from the SCA before April 1.

[3] Pursuant to § 679.20(a)(5)(i)(A)(*4*), not less than 8.5 percent of the DFA allocated to listed catcher/processors shall be available for harvest only by eligible catcher vessels delivering to listed catcher/processors.

[4] Pursuant to § 679.20(a)(5)(i)(A)(*4*)(*iii*), the AFA unlisted catcher/processors are limited to harvesting not more than 0.5 percent of the catcher/processors sector's allocation of pollock.

[5] Pursuant to § 679.20(a)(5)(i)(A)(*6*), NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the non-CDQ pollock DFAs.

[6] Pursuant to § 679.20(a)(5)(i)(A)(*7*), NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the non-CDQ pollock DFAs.

[7] Pursuant to § 679.20(a)(5)(iii)(B)(*6*), NMFS establishes harvest limits for pollock in the A season in Area 541 no more than 30 percent, in Area 542 no more than 15 percent, and in Area 543 no more than 5 percent of the Aleutian Islands pollock ABC.

[8] The Bogoslof District is closed by the final harvest specifications to directed fishing for pollock. The amounts specified are for ICA only and are not apportioned by season or sector.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of Aleutian Island subarea pollock. Since the pollock fishery is currently underway, it is important to immediately inform the industry as to the final Bering Sea and Aleutian Islands pollock allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery; allow the industry to plan for the fishing season and avoid potential disruption to

the fishing fleet as well as processors; and provide opportunity to harvest increased seasonal pollock allocations while value is optimum. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as March 4, 2016.

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

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: March 8, 2016.

Emily H. Menashes,

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

[FR Doc. 2016–05537 Filed 3–10–16; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 81, No. 48
Friday, March 11, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 1 and 3

[Docket No. APHIS–2006–0085]

RIN 0579–AB24

Animal Welfare; Marine Mammals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: We are extending the comment period for our proposed rule that would amend the Animal Welfare Act regulations concerning the humane handling, care, treatment, and transportation of marine mammals in captivity. This action will allow interested persons additional time to prepare and submit comments.

DATES: The comment period for the proposed rule published on February 3, 2016 (81 FR 5629) is extended. We will consider all comments that we receive on or before May 4, 2016.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2006-0085.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2006–0085, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2006-0085* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234; (301) 851–3751.

SUPPLEMENTARY INFORMATION: On February 3, 2016, we published in the **Federal Register** (81 FR 5629–5657, Docket No. APHIS–2006–0085) a proposal to amend the Animal Welfare Act regulations concerning the humane handling, care, treatment, and transportation of marine mammals in captivity.

Comments on the proposed rule were required to be received on or before April 4, 2016. We are extending the comment period on Docket No. APHIS–2006–0085 for an additional 30 days. This action will allow interested persons additional time to prepare and submit comments.

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

Done in Washington, DC, this 7th day of March 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–05535 Filed 3–10–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 50, 51, 71, 76, 77, 78, 86, 93, and 161

[Docket No. APHIS–2011–0044]

RIN 0579–AD65

Brucellosis and Bovine Tuberculosis; Update of General Provisions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: We are extending the comment period for our proposed rule that would consolidate the domestic regulations governing bovine tuberculosis and those governing brucellosis and revise the bovine tuberculosis- and brucellosis-related import requirements for cattle and bison to make these requirements clearer and assure that they more effectively mitigate the risk of introduction of these diseases into the United States. This action will allow interested persons additional time to prepare and submit comments.

DATES: The comment period for the proposed rule published on December 16, 2015 (80 FR 78462) is extended. We will consider all comments that we receive on or before May 16, 2016.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0044.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0044, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0044* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Domestic regulatory provisions: Dr. C. William Hench, Senior Staff Veterinarian, Ruminant Health Programs, VS, APHIS, 2150 Centre Avenue, Building B–3E20, Fort Collins, CO 80526–8117; (970) 4947378. Import-related regulatory provisions: Dr. Langston Hull, Director, Cattle Health Center, VS, APHIS, 4700 River Road, Riverdale, MD 20737; (301) 851–3363.

SUPPLEMENTARY INFORMATION: On December 16, 2015, we published in the **Federal Register** (80 FR 78462–78520, Docket No. APHIS–2011–0044) a proposal to consolidate the domestic regulations governing bovine tuberculosis and those governing brucellosis, as well as to revise the bovine tuberculosis- and brucellosis-related import requirements for cattle and bison to make these requirements clearer and assure that they more effectively mitigate the risk of

introduction of these diseases into the United States.

Comments on the proposed rule were required to be received on or before March 15, 2016. We are extending the comment period on Docket No. APHIS–2011–0044 to May 16, 2016. This action will allow interested persons additional time to prepare and submit comments.

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 7th day of March 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–05534 Filed 3–10–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–0069; Directorate Identifier 2016–NE–01–AD]

RIN 2120–AA64

Airworthiness Directives; Continental Motors, Inc. Reciprocating Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Continental Motors, Inc. (CMI) TSIO–550–K, TSIOF–550–K, TSIO–550–C, TSIOF–550–D, and TSIO–550–N reciprocating engines. This proposed AD was prompted by a report of an uncommanded in-flight shutdown (IFSD) resulting in injuries and significant airplane damage. This proposed AD would require replacing the oil cooler cross fitting assembly. We are proposing this AD to prevent failure of the oil cooler cross fitting and engine, IFSD and loss of the airplane.

DATES: We must receive comments on this proposed AD by May 10, 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 AD contact Continental Motors, Inc., 2039 Broad Street, Mobile, Alabama 36615; phone: 800–326–0089; Internet: *http://www.continentalmotors.aero*. You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, 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–2016–0069; 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: Scott Hopper, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5535; fax: 404–474–5606; email: *scott.hopper@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–2016–0069; Directorate Identifier 2016–NE–01–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

A Cirrus SR–22T crashed on November 3, 2015 due to an uncommanded IFSD. The crash caused four minor personal injuries and substantial airplane damage. The root cause of the engine IFSD was the loss of engine oil through the fatigue-induced fracture of an oil cooler cross fitting nipple. This condition, if not corrected, could result in failure of the oil cooler cross fitting and engine, IFSD, and loss of the airplane.

Relevant Service Information Under 1 CFR Part 51

We reviewed CMI Critical Service Bulletin (CSB) No. CSB15–2C, dated November 9, 2015 and CMI CSB No. CSB15–7A, dated November 10, 2015. The CSBs describe detailed procedures for replacing oil cooler cross fittings, nipples, and bushings with a redesigned oil cooler cross fitting. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this document.

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 accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between this Proposed AD and the Service Information.''

Differences Between This Proposed AD and the Service Information

CMI CSB No. CSB15–7A, dated November 10, 2015 requires replacing the oil cooler cross fitting, nipple, and bushing prior to further flight. CMI CSB No. CSB15–2C, dated November 9, 2015 requires replacing the oil cooler cross fitting, nipple, and bushing within 25 hours of engine operation or at the next scheduled inspection or engine service, whichever occurs first. This proposed AD requires replacing the fitting at the next engine maintenance event not to exceed 12 months or 100 flight hours after the effective date of this AD, whichever occurs first.

Costs of Compliance

We estimate that this proposed AD affects 1,307 engines installed on airplanes of U.S. registry. We also estimate that it will take about 1 hour per engine to comply with this proposed AD. The average labor rate is $85 per

hour. Parts would cost about $0 per engine. Based on these figures, we estimate the total cost of this proposed AD to U.S. operators to be $111,095. Our cost estimate is exclusive of possible warranty coverage.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Continental Motors, Inc. (Type Certificate previously held by Teledyne Continental Motors) Reciprocating Engines: Docket No. FAA–2016–0069; Directorate Identifier 2016–NE–01–AD.

(a) Comments Due Date

We must receive comments by May 10, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Continental Motors, Inc. (CMI) TSIO–550–K, TSIOF–550–K, TSIO–550–C, TSIOF–550–D, and TSIO–550–N reciprocating engines with an engine serial number below 1012296 and an oil cooler cross fitting, part number AN918–1J, installed.

(d) Unsafe Condition

This AD was prompted by a report of an uncommanded in-flight shutdown (IFSD) resulting in injuries and significant airplane damage. We are issuing this AD to prevent failure of the oil cooler cross fitting and engine, IFSD and loss of the airplane.

(e) Compliance

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

(1) Within 12 months or 100 flight hours from the effective date of the AD, whichever occurs first, replace the oil cooler cross fitting, nipple, and bushing. Use the Action Required paragraphs III.1 through III.8 of CMI Critical Service Bulletin (CSB) No. CSB15–7A, dated November 10, 2015 or the Action Required paragraphs III.1 through III.8 of CMI CSB No. CSB15–2C, dated November 9, 2015, to perform the replacement.

(2) Reserved.

(f) Credit for Previous Actions

You may take credit for the replacement that is required by paragraph (e) of this AD, if the replacement was performed before the effective date of this AD using CMI CSB No. CSB15–2B, dated November 6, 2015 or earlier versions; or CSB No. CSB15–7, dated November 6, 2015.

(g) Alternative Methods of Compliance (AMOCs)

The Manager, Atlanta Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

(h) Related Information

(1) For more information about this AD, contact Scott Hopper, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5535; fax: 404–474–5606; email: *scott.hopper@faa.gov.*

(2) CMI CSB No. CSB15–7A, dated November 10, 2015 and CMI CSB No. CSB15–2C, dated November 9, 2015 can be obtained from CMI using the contact information in paragraph (h)(3) of this AD.

(3) For service information identified in this AD, contact Continental Motors, Inc., 2039 Broad Street, Mobile, Alabama 36615; phone: 800–326–0089; Internet: *http://www.continentalmotors.aero.*

(4) You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on March 2, 2016.

Colleen M. D'Alessandro,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2016–05467 Filed 3–10–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–8257; Directorate Identifier 2015–NE–36–AD]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Turboshaft 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 Turbomeca S.A. MAKILA 2A and MAKILA 2A1 turboshaft engines. This proposed AD was prompted by two occurrences of crack initiation on a ferrule of the diffuser. This proposed AD would require repetitive diffuser inspections and replacement of those diffusers that fail inspection. We are proposing this AD to prevent rupture of the ferrule of the diffuser, which could result in engine fire and damage to the helicopter.

DATES: We must receive comments on this proposed AD by May 10, 2016.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building

Ground Floor, Room W12–140, Washington, DC 20590–0001.

• *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* 202–493–2251.

For service information identified in this proposed AD, contact Turbomeca S.A., 40220 Tarnos, France; phone: (33) 05 59 74 40 00; fax: (33) 05 59 74 45 15. You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803. 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–2015–8257; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The 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: Brian Kierstead, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; email: *brian.kierstead@faa.gov;* phone: 781–238–7772; fax: 781–238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–8257; Directorate Identifier 2015–NE–36–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2015–0209, dated October 16, 2015 (referred to hereinafter as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Two occurrences of crack initiation were reported on a ferrule of diffuser part number (P/N) 0298210100, which propagated and led to the ferrule rupture. The investigation shows in both cases that the ruptured ferrule contacted and punctured the main fuel supply line, resulting in a fuel leak. This condition, if not detected and corrected, could lead to an engine fire, consequently triggering an uncommanded engine in flight shut down, possibly resulting in an emergency landing. Prompted by these occurrences, Turbomeca published Mandatory Service Bulletin (MSB) No. 298 72 2832 to provide repetitive inspection instructions.

This proposed AD would require repetitive inspections of the affected diffuser and removal of those diffusers that fail the required inspection. You may obtain further information by examining the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8257.

Related Service Information Under 1 CFR Part 51

Turbomeca S.A. has issued Alert Mandatory Service Bulletin (MSB) No. A298 72 2832, Version B, dated October 12, 2015. The Alert MSB describes procedures for repetitive inspections of the affected diffuser and depending on findings, accomplishment of the corrective action(s).

Turbomeca S.A. has issued Service Bulletin (SB) No. 298 72 2833, Version A, dated July 29, 2015. The SB identifies post-TU52 HP gas generator modules that have been released with a new ferrule after repair or overhaul in a Repair Center. When applying Alert Mandatory Service Bulletin (MSB) No. A298 72 2832, it is necessary to know if an HP gas generator module released by a Repair Center is equipped with a new ferrule.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of France, and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Community, EASA has notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This proposed AD would require repetitive inspections of the affected diffuser and depending on findings, accomplishment of the corrective action(s).

Costs of Compliance

We estimate that this proposed AD affects 10 engines installed on helicopters of U.S. registry. We also estimate that it would take about 2 hours per engine to comply with this proposed AD. The average labor rate is $85 per hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $1,700.

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):

Turbomeca S.A.: Docket No. FAA–2015–8257; Directorate Identifier 2015–NE–36–AD.

(a) Comments Due Date

We must receive comments by May 10, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Turbomeca S.A. MAKILA 2A and MAKILA 2A1 turboshaft engine models with a high-pressure (HP) gas generator module (M03) that has modification (mod) TU 52 installed.

(d) Reason

This AD was prompted by two occurrences of crack initiation on a ferrule of the diffuser, which propagated and led to the ferrule rupture. We are issuing this AD to prevent rupture of the ferrule of the diffuser, which could result in engine fire and damage to the helicopter.

(e) Actions and Compliance

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

(1) Borescope inspect the centrifugal diffuser ferrule, part number (P/N) 0298210100, prior to the ferrule accumulating 700 hours, time since new or time since replacement or within 30 hours from the effective date of this AD, whichever is later. Use Accomplishment Instructions, paragraphs 2.4.1 through 2.4.2.2.1, of Turbomeca S.A. Alert Mandatory Service Bulletin (MSB) No. 298 72 2832, Version B, dated October 12, 2015, to do the borescope inspections required by this AD.

(2) Repeat the borescope inspection required by this AD every 50 hours since last inspection.

(3) If any crack, loss of contact between the ferrule and diffuser axial vane, or any contact between the injection manifold supply pipe and the diffuser ferrule is found, remove the diffuser case and replace the ferrule with a part eligible for installation.

(f) Credit for Previous Actions

You may take credit for the actions required by paragraph (e) of this AD if you performed Turbomeca S.A. MSB No. 298 72 2832, Version A, dated September 3, 2015 before the effective date of this AD.

(g) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs for 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*.

(h) Related Information

(1) For more information about this AD, contact Brian Kierstead, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7772; fax: 781–238–7199; email: *brian.kierstead@faa.gov*.

(2) Refer to MCAI European Aviation Safety Agency AD 2015–0209, dated October 16, 2015, for more information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2015–8257.

(3) Turbomeca S.A. Alert MSB No. A298 72 2832, Version B, dated October 12, 2015, can be obtained from Turbomeca S.A., using the contact information in paragraph (h)(5) of this proposed AD.

(4) Turbomeca S.A. Service Bulletin (SB) No. 298 72 2833, Version A, dated July 29, 2015, can be obtained from Turbomeca S.A., using the contact information in paragraph (h)(5) of this proposed AD.

(5) For service information identified in this proposed AD, contact Turbomeca S.A., 40220 Tarnos, France; phone: (33) 05 59 74 40 00; fax: (33) 05 59 74 45 15.

(6) You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on February 29, 2016.

Colleen M. D'Alessandro,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2016–05465 Filed 3–10–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–6033; Directorate Identifier 2015–SW–019–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Airbus Helicopters Model AS 365 N3 helicopters. This proposed AD would require inspecting the cabin and cockpit for labels, placards, or markings that provide jettison procedure instructions for cabin doors, removing any labels, placards, or markings that are in an incorrect location, and installing placards where they are missing. This proposed AD is prompted by the determination that placards had not been installed according to specifications on newly manufactured helicopters. The proposed actions are intended to provide exit procedures during an emergency.

DATES: We must receive comments on this proposed AD by May 10, 2016.

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

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–6033; or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the European Aviation Safety Agency (EASA) AD, the economic evaluation, any comments received, and other

information. The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed rule, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.airbushelicopters.com/techpub.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

FOR FURTHER INFORMATION CONTACT: David Hatfield, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy, Fort Worth, TX 76177; telephone (817) 222–5110; email *david.hatfield@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD No. 2015–0068–E, dated April 29, 2015, to correct an unsafe condition for Airbus Helicopters Model AS 365 N3 helicopters without external life rafts installed, except those helicopters modified in accordance with Airbus Helicopters modification (MOD) 0711B68, and Model AS 365 N3 helicopters with external life rafts installed, except those helicopters modified in accordance Airbus Helicopters MOD 0711B67 and MOD 0711B68. EASA advises that, during helicopter delivery after manufacturing, Airbus Helicopters identified that placards providing jettison procedure instructions for the cabin doors were not systematically installed or not installed in a proper location. This condition, if not corrected, could prevent the timely evacuation of the helicopter during an emergency. The EASA AD consequently requires determining whether any placards are missing or incorrectly located, installing any missing placards, and replacing any incorrectly located placards.

FAA's Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, its technical representative, has notified us of the unsafe condition described in its AD. We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

We reviewed Airbus Helicopters Alert Service Bulletin No. AS365–11.00.02, Revision 2, dated April 23, 2015 (ASB). The service information describes procedures for replacing and installing cabin internal evacuation markings. The ASB reports that deviations in the locations of the cabin internal evacuation markings and missing markings were noted during the delivery of new helicopters. The ASB provides instructions about the locations of, characteristics of, and information contained in the markings.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Proposed AD Requirements

This proposed AD would require, within 50 hours time-in-service (TIS), inspecting the cabin and cockpit for labels, placards, or markings that provide jettison procedure instructions for cabin doors in certain locations. If a label, placard, or marking is not located as required or is not visible and legible to every occupant, this proposed AD would require installing a placard in the required locations before further flight.

Differences Between This Proposed AD and the EASA AD

The EASA AD requires compliance within 14 days after the effective date of the EASA AD. This AD requires compliance within 50 hours TIS.

Costs of Compliance

We estimate that this proposed AD would affect 15 helicopters of U.S. Registry and that labor costs would average $85 a work-hour. Based on these estimates, we expect that inspecting the helicopter to determine the proper location and presence of cabin door jettison procedure placards and replacing and installing them would require 4 work hours and a parts cost of $70. We estimate a total cost of $410 per helicopter, and $6,150 for the U.S. fleet.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Helicopters: Docket No. FAA–2015–6033; Directorate Identifier 2015–SW–019–AD.

(a) Applicability

This AD applies to Airbus Helicopters Model AS 365 N3 helicopters, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as missing or incorrectly located information for exiting a helicopter. This condition could result in failure to jettison cabin doors during an emergency, resulting in death or injury of helicopter occupants.

(c) Comments Due Date

We must receive comments by May 10, 2016.

(d) Compliance

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

(e) Required Actions

Within 50 hours time-in-service:

(1) Inspect the cabin and cockpit for labels, placards, and markings that provide jettison procedure instructions for cabin doors.

(2) For the left and right side, remove any existing label, placard, and marking and install placards in accordance with the Accomplishment Instructions, paragraph 3.B.2 and Figures 1 through 6, of Airbus Helicopters Alert Service Bulletin No. AS365–11.00.02, Revision 2, dated April 23, 2015.

(f) Credit for Previously Completed Actions

Actions accomplished before the effective date of this AD in accordance with Airbus Helicopters Modification (MOD) 0711B68 for helicopters without external life rafts or MOD 0711B68 and MOD 0711B67 for helicopters with external life rafts are considered acceptable for compliance with this AD.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: David Hatfield, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy, Fort Worth, TX 76177; telephone (817) 222–5110; email *9–ASW–FTW–AMOC-Requests@faa.gov.*

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

(h) Additional Information

The subject of this AD is addressed in the European Aviation Safety Agency (EASA) AD No. 2015–0068–E, dated April 29, 2015. You may view the EASA AD on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2015–6033.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 1100, Placards and Markings.

Issued in Fort Worth, Texas, on February 29, 2016.

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2016–05369 Filed 3–10–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–4278; Directorate Identifier 2012–SW–022–AD]

RIN 2120–AA64

Airworthiness Directives; AgustaWestland S.p.A. (Agusta) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Agusta Model AB139 and AW139 helicopters. This proposed AD would require performing operational checks of both hydraulic systems. This proposed AD is prompted by an assessment of the hydraulic systems of the helicopter following an accident. The proposed actions are intended to prevent loss of hydraulic power to the flight controls and subsequent loss of control of the helicopter.

DATES: We must receive comments on this proposed AD by May 10, 2016.

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

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket number FAA–2016–4278 or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the European Aviation Safety Agency (EASA) AD, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed rule, contact AgustaWestland, Product Support Engineering, Via del Gregge, 100, 21015 Lonate Pozzolo (VA) Italy, ATTN: Maurizio D'Angelo; telephone 39–0331–664757; fax 39 0331–664680; or at *http://www.agustawestland.com/technical-bulletins.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Parkway, Fort Worth, Texas 76177.

FOR FURTHER INFORMATION CONTACT: Matt Wilbanks, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 10101 Hillwood Parkway, Fort Worth, Texas 76177; telephone (817) 222–5110; email *matt.wilbanks@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD No. 2011–0207, dated October 20, 2011 (EASA 2011–0207), to correct an unsafe condition for certain serial-numbered Agusta Model AB139 and AW139 helicopters. An accident involving a Model AW139 helicopter caused the tail rotor (T/R), the T/R gearbox, and part of the fin to detach from the aircraft, rupturing the hydraulic lines and draining all of the hydraulic fluid. Investigation following the accident resulted in an assessment of the helicopter's hydraulic systems. According to EASA, this assessment revealed that an operational check of the hydraulic systems is necessary to ensure its functionality. EASA advises that this condition, if not corrected, could lead, in the case of multiple failures, to loss of hydraulic power and subsequent loss of control of the helicopter. To address this, EASA AD 2011–0207 requires, within 50 flight hours or 2 months, operational checks of the power control modules and shutoff valves and reporting the results to the manufacturer.

FAA's Determination

These helicopters have been approved by the aviation authority of Italy and are approved for operation in the United States. Pursuant to our bilateral agreement with Italy, EASA, its technical representative, has notified us of the unsafe condition described in its AD. We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

We reviewed Agusta Bollettino Tecnico No. 139–269, dated September 30, 2011 (BT 139–269), for Model AB139 and AW139 helicopters. BT 139–269 contains procedures for conducting operational checks of both hydraulic systems to confirm correct functionality. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Proposed AD Requirements

This proposed AD would require, within 50 hours time-in-service (TIS), performing operational tests of the Number 1 and Number 2 hydraulic systems power control modules (PCMs), the tail shut-off valve, the PCM1 and PCM2 flight control shut-off valves, and the emergency landing gear shut-off valve for correct functionality. Depending on the results of the the operational checks, this proposed AD would require replacing a PCM, the tail shut-off valve, a flight control shut-off valve, the number 2 hydraulic control panel, the number 1 hydraulic module, the number 1 or number 2 PCM pressure switch, or repairing the electrical wiring.

Differences Between This Proposed AD and the EASA AD

The EASA AD requires reporting the results of the operational checks to Agusta, while the proposed AD does not. The EASA AD also requires compliance within 50 flight-hours or 2 months, while the proposed AD requires compliance within 50 hours TIS.

Costs of Compliance

We estimate that this proposed AD would affect 102 helicopters of U.S. Registry. Based on an average labor rate of $85 per hour, we estimate that operators may incur the following costs in order to comply with this proposed AD.

Performing the operational checks of the hydraulic systems would require about 2 work-hours for a total cost per helicopter of $170 and a total cost to U.S. operators of $17,340.

Replacing a PCM would require about 3 work-hours and required parts would cost about $87,136, for a cost per helicopter of $87,391.

Replacing a tail or flight control shut-off valve would require about 2 work-hours, and required parts would cost about $7,512, for a cost per helicopter of $7,682.

Replacing the number 2 hydraulic control panel would require about 2 work-hours, and required parts would cost about $8,165, for a cost per helicopter of $8,335.

Replacing the number 1 hydraulic module would require about 4 work-hours, and required parts would cost about $87,137, for a cost per helicopter of $87,477.

Replacing a PCM pressure switch would require about 2 work-hours, and required parts would cost about $6,974, for a cost per helicopter of $7,144.

Repairing the electrical wiring would require about 2 work-hours, and required parts would cost about $45, for a cost per helicopter of $215.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Agustawestland S.P.A. (Agusta): Docket No. FAA–2016–4278; Directorate Identifier 2012–SW–022–AD.

(a) Applicability

This AD applies to Agusta Model AB139 and AW139 helicopters, all serial numbers except serial number 31007, 31094, 31293, 31301, 31303, 31313, and 31329, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as an inoperative hydraulic shut-off valve, which could result in loss of hydraulic power and subsequent loss of control of the helicopter.

(c) Comments Due Date

We must receive comments by May 10, 2016.

(d) Compliance

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

(e) Required Actions

Within 50 hours time-in service:

(1) Perform an operational test of each Number 1 and Number 2 power control module (PCM). If the fluid level in the reservoir changes more than 5mm (0.196 in) in an hour, replace the affected PCM.

(2) Perform an operational test of each tail shut-off valve. If the 2 SERVO caution message is not illuminated and the UTIL SOV2 and TR SOV indications are in the open position:

(i) Disconnect the Tail Shutoff valve connector, HP4P1.

(ii) Disconnect the PCM2 connectors, A44P3 and A44P12.

(iii) Disconnect the TB38 terminal board connector, TB38P1.

(iv) Perform a continuity test from HP4P1–1 to A44P12–16, from HP4P1–2 to TB38P1–D, and from HP4P1–4 to A44P3–6.

(v) If there is no continuity, repair or replace the defective wiring.

(vi) If there is continuity, release the test lever of the PCM2 to the DOWN NORM position.

(vii) If the TRSVO indication stays in the closed position, replace the tail shutoff valve.

(3) Perform an operational test of the PCM 2 flight control shut-off valve as described in the Compliance Instructions, paragraphs 5.1. through 5.5., of Agusta Bollettino Tecnico No. 139–269, dated September 30, 2011 (BT 139–269).

(i) If the 2 SERVO caution message is illuminated:

(A) On the hydraulic control panel, lift the guard of the SOV1/SOV2 switch and set it to SOV2 (closed position). Make sure that the 2 HYD PRESS caution message and the HYD 2 PRESS warning light on the hydraulic control panel are illuminated.

(B) Reset the SOV1/SOV2 switch to the open position.

(C) If the 2 HYD PRESS and 2 SERVO caution messages remain illuminated:

(*1*) Disconnect the PL14P1 and PL14P2 connectors from the hydraulic control panel.

(*2*) Disconnect the A1–1P4 connector from the MAU1.

(*3*) Disconnect the A2–1P3 connector from the MAU2.

(*4*) Disconnect the A44P3 connector from the Number 2 PCM.

(*5*) Disconnect the PL1P3 connector from the circuit breaker panel.

(*6*) Perform a continuity test from PL14P1–J to A1–1P4–18, from PL14P1–D to PL1P3-q, from PL14P2–J to A44P3–5, and from PL14P2–T to A2–1P3–34. If there is no continuity, repair or replace the defective wiring.

(*7*) If the HYD PRESS and 2 SERVO caution messages remain illuminated, replace the number 2 hydraulic power module.

(ii) If the 2 HYD PRESS caution message is illuminated, the HYD 2 pressure indication is more than 190 bar (2,755 lbf/sq in), and the SOV2 shutoff valve is in the open position, replace the pressure switch on the Number 2 PCM.

(iii) If the closure of SOV 2 is indicated on the MFD hydraulic synoptic page, before further flight, replace the Number 2 PCM.

(4) Perform an operational test of the PCM 1 flight control shut-off valve as described in the Compliance Instructions, paragraphs 6.1. through 6.4., of BT 139–269.

(i) If the 1 SERVO caution message is illuminated:

(A) On the hydraulic control panel, lift the guard of the SOV1/SOV2 switch and set it to SOV1 (closed position). Make sure that the 1 HYD PRESS caution message and the HYD 1 PRESS warning light on the hydraulic control panel are illuminated.

(B) Reset the SOV1/SOV2 switch to the open position. If the 1 HYD PRESS and 1 SERVO caution messages remain illuminated:

(*1*) Disconnect the PL14P1 and PL14P2 connectors from the hydraulic control panel.

(*2*) Disconnect the A1–1P4 connector from the MAU1.

(*3*) Disconnect the A2–1P3 connector from the MAU2.

(*4*) Disconnect the A45P3 connector from the Number 1 PCM.

(*5*) Disconnect the PL1P3 connector from the circuit breaker panel.

(*6*) Perform a continuity test from PL14P1–J to A1–1P4–18, from PL14P1–E to A45P3–5, from PL14P1–D to PL1P3-q, and from PL14P2–T to A2–1P3–34. If there is no continuity, repair or replace the defective wiring.

(*7*) If the HYD PRESS and 1 SERVO caution messages remain illuminated, replace the Number 1 hydraulic control panel.

(ii) If the 1 HYD PRESS caution message is illuminated, the HYD 1 pressure indication is more than 190 bar (2,755 lbf/sq in), and the SOV1 shutoff valve is in the open position, replace the pressure switch on the Number 1 PCM.

(iii) If the closure of SOV 1 is indicated on the MFD hydraulic synoptic page, before further flight, replace the Number 1 PCM.

(4) Perform an operational test of the emergency landing gear shutoff valve as described in the Compliance Instructions, paragraphs 7.1. through 7.4., of BT 139–269.

(i) If the EMERG L/G PRESS caution message is illuminated, the HYD 1 pressure indication is more than 190 bar (2,755 lbf/sq in), and the UTIL SOV1 (LDG GEAR EMER) shutoff valve is in the open position, replace the pressure switch on the Number 1 PCM.

(ii) If the 1 HYD MIN caution message is illuminated, inspect the fluid level on the Number 1 PCM and inspect the Number 1 main hydraulic system for leaks.

(A) If the fluid level is between the FULL and ADD marks, or if there are no hydraulic fluid leaks, perform an operational test of the level switches. If the 1 HYD MIN caution message is illuminated, replace the Number 1 PCM.

(B) If there is a hydraulic fluid leak:

(*1*) Replace all leaking parts and lines or repair the leak.

(2) If the 1 HYD MIN caution message remains illuminated, perform an operational test of the level switches.

(3) If the 1 HYD MIN caution message remains illuminated, replace the Number 1 PCM.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to Matt Wilbanks, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 10101 Hillwood Parkway, Fort Worth, Texas 76177;

telephone (817) 222–5110; email *9-ASW-FTW-AMOC-Requests@faa.gov.*

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

(g) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2011–0207, dated October 20, 2011. You may view the EASA AD on the Internet at *http://www.regulations.gov* in Docket No. FAA-2016–4278.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 2900: Hydraulic Power.

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

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2016–05368 Filed 3–10–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25513; Directorate Identifier 99–NE–61–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede airworthiness directive (AD) 2006–18–14 that applies to all Rolls-Royce Deutschland Ltd & Co KG (RRD) Tay 650–15 and Tay 651–54 turbofan engines. AD 2006–18–14 requires calculating and re-establishing the cyclic life of stage 1 high-pressure turbine (HPT) disks, part number (P/N) JR32013 and P/N JR33838, and stage 1 low-pressure turbine (LPT) disk, P/N JR32318A. This proposed AD would require re-calculating the cyclic life, and would impose a reduced cyclic life, of stage 1 HPT disk, P/N JR32013. We are proposing this AD to prevent failure of stage 1 HPT disks, P/N JR32013 and P/N JR33838, and stage 1 LPT disk, P/N JR32318A, which could result in an uncontained engine failure and damage to the airplane.

DATES: We must receive comments on this proposed AD by May 10, 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 Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, Dahlewitz, 15827 Blankenfelde-Mahlow, Germany; phone: 49–0–33–7086–1064; fax: 49–0–33–7086–3276. You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, 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–2006–25513; 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 mandatory continuing airworthiness information, regulatory evaluation, any comments received, and other information. The 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: Philip Haberlen, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7770; fax: 781–238–7199; email: *philip.haberlen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2006–25513; Directorate Identifier 99–NE–61–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD 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 proposed AD.

Discussion

On August 30, 2006, we issued AD 2006–18–14, Amendment 39–14753 (71 FR 52988, September 8, 2006), for all RRD Tay 650–15 and Tay 651–54 turbofan engines. AD 2006–18–14 requires calculating and re-establishing the cyclic life of stage 1 HPT disks, P/N JR32013 and P/N JR33838, and stage 1 LPT disk, P/N JR32318A, that have been exposed to different engine flight plan profiles. AD 2006–18–14 also requires removing from service, using a drawdown schedule, those stage 1 HPT disks and stage 1 LPT disks operated under Tay 650–15 engine flight plan profiles A, B, C, or D; or operated under the Tay 651–54 engine datum flight profile, at reduced cyclic life limits. AD 2006–18–14 resulted from RRD updating their low-cycle-fatigue analysis for stage 1 HPT disks and stage 1 LPT disks and reducing their cyclic life limits. We issued AD 2006–18–14 to prevent cracks leading to turbine disk failure, which could result in an uncontained engine failure and damage to the airplane.

Actions Since AD 2006–18–14 Was Issued

Since we issued AD 2006–18–14, RRD reviewed the cyclic life limit of parts affected by AD 2006–18–14; RRD concluded that the stage 1 HPT disk, P/N JR32013, requires further cyclic life limit reduction. RRD did not further reduce the cyclic life limit of stage 1 HPT disk, P/N JR33838, or stage 1 LPT disk, P/N JR32318A. Accordingly, the cyclic life limits of stage 1 HPT disk, P/N JR33838, and stage 1 LPT disk, P/N JR32318A, as imposed by AD 2006–18–14, remain unchanged in this proposed AD.

Since AD 2006–18–14 was issued, the European Aviation Safety Agency (EASA) issued AD 2015–0056, dated March 31, 2015 to reduce the cyclic life limits of the stage 1 HPT disk, P/N JR32013.

Related Service Information Under 1 CFR Part 51

RRD has issued Alert Non-Modification Service Bulletin (NMSB) No. TAY–72–A1821, Revision 1 dated March 26, 2015. The Alert NMSB describes procedures to re-calculate the consumed cyclic life of stage 1 HPT disk, P/N JR32013. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

FAA's Determination

We are proposing this AD 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 proposed AD would require re-calculating and re-establishing the cyclic life of stage 1 HPT disk, P/N JR32013. This proposed AD would also require removing from service those stage 1 HPT disks, P/N JR32013, depending on engine flight plan profiles and engine models, at certain reduced cyclic life limits, using a drawdown schedule.

Costs of Compliance

We estimate that this proposed AD affects 25 engines installed on airplanes of U.S. registry. We also estimate that it would take about 0.5 hours per engine to comply with this proposed AD. The average labor rate is $85 per hour. The pro-rated life limit reduction cost is about $23,053 per engine. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $577,388.

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 have 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 that the 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 removing airworthiness directive (AD) 2006–18–14, Amendment 39–14753 (71 FR 52988, September 8, 2006) (''AD 2006–18–14''), and adding the following new AD:

Rolls-Royce Deutschland Ltd & Co KG (formerly Rolls-Royce plc): Docket No. FAA–2006–25513; Directorate Identifier 99–NE–61–AD.

(a) Comments Due Date

We must receive comments by May 10, 2016.

(b) Affected ADs

This AD supersedes AD 2006–18–14.

(c) Applicability

This AD applies to Rolls-Royce Deutschland Ltd & Co (RRD) KG Tay 650–15 and Tay 651–54 turbofan engines with stage 1 high-pressure turbine (HPT) disks, part number (P/N) JR32013 or P/N JR33838, or stage 1 low-pressure turbine (LPT) disks, P/N JR32318A, installed.

(d) Unsafe Condition

This AD was prompted by RRD reducing the cyclic life limit for certain stage 1 HPT disks, P/N JR32013. We are issuing this AD to prevent cracks leading to turbine disk failure, which could result in an uncontained engine failure and damage to the airplane.

(e) Compliance

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

(1) Re-calculate the cyclic life of stage 1 HPT disks, P/N JR32013, as follows:

(i) If a stage 1 HPT disk, P/N JR32013, was ever operated under a different engine flight plan profile than the engine flight plan profile operated on the last flight, and/or was ever installed and operated in a different engine model, do the following:

(A) Within 30 days after the effective date of this AD, re-calculate the cyclic life for each stage 1 HPT disk, P/N JR32013, using paragraphs 3.A.(1)(b)(1) through 3.A.(1)(b)(4) of the Accomplishment Instructions of RRD Alert Non-Modification Service Bulletin (NMSB) No. TAY–72–A1821, Revision 1, dated March 26, 2015.

(B) Reserved.

(ii) If you change your flight plan profile and/or install a stage 1 HPT disk, P/N JR32013 or P/N JR33838, or stage 1 LPT disk, P/N JR32318A, into a different engine model after the effective date of this AD, re-calculate the cyclic life of the part(s) as described in paragraph (e)(1)(i)(A) of this AD within 30 days of making the change.

(2) For engines with a stage 1 HPT disk, P/N JR32013, installed, do the following:

(i) Remove from service any stage 1 HPT disk, P/N JR32013, within 100 flight cycles after the effective date of this AD or before exceeding the new, reduced cyclic life limits specified in paragraphs (e)(2)(i)(A) through (e)(2)(i)(E) of this AD, whichever occurs later, as follows:

(A) For RRD Tay 650–15 engines operated under engine flight plan profile A, the new, reduced cyclic life limit is 18,900 flight cycles-since-new (FCSN).

(B) For RRD Tay 650–15 engines operated under engine flight plan profile B, the new, reduced cyclic life limit is 15,500 FCSN.

(C) For RRD Tay 650–15 engines operated under engine flight plan profile C, the new, reduced cyclic life limit is 11,500 FCSN.

(D) For RRD Tay 650–15 engines operated under engine flight plan profile D, the new, reduced cyclic life limit is 9,300 FCSN.

(E) For RRD Tay 651–54 engines operated under any engine flight plan profile, the new, reduced cyclic life limit is 10,873 FCSN.

(ii) Reserved.

(3) For engines with a stage 1 HPT disk, P/N JR33838, or stage 1 LPT disk, P/N JR32318A, installed, do the following:

(i) Remove from service any stage 1 HPT disk, P/N JR33838, or stage 1 LPT disk, P/N

JR32318A, before exceeding the cyclic life limits specified in paragraphs (e)(3)(i)(A) through (e)(3)(i)(E) of this AD, as follows:

(A) For RRD Tay 650–15 engines operated under engine flight plan profile A, the cyclic life limit for stage 1 HPT disk, P/N JR33838, and stage 1 LPT disk, P/N JR32318A, is 23,000 FCSN.

(B) For RRD Tay 650–15 engines operated under engine flight plan profile B, the cyclic life limit for stage 1 HPT disk, P/N JR33838, is 20,000 FCSN; and the cyclic life limit for stage 1 LPT disk, P/N JR32318A, is 21,000 FCSN.

(C) For RRD Tay 650–15 engines operated under engine flight plan profile C, the cyclic life limit for stage 1 HPT disk, P/N JR33838, is 14,700 FCSN; and the cyclic life limit for stage 1 LPT disk, P/N JR32318A, is 18,000 FCSN.

(D) For RRD Tay 650–15 engines operated under engine flight plan profile D, the cyclic life limit for stage 1 HPT disk, P/N JR33838, is 11,000 FCSN; and the cyclic life limit for stage 1 LPT disk, P/N JR32318A, is 14,250 FCSN.

(E) For RRD Tay 651–54 engines operated under any engine flight plan profile, the cyclic life limit for stage 1 HPT disk, P/N JR33838, is 12,600 FCSN and the cyclic life limit for stage 1 LPT disk, P/N JR32318A, is 20,000 FCSN.

(ii) Reserved.

(f) Installation Prohibition

After the effective date of this AD, do not install any part identified in paragraph (e) of this AD into any engine, or return any engine to service with any part identified in paragraph (e) of this AD, installed, if the part exceeds the cyclic life limit specified in paragraphs (e)(2) and (e)(3) of this AD.

(g) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, may approve AMOCs for 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.*

(h) Related Information

(1) For more information about this AD, contact Philip Haberlen, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7770; fax: 781–238–7199; email: *philip.haberlen@faa.gov.*

(2) Refer to MCAI European Aviation Safety Agency, AD 2015–0056, dated March 31, 2015, for more information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2006–25513.

(3) Rolls-Royce Deutschland Ltd & Co KG Alert Non-Modification Service Bulletin No. TAY–72–A1821, Revision 1, dated March 26, 2015 can be obtained from Rolls-Royce Deutschland Ltd & Co KG, using the contact information in paragraph (h)(4) of this AD.

(4) For service information identified in this AD, contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, Dahlewitz, 15827 Blankenfelde-Mahlow, Germany; phone: 49–0–33–7086–1064; fax: 49–0–33–7086–3276.

(5) You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on February 26, 2016.

Colleen M. D'Alessandro,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2016–05463 Filed 3–10–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0219; Directorate Identifier 2010–NE–14–AD]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede airworthiness directive (AD) 2010–11–10 that applies to all Turbomeca S.A., Astazou XIV B and XIV H turboshaft engines. AD 2010–11–10 requires inspection of certain third stage turbine wheels and removal of any damaged wheel. This AD was prompted by a report of a third stage turbine wheel crack detected during engine overhaul. This proposed AD would expand the population and frequency of repetitive inspections. We are proposing this AD to prevent uncontained failure of the third stage turbine wheel, which could result in damage to the engine and damage to the helicopter.

DATES: We must receive comments on this proposed AD by May 10, 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 Turbomeca S.A., 40220 Tarnos, France; phone: (33) 05 59 74 40 00; fax: (33) 05 59 74 45 15. You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, 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–2010–0219; 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 mandatory continuing airworthiness information, regulatory evaluation, any comments received, and other information. The 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: Contact Brian Kierstead, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7772, fax: 781–238–7199; email: *brian.kierstead@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2010–0219; Directorate Identifier 2010–NE–14–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD 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 proposed AD.

Discussion

On May 19, 2010, we issued AD 2010–11–10, Amendment 39–16315 (75 FR 30270, June 1, 2010), (''AD 2010–11–10''), for all Turbomeca S.A., Astazou XIV B and XIV H turboshaft engines. AD 2010–11–10 requires inspection of

certain third stage turbine wheels and removal of any damaged wheel. AD 2010–11–10 resulted from European Aviation Safety Agency (EASA) issuing an AD to identify and correct an unsafe condition on Turbomeca engines.

We are issuing this AD to prevent uncontained failures of the third stage turbine wheel, which could result in damage to the engine and damage to the helicopter.

Actions Since AD 2010–11–10 Was Issued

Since we issued AD 2010–11–10, Turbomeca reported a cracked third stage turbine wheel discovered during engine overhaul. As a result of the crack, Turbomeca S.A., expanded the population of affected wheels and inspection frequency. Turbomeca S.A., Mandatory Service Bulletin (MSB) No. 283 72 0804, Version D, dated July 24, 2015 addresses the increased population and inspection frequency. Also, since we issued AD 2010–11–10, (EASA) has issued AD 2015–0211, dated October 15, 2015, which supersedes EASA AD 2010–0004, dated January 5, 2010.

Related Service Information Under 1 CFR Part 51

Turbomeca S.A., has issued MSB No. 283 72 0804, Version D, dated July 24, 2015. That MSB describes procedures for expanding the frequency of repetitive inspections. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

Other Related Service Information

Turbomeca S.A., has issued Service Bulletin (SB) No. 283 72 0805, Version B, dated December 15, 2010. That SB describes terminating action for the inspections. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

FAA's Determination

We are proposing this AD 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 proposed AD would require expanding the frequency of repetitive inspections. We are proposing this AD to prevent uncontained failure of the third stage turbine wheel, which could result in damage to the engine, and damage to the helicopter.

Costs of Compliance

We estimate that this proposed AD affects seven engines installed on helicopters 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. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $2,975.

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 have 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 that the 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 removing airworthiness directive (AD) 2010–11–10, Amendment 39–16315 (75 FR 30270, June 1, 2010), (''AD 2010–11–10''), and adding the following new AD:

Turbomeca S.A.: Docket No. FAA–2010–0219 Directorate Identifier 2010–NE–14–AD.

(a) Comments Due Date

We must receive comments by May 10, 2016.

(b) Affected ADs

This AD supersedes AD 2010–11–10.

(c) Applicability

This AD applies to Turbomeca S.A., Astazou XIV B and XIV H turboshaft engines with the following part number (P/N) and serial number (S/N) third stage turbine wheels that incorporate modification AB 173 (Turbomeca S.A., Service Bulletin (SB) No. 283 72 0091) or modification AB 208 (Turbomeca S.A., SB No. 283 72 0117). This AD does not apply to third stage turbine wheels that incorporate Turbomeca SB No. 283 72 805.

(1) Third stage turbine wheels, P/N 0 265 25 700 0, all S/Ns;

(2) Third stage turbine wheels, P/N 0 265 25 702 0, all S/Ns;

(3) Third stage turbine wheels, P/N 0 265 25 706 0, all S/Ns;

(4) Third stage turbine wheels, P/N 0 265 25 705 0, with an S/N listed in Appendix 2.1 of Turbomeca S.A., Mandatory Service Bulletin (MSB) No. 283 72 0804, Version D, dated July 24, 2015.

(d) Unsafe Condition

This AD was prompted by a report of a third stage turbine wheel crack detected during engine overhaul. We are issuing this AD to prevent uncontained failure of the third stage turbine wheel, which could result in damage to the engine and damage to the helicopter.

(e) Compliance

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

(1) Perform a dye penetrant inspection of the third stage turbine wheel. Use paragraph

2.4.2.2 of Turbomeca S.A., MSB No. 283 72 0804, Version D, dated July 24, 2015, to do the inspection, as follows:

(i) Inspect third stage turbine wheels with 300 engine cycles (EC) or more accumulated since last inspection, or since new, or since last overhaul, or since repair, within 100 EC after the effective date of this AD.

(ii) Inspect third stage turbine wheels with less than 300 EC accumulated since last inspection, or since new, or since last overhaul, or since repair, within 400 EC since last inspection, or since new, or since last overhaul, or since repair.

(2) Repeat the inspection required by this AD within 400 EC since last inspection.

(3) Remove from service any third stage turbine wheels that fail the inspection required by this AD.

(f) Optional Terminating Action

Application of Turbomeca S.A., SB No. 283 72 0805, Version B, dated December 15, 2010 is terminating action for the inspections required by paragraphs (e)(1) and (e)(2) of this AD.

(g) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, may approve AMOCs for 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.*

(h) Related Information

(1) For more information about this AD, contact Brian Kierstead, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7772; fax: 781–238–7199; email: *brian.kierstead@faa.gov.*

(2) Refer to MCAI EASA AD 2015–0211, dated October 15, 2015, for related information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2010–0219.

(3) Turbomeca S.A., MSB No. 283 72 0804, Version D, dated July 24, 2015 and Turbomeca S.A., SB No. 283 72 0805, Version B, dated December 15, 2010, can be obtained from Turbomeca, using the contact information in paragraph (h)(4) of this AD.

(4) For service information identified in this proposed AD, contact Turbomeca S.A., 40220 Tarnos, France; phone: (33) 05 59 74 40 00; fax: (33) 05 59 74 45 15.

(5) You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on February 26, 2016.

Colleen M. D'Alessandro,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2016–05461 Filed 3–10–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–7857; Airspace Docket No. 15–ASW–22]

Proposed Amendment of Class D and Class E Airspace for the Following Oklahoma Towns; Antlers, OK; Oklahoma City, OK; Oklahoma City Wiley Post Airport, OK; and Shawnee, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class D airspace, Class E airspace designated as surface areas, and Class E airspace extending upward from 700 feet above the surface at Antlers, OK; Oklahoma City, OK; Oklahoma City Wiley Post Airport, OK; and Shawnee, OK. The decommissioning of non-directional radio beacons (NDB) and/or cancellation of NDB approaches due to advances in Global Positioning System (GPS) capabilities have made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at the above locations. This action also would note the updated airport names of David Jay Perry Airport, Goldsby, OK; El Reno Regional Airport, Shawnee Regional Airport, and Chandler Regional Airport to coincide with the FAA's aeronautical database. Additionally, this action would update the geographic coordinates for Tinker AFB, El Reno Regional Airport, Wiley Post Airport, Sundance Airpark, Seminole Municipal Airport, Prague Municipal Airport, Chandler Regional Airport, Tilghman NDB, Cushing Municipal Airport, Cushing NDB, and Cushing Regional Hospital Heliport to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before April 25, 2016.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2015–7857; Airspace Docket No. 15–ASW–22, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the ground floor of the building at the above address.

FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.9Z at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX, 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class E airspace at Antlers Municipal Airport, Antlers, OK; El Reno Regional Airport, Oklahoma City, OK; and Prague Municipal Airport, Shawnee, OK.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions

presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2015–7857/Airspace Docket No. 15–ASW–22.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX, 76177.

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

Availability and Summary of Documents Proposed for Incorporation by Reference

This document would amend FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E airspace extending upward from 700 feet above the surface at Antlers Municipal Airport, Antlers, OK; El Reno Regional Airport, Oklahoma City, OK; and Prague Municipal Airport, Shawnee, OK. The proposed airspace reconfigurations are due to decommissioning of NDBs and/or cancellation of the NDB approaches at each airport. This action is necessary for the safety and management of IFR operations under Standard Instrument Approach Procedures. Additionally, this proposal would note the name change of the following airports: El Reno Regional Airport (formerly El Reno Municipal Airpark; David Jay Perry Airport, Goldsby, OK (formerly David J. Perry Airport, Norman, OK); Shawnee Regional Airport (formerly Shawnee Municipal Airport); and Chandler Regional Airport (formerly Chandler Municipal Airport). Geographic coordinates also would be adjusted for the following airports and navigation aids: Tinker AFB; El Reno Regional Airport; Wiley Post Airport; Sundance Airpark; Seminole Municipal Airport; Prague Municipal Airport; Chandler Regional Airport; Tilghman NDB; Cushing Municipal Airport; Cushing NDB; and Cushing Regional Hospital Heliport.

Class D and Class E airspace designations are published in paragraph 5000, 6002, and 6005, respectively, of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

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, is non-controversial and unlikely to result in adverse or negative comments. 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASW OK D Oklahoma City Wiley Post Airport, OK [Amended]

Oklahoma City, Wiley Post Airport, OK
(Lat. 35°32′03″ N., long. 97°38′49″ W.)

That airspace extending upward from the surface to and including 3,800 feet MSL within a 4.3-mile radius of Wiley Post Airport excluding that airspace within the Oklahoma City, Will Rogers World Airport, OK, Class C airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ASW OK E2 Oklahoma City Wiley Post Airport, OK [Amended]

Oklahoma City, Wiley Post Airport, OK
(Lat. 35°32′03″ N., long. 97°38′49″ W.)

Within a 4.3-mile radius of Wiley Post Airport excluding that airspace within the

Oklahoma City, Will Rogers World Airport, OK, Class C airspace area. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASW OK E5 Antlers, OK [Amended]

Antlers Municipal Airport, OK
(Lat. 34°11′33″ N., long. 95°38′59″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Antlers Municipal Airport.

* * * * *

ASW OK E5 Oklahoma City, OK [Amended]

Oklahoma City, Will Rogers World Airport, OK
(Lat. 35°23′35″ N., long. 97°36′03″ W.)
Oklahoma City, Tinker AFB, OK
(Lat. 35°24′53″ N., long. 97°23′12″ W.)
Norman, University of Oklahoma Westheimer Airpark, OK
(Lat. 35°14′44″ N., long. 97°28′20″ W.)
University of Oklahoma Westheimer Airpark ILS Localizer
(Lat. 35°14′58″ N., long. 97°27′51″ W.)
Goldsby, David Jay Perry Airport, OK
(Lat. 35°09′18″ N., long. 97°28′13″ W.)
Oklahoma City, Clarence E. Page Municipal Airport, OK
(Lat. 35°29′17″ N., long. 97°49′25″ W.)
El Reno Regional Airport, OK
(Lat. 35°28′22″ N., long. 98°00′21″ W.)
Oklahoma City, Wiley Post Airport, OK
(Lat. 35°32′03″ N., long. 97°38′49″ W.)
Oklahoma City, Sundance Airpark, OK
(Lat. 35°36′07″ N., long. 97°42′22″ W.)

That airspace extending upward from 700 feet above the surface within an 8.1-mile radius of Will Rogers World Airport, and within an 8.2-mile radius of Tinker AFB, and within an 8.9-mile radius of University of Oklahoma Westheimer Airpark, and within 1.8 miles each side of the University of Oklahoma Westheimer Airpark ILS Localizer southwest course extending from the 8.9-mile radius to 12 miles southwest of the airport, and within a 6.3-mile radius of David Jay Perry Airport, and within a 6.5-mile radius of Clarence E. Page Airport, and within a 6.6-mile radius of El Reno Regional Airport, and within a 6.8-mile radius of Wiley Post Airport, and within a 6.8-mile radius of Sundance Airpark.

* * * * *

ASW OK E5 Shawnee, OK [Amended]

Shawnee Regional Airport, OK
(Lat. 35°21′26″ N., long. 96°56′34″ W.)
Seminole, Seminole Municipal Airport, OK
(Lat. 35°16′28″ N., long. 96°40′31″ W.)
Prague Municipal Airport, OK
(Lat. 35°28′51″ N., long. 96°43′08″ W.)
Chandler Regional Airport, OK
(Lat. 35°43′21″ N., long. 96°49′13″ W.)
Tilghman NDB
(Lat. 35°43′21″ N., long. 96°49′07″ W.)
Cushing Municipal Airport, OK
(Lat. 35°57′00″ N., long. 96°46′24″ W.)
Cushing NDB
(Lat. 35°53′24″ N., long. 96°46′24″ W.)
Cushing Regional Hospital Heliport, OK, Point In Space Coordinates
(Lat. 35°58′41″ N., long. 96°45′27″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Shawnee Regional Airport, and within a 6.6-mile radius of Seminole Municipal Airport, and within a 6.3-mile radius of Prague Municipal Airport, and within a 6.4-mile radius of Chandler Regional Airport, and within 2.5 miles each side of the 352° bearing from the Tilghman NDB extending from the 6.4-mile radius to 7.3 miles north of the airport, and within a 6.5-mile radius of Cushing Municipal Airport and within 2.1 miles each side of the 185° bearing from the Cushing NDB extending from the 6.5-mile radius to 9.3 miles south of the airport, and that airspace within a 6-mile radius of the Point In Space serving Cushing Regional Hospital Heliport.

Issued in Fort Worth, Texas, on February 29, 2016.

Vonnie Royal,

Acting Manager, Operations Support Group, Central Service Center.

[FR Doc. 2016–05177 Filed 3–10–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–0449; Airspace Docket No. 16–ASW–2]

Proposed Amendment of Class E Airspace; Clovis, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace extending upward from 700 feet above the surface at Portales Municipal Airport, Clovis, NM. This action is necessary due to the decommissioning of the Portales non-directional radio beacon (NDB), cancellation of NDB approaches at Portales Municipal Airport, and implementation of area navigation (RNAV) procedures at the airport. This action will also update the geographic coordinates for Portales Municipal Airport to coincide with the FAA's aeronautical database. This proposal would enhance the safety and management of Instrument Flight Rules (IFR) operations in the Clovis, NM, airspace area.

DATES: Comments must be received on or before April 25, 2016.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2016–0449; Airspace Docket No. 16–ASW–2, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the ground floor of the building at the above address.

FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.9Z at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX, 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

scope of that authority as it would amend Class E airspace at Portales Municipal Airport, Clovis, NM.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2016–0449/Airspace Docket No. 16–ASW–2.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX, 76177.

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

Availability and Summary of Documents Proposed for Incorporation by Reference

This document would amend FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E airspace extending upward from 700 feet above the surface at Portales Municipal Airport, Clovis, NM. After a review of the airspace, the FAA found modification of the airspace necessary due to the decommissioning of the Portales NDB, cancellation of NDB approaches at Portales Municipal Airport, and implementation of RNAV procedures at the airport. Controlled airspace is necessary for the safety and management of IFR operations in standard instrument approach procedures at the airport.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

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, is non-controversial and unlikely to result in adverse or negative comments. 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASW NM E5 Clovis, NM [Amended]

Clovis, Cannon AFB, NM
(Lat. 34°22′58″ N., long. 103°19′20″ W.)
Portales Municipal Airport, NM
(Lat. 34°08′44″ N., long. 103°24′37″ W.)
Texico VORTAC
(Lat. 34°29′42″ N., long. 102°50′23″ W.)

That airspace extending upward from 700 feet above the surface within a 20-mile radius of Cannon AFB, and within a 6.6-mile radius of Portales Municipal Airport, and within 8 miles north and 4 miles south of the 072° radial of the Texico VORTAC extending from the 20-mile radius to 16 miles east of the VORTAC.

Issued in Fort Worth, Texas, on February 29, 2016.

Vonnie Royal,

Acting Manager, Operations Support Group, Central Service Center.

[FR Doc. 2016–05173 Filed 3–10–16; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2016–0050; FRL–9943–59–Region 10]

Approval and Promulgation of Implementation Plans; Oregon: Interstate Transport of Lead and Nitrogen Dioxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Clean Air Act (CAA) requires each State Implementation Plan (SIP) to contain adequate provisions prohibiting air emissions that will have certain adverse air quality effects in other states. On October 20, 2015, the State of Oregon made a submittal to the Environmental Protection Agency (EPA) to address these requirements. The EPA is proposing to approve the submittal as meeting the requirements that each SIP contain adequate provisions to prohibit emissions that will contribute significantly to nonattainment or interfere with maintenance of the 2008 lead (Pb) and 2010 nitrogen dioxide (NO_2) National Ambient Air Quality Standards (NAAQS) in any other state.

DATES: Written comments must be received on or before April 11, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2016–0050, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *http://www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information the disclosure of which 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 at *http://www.regulations.gov* or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Kristin Hall at (206) 553–6357, *hall.kristin@epa.gov,* or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, it is intended to refer to the EPA.

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I. Background
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I. Background

On October 15, 2008, the EPA revised the level of the primary and secondary Pb NAAQS from 1.5 micrograms per cubic meter (μg/m^3) to 0.15 μg/m^3 (73 FR 66964, published November 12, 2008). On January 22, 2010, the EPA established a primary NO_2 NAAQS at 100 parts per billion (ppb), averaged over one hour, supplementing the existing annual standard (75 FR 6474, published February 9, 2010).

The CAA requires states to submit SIPs meeting sections 110(a)(1) and (2) within three years after promulgation of a new or revised standard. CAA sections 110(a)(1) and (2) address basic SIP requirements, including but not limited to emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards—so-called infrastructure requirements. To help states meet this statutory requirement, the EPA issued infrastructure guidance for the 2008 Pb NAAQS.[1] Subsequently, on September 13, 2013, the EPA issued updated infrastructure guidance for multiple standards, including the 2010 one hour NO_2 NAAQS.[2]

One of the infrastructure elements, CAA section 110(a)(2)(D)(i), requires SIPs to contain good neighbor provisions to prohibit certain adverse air quality effects on neighboring states due to interstate transport of pollution. There are four sub-elements within CAA section 110(a)(2)(D)(i). This action addresses the first two sub-elements of the good neighbor provisions, at CAA section 110(a)(2)(D)(i)(I). These sub-elements require that each SIP for a new or revised standard contain adequate provisions to prohibit any source or other type of emissions activity within the state from emitting air pollutants that will contribute significantly to nonattainment or interfere with maintenance of the applicable air quality standard in any other state.

II. State Submittal

On October 20, 2015, Oregon made a submittal to address the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for multiple NAAQS, including the 2008 Pb and 2010 one hour NO_2 NAAQS. We note that this action addresses the CAA section 110(a)(2)(D)(i)(I) interstate transport requirements for the 2008 Pb and 2010 one hour NO_2 NAAQS only. We intend to address the remainder of the Oregon submittal, including requirements related to the 2010 one hour sulfur dioxide NAAQS and the 2012 annual fine particulate matter NAAQS in separate, future actions.

CAA sections 110(a)(1) and (2) and section 110(l) require that revisions to a SIP be adopted by the state after reasonable notice and public hearing. The EPA has promulgated specific procedural requirements for SIP revisions in 40 CFR part 51, subpart F. These requirements include publication of notices by prominent advertisement in the relevant geographic area, a public comment period of at least 30 days, and an opportunity for a public hearing. The Oregon submittal included public process documentation, including a duly-noticed public hearing held on August 18, 2015. We find that the process followed by Oregon in adopting the SIP submittal complies with the procedural requirements for SIP revisions under CAA section 110 and the EPA's implementing regulations.

III. EPA Evaluation

A. 2008 Pb NAAQS

The EPA believes, as noted in the October 14, 2011 infrastructure

[1] Stephen D. Page, Director, Office of Air Quality Planning and Standards. ''Guidance on Infrastructure State Implementation Plan (SIP) Elements Required Under Sections 110(a)(1) and (2) for the 2008 Lead (Pb) National Ambient Air Quality Standards.'' Memorandum to EPA Air Division Directors, Regions I–X, October 14, 2011.

[2] Stephen D. Page, Director, Office of Air Quality Planning and Standards. ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2).'' Memorandum to EPA Air Division Directors, Regions 1–10, September 13, 2013.

guidance, that the physical properties of Pb prevent Pb emissions from experiencing the same travel or formation phenomena as fine particulate matter or ozone. More specifically, there is a sharp decrease in Pb concentrations, at least in the coarse fraction, as the distance from a Pb source increases.

Accordingly, while it may be possible for a source in a state to emit Pb in a location and in quantities that may contribute significantly to nonattainment or interfere with maintenance of the standard in another state, the EPA anticipates that this would be a rare situation, *e.g.,* where large sources are in close proximity to state boundaries. The EPA's experience with initial Pb designations suggests that sources that emit less than 0.5 tons per year or that are located more than two miles from a state border generally appear unlikely to contribute significantly to nonattainment in another state.

As recommended by the EPA's guidance, Oregon evaluated whether large sources of Pb are located in close proximity to the border that have emissions such that they contribute significantly to nonattainment or interfere with maintenance of the 2008 Pb NAAQS in neighboring states. The state identified no sources of Pb emissions in Oregon greater than 0.5 tons per year that are also located within two miles of the border. The submittal also included a review of data from Pb monitors in bordering states and trends in monitored values in Oregon and bordering states.

Compliance with the Pb NAAQS is measured by comparing the maximum rolling three-month average, over a three-year period, to the level of the NAAQS. This statistic represents the design value at a specific monitor. Oregon found that, for the design value period of 2011 through 2013, the only monitors violating the Pb NAAQS in a state bordering Oregon were those monitors located in Los Angeles, San Diego, and San Mateo, California. Oregon concluded that it is unlikely that sources in Oregon will significantly contribute to nonattainment or interfere with maintenance of the 2008 Pb NAAQS in any other state.

We reviewed the Oregon submittal with respect to Pb and we agree with the state's conclusion. 2011 national emissions inventory data confirm that there are no Oregon sources identified that emit 0.5 tons per year or more of Pb that are also located within two miles of the Oregon border.[3] We also reviewed the most recent data on ambient Pb levels in neighboring states—that became available after Oregon conducted its analysis.

For the 2012 through 2014 design value period we found that, for the purposes of evaluating significant contribution to nonattainment, there are only two violating monitors in states that border Oregon.[4] These monitors are located in San Mateo and San Diego, California, and are approximately 300 and 600 miles from the Oregon border, respectively. We also reviewed data for the previous two design value periods—2010 through 2012 and 2011 through 2013—for purposes of evaluating interference with maintenance. We identified one monitor in a bordering state that violated the 2008 Pb NAAQS in these previous periods, but attained the standard in the most recent period of 2012 through 2014. This monitor is located in Los Angeles, California—approximately 500 miles from the Oregon border. In all instances, none of these monitors are within sufficient proximity to Oregon to suggest that Pb emissions from Oregon will contribute significantly to nonattainment or interfere with maintenance of the 2008 Pb NAAQS in any other state.

With respect to potential new sources of Pb, we reviewed provisions in the Federally-approved Oregon SIP designed to control emissions of Pb. Oregon generally regulates new sources of Pb through its pre-construction and operating permit regulations for stationary sources. Oregon's pre-construction permitting rules are found at Oregon Administrative Rules Chapter 340, Division 224—New Source Review. Oregon's Federally-enforceable state operating permit program is found at Oregon Administrative Rules Chapter 340, Division 216—Air Contaminant Discharge Permits. These rules are designed to ensure that new or modified stationary sources will not cause or contribute to a violation of the applicable NAAQS.

Based on the Oregon submittal and our review of more recent monitoring data and provisions in the Oregon SIP, we believe it is reasonable to conclude that Oregon emissions will not significantly contribute to nonattainment or interfere with maintenance of the 2008 Pb NAAQS in any other state. We are proposing to approve the Oregon SIP as meeting the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2008 Pb NAAQS.

B. 2010 NO_2 NAAQS

In the submittal, Oregon reviewed monitoring data and trends to evaluate whether emissions in Oregon significantly contribute to nonattainment or interfere with maintenance of the 2010 one hour NO_2 NAAQS in other states. Compliance with the one hour NO_2 NAAQS is determined by comparing the annual 98th percentile of the daily maximum one hour concentration values, averaged over three consecutive years to the level of the NAAQS. This statistic represents the design value at a specific monitor. Oregon found no violations of the one hour NO_2 NAAQS at any established monitoring sites in the United States—for the design value period 2011 through 2013. Oregon also reviewed monitoring data from bordering states. The highest design value was 73 ppb at the San Diego, California, monitor—well below the 100 ppb level of the standard. Oregon asserted that a review of daily maximum one hour NO_2 concentrations at monitors in Washington, California, Idaho and Nevada also indicate trends well below the standard.

With respect to potential new emissions, Oregon cited provisions in the Oregon SIP that require review of new and modified stationary sources prior to construction. Planned new and modified major sources in attainment and unclassifiable areas must conduct air quality analyses to demonstrate that new emissions, along with emissions from existing sources, will not cause or contribute to a violation of any applicable standard. Based on ambient air monitoring data and provisions in the Oregon SIP that regulate new sources, Oregon determined that it is reasonable to conclude that emissions from sources in Oregon will not significantly contribute to nonattainment or interfere with maintenance of the 2010 one hour NO_2 NAAQS.

We reviewed the Oregon submittal with respect to NO_2 and we agree with the state's conclusion. We also reviewed the most recent data on ambient NO_2 levels in neighboring states—that became available after Oregon conducted its analysis.

For the purpose of evaluating significant contribution to nonattainment, we reviewed design values for the period 2012 through 2014 and found no monitors violating the one hour NO_2 NAAQS in the United States.[5] We also reviewed data for the previous two design value periods—2010 through 2012 and 2011 through 2013—to

[3] *http://www3.epa.gov/ttn/chief/net/2011inventory.html.*

[4] *http://www.epa.gov/airtrends/values.html.*

[5] *http://www.epa.gov/airtrends/values.html.*

evaluate interference with maintenance. We found no monitors violating the one hour NO_2 NAAQS in these previous periods, as well. Further, monitored values are well below 100 ppb in states bordering Oregon—63 ppb was the highest design value for 2012 through 2014, at the Los Angeles, California, monitor.

We also reviewed provisions in the Federally-approved Oregon SIP designed to control emissions of NO_X—of which NO_2 is a subset. Oregon generally regulates emissions of NO_X through its pre-construction permitting and operating permit regulations. Oregon's pre-construction permitting rules are found at Oregon Administrative Rules Chapter 340, Division 224—New Source Review. Oregon's Federally-enforceable state operating permit program is found at Oregon Administrative Rules Chapter 340, Division 216—Air Contaminant Discharge Permits. These rules are designed ensure that new or modified stationary sources will not cause or contribute to a violation of the applicable NAAQS.

Based on the Oregon submittal and our review of more recent monitoring data and provisions in the Oregon SIP, we believe it is reasonable to conclude that Oregon emissions will not significantly contribute to nonattainment or interfere with maintenance of the 2010 one hour NO_2 NAAQS in any other state. We are proposing to approve the Oregon SIP as meeting the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2010 one hour NO_2 NAAQS.

IV. Proposed Action

We are proposing to approve the Oregon submittal for the purposes of meeting CAA section 110(a)(2)(D)(i)(I) interstate transport requirements for the 2008 Pb and 2010 one hour NO_2 NAAQS. We intend to address the remainder of the submittal with respect to the 2010 one hour sulfur dioxide and 2012 annual fine particulate matter NAAQS in separate, future actions.

V. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because it does not involve technical standards; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: March 2, 2016.

Dennis J. McLerran,

Regional Administrator, Region 10.

[FR Doc. 2016–05557 Filed 3–10–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

42 CFR Part 136

[RIN 0905AC97]

Catastrophic Health Emergency Fund

AGENCY: Indian Health Service, HHS.

ACTION: Notice; extension of the comment period.

SUMMARY: This document extends the comment period for the Catastrophic Health Emergency Fund (CHEF) notice of proposed rulemaking which was published in the **Federal Register** on January 26, 2016. The comment period for the notice, which would have ended on March 11, 2016, is extended by 60 days.

DATES: The comment period for the notice published in the January 26, 2016 **Federal Register** (81 FR 4239) is extended to May 10, 2016.

ADDRESSES: Because of staff and resource limitations, we cannot accept comments by facsimile transmission. You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit written comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a Comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Betty Gould, Regulations Officer, Indian Health Service, Office of Management Services, Division of Regulatory Affairs, 5600 Fishers Lane, Mailstop 09E70, Rockville, Maryland 20857.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the above address.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to the address above. If you intend to deliver your comments to the Rockville address, please call telephone number (301) 443–1116 in advance to schedule your arrival with a staff member.

Comments will be made available for public inspection at the Rockville

address from 8:30 a.m. to 5:00 p.m., Monday–Friday, approximately two weeks after publication of this notice.

FOR FURTHER INFORMATION CONTACT: Ms. Terri Schmidt, Acting Director, Office of Resource Access and Partnerships, Indian Health Service, 5600 Fishers Lane, Mailstop 10E85C, Rockville, Maryland 20857. Telephone: (301) 443–1553.

SUPPLEMENTARY INFORMATION: The notice that was published in the **Federal Register** on January 26, 2016 advises the public that the Indian Health Service proposes to (1) establish definitions governing the CHEF, including definitions of disasters and catastrophic illnesses; (2) establish that a Service Unit shall not be eligible for reimbursement for the cost of treatment from CHEF until its cost of treating any victim of such catastrophic illness or disaster has reached a certain threshold cost; (3) establish a procedure for reimbursement of the portion of the costs for authorized services that exceed such threshold costs; (4) establish a procedure for payment from CHEF for cases in which the exigencies of the medical circumstances warrant treatment prior to the authorization of such treatment; and (5) establish a procedure that will ensure no payment will be made from CHEF to a Service Unit to the extent the provider of services is eligible to receive payment from any other Federal, State, local, or private source of reimbursement for which the patient is eligible.

This comment period is being extended to allow all interested parties the opportunity to comment on the proposed rule. Therefore, we are extending the comment period until May 10, 2016.

Dated: March 4, 2016.

Elizabeth Fowler,

Deputy Director for Management Operations Indian Health Service.

[FR Doc. 2016–05555 Filed 3–10–16; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 595

[Docket No. NHTSA–2016–0031]

RIN 2127–AL67

Make Inoperative Exemptions; Vehicle Modifications To Accommodate People With Disabilities, Roof Crush Resistance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This NPRM proposes to amend 49 CFR part 595, subpart C, ''Make Inoperative Exemptions, Vehicle Modifications to Accommodate People With Disabilities,'' to include a new exemption relating to the Federal motor vehicle safety standard for roof crush resistance. The exemption would facilitate the mobility of physically disabled drivers and passengers. This document responds to a petition from Autoregs Consulting, Inc. on behalf of The National Mobility Equipment Dealers Association.

DATES: You should submit your comments early enough to ensure that the Docket receives them not later than May 10, 2016.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. 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 below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Christopher J. Wiacek, NHTSA Office of Crash Avoidance Standards, NVS–122 (telephone 202–366–4801) (fax 202–493–2739), or Jesse Chang, NHTSA Office of Chief Counsel, NCC–112 (telephone 202–366–2992) (fax 202–366–3820). The mailing address for these officials is: National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

The National Traffic and Motor Vehicle Safety Act (49 U.S.C. chapter 301) (''Safety Act'') and NHTSA's regulations require vehicle manufacturers to certify that their vehicles comply with all applicable Federal motor vehicle safety standards (FMVSSs) (*see* 49 U.S.C. 30112; 49 CFR part 567). A vehicle manufacturer, distributor, dealer, or repair business generally may not knowingly make inoperative any part of a device or element of design installed in or on a motor vehicle in compliance with an applicable FMVSS (*see* 49 U.S.C. 30122). NHTSA has the authority to issue regulations that exempt regulated entities from the ''make inoperative'' provision (49 U.S.C. 30122(c)). The agency has used that authority to promulgate 49 CFR part 595 subpart C, ''Make Inoperative Exemptions, Vehicle Modifications to Accommodate People with Disabilities.''

49 CFR part 595 subpart C sets forth exemptions from the make inoperative provision to permit, under limited circumstances, vehicle modifications that take the vehicles out of compliance with certain FMVSSs when the vehicles are modified to be used by persons with disabilities after the first retail sale of the vehicle for purposes other than resale. The regulation was promulgated to facilitate the modification of motor vehicles so that persons with disabilities

can drive or ride in them. The regulation involves information and disclosure requirements and limits the extent of modifications that may be made.

Under the regulation, a motor vehicle repair business that modifies a vehicle to enable a person with a disability to operate or ride as a passenger in the motor vehicle and that avails itself of the exemption provided by 49 CFR part 595 subpart C must register with NHTSA. The modifier is exempted from the make inoperative provision of the Safety Act, but only to the extent that the modifications affect the vehicle's compliance with the FMVSSs specified in 49 CFR 595.7(c) and only to the extent specified in § 595.7(c). Modifications that would take the vehicle out of compliance with any other FMVSS, or with an FMVSS listed in § 595.7(c) but in a manner not specified in that paragraph are not exempted by the regulation. The modifier must affix a permanent label to the vehicle identifying itself as the modifier and the vehicle as no longer complying with all FMVSS in effect at original manufacture, and must provide and retain a document listing the FMVSSs with which the vehicle no longer complies and indicating any reduction in the load carrying capacity of the vehicle of more than 100 kilograms (220 pounds).

II. FMVSS No. 216 ''Roof Crush Resistance'' and Part 595

On May 12, 2009, as part of a comprehensive plan for reducing the serious risk of rollover crashes and the risk of death and serious injury in those crashes, NHTSA published in the **Federal Register** (74 FR 22348) a final rule substantially upgrading the roof crush resistance requirements by adopting new provisions in Federal Motor Vehicle Safety Standard (FMVSS) No. 216, Roof Crush Resistance. During the rulemaking, our analysis showed that roof strength is relevant to about seven percent (about 667) of the rollover crash fatalities each year. We estimated that the May 2009 rule would prevent 135 of those 667 fatalities. In summary, the final rule established the following main provisions.

(1) For the vehicles currently subject to the standard, *i.e.,* passenger cars and multipurpose passenger vehicles, trucks and buses with a Gross Vehicle Weight Rating (GVWR) of 2,722 kilograms (6,000 pounds) or less, the rule doubled the amount of force the vehicle's roof structure must withstand in the specified test, from 1.5 times the vehicle's unloaded weight to 3.0 times the vehicle's unloaded weight. We note that this value is sometimes referred to as the strength-to-weight ratio (SWR), *e.g.,* a SWR of 1.5, 2.0, 2.5, and so forth.

(2) The rule extended the applicability of the standard so that it will also apply to vehicles with a GVWR greater than 2,722 kilograms (6,000 pounds), but not greater than 4,536 kilograms (10,000 pounds). The rule established a SWR of 1.5 times for these vehicles.

(3) The rule required all applicable vehicles to meet the specified force requirements in a two-sided test, an upgrade from the existing single-sided test, *i.e.,* the same vehicle must meet the force requirements when tested first on one side and then on the other side of the vehicle prior to 127 mm of roof crush.

(4) The rule established a new requirement for maintenance of headroom, *i.e.,* survival space, during testing in addition to the existing limit on the amount of roof crush.

As the agency was conscious of the fact that some vehicles are built in multiple stages, the rule provided an option for alterers and multi-stage (final stage) manufacturers (who complete or add raised roofs to vehicles prior to first retail sale) to certify to the school bus rollover protection requirements (FMVSS No. 220) instead. This option is available to manufacturers of vehicles with a GVWR greater than 2,722 kilograms (6,000 pounds), but not greater than 4,536 kilograms (10,000 pounds), except those built on chassis-cab incomplete vehicles.

While the option to certify to the requirements in FMVSS No. 220 is available to manufacturers that alter vehicles prior to first sale, modifiers are prohibited from making similar changes to a vehicle (originally certified to meet FMVSS No. 216a) after first sale (due to the aforementioned make-inoperative prohibition in section 30122 of the Motor Vehicle Safety Act). Further, 49 CFR part 595 does not currently provide for an exemption from FMVSS No. 216 for modifiers that raise the roof on vehicles to accommodate people with disabilities.

III. Petition for Rulemaking

On January 21, 2013, Autoregs Consulting, Inc. (Autoregs) on behalf of The National Mobility Equipment Dealers Association (NMEDA) submitted a petition for rulemaking to amend § 595.7 to include an exemption from certain requirements of FMVSS No. 216. In its petition, Autoregs requested flexibility to allow modifiers to replace a vehicle's original roof after first sale with a raised or altered roof to accommodate the needs of persons with disability. Instead of complying with those requirements of FMVSS No. 216, the Petitioner states that modifiers should be afforded the same option (as alterers and multistage manufacturers—who alter vehicles prior to first sale) of installing a roof system that complies with the requirements of FMVSS No. 220, School bus rollover protection.

Autoregs explained that raising the roof of a vehicle is an everyday manufacturing operation for hundreds of NMEDA members, most of which are modifiers of vehicles with a GVWR greater than 2,722 kilograms (6,000 pounds), but not greater than 4,536 kilograms (10,000 pounds). Autoregs further asserts there is a need for modifiers to raise the roofs of vehicles after first sale to meet the special needs of consumers with disabilities. Autoregs explained that in many cases a consumer will purchase a vehicle, usually over 2,722 kilograms (6,000 pounds) GVWR and then approach a modifier to have a roof raised. Generally, customers ask to raise the roof 30.5 to 35.6 centimeters (14 to 16 inches) to suit their special needs. In other cases, a public agency or independent transportation company will purchase a vehicle to have the roof raised to provide public transportation for special needs citizens. They state that the make-inoperative prohibition and upgraded FMVSS No. 216 makes it impossible for such modifiers to provide transportation that accommodates those individuals who need a vehicle with a raised roof to drive or to access public transportation due to a disability.

While modifiers would have difficultly ensuring the modified roof continues to meet the performance specified in FMVSS No. 216, the Petitioner stated that such modifiers are able to change the roof structures of these vehicles in a way so as to accommodate the needs of persons with disabilities while still providing some roof strength protection to the vehicle occupants. Instead of adhering to the upgraded requirements of FMVSS No. 216, the petitioner states that such modifiers are able to ensure that a vehicle with the modified roof structure would meet the requirements of FMVSS No. 220.

Prior to the upgrade to FMVSS No. 216, NMEDA had tested and provided consortium test and installation instruction to its members for a tubular structure, or roll cage, to comply with the requirements in FMVSS No. 220. NMEDA conducted this testing mainly because they believed that FMVSS No. 220 is a comparatively simpler test and the roll cage is less expensive to install. However, after the FMVSS No. 216

upgrade, a modifier that used the NMEDA roll cage would still be subject to the make-inoperative prohibition.

IV. Response to Petition

NHTSA tentatively agrees with the Petitioner and proposes to amend 49 CFR 595.7(c) and add an exemption to the upgraded roof strength requirements of FMVSS No. 216a. We also agree with the Petitioner and propose to condition this exemption on modifiers installing a new roof that would enable the vehicle to meet the performance requirements of FMVSS No. 220.

A. What are the mobility needs that require accommodation?

We tentatively agree with the Petitioner that there is a need to accommodate persons with special mobility needs in this situation and the new FMVSS No. 216 prevents vehicle modifiers from doing so. To accommodate those with disabilities, a vehicle's roof may have to be raised. Prior to the 2009 upgrade to FMVSS No. 216, the vast majority of the vehicles being modified for this purpose did not have to comply with any roof crush requirements because they were vehicles with a GVWR between 2,722 kilograms (6,000 pounds) and 4,536 kilograms (10,000 pounds). Thus, prior to the 2009 upgrade, modifiers could replace the roof of such a vehicle to accommodate a person with special mobility needs without making inoperative any equipment installed in compliance with FMVSS No. 216.

While, such vehicles now have requirements under FMVSS No. 216, the need to accommodate such persons remains. A raised roof makes it easy for someone to enter the van seated in a wheelchair or for a personal care attendant to tend to them or walk in and out of the entrance. Doors may be raised in conjunction with a roof to enable a person in a wheelchair to enter without having to bend over or have a personal care attendant tilt the wheelchair back. Larger wheelchairs or motorized wheelchairs may also require modifications to the roof height to improve ingress and egress of the occupant. These modifications to the roof could take the vehicle out of compliance with the requirements of FMVSS No. 216.

B. Our Proposal To Accommodate This Need

We tentatively agree with the Petitioners that there is a need to provide an exemption in part 595 to the make inoperative prohibition for vehicles modified to accommodate persons with special mobility needs. We also tentatively agree with the Petitioners suggestion that FMVSS No. 220 is a viable alternative to ensure a minimum level of roof strength to protect the occupants of vehicles modified in this manner.

Similar to the rationale we expressed in the 2009 upgrade of FMVSS No. 216 for altered vehicles (*e.g.,* vehicles with a roof raised prior to first sale), we believe that there are certain technical problems modifying a vehicle to incorporate a raised roof and ensure that the vehicle continues to meet the requirements of the upgraded FMVSS No. 216. For example, if a van is altered by replacing its roof with a taller roof surface and structure, this would change the location of the test device with respect to the original roof surface and structure. If a vehicle is modified and the roof is raised to the heights suggested by the Petitioner (*i.e.,* 305 to 356 mm), the 127 mm of platen travel specified in the requirements would likely be exceed prior to the platen engaging the original vehicle's roof structure in the FMVSS No. 216 test.

We believe it would be difficult for modifiers (generally small businesses and subject to the differing needs of their customers) to raise the roof of a vehicle to these types of heights and ensure that the vehicle remains compliant with FMVSS No. 216 because the modified roof would require different testing for each variation of the roof modification. Given the small volume, variety of roof heights needed to accommodate different disabilities, and different vehicle models used for these modifications, we believe that there are substantial technical difficulties for designing a roof and structure that would enable a vehicle to continue to comply with FMVSS No. 216.

However, we currently believe that providing FMVSS No. 220 as an option for compliance is a more appropriate balance between the need to modify these vehicles to accommodate a person with a disability and our interest in ensuring a sufficient level of safety. With FMVSS No. 220, modifiers can use a whole raised roof that is designed to be installed on the vehicle. Further, such a raised roof could be applied to vehicles of varying height and would still be able to absorb the load of the platen in the FMVSS No. 220 test. As the Petitioner stated, such a roof structure (that can be applied to the variety of needed modifications and would enable the modified vehicle to meet FMVSS No. 220) has been designed and is available to modifiers. NMEDA developed the Raised Roof Manufacturing Guidelines [1] which provide their members with roof structure designs and installation considerations such that the modified vehicle would meet the minimum load requirements in FMVSS No. 220.

Further, as we stated in the 2009 upgrade to FMVSS No. 216, we believe that the requirements of FMVSS No. 220 offer a reasonable avenue for increasing safety in rollover crashes. We note that several states already require ''para-transit'' vans and other buses, which are typically manufactured in multiple stages, to comply with the roof crush requirements of FMVSS No. 220. These states include Pennsylvania, Minnesota, Wisconsin, Tennessee, Michigan, Utah, Alabama, and California. Further, our crash data continue to show that FMVSS No. 220 has been effective for protecting school buses during rollover crashes.

In addition, we believe that the strength requirements for FMVSS Nos. 216 and 220 are comparable—even though the test procedures differ. FMVSS No. 216 requires the roof to withstand a force that 1.5 times the unloaded vehicle weight of the vehicle when an angled plate (5 degree pitch forward and 25 degree rotation outward, along its lateral axis) is applied to the front corner of the roof over the occupant compartment on one side prior to 127 mm (5 inches) of plate travel or the roof makes contact with the head of seat 50th percentile dummy and repeated on the other side of the vehicle. The FMVSS No. 220 test uses a single horizontal platen over the whole roof of the vehicle to apply a load to the vehicle's roof. The standard requires the roof to withstand a force of 1.5 times the vehicle's unloaded weight prior to 130 mm (5.1 inches) limit of platen travel.

Thus, we recognize the concerns raised by Autoregs on behalf of NMEDA for continued mobility for people with disabilities with respect to the new FMVSS No. 216 requirements and tentatively believe their request to allow modifiers the option of meeting the performance requirements of FMVSS No. 220 reasonable. The agency continues to believe the requirements of FMVSS No. 220 have been effective for school buses and allows it as an option for certain multi-stage vehicles when the new requirements of FMVSS No. 216 become effective in 2017. In the context of the Petitioner's request and the work NMEDA has conducted in

[1] NMEDA, Raised Roof Manufacturing Guidelines—Ford E series GM/Chevrolet Savana/Express Model years 2008–2009–2010, Revision 2, January 19, 2010.

developing Raised Roof Manufacturing Guidelines for its members, we believe FMVSS No. 220 offers a reasonable avenue to balance the practicability of modifying vehicles to accommodate persons with a disability and the need to increase safety in rollover crashes. We request comments on the proposed exemption.

V. Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.'' It is not considered to be significant under E.O. 12866 or the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). NHTSA has determined that the effects are so minor that a regulatory evaluation is not needed to support the subject rulemaking. This rulemaking would impose no costs on the vehicle modification industry.

Modifying a vehicle in a way that makes inoperative the performance of roof crush resistance could be detrimental for the occupants of the vehicle involved in a rollover crash. By allowing modifiers the option of designing a roof system to the school bus rollover test procedure and strength requirements there is essentially no known safety trade-off for persons with disabilities. The number of vehicles potentially modified would be also very few in number. The agency believes we have made the exemption narrow and conditioned on maintaining the integrity of the roof. This issue has also been discussed in the 2009 upgrade to the requirements of Standard No. 216. We have requested comments on how the agency may make the exemption as narrow as reasonably possible.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of proposed rulemaking or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this proposed rule under the Regulatory Flexibility Act. Most dealerships and repair businesses are considered small entities, and a substantial number of these businesses modify vehicles to accommodate individuals with disabilities. I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. While most dealers and repair businesses would be considered small entities, the proposed exemption would not impose any new requirements, but would instead provide additional flexibility. Therefore, the impacts on any small businesses affected by this rulemaking would not be substantial.

Executive Order 13132 (Federalism)

NHTSA has examined today's proposed rule pursuant to Executive Order 13132 (64 FR 43255; Aug. 10, 1999) and concluded that no additional consultation with States, local governments, or their representatives is mandated beyond the rulemaking process. The agency has concluded that the proposed rule does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The proposal does not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule would not impose any requirements on anyone. This proposal would lessen a burden on modifiers.

NHTSA rules can have preemptive effect in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision stating that a State (or a political subdivision of a State) may prescribe or continue to enforce a standard that applies to an aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the FMVSS governing the same aspect of performance. *See* 49 U.S.C. 30103(b)(1). This provision is not relevant to this rulemaking as it does not involve the establishing, amending or revoking of a Federal motor vehicle safety standard.

Second, the Supreme Court has recognized the possibility, in some instances, of implied preemption of State requirements imposed on motor vehicle manufacturers, including sanctions imposed by State tort law. We are unaware of any State law or action that would prohibit the actions that this proposed rule would permit.

Civil Justice Reform

When promulgating a regulation, agencies are required under Executive Order 12988 to make every reasonable effort to ensure that the regulation, as appropriate: (1) Specifies in clear language the preemptive effect; (2) specifies in clear language the effect on existing Federal law or regulation, including all provisions repealed, circumscribed, displaced, impaired, or modified; (3) provides a clear legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction; (4) specifies in clear language the retroactive effect; (5) specifies whether administrative proceedings are to be required before parties may file suit in court; (6) explicitly or implicitly defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship of regulations.

Pursuant to this Order, NHTSA notes as follows. The preemptive effect of this proposed rule is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), ''all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.'' 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, such as the Society of Automotive Engineers (SAE).

The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards. No voluntary standards exist regarding this proposed exemption for modification of vehicles to accommodate persons with disabilities.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). This proposed exemption would not result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector in excess of $100 million annually.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This proposal does not contain new reporting requirements or requests for information beyond what is already required by 49 CFR part 595 subpart C.

Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this proposal.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Public Participation

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Comments may also be submitted to the docket electronically by logging onto the Docket Management System Web site at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at *http://www.whitehouse.gov/omb/fedreg/reproducible.html.*

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to the docket at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the agency consider late comments?

We will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that the docket receives after that date. If the docket receives a comment too late for us to consider in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may read the comments received by the docket at the address given above under **ADDRESSES**. The hours of the docket are indicated above in the same location. You may also see the comments on the Internet. To read the comments on the Internet, go to *http://www.regulations.gov.* Follow the online instructions for accessing the dockets.

Please note that even after the comment closing date, we will continue to file relevant information in the docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material. You can arrange with the docket to be notified when others file comments in the docket. See *www.regulations.gov* for more information.

List of Subjects in 49 CFR Part 595

Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, we propose to amend 49 CFR part 595 to read as follows:

PART 595—MAKE INOPERATIVE EXEMPTIONS

■ 1. The authority citation for part 595 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30122 and 30166; delegation of authority at 49 CFR 1.95.

■ 2. Amend § 595.7 by adding paragraph (c)(18) to read as follows:

§ 595.7 Requirements for vehicle modifications to accommodate people with disabilities.

* * * * *

(c) * * *

(18) S5.2(b) of 49 CFR 571.216a, in any case where the vehicle, after modification, meets the roof crush requirements in S4 of 49 CFR 571.220 when tested in accordance to S5 of 49 CFR 571.220.

* * * * *

Issued on: March 2, 2016.

R. Ryan Posten,

Associate Administrator for Rulemaking.

[FR Doc. 2016–05372 Filed 3–10–16; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 81, No. 48
Friday, March 11, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2015–0100]

Availability of an Environmental Assessment for Field Testing a Canine Osteosarcoma Vaccine, Live Listeria Vector

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment concerning authorization to ship for the purpose of field testing, and then to field test, an unlicensed Canine Osteosarcoma Vaccine, Live Listeria Vector. The environmental assessment, which is based on a risk analysis prepared to assess the risks associated with the field testing of this vaccine, examines the potential effects that field testing this veterinary vaccine could have on the quality of the human environment. Based on the risk analysis and other relevant data, we have reached a preliminary determination that field testing this veterinary vaccine will not have a significant impact on the quality of the human environment, and that an environmental impact statement need not be prepared. We intend to authorize shipment of this vaccine for field testing following the close of the comment period for this notice unless new substantial issues bearing on the effects of this action are brought to our attention. We also intend to issue a U.S. Veterinary Biological Product license for this vaccine, provided the field test data support the conclusions of the environmental assessment and the issuance of a finding of no significant impact and the product meets all other requirements for licensing.

DATES: We will consider all comments that we receive on or before April 11, 2016.

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

- Federal eRulemaking Portal: Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0100.*
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS–2015–0100, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0100* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Donna Malloy, Operational Support Section, Center for Veterinary Biologics, Policy, Evaluation, and Licensing, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1231; phone (301) 851–3426, fax (301) 734–4314.

For information regarding the environmental assessment or the risk analysis, or to request a copy of the environmental assessment (as well as the risk analysis with confidential business information removed), contact Dr. Patricia L. Foley, Risk Manager, Center for Veterinary Biologics, Policy, Evaluation, and Licensing, VS, APHIS, 1920 Dayton Avenue, P.O. Box 844, Ames, IA 50010; phone (515) 337–6100, fax (515) 337–6120.

SUPPLEMENTARY INFORMATION: Under the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*), a veterinary biological product must be shown to be pure, safe, potent, and efficacious before a veterinary biological product license may be issued. A field test is generally necessary to satisfy prelicensing requirements for veterinary biological products. Prior to conducting a field test on an unlicensed product, an applicant must obtain approval from the Animal and Plant Health Inspection Service (APHIS), as well as obtain APHIS' authorization to ship the product for field testing.

To determine whether to authorize shipment and grant approval for the field testing of the unlicensed product referenced in this notice, APHIS considers the potential effects of this product on the safety of animals, public health, and the environment. Using the risk analysis and other relevant data, APHIS has prepared an environmental assessment (EA) concerning the field testing of the following unlicensed veterinary biological product:

Requester: Antelope Valley Bios, Inc.

Product: Canine Osteosarcoma Vaccine, Live Listeria Vector.

Possible Field Test Locations: Arizona, California, Connecticut, Maryland, New Jersey, Nevada, New York, and Pennsylvania.

The above-mentioned product consists of a highly attenuated *Listeria monocytogenes* strain that expresses a HER2/neu chimeric protein. It induces a strong cell-mediated immune response as an aid in the treatment of dogs with osteosarcoma. It will be administered only in a veterinary clinic or veterinary oncology center by trained personnel.

The EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Unless substantial issues with adverse environmental impacts are raised in response to this notice, APHIS intends to issue a finding of no significant impact (FONSI) based on the EA and authorize shipment of the above product for the initiation of field tests following the close of the comment period for this notice.

Because the issues raised by field testing and by issuance of a license are identical, APHIS has concluded that the EA that is generated for field testing would also be applicable to the proposed licensing action. Provided that the field test data support the conclusions of the original EA and the issuance of a FONSI, APHIS does not intend to issue a separate EA and FONSI to support the issuance of the product

license, and would determine that an environmental impact statement need not be prepared. APHIS intends to issue a veterinary biological product license for this vaccine following completion of the field test provided no adverse impacts on the human environment are identified and provided the product meets all other requirements for licensing.

Authority: 21 U.S.C. 151–159.

Done in Washington, DC, this 7th day of March 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–05533 Filed 3–10–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2015–0105]

International Sanitary and Phytosanitary Standard-Setting Activities

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with legislation implementing the results of the Uruguay Round of negotiations under the General Agreement on Tariffs and Trade, we are informing the public of the international standard-setting activities of the World Organization for Animal Health, the Secretariat of the International Plant Protection Convention, and the North American Plant Protection Organization, and we are soliciting public comment on the standards to be considered.

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

- Federal eRulemaking Portal: Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0105.*
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS–2015–0105, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0105* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 7997039 before coming.

FOR FURTHER INFORMATION CONTACT: For general information on the topics covered in this notice, contact Ms. Jessica Mahalingappa, Assistant Deputy Administrator for Trade and Capacity Building, International Services, APHIS, Room 1132, USDA South Building, 14th Street and Independence Avenue SW., Washington, DC 20250; (202) 799–7121.

For specific information regarding standard-setting activities of the World Organization for Animal Health, contact Dr. Michael David, Director, International Animal Health Standards Team, National Import Export Services, VS, APHIS, 4700 River Road Unit 33, Riverdale, MD 20737–1231; (301) 851–3302.

For specific information regarding the standard-setting activities of the International Plant Protection Convention, contact Dr. Marina Zlotina, IPPC Technical Director, International Phytosanitary Standards, PPQ, APHIS, 4700 River Road Unit 130, Riverdale, MD 20737, (301) 851–2200.

For specific information on the North American Plant Protection Organization, contact Ms. Patricia Abad, NAPPO Technical Director, International Phytosanitary Standards, PPQ, APHIS, 4700 River Road Unit 130, Riverdale, MD, 20737, (301) 851–2264.

SUPPLEMENTARY INFORMATION:

Background

The World Trade Organization (WTO) was established as the common international institutional framework for governing trade relations among its members in matters related to the Uruguay Round Agreements. The WTO is the successor organization to the General Agreement on Tariffs and Trade. U.S. membership in the WTO was approved by Congress when it enacted the Uruguay Round Agreements Act (Pub. L. 103–465), which was signed into law on December 8, 1994. The WTO Agreements, which established the WTO, entered into force with respect to the United States on January 1, 1995. The Uruguay Round Agreements Act amended Title IV of the Trade Agreements Act of 1979 (19 U.S.C. 2531 *et seq.*). Section 491 of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2578), requires the President to designate an agency to be responsible for informing the public of the sanitary and phytosanitary (SPS) standard-setting activities of each international standard-setting organization. The designated agency must inform the public by publishing an annual notice in the **Federal Register** that provides the following information: (1) The SPS standards under consideration or planned for consideration by the international standard-setting organization; and (2) for each SPS standard specified, a description of the consideration or planned consideration of that standard, a statement of whether the United States is participating or plans to participate in the consideration of that standard, the agenda for U.S. participation, if any, and the agency responsible for representing the United States with respect to that standard.

''International standard'' is defined in 19 U.S.C. 2578b as any standard, guideline, or recommendation: (1) Adopted by the Codex Alimentarius Commission (Codex) regarding food safety; (2) developed under the auspices of the World Organization for Animal Health (OIE, formerly known as the Office International des Epizooties) regarding animal health and welfare, and zoonoses; (3) developed under the auspices of the Secretariat of the International Plant Protection Convention (IPPC) in cooperation with the North American Plant Protection Organization (NAPPO) regarding plant health; or (4) established by or developed under any other international organization agreed to by the member countries of the North American Free Trade Agreement (NAFTA) or the member countries of the WTO.

The President, pursuant to Proclamation No. 6780 of March 23, 1995 (60 FR 15845), designated the Secretary of Agriculture as the official responsible for informing the public of the SPS standard-setting activities of Codex, OIE, IPPC, and NAPPO. The United States Department of Agriculture's (USDA's) Food Safety and Inspection Service (FSIS) informs the public of Codex standard-setting activities, and USDA's Animal and Plant Health Inspection Service (APHIS) informs the public of OIE, IPPC, and NAPPO standard-setting activities.

FSIS publishes an annual notice in the **Federal Register** to inform the public of SPS standard-setting activities for Codex. Codex was created in 1962 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization. It is the major international organization for encouraging international trade in food and protecting the health and economic interests of consumers.

APHIS is responsible for publishing an annual notice of OIE, IPPC, and NAPPO activities related to

international standards for plant and animal health and representing the United States with respect to these standards. Following are descriptions of the OIE, IPPC, and NAPPO organizations and the standard-setting agenda for each of these organizations. We have described the agenda that each of these organizations will address at their annual general sessions, including standards that may be presented for adoption or consideration, as well as other initiatives that may be underway at the OIE, IPPC, and NAPPO.

The agendas for these meetings are subject to change, and the draft standards identified in this notice may not be sufficiently developed and ready for adoption as indicated. Also, while it is the intent of the United States to support adoption of international standards and to participate actively and fully in their development, it should be recognized that the U.S. position on a specific draft standard will depend on the acceptability of the final draft. Given the dynamic and interactive nature of the standard-setting process, we encourage any persons who are interested in the most current details about a specific draft standard or the U.S. position on a particular standard-setting issue, or in providing comments on a specific standard that may be under development, to contact APHIS. Contact information is provided at the beginning of this notice under **FOR FURTHER INFORMATION CONTACT**.

OIE Standard-Setting Activities

The OIE was established in Paris, France, in 1924, with the signing of an international agreement by 28 countries. It is currently composed of 180 Members, each of which is represented by a delegate who, in most cases, is the chief veterinary officer of that country or territory. The WTO has recognized the OIE as the international forum for setting animal health and welfare standards, reporting global animal disease events, and presenting guidelines and recommendations on sanitary measures relating to animal health.

The OIE facilitates intergovernmental cooperation to prevent the spread of contagious diseases in animals by sharing scientific research among its Members. The major functions of the OIE are to collect and disseminate information on the distribution and occurrence of animal diseases and to ensure that science-based standards govern international trade in animals and animal products. The OIE aims to achieve these through the development and revision of international standards for diagnostic tests, vaccines, and the safe international trade of animals and animal products.

The OIE provides annual reports on the global distribution of animal diseases, recognizes the free status of Members for certain diseases, categorizes animal diseases with respect to their international significance, publishes bulletins on global disease status, and provides animal disease control guidelines to Members. Various OIE commissions and working groups undertake the development and preparation of draft standards, which are then circulated to Members for consultation (review and comment). Draft standards are revised accordingly and are then presented to the OIE World Assembly of Delegates (all the Members) during the General Session, which meets annually every May, for review and adoption. Adoption, as a general rule, is based on consensus of the OIE membership.

The next OIE General Session is scheduled for May 22 to May 27, 2016, in Paris, France. Currently, the Deputy Administrator for APHIS' Veterinary Services program is the official U.S. Delegate to the OIE. The Deputy Administrator for APHIS' Veterinary Services program intends to participate in the proceedings and will discuss or comment on APHIS' position on any standard up for adoption. Information about OIE draft Terrestrial and Aquatic Animal Health Code chapters may be found on the Internet at *http://www.aphis.usda.gov/animal-health/export-animals-oie* or by contacting Dr. Michael David (see **FOR FURTHER INFORMATION CONTACT** above).

OIE Terrestrial and Aquatic Animal Health Code Chapters and Appendices Adopted During the May 2015 General Session

More than 30 Code chapters were amended, rewritten, or newly proposed and presented for adoption at the General Session. The following Code chapters are of particular interest to the United States:

1. Glossary

Text was changed in this Code chapter for the definition of ''Stamping out,'' particularly the removal of the phrase that includes ''in whole or in part'', which may be misinterpreted and cause confusion.

2. User's Guide

Text in this Code chapter was modified for clarity.

3. Chapter 3.2., Evaluation of Veterinary Services

Text in this Code chapter was modified for clarity and consistency.

4. Chapter 4.7., Collection and Processing of In-Vivo Derived Embryos From Livestock and Horses

Text in this Code chapter was modified for clarity.

5. Chapter 5.1., General Obligation Related to Certification

Text in this Code chapter was modified and precise definitions for standard, guideline, and recommendation will be provided by the Commission for Member Country comment.

6. Chapter 5.2., Certification Procedures

Text in this Code chapter had minor modifications for clarity.

*7. Chapter 6.5., Prevention, Detection, and Control of Salmonella in Poultry **

Text in this Code chapter was modified for clarity.

8. Chapter 7.X., Animal Welfare and Dairy Cattle Production Systems

This is a new Code chapter and the text will be modified for clarity and consistency in the future as the Commission proposes changes for comment.

9. Chapter 7.10., Animal Welfare and Broiler Production

Text in this Code chapter was modified for clarity.

10. Chapter 7.5., Slaughter of Animals

Proposed text in this Code chapter was not adopted and the chapter remains as currently written.

11. Chapter 8.X., Infection With Epizootic Hemorrhagic Disease Virus

This is a new Code chapter that was adopted with minimal discussion and closely parallels the current chapter for bluetongue.

12. Chapter 15.3., Infection With Taenia Solium

This is a new Code chapter that was adopted and additional comments will be submitted on the limits of cysticerci detections per carcass and the appropriate temperature to inactivate the cysticerci.

13. Chapter 4.16., High Health Status Horse Subpopulation

This Code chapter was adopted in 2014. It presents the concept of ''higher health status'' horses, which by being closely monitored and tested for certain

diseases should be able to move in and out of countries, where they may compete with greater ease than they would otherwise.

14. Chapter 11.4., Bovine Spongiform Encephalopathy

The text in this chapter was updated to recognize the distinction between ''classical BSE'' and ''atypical BSE''.

15. Chapter 10.4., Infection With Avian Influenza Viruses

The text in this Code chapter was minimally modified to align it with similar text in Code Chapter 10.9. ''Infection with Newcastle Disease Virus.''

The following Aquatic Manual chapters were revised and adopted, and are of particular interest to the United States:

Chapter 2.2.2. Infectious hypodermal and haematopoietic necrosis
Chapter 2.2.4. Necrotising hepatopancreatitis
Chapter 2.2.5. Taura syndrome
Chapter 2.2.8. Infection with yellow head virus
Chapter 2.4.7. Infection with *Perkinsus olseni*

OIE Terrestrial Animal Health Code Chapters and Appendices for Future Review

- Glossary.
- Chapter 1.1., Notification of diseases.
- Chapter 1.2., Criteria for inclusion OIE list.
- Chapter 15.1., Infection with African swine fever.
- Chapter 6.X., Salmonella in cattle.
- Chapter 11.5., Bovine tuberculosis.
- Chapter 6.9., Responsible and prudent use of antimicrobial agents in veterinary medicine.
- Chapter 11.12., Theileriosis.
- Chapter 12.10., Glanders.
- Chapter 10.5., Avian mycoplasmosis (*Mycoplasma gallisepticum*).
- Chapter 11.11., Lumpy skin disease.
- Chapter 4.16., High health status horse subpopulation.

IPPC Standard-Setting Activities

The IPPC is a multilateral convention adopted in 1952 for the purpose of securing common and effective action to prevent the spread and introduction of pests of plants and plant products and to promote appropriate measures for their control. Under the IPPC, the understanding of plant protection has been, and continues to be, broad, encompassing the protection of both cultivated and non-cultivated plants from direct or indirect injury by plant pests. Activities addressed by the IPPC include the development and establishment of international plant health standards (ISPMs), the harmonization of phytosanitary activities through emerging standards, the facilitation of the exchange of official and scientific information among countries, and the furnishing of technical assistance to developing countries that are signatories to the IPPC.

The IPPC is under the authority of the Food and Agriculture Organization (FAO), and the members of the Secretariat of the IPPC are appointed by the FAO. The IPPC is implemented by national plant protection organizations (NPPOs) in cooperation with regional plant protection organizations (RPPOs), the Commission on Phytosanitary Measures (CPM), and the Secretariat of the IPPC. The United States plays a major role in all standard-setting activities under the IPPC and has representation on FAO's highest governing body, the FAO Conference.

The United States became a contracting party to the IPPC in 1972 and has been actively involved in furthering the work of the IPPC ever since. The IPPC was amended in 1979, and the amended version entered into force in 1991 after two-thirds of the contracting countries accepted the amendment. More recently, in 1997, contracting parties completed negotiations on further amendments that were approved by the FAO Conference and submitted to the parties for acceptance. This 1997 amendment updated phytosanitary concepts and formalized the standard-setting structure within the IPPC. The 1997 amended version of the IPPC entered into force after two-thirds of the contracting parties notified the Director General of FAO of their acceptance of the amendment in October 2005. The U.S. Senate gave its advice and consent to acceptance of the newly revised IPPC on October 18, 2000. The President submitted the official letter of acceptance to the FAO Director General on October 4, 2001.

The IPPC has been, and continues to be, administered at the national level by plant quarantine officials whose primary objective is to safeguard plant resources from injurious pests. In the United States, the national plant protection organization is APHIS' Plant Protection and Quarantine (PPQ) program.

Every 2 years, NPPOs and RPPOs propose topics for ISPMs, which are then prioritized and approved by the CPM. All contracting parties agree to the scope of the draft ISPM and then NPPOs and RPPOs nominate experts to draft the ISPM. The draft ISPM then enters the member consultation stage, in which countries submit comments. The comments are incorporated and the draft ISPM is presented for the final member consultation stage, and is then adopted by the CPM. On average, this process takes 5 to 7 years. More detailed information on the standard setting process can be found on the IPPC Web site.[1]

Each member country is represented on the CPM by a single delegate. Although experts and advisors may accompany the delegate to meetings of the CPM, only the delegate (or an authorized alternate) may represent each member country in considering a standard proposed for approval. Parties involved in a vote by the CPM are to make every effort to reach agreement on all matters by consensus. Only after all efforts to reach a consensus have been exhausted may a decision on a standard be passed by a vote of two-thirds of delegates present and voting.

Technical experts from the United States have participated directly in working groups and indirectly as reviewers of all IPPC draft standards. The United States also has a representative on the Standards Committee, Capacity Development Committee, and the CPM Bureau. In addition, documents and positions developed by APHIS and NAPPO have been sources of significant input for many of the standards adopted to date. This notice describes each of the IPPC standards currently under consideration or up for adoption. Interested individuals may review the standards [2] and submit comments to Dr. Marina Zlotina (see **FOR FURTHER INFORMATION CONTACT** above).

The 10th Session of the CPM took place from March 16 to 20, 2015, at FAO Headquarters in Rome, Italy. The Deputy Administrator for APHIS' PPQ program was the U.S. delegate to the CPM. The Deputy Administrator participated in the proceedings and discussed or commented on APHIS' position on any standards up for adoption.

The following standards were adopted by the CPM at its 2015 meeting. The United States participated in consideration of these standards. The

[1] IPPC Standard Setting procedure: *https://www.ippc.int/core-activities/standards-setting.*

[2] Draft ISPMs submitted for member consultation: *https://www.ippc.int/core-activities/standards-setting/member-consultation-draft-ispms.* Draft ISPMs submitted for substantial concerns commenting period: *https://www.ippc.int/core-activities/standards-setting/substantial-concerns-commenting-period-sccp-draft-ispms.* Draft ISPMs submitted for adoption: *https://www.ippc.int/core-activities/standards-setting/formal-objections-draft-ispms-14-days-prior-cpm.*

U.S. position on each of these issues were developed prior to the CPM session and were based on APHIS' analysis, information from other U.S. Government agencies, and relevant scientific information from interested stakeholders:

- Annex 3 to ISPM 26 (Establishment of pest free areas for fruit flies (Tephritidae)) on Phytosanitary procedures for fruit fly (Tephritidae) management
- ISPM 5: Glossary of Phytosanitary Terms
- Annexes to ISPM 28: Phytosanitary treatments
  - Cold treatment for *Bactrocera tryoni* on *Citrus sinensis*
  - Cold treatment for *Bactrocera tryoni* on *Citrus reticulata* x *C. sinensis*
  - Cold treatment for *Bactrocera tryoni* on *Citrus limon*
  - Irradiation for *Dysmicoccus neobrevipes, Planococcus lilacinus,* and *Planococcus minor*
- Annexes to ISPM 27: Diagnostic Protocols
  - *Phyllosticta citricarpa* (McAlpine) Aa on fruit
  - *Xanthomonas citri* subsp. *citri*
  - Potato spindle tuber viroid

Other APHIS key achievements from the 2015 CPM meeting were to promote the IPPC Secretariat Enhancement Evaluation study, initiate the review of the IPPC standard setting process, lead and influence the international direction on electronic certification, support the establishment of the International Year of Plant Health in 2020, and continue to support plans for an international workshop in wood packaging material (ISPM 15).

New Standard-Setting Initiatives, Including Those in Development

A number of expert working group (EWG) meetings or other technical consultations took place during 2015 on the topics listed below. These standard-setting initiatives are under development and may be considered for future adoption. APHIS intends to participate actively and fully in each of these working groups. The U.S. position on each of the topics to be addressed by these various working groups was developed prior to these working group meetings and was based on APHIS' technical analysis, information from other U.S. Government agencies, and relevant scientific information from interested stakeholders:

- EWG on the revision of ISPM 6: Guidelines for surveillance
- Technical Panel on Fruit Flies
- Technical Panel on the Glossary of Phytosanitary Terms
- Technical Panel on Diagnostic Protocols
- Technical Panel on Phytosanitary Treatments

For more detailed information on the above, contact Dr. Marina Zlotina (see **FOR FURTHER INFORMATION CONTACT** above).

APHIS posts links to draft standards on the Internet as they become available and provides information on the due dates for comments.[3] Additional information on IPPC standards (including the standard setting process and adopted standards) is available on the IPPC Web site.[4] For the most current information on official U.S. participation in IPPC activities, including U.S. positions on standards being considered, contact Dr. Marina Zlotina (see **FOR FURTHER INFORMATION CONTACT** above). Those wishing to provide comments on any of the areas of work being undertaken by the IPPC may do so at any time by responding to this notice (see **ADDRESSES** above) or by providing comments through Dr. Zlotina.

NAPPO Standard-Setting Activities

NAPPO, a regional plant protection organization created in 1976 under the IPPC, coordinates the efforts among Canada, the United States, and Mexico to protect their plant resources from the entry, establishment, and spread of harmful plant pests, while facilitating intra- and inter-regional trade. NAPPO conducts its work through priority-driven annual projects conducted by expert groups. Project results and updates are provided during the NAPPO annual meeting. The NAPPO Executive Committee issues a call for project proposals each year. Projects can include the development of positions, policies, or technical documents, or the development or revision of regional standards for phytosanitary measures (RSPMs). Projects can also include implementation of standards or other capacity building activities such as workshops. After the NAPPO region selects the projects for the year, expert groups are formed with subject matter experts from each member country, as well as representatives from key industries or commodity groups (*e.g.*, nursery, seed, forestry, grains, potato, citrus, etc.). In the United States, draft standards are circulated to industry, States, and various government agencies for consideration and comment. The draft standards are posted on the Internet at *http://www.nappo.org/.* Once revisions are made, the proposal is sent to the NAPPO Working Group for technical review, and then to the Executive Committee for final approval, which is granted by consensus.

The 40th NAPPO annual meeting will be held October 31 to November 3, 2016, in Montreal, Canada. The NAPPO Executive Committee meeting will take place during that meeting. The Deputy Administrator for PPQ, or his designee, is a member of the NAPPO Executive Committee.

Below is a summary of the 2015 NAPPO work program as it relates to the ongoing development of NAPPO standards. The United States (*i.e.*, USDA/APHIS) participates actively and fully in the NAPPO work program. The U.S. position on each topic is guided and informed by the best scientific information available on each of these topics. For each of the following topics, the United States considered its position on any draft standard after it reviewed a prepared draft. Information regarding the following NAPPO projects, assignments, activities, and updates on meeting times and locations may be obtained from the NAPPO homepage at *http://www.nappo.org* or by contacting Ms. Patricia Abad (see **FOR FURTHER INFORMATION CONTACT** above). Additional information on the 2016 work program, once determined, will also be available on the NAPPO Web site.

The following are the projects from the 2015 work program that were actively worked on:

1. Biological Control: The Biological Control Expert Group organized a workshop in July 2015 to provide training on preparing a petition for first release of an entomophagous biological control agent according to requirements outlined in RSPM 12, ''Guidelines for petition for first release of non-indigenous entomophagous biological control agents.'' It also finalized the revision of the following standards based on country comments: RSPM 7 (2008), ''Guidelines for petition for first release of non-indigenous phytophagous biological control agents''; RSPM 12 (2008), ''Guidelines for petition for first release of non-indigenous entomophagous biological control agents''; and RSPM 29 (2008), ''Guidelines for the petition for import and release of non-Apis pollinating insects into NAPPO countries.'' Finally, the Expert Group revised RSPM 26 (2012), ''Certification of commercial arthropod biological control agents moving into NAPPO member countries, including the addition of non-Apis pollinators.''

2. Citrus: The Citrus Expert Group used country comments to finalize a document on recommended measures

[3] For more information on the IPPC draft ISPM member consultation: *http://www.aphis.usda.gov/plant_health/international/PhytosanitaryStandards/draft_standards.shtml.*

[4] IPPC Web site: *https://www.ippc.int/.*

for the establishment and maintenance of area wide management programs for Huanglongbing and its vector. The Expert Group also reviewed and integrated comments from country consultation on the template for identifying new and emerging quarantine pests as well as on its application to Citrus leprosis virus. It also revised the treatment protocols for TP 01 (2009), Thermotherapy, and TP 02 (2009), Shoot-tip micro-grafting.

3. Electronic Certification: The Electronic Certification Expert Group continued to provide input to the IPPC Steering Group, especially to help address mechanisms of exchange, security, and secure transmission of data and the standardization of data.

4. Forestry: The Forestry area consisted of four Expert Groups: The Forestry Systems Expert Group finalized a specification for a possible standard on the potential use of systems approaches to manage pest risks associated with the movement of wood, based on country comments. The ISPM 15 Expert Group began preparations for a multi-region conference on ISPM 15 implementation, following the recommendation that came out of the NAPPO–Asia Pacific Plant Protection Commission workshop. The Asian Gypsy Moth (AGM) Expert Group revised RSPM 33 (2009), ''Guidelines for regulating the movement of ships and cargo from areas infested with the Asian gypsy moth.'' In November 2015, the AGM Expert Group also organized a training workshop for further development and implementation of an Asian gypsy moth program based on RSPM 33. Finally, the Lymantriids Expert Group continued on the development of a Science and Technology paper on the risks associated with Lymantriids of potential concern to the NAPPO region, identifying potential species and pathways of concern.

5. Fruit: The Fruit Expert Group working on trapping protocols for pests of fruit reviewed and integrated comments from country consultation on the Annex to RSPM 17 (2010), ''Guidelines for development of, and efficacy verification for, lures and traps for arthropod pests of fruits.'' The document was approved and accepted as a new Surveillance Protocol (SP 02): Trapping Protocols for Pests of Fruit Entering into NAPPO Member Countries.

6. Grain: The Grain Expert Group reviewed and integrated comments from country consultation of RSPM 13 (2009), ''Guidelines to establish, maintain and verify Karnal Bunt pest free areas in North America.''

7. Phytosanitary Alert System: The Phytosanitary Alert System (PAS) Expert Group continued to manage the NAPPO pest reporting system and continued to review the unofficial pest alert product offered by the Phytosanitary Alert System.

8. Plants for Planting: An Expert Group on Plum Pox worked on the revision of RSPM 18 (2004), ''Guidelines for phytosanitary action following detection of plum pox virus.''

9. Potato: The Potato Expert Group was tasked with revising the pest list for RSPM 3 (2011), ''Guidelines for movement of potatoes into a NAPPO member country.'' They were also asked to review RSPM 3 to align it with ISPM 33 (2010), ''Pest free potato (*Solanum* spp.) micropropagative material and minitubers for international trade,'' and discuss any adjustments required by NAPPO member countries.

10. Seed: The Seed Expert Group discussed the development of annexes to RSPM 36 (2013), ''Phytosanitary guidelines for the movement of seed into a NAPPO member country,'' to include treatments for seed borne and seed transmissible pests and to harmonize countries' import/export phytosanitary requirements. They also organized a workshop in July 2015 on needs assessment of regulatory support of the North American seed industry.

The PPQ Assistant Deputy Administrator, as the official U.S. delegate to NAPPO, participates in the adoption of these regional plant health standards, including the work described above, once they are completed and ready for such consideration.

The information in this notice contains all the information available to us on NAPPO standards under development or consideration. For updates on meeting times and for information on the expert groups that may become available following publication of this notice, go to the NAPPO Web site on the Internet at *http://www.nappo.org* or contact Ms. Patricia Abad (see **FOR FURTHER INFORMATION CONTACT** above). Information on official U.S. participation in NAPPO activities, including U.S. positions on standards being considered, may also be obtained from Ms. Abad. Those wishing to provide comments on any of the topics being addressed in the NAPPO work program may do so at any time by responding to this notice (see **ADDRESSES** above) or by transmitting comments through Ms. Abad.

Done in Washington, DC, this 7th day of March 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–05527 Filed 3–10–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

South Gifford Pinchot Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The South Gifford Pinchot Resource Advisory Committee (RAC) will meet in Stevenson, Washington. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following Web site: *http://www.fs.usda.gov/main/giffordpinchot/workingtogether/advisorycommittees*.

DATES: The meeting will be held April 11, 2016, from 9:30 a.m. to 4:40 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Rock Creek Hegewald Center, 710 Southwest Rock Creek Drive, Stevenson, Washington.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Gifford Pinchot National Forest Headquarters. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Gala Miller, RAC Coordinator, by phone at 360–891–5014 or via email at *galamiller@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Elect the Chair and Vice Chair,
2. Review submitted Title II project proposals, and
3. Make project recommendations for Title II funding.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by April 1, 2016, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Gala Miller, RAC Coordinator, 10600 NE 51st Circle, Vancouver, Washington 98682; by email to *galamiller@fs.fed.us,* or via facsimile to 360–891–5045.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: March 4, 2016.

Angela Elam,

Deputy Forest Supervisor.

[FR Doc. 2016–05524 Filed 3–10–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Submission for OMB Review; Comment Request

March 7, 2016.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the 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 burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; (4) ways to 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.

Comments regarding this information collection received by April 11, 2016 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service

Title: Cold Storage.

OMB Control Number: 0535–0001.

Summary of Collection: The primary objective of the National Agricultural Statistics Service (NASS) is to prepare and issue State and national estimates of crop and livestock production, value and disposition. The monthly Cold Storage Survey provides information on national supplies of food in refrigerated storage facilities. A biennial survey of refrigerated warehouses is also conducted to provide a benchmark of the capacity available for refrigerated storage of the nation's food supply. The data will be collected under the authority of 7 U.S.C. 2204(a). This statute specifies ''The Secretary of Agriculture shall procure and preserve all information concerning agriculture which he can obtain . . . by the collection of statistics . . . and shall distribute them among agriculturists.''

Need and Use of the Information: USDA agencies such as the World Agricultural Outlook Board, Economic Research Service, and Agricultural Marketing Service use this information from the Cold Storage report in setting and administering government commodity programs and in supply and demand analysis. Included in the report are stocks of pork bellies, frozen orange juice concentrate, butter, and cheese which are traded on the Chicago Board of Trade. The timing and frequency of the surveys have evolved to meet the needs of producers, facilities, agribusinesses, and government agencies.

Description of Respondents: Business or other for-profit.

Number of Respondents: 1,378.

Frequency of Responses: Reporting: Monthly; Biennially.

Total Burden Hours: 3,965.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016–05508 Filed 3–10–16; 8:45 am]

BILLING CODE 3410–20–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the North Carolina Advisory Committee for a Meeting To Hear Testimony on the Civil Rights Implications of Environmental Justice in North Carolina

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the North Carolina Advisory Committee will hold a meeting on Thursday, April 7, 2016, beginning at 09:00 a.m. for the purpose of hearing testimony regarding the issue of civil rights implications of environmental issues in North Carolina, particularly as it relates to coal ash disposal.

This meeting is open to the public, and will take place at the Walnut Cove Public Library, 106 5th Street, Walnut Cove, North Carolina 27052. Members of the public are invited to make statements during the open comment period beginning at 4:00 p.m. In addition, members of the public may submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Southern Regional Office, U.S. Commission on Civil Rights, 61 Forsyth St., Suite 16T126, Atlanta, Georgia 30303. They may also be faxed to the Commission at (404) 562–7005, or emailed to Jeff Hinton Allen at *jhinton@usccr.gov.* Persons who desire additional information may contact the USCCR, Southern Regional Office at (404) 562–7000.

Records and documents discussed during the meeting will be available for public viewing prior to and following the meeting at *http://facadatabase.gov/committee/meetings.aspx?cid=266* and following the links for ''Meeting Details'' and then ''Documents.'' Records generated from this meeting may also be inspected and reproduced at the Southern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Southern Regional Office at the above email or street address.

DATES: The meeting will be held on Thursday, April 7, 2016, from 9:00 a.m. to 5:00 p.m. EST.

ADDRESSES: Walnut Cove Public Library, 106 5th Street, Walnut Cove, North Carolina 27052.

Agenda

I. Introductory Remarks by Chairman: 9:00 a.m.
II. Panel 1: Government Officials, Community Leaders/Advocates: 9:10 a.m.–10:20 a.m.
Questions from Committee Members
Break: 10:20 a.m.–10:30 a.m.
III. Panel 2: Environment/Health Issues: 10:30 a.m.–11:50 p.m.
Questions from Committee Members
Lunch: 11:50 p.m.–1:20 p.m.
IV. Panel 3: Coal Industry Executives and Advocacy Groups: 1:20p.m.–2:30 p.m.
Questions from Committee Members
V. Break: 2:30p.m.–2:40 p.m.
VI. Panel 4: Coal Ash Activists/Advocates: 2:40 p.m.–4:00 p.m.
Questions from Committee Members
VII. Open Comments Period: 4:00 p.m.–5:00 p.m.
Questions from Committee Members
VIII. Adjourn Briefing: 5:15 p.m.

FOR FURTHER INFORMATION CONTACT: Jeff Hinton, DFO, (404) 562–7006 or *jhinton@usccr.gov.*

Dated: March 8, 2016.

David Mussatt,

Chief, Regional Programs Unit, USCCR.

[FR Doc. 2016–05476 Filed 3–10–16; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission Briefing and Business Meeting.

DATES: Friday, March 18, 2016, at 9 a.m. EST.

ADDRESSES: National Place Building, 1331 Pennsylvania Ave. NW., 11th Floor, Suite 1150, Washington, DC 20245 (Entrance on F Street NW.)

FOR FURTHER INFORMATION CONTACT: Gerson Gomez, Media Advisor at telephone: (202) 376–8371, TTY: (202) 376–8116 or email: *publicaffairs@usccr.gov.*

SUPPLEMENTARY INFORMATION: This briefing and business meeting are open to the public. The public may listen on the following toll-free number: 1–888–572–7033. Please provide the operator with conference ID number 6194124.

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.

During the briefing portion, Commissioners will ask questions and discuss the briefing topic with the panelists. The public may submit written comments on the topic of the briefing to the above address for 30 days after the briefing. Please direct your comments to the attention of the ''Staff Director'' and clearly mark ''Briefing Comments Inside'' on the outside of the envelope. Please note we are unable to return any comments or submitted materials. Comments may also be submitted by email to *municiapalfees@usccr.gov.*

Meeting Agenda

I. Approval of Agenda
II. Briefing on Municipal Policing and Courts: A Search for Justice or a Quest for Revenue
A. Opening Remarks: 9:00 a.m.–9:20 a.m. *Please note that the time frames and panels provided herein are approximate and subject to change.
B. Panel One: National experts and legal scholars, who will speak about the historical context of revenue-generating practices in the municipal court system, how they have evolved, how pervasive such practices are across the country, and possible solutions.—9:20 a.m.–10:35 a.m.
Speakers' Remarks
- Vikrant Reddy, Charles Koch Institute
- Thomas Harvey, Arch City Defenders
- Nusrat Choudhury, American Civil Liberties Union
- Emily Napier, Center for Community Alternatives

Questions from Commissioners
C. Panel Two: Community leaders and advocates that have work directly with individuals from low-income communities of color and will describe how the deliberate of generating revenue through the municipal courts has negatively impacted their lives both directly and indirectly.—10:35 a.m.–11:50 a.m.
Speakers' Remarks
- Starsky Wilson, Co-Chairman of the Ferguson Commission
- Bennie Small, NAACP Hillsborough County Branch
- Kelsey Antle, Brennan Center for Justice
- Mitali Nagrecha, Center for Community Alternatives

Questions from Commissioners
D. 11:50 a.m.–12:05 p.m.—Break
E. Panel Three: Scholars and criminal justice experts who can demonstrate empirically how the practice of generating revenue through the municipal court system has impacted low-income communities of color.—12:05 p.m.–1:20 p.m.
Speakers' Remarks
- Joshua House, Institute for Justice
- Janene McCabe, National Association of Public Defense
- Alexes Harris, University of Washington
- Karin Martin, John Jay College of Criminal Justice

Questions from Commissioners
F. Adjourn Briefing
III. Lunch: 1:20 p.m.–2:20 p.m.
IV. Business Meeting: 2:30 p.m.–4 p.m.
A. Program Planning
a. Discussion about moving the December 2016 Business Meeting to December 2, 2016
b. Discussion and Vote on the National Voter Registration Act Report and Findings and Recommendations
c. Discussion and vote on Uniontown Town Hall
a. Advisory Committees
b. Management and Operations
- Staff Director's Report

c. Other
d. Discussion and vote on follow-up letters on issue of denial of birth certificates to U.S. citizen children in Texas
V. Adjourn Meeting

Dated: March 8, 2016.

David Mussatt,

Regional Programs Unit Chief, U.S. Commission on Civil Rights.

[FR Doc. 2016–05616 Filed 3–9–16; 11:15 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Dakota Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the South Dakota Advisory Committee to the Commission will convene at 12:00 p.m. (MST) on Tuesday, April 5, 2016, via teleconference. The purpose of the meeting is to review current civil rights issues in the state identified by state advisory committee members. A goal of the meeting is to select a topic for study.

Members of the public may listen to the discussion by dialing the following Conference Call Toll-Free Number: 1–888–455–2296; Conference ID: 5419679. Please be advised that before being placed into the conference call, the operator will ask callers to provide their names, their organizational affiliations (if any), and an email address (if available) prior to placing callers into the conference room. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free phone number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service (FRS) at 1–800–977–8339 and provide the FRS operator with the Conference Call Toll-Free Number: 1–888–455–2296, Conference ID: 5419679. Members of the public are invited to submit written comments; the comments must be received in the regional office by Thursday, May 5, 2016. Written comments may be mailed to the Rocky Mountain Regional Office, U.S. Commission on Civil Rights, 1961 Stout Street, Suite 13–201, Denver, CO 80294, faxed to (303) 866–1050, or emailed to Evelyn Bohor at *ebohor@usccr.gov.* Persons who desire additional information may contact the Rocky Mountain Regional Office at (303) 866–1040.

Records and documents discussed during the meeting will be available for public viewing as they become available at *http://www.facadatabase.gov/committee/meetings.aspx?cid=274* and clicking on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Rocky Mountain Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Rocky Mountain Regional Office at the above phone number, email or street address. Agenda:

- Welcome and Introductions

Richard Braunstein, Chair, South Dakota Advisory Committee

Malee V. Craft, Regional Director, Rocky Mountain Regional Office (RMRO)

- Further discuss topics identified by SAC members
- Select topic for future study
- Next Steps

DATES: Tuesday, April 5, 2016, at 12:00 p.m. (MST).

ADDRESSES: To be held via teleconference:

Conference Call Toll-Free Number: 1–888–455–2296, Conference ID: 5419679.

TDD: Dial Federal Relay Service 1–800–977–8339 and give the operator the above conference call number and conference ID.

FOR FURTHER INFORMATION CONTACT: Malee V. Craft, DFO, *mcraft@usccr.gov,* 303–866–1040.

Dated: March 8, 2016.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2016–05475 Filed 3–10–16; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Scientific Advisory Committee

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of the Census (Census Bureau) is giving notice of a meeting of the Census Scientific Advisory Committee (C–SAC). The Committee will address policy, research, and technical issues relating to a full range of Census Bureau programs and activities, including communications, decennial, demographic, economic, field operations, geographic, information technology, and statistics. The C–SAC will meet in a plenary session on April 14–15, 2016. Last minute changes to the schedule are possible, which could prevent giving advance public notice of schedule adjustments. Please visit the Census Advisory Committees Web site for the most current meeting agenda at: *http://www.census.gov/cac/.* The meeting will be available via Web cast at: *http://www.census.gov/newsroom/census-live.html* or at *http://www.ustream.tv/embed/6504322?wmode=direct.*

DATES: April 14–15, 2016. On April 14, the meeting will begin at approximately 8:30 a.m. and end at approximately 4:15 p.m. On April 15, the meeting will begin at approximately 8:30 a.m. and end at approximately 2:45 p.m.

ADDRESSES: The meeting will be held at the U.S. Census Bureau Auditorium, 4600 Silver Hill Road, Suitland, Maryland 20746.

FOR FURTHER INFORMATION CONTACT: Tara Dunlop, Branch Chief for Advisory Committees, Customer Liaison and Marketing Services Office, *tara.t.dunlop@census.gov,* Department of Commerce, U.S. Census Bureau, Room 8H177, 4600 Silver Hill Road, Washington, DC 20233, telephone 301–763–5222. For TTY callers, please use the Federal Relay Service 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The members of the C–SAC are appointed by the Director, U.S. Census Bureau. The Committee provides scientific and technical expertise, as appropriate, to address Census Bureau program needs and objectives. The Committee has been established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2, Section 10).

All meetings are open to the public. A brief period will be set aside at the meeting for public comment on April 15. However, individuals with extensive questions or statements must submit them in writing to: *census.scientific.advisory.committee@census.gov* (subject line ''April 2016 C–SAC Meeting Public Comment''), or by letter submission to Kimberly L. Collier, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 8H179, 4600 Silver Hill Road, Washington, DC 20233.

If you plan to attend the meeting, please register by Tuesday, April 12, 2016. You may access the online registration from the following link: *https://www.regonline.com/Register/Checkin.aspx?EventID=1822689.* Seating is available to the public on a first-come, first-served basis.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should also be directed to the Committee Liaison Officer as soon as known, and preferably two weeks prior to the meeting.

Due to increased security and for access to the meeting, please call 301–763–9906 upon arrival at the Census Bureau on the day of the meeting. A photo ID must be presented in order to receive your visitor's badge. Visitors are not allowed beyond the first floor.

Topics to be discussed include the following items:

- 2020 Census Program Overview
  - Reengineering Address Canvassing
  - Utilizing Administrative Records
  - Optimizing Self-Response
- BIG Data
- National Content Test Study Plan
- Working Groups Reports
  - BIG Data
  - Census Enterprise Data Collection and Processing Systems (CEDCaP) and Reorganized Census with Integrated Technology (ROCkIT)
  - American Community Survey (ACS) Reducing Respondent Burden
- Brief of National Academy of Science ACS Expert Group
- Technology EXPO

Dated: March 4, 2016.

John H. Thompson,

Director, Bureau of the Census.

[FR Doc. 2016–05541 Filed 3–10–16; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Annual Survey of Entrepreneurs.

OMB Control Number: 0607–0986.

Form Number(s): The online survey instrument does not have a form number.

Type of Request: Revision of a currently approved collection.

Number of Respondents: 290,000.

Average Hours per Response: 35 minutes.

Burden Hours: 169,167.

Needs and Uses: In an effort to improve the timely measurement of business dynamics in the United States, the U.S. Census Bureau conducts an annual survey focused on employer businesses. The survey is known as the Annual Survey of Entrepreneurs (ASE) and collects information on characteristics of businesses and business owners. The ASE is a supplement to the Survey of Business Owners and Self-Employed Persons (SBO), which provides economic and demographic characteristics for businesses and business owners by gender, ethnicity, race, and veteran status every 5 years. The ASE is an intercensal program that helps assess the health of the economy and provides detailed statistics on businesses and business owners more frequently. The ASE is a joint effort funded by the Ewing Marion Kauffman Foundation, the Minority Business Development Agency (MBDA), and the Census Bureau. The Census Bureau will collaborate with the Kauffman Foundation, the MBDA, and other agencies to ensure the ASE is as robust and effective as possible.

The inaugural ASE began collection in September 2015 for the 2014 reference year. Corresponding estimates will be released in late summer of 2016. Estimates will include number of firms, sales/receipts, annual payroll, and employment by gender, ethnicity, race, and veteran status. The ASE includes questions from the 2012 SBO long form SBO–1 with additional questions to collect data on entrepreneurs' access to capital. The ASE introduces a new module each year focusing on an important component related to business growth. Proposed module topics include innovation, research and development, technological advances, Internet usage, management and business practices, exporting practices, and globalization. The 2014 ASE module covered innovation and research and development. The 2015 module, the subject of this request, will cover management and business practices. We are proposing no changes to the core questions currently asked on the ASE. The survey samples approximately 290,000 employer businesses stratified by metropolitan statistical area (MSA), frame, and age of business. This survey will help assess the impact young firms have on the growth of the economy. Additionally, the survey has a longitudinal component that will allow the growth of the firms in the sample to be tracked and analyzed over time.

This collection allows the Census Bureau to collaborate on the implementation of a key National Academies recommendation for improving the measurement of business dynamics in the U.S. economy, which recommended:

> The Census Bureau Survey of Business Owners (SBO) should be conducted on an annual basis. The survey should include both a longitudinal component and a flexible, modular design that allows survey content to change over time. In addition, the Census Bureau should explore the possibility of creating a public-use (anonymized) SBO or a restricted access version of the data file.
>
> —Lynch, Lisa M., John Haltiwanger, and Christopher Mackie, eds. Understanding Business Dynamics: An Integrated Data System for America's Future. National Academies Press, 2007.

The additional sources of capital and financing questions provide information on the financial trends and financial challenges faced by entrepreneurs. Tabulation of the financing questions will offer insight into the type of funding acquired and used by women-, minority-, and veteran-owned businesses. Questions for the 2015 management and business practices module were developed in conjunction with the Ewing Marion Kauffman Foundation, MBDA, and the Census Bureau. Census Bureau labor economists contributed to the development of the management module by identifying relevant questions about entrepreneurs' management, record-keeping, and other business practices. The 2015 ASE module will allow for an assessment of management practices that contribute to business growth. Questions from the management practices module will also provide an understanding of the types of workers used by a business and the types of tasks they perform. The ASE is designed to retain certain businesses in the sample from year to year. This will help track and assess the growth of these firms and changes to their business characteristics over time.

The ASE collection is electronic only. An initial letter that informs the respondents of their requirement to complete the survey and provides survey access instructions will be mailed from the Census Bureau's processing headquarters in Jeffersonville, Indiana. For the 2015 ASE, approximately 290,000 letters will be mailed to employer businesses that were in business during 2015. Initial mailout will occur in June 2016, with a due date of July 27, 2016. There will be two follow-up letter mailings to nonrespondents after the due date. Closeout of mail operations is scheduled for November 2016. Upon the close of the collection period, the response data will be processed, edited, reviewed, tabulated, and released publically.

The survey will collect data on the gender, ethnicity, race, and veteran status for up to four persons owning the majority of rights, equity, or interest in the business. These data are needed to evaluate the extent and growth of business ownership by women,

minorities, and veterans in order to provide a framework for assessing and directing federal, state, and local government programs designed to promote the activities of disadvantaged groups.

The SBA and the MBDA will use the data to allocate resources for their business assistance programs.

The data will also be widely used by private firms and individuals to evaluate their own businesses and markets. Additionally, the data will be used by entrepreneurs to write business plans and loan application letters, by the media for news stories, by researchers and academia for determining firm characteristics, and by the legal profession in evaluating the concentration of minority businesses in particular industries and/or geographic areas.

Government program officials, industry organization leaders, economic and social analysts and researchers, and business entrepreneurs are anticipated users of ASE statistics. Examples of data use include:

- The Small Business Administration (SBA) and the Minority Business Development Agency (MBDA) to assess business assistance needs and allocate available program resources.
- Local government commissions on small and disadvantaged businesses to establish and evaluate contract procurement practices.
- Federal, state and local government agencies as a framework for planning, directing and assessing programs that promote the activities of disadvantaged groups.
- The National Women's Business Council to assess the state of women's business ownership for policymakers, researchers, and the public at large.
- Consultants and researchers to analyze long-term economic and demographic shifts, and differences in ownership and performance among geographic areas.
- Individual business owners to analyze their operations in comparison to similar firms, compute their market share, and assess their growth and future prospects.
- Researchers and businesses to understand the innovation and research and development activities conducted by entrepreneurs.
- Researchers and businesses to understand the record-keeping and management practices implemented by entrepreneurs.
- Federal agencies to assess the competitiveness of businesses by ownership characteristics.
- Data users to understand time-series data in certain industries for entrepreneurs.
- Business owners or perspective business owners to gain knowledge about the funding of businesses.

Affected Public: Business or other for-profit, not-for-profit institutions, State, local or tribal government.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 8(b), 131 and 182. Executive Order 11625, Section 1(a)(3).

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: March 7, 2016.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2016–05447 Filed 3–10–16; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

U.S. Census Bureau

Proposed Information Collection; Comment Request; Commodity Flow Survey

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before May 10, 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(s) and instructions should be directed to James Hinckley, Census Bureau, Room 6H051, Washington, DC 20233 (or via the Internet at *james.hinckley@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Commodity Flow Survey, a component of the 2017 Economic Census, is the only comprehensive source of multimodal, system-wide data on the volume and pattern of goods movement in the United States. The Commodity Flow Survey is conducted in partnership with the Bureau of Transportation Statistics, Office of the Assistant Secretary for Research and Technology, U.S. Department of Transportation.

The Commodity Flow Survey data are used by policy makers and transportation planners in various federal, state, and local agencies to assess the demand for transportation facilities and services, energy use, and safety risks and environmental concerns. Additionally, business owners, private researchers, and analysts use the Commodity Flow Survey data for analyzing trends in the movement of goods, mapping spatial patterns of commodity and vehicle flows, forecasting demands for the movement of goods, and determining needs for associated infrastructure and equipment.

The survey provides data on the movement of commodities in the United States from their origin to destination. The survey produces summary statistics on value, tons, ton-miles and average miles by commodity, industry, and mode of transportation. The Census Bureau will publish these shipment characteristics for the nation, census regions and divisions, states, and CFS defined geographical areas.

Primary strategies for reducing respondent burden in the Commodity Flow Survey include: employing a stratified random sample of business establishments, requesting data on a limited sample of shipment records from each establishment, accepting estimates of shipping activity, and providing the opportunity for establishments to report electronically.

II. Method of Collection

The Commodity Flow Survey will be sent to a sample of business establishments in mining, manufacturing, wholesale, and select retail and services industries. The survey will also cover auxiliary establishments (*i.e.,* warehouses and managing offices) of multi-

establishment companies. Each selected establishment will receive four questionnaires, one during each calendar quarter of 2017. On each questionnaire, an establishment will be asked to report data for approximately 20–30 shipments for a predefined reporting week. These data will include the value, net weight, commodity, and origin and destination of each selected shipment. A limited number of establishments will be asked to report more than 40 shipments, providing better representation of their shipping activity. Respondents may report via paper questionnaire or via secure electronic reporting.

III. Data

OMB Control Number: 0607–0932.

Form Number: CFS 1000 (2017).

Type of Review: Regular submission.

Affected Public: Business and other for-profit.

Estimated Number of Respondents: 100,000.

Estimated Time per Response: 2.5 hours.

Estimated Total Annual Burden Hours: 1,000,000.

Estimated Total Cost: $0.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 8(b), 131 and 193; Title 49 U.S.C., Section 6302.

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: March 8, 2016.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2016–05494 Filed 3–10–16; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis (BEA), Department of Commerce.

Title: Quarterly Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons.

OMB Control Number: 0608–0067.

Form Number: BE–125.

Type of Request: Regular submission.

Number of Responses: 8,800 annually (2,200 filed each quarter; 1,700 reporting mandatory data, and 500 that would file other responses).

Average Hours per Response: 19 hours is the average for those reporting data, and 1 hour is the average for those not reporting data or providing voluntary responses, but hours may vary considerably among respondents because of differences in company size and complexity.

Estimated Total Annual Burden Hours: 131,200.

Needs and Uses: The Quarterly Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons (BE–125) is a survey that collects data from U.S. persons who engage in covered transactions with foreign persons in selected services or intellectual property. A U.S. person must report if it had sales of covered services or intellectual property to foreign persons that exceeded $6 million for the previous fiscal year, or are expected to exceed that amount during the current fiscal year, or if it had purchases of covered services or intellectual property from foreign persons that exceeded $4 million for the previous fiscal year, or are expected to exceed that amount during the current fiscal year.

The data are needed to monitor U.S. trade in services, to analyze the impact of trade on the U.S. and foreign economies, to compile and improve the U.S. economic accounts, to support U.S. commercial policy on trade in services, to conduct trade promotion, and to improve the ability of U.S. businesses to identify and evaluate market opportunities. The data are used in estimating the services component of the U.S. international transactions accounts (ITAs) and national income and product accounts.

BEA received OMB approval for this information collection request on December 22, 2015. (Previous notices may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the OMB control number 0608–0067 to search for the BE–125 survey instrument.) Subsequent to this date, BEA identified additional changes to the data collected on the survey that would allow BEA to align the country detail published in the ITAs more closely with international economic accounting guidelines. As a result, the following changes are proposed for the collection of information on transactions in intellectual property:

Mandatory Schedules A and B will be expanded to collect additional detail on intellectual property (IP) transactions. A U.S. person who engages in IP transactions with foreign persons will be required to distribute their receipts and/or payments according to the type of transaction and the type of IP. The covered transaction types are: (1) Transactions for the rights to use IP, (2) transactions for the rights to reproduce and/or distribute IP, and (3) transactions for the outright sales or purchases of IP. Reporters will be required to identify the foreign country(ies) involved in the transaction(s) and to distribute the amounts reported for each country according to whether the foreign person is the U.S. person's foreign affiliate, part of the U.S. person's foreign parent group, or an unaffiliated foreign person.

BEA estimates the proposed changes will increase the average number of hours per response from 18 hours to 19 hours for those reporting data. The reporting thresholds of the current BE–125 survey will be retained. The effort to keep current reporting thresholds unchanged is intended to minimize respondent burden while considering the needs of data users. Existing language in the instructions and definitions will be reviewed and adjusted as necessary to clarify survey requirements.

Affected Public: Businesses or other for-profit organizations.

Frequency: Quarterly.

This information collection request may be viewed at *www.reginfo.gov.* Follow instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to OIRA *Submission@omb.eop.gov* or fax to (202) 975–5806.

Dated: March 8, 2016.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2016–05510 Filed 3–10–16; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–836]

Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews and Rescission of Administrative Review, in Part; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review and a concurrent new-shipper review of the antidumping duty order on certain cut-to-length carbon-quality steel plate products (CTL plate) from the Republic of Korea (Korea). The period of review (POR) is February 1, 2014, through January 31, 2015. With respect to the administrative review, the Department preliminarily determines that the sole producer/exporter subject to the review, Dongkuk Steel Mill Co., Ltd. (DSM), made sales of subject merchandise at less than normal value. With respect to the new-shipper review, the Department preliminarily determines that Hyundai Steel Company (Hyundai Steel) did not make sales of subject merchandise at less than normal value. We invite interested parties to comment on these preliminary results.

DATES: *Effective Date:* March 11, 2016.

FOR FURTHER INFORMATION CONTACT: Yang Jin Chun or Thomas Schauer, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington DC 20230; telephone (202) 482–5760 or (202) 482–0410, respectively.

Scope of the Order

The products covered by the antidumping duty order are certain CTL plate. Imports of CTL plate are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 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, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, and 7226.99.0000. While the HTSUS subheadings are provided for convenience and customs purposes, the written description is dispositive. A full description of the scope of the order is contained in the Preliminary Decision Memorandum.[1]

Tolling of Deadline of Preliminary Results of Reviews

As explained in the memorandum from the Acting Assistant Secretary for Enforcement & Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the recent closure of the Federal Government. All deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the preliminary results of these reviews is now March 4, 2016.[2]

Rescission of Administrative Review in Part

We are rescinding the administrative review in part with respect to BDP International, Daewoo International Corp., GS Global Corp., Hyundai Glovis, Hyundai Steel, Iljin Steel, Samsung C&T Corporation, Samsung C&T Engineering & Construction Group, Samsung C&T Trading and Investment Group, Samsung Heavy Industries, and Steel N People Ltd.[3]

Methodology

The Department conducted these reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). Constructed export price is calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is made available to the public *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 to all parties in the Department's Central Records Unit, located at room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/index.html*.

Preliminary Results of the Administrative Review

As a result of this administrative review, we preliminarily determine that a weighted-average dumping margin of 1.11 percent exists for Dongkuk Steel Mill Co., Ltd., for the period February 1, 2014, through January 31, 2015.

Preliminary Results of the New Shipper Review

As a result of this new shipper review, we preliminarily determine that a weighted-average dumping margin of 0.00 percent exists for merchandise produced and exported by Hyundai Steel Company for the period February 1, 2014, through January 31, 2015.

Disclosure and Public Comment

We intend to disclose the calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[4] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.[5]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically *via* ACCESS. An

[1] *See* the memorandum from Deputy Assistant Secretary Christian Marsh to Assistant Secretary Paul Piquado entitled, ''Preliminary Decision Memorandum for the Administrative and New-Shipper Reviews of the Antidumping Duty Order on Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea'' dated concurrently with this notice and hereby adopted by this notice (Preliminary Decision Memorandum).

[2] *See* Memorandum to the Record from Ron Lorentzen, Acting A/S for Enforcement & Compliance, regarding ''Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas'' dated January 27, 2016.

[3] *See* Preliminary Decision Memorandum at 4 for more details on this rescission in part. As noted in the Preliminary Decision Memorandum, we will not issue assessment instructions as a result of the administrative review rescission with respect to Hyundai Steel, given the ongoing new-shipper review. *Id.* n.14.

[4] *See* 19 CFR 351.309(d).

[5] *See* 19 CFR 351.309(c)(2) and (d)(2).

electronically filed document must be received successfully in its entirety by the Department's electronic records system, ACCESS, by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.[6] Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. The Department will issue the final results of this administrative and new shipper 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

If a respondent's weighted-average dumping margin is above *de minimis* in the final results of these reviews, we will calculate an importer-specific assessment rate on the basis of the ratio of the total amount of antidumping duties calculated for the importer's examined sales and the total entered value of the sales in accordance with 19 CFR 351.212(b)(1).[7] If the respondent's weighted-average dumping margin is zero or *de minimis* in the final results of reviews, we will instruct U.S. Customs and Border Protection (CBP) not to assess duties on any of its entries in accordance with the *Final Modification for Reviews*.[8]

For entries of subject merchandise during the POR produced by DSM or Hyundai Steel for which they did not know their merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of these reviews.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of these reviews for all shipments of CTL plate from Korea entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) The cash deposit rate with respect to the administrative review respondent will be the rate established in the final results of the review; (2) for merchandise exported by manufacturers or exporters not covered in these reviews but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in these reviews, a prior review, or the original investigation but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will continue to be 0.98 percent,[9] the all-others rate established in the less-than-fair-value investigation, adjusted for the export-subsidy rate in the companion countervailing duty investigation.

With respect to Hyundai Steel, the new shipper respondent, the Department established a combination cash deposit rate for this company consistent with its practice as follows: (1) For subject merchandise produced and exported by Hyundai Steel, the cash deposit rate will be the rate established for Hyundai Steel in the final results of the NSR; (2) for subject merchandise exported by Hyundai Steel, but not produced by Hyundai Steel, the cash deposit rate will be the rate for the all-others rate established in the less-than-fair-value investigation; and (3) for subject merchandise produced by Hyundai Steel but not exported by Hyundai Steel, the cash deposit rate will be the rate applicable to the exporter.

These cash deposit 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 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.

The Department is issuing and publishing these results in accordance with sections 751(a)(1), 751(a)(2)(B), 777(i) of the Act and 19 CFR 351.214 and 351.221(b)(4).

Dated: March 4, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

Summary
Background
Scope of the Order
Rescission of Administrative Review in Part
Bona Fides Analysis
Comparisons to Normal Value
Determination of Comparison Method
Results of the Differential Pricing Analysis
Product Comparisons
Date of Sale
Level of Trade/CEP Offset
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Normal Value
1. Overrun Sales
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6. Calculation of Normal Value Based on Comparison Market Prices
Currency Conversion
Recommendation

[FR Doc. 2016–05567 Filed 3–10–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–868]

Countervailing Duty Investigation of Welded Stainless Pressure Pipe From India: Preliminary Affirmative Determination and Alignment of Final Determination With Final Antidumping Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') preliminarily determines that countervailable subsidies are being provided to producers and exporters of welded stainless pressure pipe (''welded stainless pipe'') from India. The period of investigation is January 1, 2014, through December 31, 2014. We invite interested parties to comment on this preliminary determination.

DATES: *Effective Date:* March 11, 2016.

FOR FURTHER INFORMATION CONTACT: Andrew Medley at (202) 482–4987, or Amanda Mallott at (202) 482–6430, AD/

[6] *See* 19 CFR 351.310(c).

[7] In these preliminary results, the Department applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*).

[8] *See Final Modification for Reviews,* 77 FR at 8102.

[9] *See, e.g., Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2013–2014,* 80 FR 22971, 22972 n.3 (April 24, 2015).

CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Scope of the Investigation

The merchandise covered by this investigation is circular welded austenitic stainless pressure pipe not greater than 14 inches in outside diameter, from India. For a complete description of the scope of this investigation, *see* Appendix II.

Methodology

The Department is conducting this countervailing duty (''CVD'') investigation in accordance with section 701 of the Tariff Act of 1930, as amended (''the Act''). For each of the subsidy programs found countervailable, we preliminarily determine that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[1] For a full description of the methodology underlying our preliminary conclusions, *see* the Preliminary Decision Memorandum.[2] The Preliminary Decision Memorandum is a public document and is on file in the Central Records Unit (''CRU''), Room B8024 of the main Department of Commerce building, as well as 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 it is available to all parties in the CRU. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

New Subsidy Allegations

On January 20, 2016, Bristol Metals, LLC, Felker Brothers Corp, Outokumpu Stainless Pipe, Inc., and Marcegaglia USA (collectively, ''Petitioners'') submitted a request that the Department expand its investigation to include 16 additional subsidy programs.[3] Based upon the information contained in Petitioner's New Subsidy Allegations and the Petition,[4] the Department is initiating an investigation of 15 additional subsidy programs concurrently with this preliminary determination.[5] For these 15 programs, we have determined that Petitioners alleged the necessary elements of a subsidy, *i.e.,* financial contribution, benefit, and specificity in accordance with sections 771(5)(B) and 771(5A) of the Act. We also find that these allegations are supported by reasonably available information sufficient to warrant an investigation of these subsidy programs, in accordance with section 702(b)(1) of the Act. We intend to examine these programs after the preliminary determination.

Preliminary Determination and Suspension of Liquidation[6]

In accordance with section 703(d)(1)(A)(i) of the Act, we calculated an individual rate for each producer/exporter of the subject merchandise individually investigated. In accordance with sections 703(d) and 705(c)(5)(A) of the Act, for companies not individually examined, we apply an ''all-others'' rate, which is normally calculated by weighting the subsidy rates of the individual companies as respondents by those companies' exports of the subject merchandise to the United States. Under section 705(c)(5)(A)(i) of the Act, the all-others rate should exclude zero and *de minimis* rates or any rates based entirely on facts otherwise available pursuant to section 776 of the Act. Accordingly, in these preliminary results, we have calculated the ''all-others'' rate by weight-averaging the calculated subsidy rates of the two individually investigated respondents, using the respondent's publicly-ranged sales data for exports of subject merchandise to the United States.[7]

We preliminarily determine the countervailable subsidy rates to be:

Company	Subsidy rate
Steamline Industries Limited	2.96 percent.
Sunrise Stainless Private Limited, Sun Mark Stainless Pvt. Ltd., and Shah Foils Ltd. (collectively, ''Sunrise Group'').	6.21 percent.
All-Others	4.55 percent.

In accordance with sections 703(d)(1)(B) and (d)(2) of the Act, we are directing U.S. Customs and Border Protection to suspend liquidation of all entries of welded stainless pipe from India that are entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit for such entries of merchandise in the amounts indicated above.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information submitted in response to the Department's questionnaires prior to making our final determination.

Alignment

On February 9, 2016, in accordance with section 705(a)(1) of the Act, Petitioners requested an alignment of the final CVD determination with the final antidumping duty (''AD'') determination of welded stainless pipe from India.[8] Therefore, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), we are aligning the final CVD determination in this investigation with the final AD determination. Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than July 18, 2016, unless postponed.

Disclosure and Public Comment

The Department intends to disclose calculations performed for this

[1] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[2] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Countervailing Duty Investigation of Welded Stainless Pressure Pipe from India: Decision Memorandum for the Preliminary Determination'' (''Preliminary Decision Memorandum''), dated concurrently with, and hereby adopted by, this notice.

[3] *See* Letter from Petitioners, ''Welded Stainless Pressure Pipe from India: New Subsidy Allegations'' (''New Subsidy Allegations'') dated January 20, 2016.

[4] *See* ''Petition for the Imposition of Antidumping and Countervailing Duties: Welded Stainless Pressure Pipe from India,'' dated September 30, 2015 (''Petition'').

[5] *See* Memorandum to Brendan Quinn, Acting Director, Office III, ''Certain Welded Stainless Steel Pressure Pipe from India: New Subsidy Allegations Initiation Memorandum,'' dated concurrently with, and hereby adopted by, this notice.

[6] As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the recent closure of the Federal Government. *See* Memorandum to the Record from Ron Lorentzen, Acting A/S for Enforcement & Compliance, regarding ''Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas,'' dated January 27, 2016. All deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the preliminary determination of this administrative review is now March 4, 2016.

[7] *See* Memorandum to the File, ''Countervailing Duty Investigation of Welded Stainless Pressure Pipe from India: Preliminary Determination Margin Calculation for All-Others,'' dated concurrently with this memorandum.

[8] *See* Letter from Petitioners, ''Welded Stainless Pressure Pipe from India: Request for Alignment,'' dated February 9, 2016.

preliminary determination to the parties within five days of the date of public announcement of this determination in accordance with 19 CFR 351.224(b). Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the final verification report is issued in this proceeding, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[9] A table of contents, list of authorities used, and an executive summary of issues should accompany any briefs submitted to the Department, pursuant to 19 CFR 351.309(c)(2) and (d)(2). This summary should be limited to five pages total, including footnotes.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically using ACCESS. An electronically-filed request must be received successfully, and in its entirety, by ACCESS by 5:00 p.m. Eastern Time, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a date, time, and specific location to be determined. Parties will be notified of the date, time, and location of any hearing. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

International Trade Commission Notification

In accordance with section 703(f) of the Act, we will notify the International Trade Commission (''ITC'') of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Enforcement and Compliance.

[9] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: March 4, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope Comments
IV. Scope of the Investigation
V. Alignment
VI. Injury Test
VII. Subsidies Valuation
VIII. Analysis of Programs
IX. Calculation of the All-Others Rate
X. ITC Notification
XI. Disclosure and Public Comment
XII. Verification
XIII. Conclusion

Appendix II

Scope of the Investigation

The merchandise covered by this investigation is circular welded austenitic stainless pressure pipe not greater than 14 inches in outside diameter. References to size are in nominal inches and include all products within tolerances allowed by pipe specifications. This merchandise includes, but is not limited to, the American Society for Testing and Materials (''ASTM'') A–312 or ASTM A–778 specifications, or comparable domestic or foreign specifications. ASTM A–358 products are only included when they are produced to meet ASTM A–312 or ASTM A–778 specifications, or comparable domestic or foreign specifications.

Excluded from the scope of the investigation are: (1) Welded stainless mechanical tubing, meeting ASTM A–554 or comparable domestic or foreign specifications; (2) boiler, heat exchanger, superheater, refining furnace, feedwater heater, and condenser tubing, meeting ASTM A–249, ASTM A–688 or comparable domestic or foreign specifications; and (3) specialized tubing, meeting ASTM A–269, ASTM A–270 or comparable domestic or foreign specifications.

The subject imports are normally classified in subheadings 7306.40.5005, 7306.40.5040, 7306.40.5062, 7306.40.5064, and 7306.40.5085 of the Harmonized Tariff Schedule of the United States (''HTSUS''). They may also enter under HTSUS subheadings 7306.40.1010, 7306.40.1015, 7306.40.5042, 7306.40.5044, 7306.40.5080, and 7306.40.5090. The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of this investigation is dispositive.

[FR Doc. 2016–05575 Filed 3–10–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–842]

Large Residential Washers From Mexico: Preliminary Results of the Antidumping Duty Administrative Review; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on large residential washers from Mexico. The period of review (POR) is February 1, 2014, through January 31, 2015. The review covers one producer/exporter of the subject merchandise, Electrolux Home Products Corp. N.V. and Electrolux Home Products de Mexico, S.A. de C.V. (collectively, Electrolux). We preliminarily determine that sales of subject merchandise by Electrolux have been made at prices below normal value (NV). We invite interested parties to comment on these preliminary results.

DATES: *Effective Date:* March 11, 2016.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Brandon Custard, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1766 or (202) 482–1823.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The products covered by the order are all large residential washers and certain subassemblies thereof from Mexico. The products are currently classifiable under subheadings 8450.20.0040 and 8450.20.0080 of the Harmonized Tariff System of the United States (HTSUS). Products subject to this order may also enter under HTSUS subheadings 8450.11.0040, 8450.11.0080, 8450.90.2000, and 8450.90.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.[1]

[1] A full description of the scope of the order is contained in the memorandum entitled ''Large

Continued

Methodology

The Department conducted this review in accordance with sections 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act). Constructed export price is calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 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 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 at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content. A list of the topics discussed in the Preliminary Decision Memorandum is attached as an Appendix to this notice.

Preliminary Results of the Review [2]

As a result of this review, the Department preliminarily determines that a weighted-average margin of 2.47 percent exists for Electrolux for the period February 1, 2014, through January 31, 2015.

Disclosure and Public Comment

We will disclose the calculations performed to parties in this segment of the proceeding 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 not later than 30 days after the date of publication of this notice.[3] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[4] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce. All documents must be filed electronically using ACCESS. An electronically filed request must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Standard Time, within 30 days after the date of publication of this notice.[5] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined.[6] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

The Department intends to issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, unless the deadline is extended.[7]

Assessment Rates

Upon issuance of the final results, the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.[8]

We calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales to that importer. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is above *de minimis.* Where either the exporter's weighted-average dumping margin is zero or *de minimis,* or the importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.[9]

We intend to issue instructions to CBP 41 days after the publication date of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective 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 this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Electrolux will be the rate established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 11.80 percent, the all-others rate established in the less-than-fair-value investigation.[10] These 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) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties

Residential Washers from Mexico: Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review; 2014–2015,'' dated concurrently with and adopted by this notice (Preliminary Decision Memorandum).

[2] As explained in the memorandum from the Acting Assistant Secretary for Enforcement & Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the recent closure of the Federal Government. *See* Memorandum to the Record from Ron Lorentzen, Acting A/S for Enforcement & Compliance, regarding ''Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas,'' dated January 27, 2016. All deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the preliminary determination of this administrative review is now March 4, 2016.

[3] *See* 19 CFR 351.309(c).

[4] *See* 19 CFR 351.309(d).

[5] *See* 19 CFR 351.310(c).

[6] *See* 19 CFR 351.310(d).

[7] *See* section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

[8] *See* 19 CFR 351.212(b).

[9] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101, 8103 (February 14, 2012); 19 CFR 351.106(c)(2).

[10] *See Large Residential Washers From Mexico and the Republic of Korea: Antidumping Duty Orders,* 78 FR 11148 (February 15, 2013).

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 351.221(b)(4).

Dated: March 4, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of the Methodology
A. Normal Value Comparisons
1. Determination of Comparison Method
2. Results of the Differential Pricing Analysis
B. Product Comparisons
C. Constructed Export Price
D. Normal Value
1. Home Market Viability and Selection of Comparison Market
2. Affiliated Party Transactions and Arm's-Length Test
3. Level of Trade (LOT)
E. Cost of Production (COP) Analysis
1. Calculation of COP
2. Test of Comparison Market Sales Prices
3. Results of the COP Test
F. Calculation of NV Based on Comparison Market Prices
G. Calculation of NV Based on CV
H. Currency Conversion
V. Recommendation

[FR Doc. 2016–05566 Filed 3–10–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–868]

Large Residential Washers From the Republic of Korea: Preliminary Results of the Antidumping Duty Administrative Review; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on large residential washers from the Republic of Korea. The period of review (POR) is February 1, 2014, through January 31, 2015. The review covers one producer/exporter of the subject merchandise, LG Electronics, Inc. (LGE). We preliminarily determine that sales of subject merchandise by LGE have been made at prices below normal value (NV). We invite interested parties to comment on these preliminary results.

DATES: *Effective Date:* March 11, 2016.

FOR FURTHER INFORMATION CONTACT: David Goldberger, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–4136.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The products covered by the order are all large residential washers and certain subassemblies thereof from Korea. The products are currently classifiable under subheadings 8450.20.0040 and 8450.20.0080 of the Harmonized Tariff System of the United States (HTSUS). Products subject to this order may also enter under HTSUS subheadings 8450.11.0040, 8450.11.0080, 8450.90.2000, and 8450.90.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.[1]

Methodology

The Department conducted this review in accordance with sections 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act). Export price and constructed export price are calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 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 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 at *http://enforcement.trade.gov/frn/*. The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content. A list of the topics discussed in the Preliminary Decision Memorandum is attached as an Appendix to this notice.

Preliminary Results of the Review [2]

As a result of this review, the Department preliminarily determines that a weighted-average margin of 1.64 percent exists for LGE for the period February 1, 2014, through January 31, 2015.

Disclosure and Public Comment

We will disclose the calculations performed to parties in this segment of the proceeding 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 not later than 30 days after the date of publication of this notice.[3] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[4] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce. All documents must be filed electronically using ACCESS. An electronically filed request must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Standard Time, within 30 days after the date of publication of this notice.[5] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and date to be determined.[6] Parties should confirm by telephone the date, time, and

[1] A full description of the scope of the order is contained in the memorandum entitled ''Large Residential Washers from Korea: Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review; 2014–2015,'' dated concurrently with and adopted by this notice (Preliminary Decision Memorandum).

[2] As explained in the memorandum from the Acting Assistant Secretary for Enforcement & Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the recent closure of the Federal Government. *See* Memorandum to the Record from Ron Lorentzen, Acting A/S for Enforcement & Compliance, regarding ''Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas,'' dated January 27, 2016. All deadlines in this segment of the proceeding have been extended by four business days.

[3] *See* 19 CFR 351.309(c).

[4] *See* 19 CFR 351.309(d).

[5] *See* 19 CFR 351.310(c).

[6] *See* 19 CFR 351.310(d).

location of the hearing two days before the scheduled date.

The Department intends to issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, unless the deadline is extended.[7]

Assessment Rates

Upon issuance of the final results, the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.[8]

We calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales to that importer. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is above *de minimis.* Where either the exporter's weighted-average dumping margin is zero or *de minimis,* or the importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.[9]

We intend to issue instructions to CBP 15 days after the publication date of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective 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 this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for LGE will be the rate established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 11.80 percent, the all-others rate established in the less-than-fair-value investigation.[10] These 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) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties and/or countervailing 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 351.221(b)(4).

Dated: March 4, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of the Methodology
A. NV Comparisons
1. Determination of Comparison Method
2. Results of the Differential Pricing Analysis
B. Product Comparisons
C. EP and CEP
D. NV
1. Home Market Viability and Selection of Comparison Market
2. Affiliated Party Transactions and Arm's-Length Test
3. Level of Trade (LOT)
E. Cost of Production (COP) Analysis
1. Calculation of COP
2. Test of Comparison Market Sales Prices
3. Results of the COP Test
F. Calculation of NV Based on Comparison Market Prices
G. Calculation of NV Based on CV
H. Currency Conversion
V. Recommendation

[FR Doc. 2016–05570 Filed 3–10–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–835]

Furfuryl Alcohol From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Commerce.

SUMMARY: The Department of Commerce (''Department'') is conducting an administrative review of the antidumping duty order on furfuryl alcohol from the People's Republic of China (''PRC''). The period of review (''POR'') is June 1, 2014, through May 31, 2015. The review covers one exporter of subject merchandise.[1] The Department preliminarily finds that the mandatory respondent, Qingdao WenKem Co., Ltd. (''WenKem''), has not demonstrated that it is eligible for a separate rate in this segment of the proceeding, and therefore, for the preliminary results, we are treating it as part of the PRC-wide entity.

DATES: Effective March 11, 2016.

FOR FURTHER INFORMATION CONTACT: Mandy Mallott, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6430.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 2015, the Department initiated the first administrative review of the antidumping duty order on furfuryl alcohol from the PRC.[2] On September 8, 2015, the Department issued an antidumping questionnaire to WenKem. WenKem submitted an entry of appearance on September 30, 2015, and on October 22, 2015, WenKem submitted a letter to the Department stating that it did not export furfuryl alcohol to the United States during the POR.[3] However, U.S. Customs and

[7] *See* section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

[8] *See* 19 CFR 351.212(b).

[9] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101, 8103 (February 14, 2012); 19 CFR 351.106(c)(2).

[10] *See Large Residential Washers From Mexico and the Republic of Korea: Antidumping Duty Orders,* 78 FR 11148 (February 15, 2013).

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 80 FR 45947 (August 3, 2015) (''*Initiation Notice*'').

[2] *See Initiation Notice.*

[3] *See* letters from WenKem, ''ENTRY OF APPEARANCE A–570–835, Administrative Review of the Antidumping Order on Furfuryl Alcohol from the People's Republic of China (PRC) for the Period 6/1/2014 through 5/31/2015,'' dated September 30,

Border Protection (''CBP'') import data on the record of this administrative review indicate that WenKem did have exports of subject merchandise to the United States during the POR.[4] Additionally, PennAKem LLC (''Petitoner'') placed publicly available information on the record of this administrative review indicating that WenKem exported furfuryl alcohol to the United States during the POR.[5] WenKem did not comment on either the CBP import data or the information placed on the record by the Petitioner (both of which were on the record prior to WenKem's statement that it had no shipments of furfuryl alcohol to the United States during the POR).

Scope of the Order

The merchandise covered by this order is furfuryl alcohol ($C_4H_3OCH_2OH$). Furfuryl alcohol is a primary alcohol, and is colorless or pale yellow in appearance. It is used in the manufacture of resins and as a wetting agent and solvent for coating resins, nitrocellulose, cellulose acetate, and other soluble dyes. The product subject to this order is classifiable under subheading 2932.13.00[6] of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope is dispositive.

Nonmarket Economy Country

The Department considers the PRC to be an nonmarket economy (''NME'') country.[7] In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended (''the Act''), any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Therefore, we continue to treat the PRC as an NME country for purposes of these preliminary results.

Application of Separate Rates in NME Proceedings

In the *Initiation Notice,* the Department notified parties of the application process by which exporters may obtain separate rate status in an NME proceeding.[8] It is the Department's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in *Sparklers,*[9] as further developed by *Silicon Carbide.*[10] However, if the Department determines that a company is wholly foreign-owned, then an analysis of the *de jure* and *de facto* criteria is not necessary to determine whether it is independent from government control.[11]

Separate Rates

Although WenKem reported it had no shipments of furfuryl alcohol to the United States during the POR, we received a response from CBP contrary to this claim.[12] Because WenKem did not address evidence contrary to its no shipments claim (*i.e.,* that it in fact shipped subject merchandise to the United States during the POR), the uncontroverted evidence on the record of this segment of the proceeding is that this company had shipments of subject merchandise to the United States during the POR and, thus, is properly under review. Furthermore, WenKem did not submit a separate rate application or certification to demonstrate that it was eligible to receive a separate rate. Thus, consistent with our practice in NME proceedings discussed above, we are treating WenKem as part of the PRC-wide entity for the preliminary results of this review. In this regard, we note that our determination with respect to WenKem is not the result of adverse facts available.

PRC-Wide Entity

The Department's change in policy regarding conditional review of the PRC-wide entity applies to this administrative review.[13] 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 is not subject to change (*i.e.,* 45.27 percent).

Preliminary Results of Review

The Department preliminarily determines that Qingdao WenKem Co., Ltd. is part of the PRC-wide entity and that the following weighted-average dumping margin applies for the period June 1, 2014, through May 31, 2015:

Exporter	Weighted-average dumping margin (percent)
PRC-Wide Entity	45.27

Public Comment and Opportunity To Request a Hearing

Interested parties may submit case briefs within 30 days after the date of publication of these preliminary results of review in the *Federal Register.*[14] Rebuttals to case briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the time limit for filing case briefs.[15] Parties who submit arguments are requested to submit with the argument (a) a statement of the issue, (b) a brief summary of the argument, and (c) a table of authorities.[16] Parties submitting briefs should do so pursuant to the Department's electronic filing system, ACCESS.[17]

Any interested party may request a hearing within 30 days of publication of

2015, and ''Administrative Review of the Antidumping Order on Furfuryl Alcohol from the People's Republic of China (PRC) for the Period 6/1/2014 through 5/31/2015,'' dated October 22, 2015.

[4] *See* letter from the Department, ''2014–2015 Administrative Review of the Antidumping Duty Order on Furfuryl Alcohol from the People's Republic of China: U.S. Customs and Border Protection Import Data, for Use in Respondent Selection,'' dated August 19, 2015 (''CBP Import Data'').

[5] *See* letter from Petitioner, '' Furfuryl Alcohol from the PRC Administrative Review (06.01.14–05.31.15): Evidentiary Submission,'' dated October 13, 2015.

[6] 29 (''Organic Chemicals''); .32 (''Heterocyclic compounds with oxygen hetero-atom(s) only: Compounds containing an unfused furan ring (whether or not hydrogenated) in the structure:''); .13.00 (''Furfuryl alcohol and tetrahydrofurfuryl alcohol'').

[7] *See, e.g., Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Results of the First Administrative Review, Preliminary Rescission, in Part, and Extension of Time Limits for the Final Results,* 76 FR 62765, 62767–68 (October 11, 2011), unchanged in *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review,* 77 FR 21734 (April 11, 2012).

[8] *See Initiation Notice.*

[9] *See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588 (May 6, 1991) (''*Sparklers*'').

[10] *See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China,* 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*'').

[11] *See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles From the People's Republic of China,* 72 FR 52355, 52356 (September 13, 2007).

[12] *See* CBP Import Data.

[13] *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).

[14] *See* 19 CFR 351.309(c)(1)(ii).

[15] *See* 19 CFR 351.309(d)(1)–(2).

[16] *See* 19 CFR 351.309(c)(2), (d)(2).

[17] *See* 19 CFR 351.303 (for general filing requirements).

this notice.[18] 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 briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.[19]

The Department intends to issue the final results of this administrative review, which will include the results of our analysis of all issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, 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. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review.

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, as provided for by section 751(a)(2)(C) of the Act: (1) As described above, we preliminarily determine that WenKem is not eligible for a separate rate, and therefore, as part of the PRC-wide entity, its exports to the U.S. are subject to the PRC-wide rate of 45.27 percent; (2) for previously investigated or reviewed PRC and non-PRC exporters who are not under review in this segment of the proceeding but who 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 that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 45.27 percent; 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(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 preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement off antidumping duties prior to liquidation of the relevant entries during this period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213.

Dated: March 7, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–05554 Filed 3–10–16; 8:45 am]

BILLING CODE 3510–DS–P

[18] *See* 19 CFR 351.310(c).

[19] *See* 19 CFR 351.310(d).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting via webinar.

SUMMARY: The Gulf of Mexico and South Atlantic Fishery Management Councils will hold a Joint Spiny Lobster Review Panel meeting via webinar.

DATES: The webinar will convene on Monday, March 28, 2016, 10 a.m. to 12 p.m. EDT.

ADDRESSES: The meeting will take place via webinar.

FOR FURTHER INFORMATION CONTACT: Dr. Morgan Kilgour, Fishery Biologist, Gulf of Mexico Fishery Management Council; *morgan.kilgour@gulfcouncil.org,* telephone: (813) 348–1630; and Kari Maclauchlin, Fishery Social Scientist; *kari.maclauchlin@safmc.net,* telephone: (843) 571–4366.

SUPPLEMENTARY INFORMATION: Please register for the Gulf of Mexico and South Atlantic Fishery Management Councils: Joint Spiny Lobster Review Panel Meeting on March 28, 2016, 10 a.m. EDT at: *https://attendee.gotowebinar.com/register/6852168931907017731.* After registering, you will receive a confirmation email containing information about joining the webinar.

Agenda

Staff will start the meeting with introductions. The review panel will review the 2014/15 spiny lobster landings and the 2015 Spiny Lobster Review Panel Report. The review panel will also review landings, effort, projections and commercial reporting requirements. The review panel will then discuss the 2014/2015 Annual Catch Target (ACT) overage.

—Meeting Adjourns—

The Agenda is subject to change, and the latest version along with other meeting materials will be posted on the Council's file server. To access the file server, the URL is *https://public.gulfcouncil.org:5001/webman/index.cgi*, or go to the Council's Web site and click on the FTP link in the lower left of the Council Web site (*http://www.gulfcouncil.org*). The username and password are both ''gulfguest''. Click on the ''Library Folder'', then scroll down to ''Joint Spiny Lobster Review Panel meeting-2016–03''.

The meeting will be webcast over the Internet. A link to the webcast will be available on the Council's Web site, *http://www.gulfcouncil.org.*

Although other non-emergency issues not on the agenda may come before the Review Panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Review Panel will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Gulf Council Office (see **ADDRESSES**), at least 5 working days prior to the meeting.

Dated: March 8, 2016.

Tracey L. Thompson,

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

[FR Doc. 2016–05546 Filed 3–10–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE486

Marine Mammals; File No. 19768

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Evin Hildebrandt, Ph.D., University of Massachusetts Medical School, 55 Lake Avenue, S3–221, Worcester, MA 01655, has applied in due form for a permit to receive and create cell lines from marine mammal cetaceans species for scientific research.

DATES: Written, telefaxed, or email comments must be received on or before April 11, 2016.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 19768 from the list of available applications.

These documents are also available upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No.19768 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The applicant is requesting authorization to receive cell lines from other researchers and to create cell lines from animal tissues obtained from the stranding network under a regional authorization letter for scientific research purposes. Up to 15 cell lines would be received or created annually from unidentified cetacean species. These cell lines would be used to study the evolution of endogenous viruses (viruses that integrate into the genome of the host) using the DNA and RNA sequencing. No takes of live animals is proposed and a permit is requested for a 5 year period.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: March 8, 2016.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–05613 Filed 3–10–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Herring Advisory Panel to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, March 29, 2016 at 10 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn, 300 Woodbury Avenue, Portsmouth, NH 03801; phone: (603) 431–8000; fax: (603) 431–2065.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Advisory Panel plans to discuss and provide recommendations to the Herring Committee on Amendment 8 to the Atlantic Herring Fishery Management Plan in regards to plans for a public workshop on the Management Strategy Evaluation of Atlantic Herring Acceptable Biological Catch control rules, Plan Development Team (PDT) analyses related to localized depletion in inshore waters and potentially develop a definition of localized depletion, a problem statement and related measures, and/or task PDT with additional analyses. The Panel also plans to discuss Georges Bank haddock catch cap accountability measures (AMs), specifically, plans to potentially develop a framework adjustment in 2016 to consider revising the AMs. Other business will be discussed as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: March 8, 2016.

Tracey L. Thompson,

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

[FR Doc. 2016–05547 Filed 3–10–16; 8:45 am]

BILLING CODE 3510–22–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No: CFPB–2016–0009]

Agency Information Collection Activities: Comment Request

Correction

In notice document 2016–05179 appearing on pages 12479–12480 in the issue of March 9, 2016, make the following correction:

On page 12479, in the third column, under the **DATES** heading, in the third line, ''March 9, 2016'' should read ''May 9, 2016''.

[FR Doc. C1–2016–05179 Filed 3–9–16; 4:15 pm]

BILLING CODE 1505–01–D

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS) has submitted a public information collection request (ICR) entitled Process Evaluation of the Social Innovation Fund (SIF) Pay for Success (PFS) Program for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Lily Zandniapour, at 202–606–6939 or email to *LZandniapour@cns.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

DATES: Comments may be submitted, identified by the title of the information collection activity, within April 11, 2016.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) By fax to: 202–395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; or

(2) By email to: *smar@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, 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;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to 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.

Comments

A 60-day Notice requesting public comment was published in the **Federal Register** on December 11, 2015, Volume 80, No. 238 FR, 76848–76849. This comment period ended February 9, 2016. No comments were received regarding this Notice.

Description: CNCS has contracted with Abt Associates to support CNCS's Office of Research and Evaluation to implement a process evaluation of the Social Innovation Fund (SIF) Pay for Success (PFS) Program. The major data collection activities to be undertaken subject to this notice will include two surveys: (1) Grantee Survey, and (2) Subrecipient/Service Recipient Survey. Survey information will be collected from current and future SIF PFS grantees and their subrecipients/service recipients through an online survey program. The purpose of the Grantee Survey is to better understand grantees' program structure, practices in providing technical assistance and deal structuring activities. The Subrecipient/Service Recipient Survey will collect data on activities, capacity, and perspectives and experiences of subrecipients/service recipients receiving assistance from the grantees. Note that since the 60-day Notice was published, the word ''grant'' was dropped from the title of the study based on the revised program name (SIF PFS program) and the organizations previously referred to as ''subgrantees'' are now referred to as ''subrecipients/service recipients'' to reflect the revised language that CNCS is using to refer to these organizations.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Process Evaluation of the Social Innovation Fund (SIF) Pay for Success (PFS) Program.

OMB Number: TBD.

Agency Number: None.

Affected Public: Current and future CNCS-funded SIF PFS grantees (mostly nonprofit organizations) and current and future community organizations and state or local government agencies (referred to as subrecipients/service recipients).

Total Respondents: Approximately 260. This includes approximately 18 respondents to the Grantee Survey and approximately 242 respondents to the Subrecipient/Service Recipient Survey. The exact number of respondents will depend on the number of new grantees funded by the SIF PFS program in 2016 and 2017 and the number of subrecipients/service recipients that each grantee selects to work with each year.

Frequency: Once per year. Each respondent will complete the survey annually for one to three years depending upon the timing and duration of their participation in the program.

Average Time per Response: 20 minutes per year.

Estimated Total Burden Hours: 151 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: March 7, 2016.

Mary Hyde,

Director, Research and Evaluation.

[FR Doc. 2016–05507 Filed 3–10–16; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Air Force

U.S. Air Force Academy Board of Visitors Notice of Meeting

AGENCY: U.S. Air Force Academy Board of Visitors, DOD.

ACTION: Amended meeting notice.

SUMMARY: In accordance with 10 U.S.C. Section 9355, the U.S. Air Force Academy (USAFA) Board of Visitors (BoV) will hold a meeting at the Falcon Club, U.S. Air Force Academy, Colorado Springs, CO, on March 18, 2016. On Friday, the meeting will begin at 9:00 a.m. and will end at 3:45 p.m. Due to

circumstances beyond the control of the Designated Federal Officer, the Board of Visitors of the U.S. Air Force Academy was unable to provide public notice of its meeting of March 18, 2016, or the amended meeting notice clarifying the meeting agenda as required by 41 CFR 102–3.150(a). Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement for the initial meeting notice (**Federal Register**, Volume 81, Number 33, Monday, March 7, 2016) and the amended meeting notice. The purpose of this meeting is to review morale and discipline, social climate, curriculum, instruction, infrastructure, fiscal affairs, academic methods, and other matters relating to the Academy. Specific topics for this meeting include a Superintendent's Update; USAFA Admissions Update; Air Force Academy Athletic Corporation Update. Public attendance at this USAFA BoV meeting shall be accommodated on a first-come, first-served basis up to the reasonable and safe capacity of the meeting room. In addition, any member of the public wishing to provide input to the USAFA BoV should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act and the procedures described in this paragraph. Written statements must address the following details: the issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and provide any necessary background information. Written statements can be submitted to the Designated Federal Officer (DFO) at the Air Force address detailed below at any time. However, if a written statement is not received at least 10 calendar days before the first day of the meeting which is the subject of this notice, then it may not be provided to or considered by the BoV until its next open meeting. The DFO will review all timely submissions with the BoV Chairman and ensure they are provided to members of the BoV before the meeting that is the subject of this notice. If after review of timely submitted written comments and the BoV Chairman and DFO deem appropriate, they may choose to invite the submitter of the written comments to orally present the issue during an open portion of the BoV meeting that is the subject of this notice. Members of the BoV may also petition the Chairman to allow specific personnel to make oral presentations before the BoV. In accordance with 41 CFR 102–3.140(d), any oral presentations before the BoV shall be in accordance with agency guidelines provided pursuant to a written invitation and this paragraph. Direct questioning of BoV members or meeting participants by the public is not permitted except with the approval of the DFO and Chairman. For the benefit of the public, rosters that list the names of BoV members and any releasable materials presented during the open portions of this BoV meeting shall be made available upon request.

Contact Information: For additional information or to attend this BoV meeting, contact Major Jennifer Hubal, Accessions and Training Division, AF/A1PT, 1040 Air Force Pentagon, Washington, DC 20330, (703) 695–4066, *Jennifer.M.Hubal.mil@mail.mil.*

Henry Williams,

Civ, Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2016–05418 Filed 3–10–16; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2016–HQ–0007]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Department of the Army proposes to alter a system of records notice AAFES 0602.04a, entitled ''Legal Office Management System,'' to review and process charges and claims of unfair labor practices through formal/informal negotiations; to review and process bankruptcy related claims; for managerial and statistical reports; to process other legal complaints against individuals; to initiate litigation as necessary; to investigate other claims and prepare responses; and to defend the Exchange in civil suits filed against it in the Federal Court System.

DATES: Comments will be accepted on or before April 11, 2016. This proposed action will be effective on the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Tracy Rogers, Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3827 or by calling (703) 428–7499.

SUPPLEMENTARY INFORMATION: The Department of the Army's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or from the Defense Privacy and Civil Liberties Division Web site at *http://dpcld.defense.gov/.*

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, as amended, were submitted on February 18, 2016, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: March 7, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

AAFES 0602.04a

SYSTEM NAME:

Legal Office Management System (May 9, 2001, 66 FR 23683)

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with ''AAFES 0602.04''.

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Office of the General Counsel at Headquarters, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598; Personnel offices at Exchange Regions and Area Exchanges at posts, bases, and satellites world-wide. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Employees of the Army and Air Force Exchange Service (Exchange) who are permitted to file charges/claims pursuant to Executive Order 11491, as amended; individuals who file any other type of complaint and/or claim or similar pleading in a court or administrative body against the Exchange; individuals involved with the Exchange on other legal matters or proceedings, including bankruptcy; an Exchange employee who is named as a defendant; individuals against whom the Exchange has filed a complaint or similar pleading in a court or administrative body, and/or other individuals who are involved in the investigation or legal matter.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Individual's or claimant's name, address, phone number, AAFES case number, Social Security Number (SSN), date of birth, sex, marital status, age, credit card number, credit account history, bankruptcy data and similar information that could be used as evidence in litigation or to further an investigation, as well as materials and information received from opposing counsel or outside sources involved in a legal matter, *e.g.* exhibits; individual's or claimant's counsel name, address and phone number. These items may be included in written allegations of unfair labor practice; supporting correspondence, documentation, memoranda, opinions, or other related materials involved in representing the Exchange in unfair labor practice or bankruptcy claims; or individuals involved with the Exchange on other legal matters or proceedings.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 8013, Secretary of the Air Force; E.O. 11491, Labor-management Relations in the Federal Service, as amended; Army Regulation 60–21, Exchange Service Personnel Policies; Army Regulation 215–1, Military Morale, Welfare, and Recreation Activities and Nonappropriated Fund Instrumentalities; Army Regulation 215–8/AFI 34–211(I), Army and Air Force Exchange Service Operations; and E.O. 9397 (SSN), as amended.''

PURPOSE(S):

Delete entry and replace with ''To review and process charges and claims of unfair labor practices through formal/informal negotiations; to review and process bankruptcy related claims; for managerial and statistical reports; to process other legal complaints against individuals; to initiate litigation as necessary; to investigate other claims and prepare responses; and to defend the Exchange in civil suits filed against it in the Federal Court System.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Disclosure to consumer reporting agencies. Disclosures pursuant to 5 U.S.C. 552a(b)(12) 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 Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government; typically to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records.

Disclosure of records is limited to the individual's name, address, Social Security Number (SSN), and other information necessary to establish the individual's identity; the amount, status, and history of the claim; and the agency program under which the claim arose. This disclosure will be made only after the procedural requirement of 31 U.S.C. 3711(f) has been followed.

The DoD Blanket Routine Uses set forth at the beginning of the Army's compilation of system of records notices may apply to this system. The complete list of DoD Blanket Routine Uses can be found online at: *http://dpcld.defense.gov/Privacy/SORNsIndex/BlanketRoutineUses.aspx.''*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE

Delete entry and replace with ''Electronic storage media and paper records.''

RETRIEVABILITY:

Delete entry and replace with ''By the individual's surname and SSN of defendant in the proceeding.''

SAFEGUARDS:

Delete entry and replace with ''Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, and is accessible only to authorized personnel. Access to records is limited to person(s) with an official need to know who are responsible for servicing the record in performance of their official duties. Persons are properly screened and cleared for access. Access to computerized data is role-based and further restricted by passwords, which are changed periodically. In addition, integrity of automated data is ensured by internal audit procedures, data base access accounting reports and controls to preclude unauthorized disclosure.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Documents relating to legal opinions establishing precedence policies, and procedures regarding laws, regulations, directives, and decision, and their effect on the Exchange are maintained permanently. Litigation case files are cutoff at the close of the Exchange fiscal year in which the case is closed and then destroyed by shredding or by erasing/reformatting electronic media 10 years thereafter. Unfair Labor Claims/Charges are maintained for 3 years after the claim is closed, then retained for 5 years in an active file, then transferred to the servicing Exchange warehouse or General Services Administration records holding center for an additional 5 years at which time they are destroyed either by shredding or erasing/reformatting the electronic media. Workers' Compensation files are maintained at the corporate level for a period of one year after the case is closed and then transferred to the Federal Record Center for a period of 30 years after the close date and destroyed by shredding and erasing/reformatting electronic media. All other files are maintained for a period of 10 years after the closing of the case or judicial proceedings have been resolved, after which they are destroyed by shredding or erasing/reformatting electronic media.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Director/Chief Executive Officer, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director/Chief Executive Officer, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide their full name, SSN, current address and telephone number, last employing station, AAFES case number if applicable and details sufficient to assist in locating the record, and signature.

In addition, the requestor must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director/Chief Executive Officer, Army and Air Force Exchange Service, ATTN: FOIA/Privacy Manager, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide their full name, SSN, current address and telephone number, last employing station, AAFES case number if applicable and details sufficient to locate the record, and signature.

In addition, the requestor must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on (date). (Signature).'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.''

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''From the individual, the union representative, witnesses, official records of the Army and Air Force Exchange Service, Defense Enrollment and Eligibility Reporting System (DEERS) and other DoD systems as applicable per the case.''

* * * * *

[FR Doc. 2016–05445 Filed 3–10–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2016–HQ–0006]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Department of the Army proposes to alter a system of records, A0040–31b DASG, entitled ''Research and Experimental Case Files''. This is now a closed system; no new records may be added. Records will be used to enable follow up of volunteers who participated in Army medical research projects concerning chemical agents for the purpose of assessing risks/hazards to them, and for retrospective medical/scientific evaluation and future scientific and legal significance.

DATES: Comments will be accepted on or before April 11, 2016. This proposed action will be effective on the day following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Tracy Rogers, Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22315–3827 or by phone at 703–428–7499.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy and Civil Liberties Office Web site at *http://dpcld.defense.gov/.*

The proposed system report, as required by 5 U.S.C 552a(r) of the Privacy Act of 1974, as amended, was submitted on February 16, 2016, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I of OMB Circular No. A–130, Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: March 7, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0040–31b DASG

SYSTEM NAME:

Research and Experimental Case Files (April 4, 2003, 68 FR 16484)

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with ''CLOSED—Research and Experimental Case Files.''

SYSTEM LOCATION:

Delete entry and replace with ''U.S. Army Medical Research Institute of Chemical Defense (USAMRICD), 2900 Ricketts Point Road, Aberdeen Proving Ground, MD 21010–5400.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''This is a closed system—no new records will be

added. Volunteers (military personnel, Federal civilian employees, state prisoners) who participated in Army medical research which included potential chemical agents and/or antidotes from the early 1950's until the program ended in 1975.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Name, Social Security Number (SSN), military service number, history and record of patient treatment, to include individual pre-test physical examination records and test records of performance and biomedical parameters measured during and after test exposure.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 3013, Secretary of the Army; Army Regulation 40–31, Armed Forces Institute of Pathology and Armed Forces Histopathology Centers; DoD Instruction 5154.30, Armed Forces Medical Examiner System (AFMES) Operations; 45 CFR part 160, Department of Health and Human Services General Administrative Requirements; 45 CFR part 164, Department of Health and Human Services Security and Privacy; and E.O. 9397 (SSN), as amended.''

PURPOSE(S):

Delete entry and replace with ''Records were used to enable follow up of volunteers who participated in Army medical research projects concerning chemical agents for the purpose of assessing risks/hazards to them, and for retrospective medical/scientific evaluation and future scientific and legal significance.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to the Department of Veterans Affairs in connection with benefits determinations.

The DoD Blanket Routine Uses set forth at the beginning of the Army's compilation of systems of records notices may apply to this system. The complete list of DoD Blanket Routine Uses can be found online at: *http://dpcld.defense.gov/Privacy/SORNsIndex/BlanketRoutineUses.aspx.*

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974, as amended, or mentioned in this system of records notice.''

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Delete entry and replace with ''Paper, electronic storage media, and microfiche.''

RETRIEVABILITY:

Delete entry and replace with ''Individual's name, military service number, or SSN.''

SAFEGUARDS:

Delete entry and replace with ''Records are maintained in a controlled area accessible only to authorized personnel. Access to personally identifiable information in this system of records is restricted to those who require the data in the performance of the official duties. The USAMRICD utilizes ID badges, closed circuit television, and electronic key access as physical security measures that ensure only authorized personnel have access to the records storage area. The electronic files are stored on compact disk storage media and secured in the same location as the paper records. The disks are accessed on Common Access Card (CAC) login-secured computers and then stored when not in use. Electronic copies of the records are not stored on any computer.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Electronic records will be owned by the Army and maintained by the system owner at USAMRICD, 2900 Ricketts Point Road, Aberdeen Proving Ground, MD 21010–5400. Original hard copy records are now stored at the National Archives, 1 Archives Drive, St. Louis MO 63138–1001, for permanent retention. Records relating to research studies that require a signed consent form from participants will be retained for 75 years. Records will be destroyed by shredding or deleting.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Chief Information Officer, US Army Medical Research Institute of Chemical Defense (USAMRICD), 2900 Ricketts Point Road, Aberdeen Proving Ground, MD 21010–5400.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the FOIA/Privacy Act Officer, U.S. Army Medical Research Institute of Chemical Defense (USARMRICD), 2900 Ricketts Point Road, Aberdeen Proving Ground, MD 21010–5400.

Individual should provide full name, military service number or SSN, current address, and telephone number of the requester.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).' ''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the FOIA/Privacy Act Officer, U.S. Army Medical Research Institute of Chemical Defense (USARMRICD), 2900 Ricketts Point Road, Aberdeen Proving Ground, MD 21010–5400.

Individual should provide full name, military service number or SSN, current address, and telephone number of the requester.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).' ''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The Army's rules for accessing records, and

for contesting contents and appealing initial agency determinations are contained in 32 CFR part 505, Army Privacy Program; or may be obtained from the system manager.''

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''Information was received from the individual through test and questionnaire forms completed at test location; from medical authorities and sources by evaluation of data collected previous to, during, and following tests while individual was in this research program.''

* * * * *

[FR Doc. 2016–05424 Filed 3–10–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Quadrennial Energy Review: Notice of Public Meeting

AGENCY: Office of Energy Policy and Systems Analysis, Secretariat, Quadrennial Energy Review Task Force, Department of Energy.

ACTION: Notice of public meeting.

SUMMARY: At the direction of the President, the U.S. Department of Energy (DOE or Department), as the Secretariat for the Quadrennial Energy Review Task Force (QER Task Force), will convene public meetings for the second installment of the Quadrennial Energy Review, an integrated study of the U.S. electricity system from generation through end use. A mixture of panel discussions and a public comment period will frame multi-stakeholder discourse around deliberative analytical questions relating to the intersection of electricity and its role in promoting economic competitiveness, energy security, and environmental responsibility.

DATES: The public meetings will be held on March 31, 2016, in Atlanta, Georgia; April 15, 2016 in Boston, Massachusetts; April 25, 2016 in Salt Lake City, Utah; May 6, 2016 in Des Moines, Iowa; May 10, 2016 in Los Angeles, California; and in Austin, Texas, on a date to-be-determined. Written comments are welcome, especially following the public meetings, and should be submitted within 60 days of the meetings, but no later than July 1, 2016.

ADDRESSES: Meeting locations and addresses will be announced when they are available, in **Federal Register** notices and at *energy.gov/qer.* Between February 4, 2016 and July 1, 2016, you may submit written comments online at *http://energy.gov/qer* or by U.S. mail to the Office of Energy Policy and Systems Analysis, EPSA–60, QER Meeting Comments, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0121.

FOR FURTHER INFORMATION CONTACT: John Richards, EPSA–60, U.S. Department of Energy, Office of Energy Policy and Systems Analysis, 1000 Independence Avenue SW., Washington, DC 20585–0121. *Telephone:* 202–586–0507 *Email: John.Richards@Hq.Doe.Gov.*

SUPPLEMENTARY INFORMATION: On January 9, 2014, President Obama issued a *Presidential Memorandum—Establishing a Quadrennial Energy Review.* To accomplish this review, the Presidential Memorandum establishes a Quadrennial Energy Review Task Force to be co-chaired by the Director of the Office of Science and Technology Policy, and the Director of the Domestic Policy Council. Under the Presidential Memorandum, the Secretary of Energy shall provide support to the Task Force, including support for coordination activities related to the preparation of the Quadrennial Energy Review (QER) Report, policy analysis and modeling, and stakeholder engagement.

The Quadrennial Energy Review process itself involves robust engagement of federal agencies and outside stakeholders, and further enables the federal government to translate policy goals into a set of analytically based, integrated actions for proposed investments over a four year planning horizon. Unlike traditional federal Quadrennial Review processes, the QER is conducted in a multi-year installment series to allow for more focused analysis on particular sub-sectors of the energy system. The initial focus for the Quadrennial Energy Review was our Nation's transmission, storage and distribution infrastructures that link energy supplies to intermediate and end users, because these capital-intensive infrastructures tend to set supply and end use patterns, investments and practices in place for decades. On April 21, 2015, the Quadrennial Energy Review Task Force released its first Quadrennial Energy Review installment report entitled, ''Energy Transmission, Storage, and Distribution Infrastructure''. Among the issues highlighted by the analysis in the first installment of the QER were the growing dependencies of all critical infrastructures and economic sectors on electricity, as well as, the increasing interdependence of the various energy subsectors. In response to these findings, and to provide an appropriate consideration of an energy sector undergoing significant technological and regulatory change, the second installment of the QER will conduct a comprehensive review of the nation's electricity system, from generation to end use, including a more comprehensive look at electricity transmission, storage, and distribution infrastructure covered in installment one. The electricity system encompasses not just physical structures, but also a range of actors and institutions. Under this broad framing, the second installment intends to consider the roles and activities of all relevant actors, industries, and institutions integral to continuing to supply reliable and affordable electricity at a time of dramatic change in technology development. Issues to be considered in QER analyses include fuel choices, distributed and centralized generation, physical and cyber vulnerabilities, federal, state, and local policy direction, expectations of residential and commercial consumers, and a review of existing and evolving business models for a range of entities throughout the system.

Significant changes will be required to meet the transformational opportunities and challenges posed by our evolving electricity system. The Administration is seeking public input on key questions relating to possible federal actions that would address the challenges and take full advantage of the opportunities of this changing system to meet the Nation's objectives of reliable, affordable and clean electricity. Over the course of 2016, the Secretariat for the Quadrennial Energy Review Task Force will hold a series of public meetings to discuss and receive comments on the issues outlined above, and well as, others, as they relate to the second installment of the Quadrennial Energy Review.

The Department of Energy has a broad role in energy policy development and the largest role in implementing the Federal Government's energy research and development portfolio. Many other executive departments and agencies also play key roles in developing and implementing policies governing energy resources and consumption, as well as, associated environmental impacts. In addition, non-Federal actors are crucial contributors to energy policies. Because most energy and related infrastructure is owned by private entities, investment by and engagement of, input from the private sector is necessary to develop and implement effective policies. State and local policies, the views of non-governmental, environmental, faith-based, labor, and other social organizations, and contributions from

the academic and non-profit sectors are also critical to the development and implementation of effective Federal energy policies.

The interagency Quadrennial Energy Review Task Force, which includes members from all relevant executive departments and agencies, will develop an integrated review of energy policy that integrates all of these perspectives. It will build on the foundation provided in the Administration's *Blueprint for a Secure Energy Future* of March 30, 2011, and *Climate Action Plan* released on June 25, 2013. The Task Force will offer recommendations on what additional actions it believes would be appropriate. These may include recommendations on additional executive or legislative actions to address the energy challenges and opportunities facing the Nation.

Quadrennial Energy Review Public Meetings

The DOE will hold public meetings on electricity from generation through end use, in the following cities:
Atlanta, Georgia, March 31, 2016
Boston, Massachusetts, April 15, 2016
Salt Lake City, Utah, April 25, 2016
Des Moines, Iowa, May 6, 2016
Los Angeles, California, May 10, 2016
Austin, Texas, date TBD

Each meeting will feature facilitated panel discussions, followed by an open microphone session. People who would like to speak during the open microphone session at the public meeting should come prepared to speak for no more than five minutes and will be accommodated on a first-come, first-served basis, according to the order in which they register to speak on a sign-in sheet available at the meeting location, on the morning of the meeting. In advance of the meetings, DOE anticipates making publicly available a briefing memorandum providing useful background information regarding the topics under discussion at the meeting. DOE will post this memorandum on its Web site: *http://energy.gov/qer.*

Submitting comments online. DOE will accept public comments on the QER from February 4, 2016, to July 1, 2016, at *energy.gov/qer.* Submitting comments online to the DOE Web site will require you to provide your name and contact information. Your contact information will be viewable to DOE staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). Your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through the DOE Web site cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section, below.

If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English, and are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: One copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination. Confidential information should be submitted to the Confidential QER email address: *QERConfidential@hq.doe.gov*.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest. It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

Issued in Washington, DC, on March 7, 2016.

April Salas,

QER Secretariat Director, Quadrennial Energy Review Task Force, U.S. Department of Energy.

[FR Doc. 2016–05551 Filed 3–10–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Public Meeting To Inform the Design of a Consent-Based Siting Process for Nuclear Waste Storage and Disposal Facilities

AGENCY: Fuel Cycle Technologies, Office of Nuclear Energy, Department of Energy.

ACTION: Notice of public meeting.

SUMMARY: The U.S Department of Energy (DOE) is implementing a consent-based siting process to establish an integrated waste management system to transport, store, and dispose of spent nuclear fuel and high-level radioactive waste. In a consent-based siting approach, DOE will work with communities, tribal governments and states across the country that express interest in hosting any of the facilities identified as part of an integrated waste management system. As part of this process, the Department is hosting a series of public meetings to engage

communities and individuals and discuss the development of a consent-based approach to managing our nation's nuclear waste. A public meeting is scheduled for Chicago, IL on March 29, 2016.

DATES: The meeting will take place on Tuesday March 29, 2016 from 1:00 p.m. to 5:00 p.m. CDT. Informal poster sessions will be held from 12:00 p.m. until 1:00 p.m. and again after 5:00 p.m. Department officials will be available to discuss consent-based siting during the poster sessions.

ADDRESSES: The meeting will be held at the Gleacher Center, 450 North Cityfront Plaza Drive, Chicago, IL 60611. To review the agenda for the meeting and to register, please go to *energy.gov/consentbasedsiting.*

FOR FURTHER INFORMATION CONTACT: Requests for further information should be sent to *consentbasedsiting@hq.doe.gov.* Updated information on this and other public meetings on consent based siting will be posted at *energy.gov/consentbasedsiting.*

If you are unable to attend a public meeting or would like to further discuss ideas for consent-based siting, please request an opportunity for us to speak with you. The Department will do its best to accommodate such requests and help arrange additional opportunities to engage. To learn more about nuclear energy, nuclear waste, and ongoing technical work please go to *energy.gov/consentbasedsiting.*

Privacy Act: Data collected via the mechanisms listed above will not be protected from the public view in any way.

Issued in Washington, DC, on March 7, 2016.

Andrew Richards,

Chief of Staff, Office of Nuclear Energy, Department of Energy.

[FR Doc. 2016–05526 Filed 3–10–16; 8:45 am]

BILLING CODE 6450–01–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: RP16–666–000.
Applicants: Equitrans, L.P.
Description: Compliance filing Notice Regarding Non-Jurisdictional Gathering Facilities (PEBC1137 PEBC1237).
Filed Date: 3/1/16.
Accession Number: 20160301–5009.
Comments Due: 5 p.m. ET 3/14/16.

Docket Numbers: RP16–667–000.
Applicants: Boardwalk Storage Company, LLC.
Description: Section 4(d) Rate Filing: Housekeeping Matters to be effective 4/1/2016.
Filed Date: 3/1/16.
Accession Number: 20160301–5086.
Comments Due: 5 p.m. ET 3/14/16.

Docket Numbers: RP16–668–000.
Applicants: Black Hills Shoshone Pipeline, LLC.
Description: Compliance filing Annual Adjustment for Lost and Unaccounted for Gas Percentage.
Filed Date: 3/1/16.
Accession Number: 20160301–5093.
Comments Due: 5 p.m. ET 3/14/16.

Docket Numbers: RP16–669–000.
Applicants: Columbia Gas Transmission, LLC.
Description: Section 4(d) Rate Filing: EPCA 2016 to be effective 4/1/2016.
Filed Date: 3/1/16.
Accession Number: 20160301–5099.
Comments Due: 5 p.m. ET 3/14/16.

Docket Numbers: RP16–670–000.
Applicants: Columbia Gas Transmission, LLC.
Description: Section 4(d) Rate Filing: RAM 2016 to be effective 4/1/2016.
Filed Date: 3/1/16.
Accession Number: 20160301–5123.
Comments Due: 5 p.m. ET 3/14/16.

Docket Numbers: RP16–671–000.
Applicants: WBI Energy Transmission, Inc.
Description: Section 4(d) Rate Filing: 2016 Annual Fuel & Electric Power Reimbursement to be effective 4/1/2016.
Filed Date: 3/1/16.
Accession Number: 20160301–5128.
Comments Due: 5 p.m. ET 3/14/16.

Docket Numbers: RP16–672–000.
Applicants: Millennium Pipeline Company, LLC.
Description: Section 4(d) Rate Filing: RAM 2016 to be effective 4/1/2016.
Filed Date: 3/1/16.
Accession Number: 20160301–5136.
Comments Due: 5 p.m. ET 3/14/16.

Docket Numbers: RP16–673–000.
Applicants: Kern River Gas Transmission Company.
Description: Section 4(d) Rate Filing: 2016 Daggett Surcharges to be effective 4/1/2016.
Filed Date: 3/1/16.
Accession Number: 20160301–5156.
Comments Due: 5 p.m. ET 3/14/16.

Docket Numbers: RP16–674–000.
Applicants: White River Hub, LLC.
Description: Section 4(d) Rate Filing: ? 10.2 Version 1.0.0 to be effective 4/1/2016.
Filed Date: 3/1/16.
Accession Number: 20160301–5166.
Comments Due: 5 p.m. ET 3/14/16.

Docket Numbers: RP16–675–000.
Applicants: Questar Pipeline Company.
Description: Section 4(d) Rate Filing: ? 10.3 Version 2.0.0 to be effective 4/1/2016.
Filed Date: 3/1/16.
Accession Number: 20160301–5169.
Comments Due: 5 p.m. ET 3/14/16.

Docket Numbers: RP16–676–000.
Applicants: Questar Southern Trails Pipeline Company.
Description: Section 4(d) Rate Filing: ? 11.2 Version 2.0.0 to be effective 4/1/2016.
Filed Date: 3/1/16.
Accession Number: 20160301–5173.
Comments Due: 5 p.m. ET 3/14/16.

Docket Numbers: RP16–677–000.
Applicants: Columbia Gas Transmission, LLC.
Description: Section 4(d) Rate Filing: System Map Tariff Update to be effective 4/1/2016.
Filed Date: 3/1/16.
Accession Number: 20160301–5174.
Comments Due: 5 p.m. ET 3/14/16.

Docket Numbers: RP16–678–000.
Applicants: Columbia Gulf Transmission, LLC.
Description: Section 4(d) Rate Filing: TRA 2016 to be effective 4/1/2016.
Filed Date: 3/1/16.
Accession Number: 20160301–5175.
Comments Due: 5 p.m. ET 3/14/16.

Docket Numbers: RP16–679–000.
Applicants: Columbia Gulf Transmission, LLC.
Description: Section 4(d) Rate Filing: System Map Tariff Update to be effective 4/1/2016.
Filed Date: 3/1/16.
Accession Number: 20160301–5180.
Comments Due: 5 p.m. ET 3/14/16.

Docket Numbers: RP16–680–000.
Applicants: Northern Natural Gas Company.
Description: Section 4(d) Rate Filing: 20160301 Negotiated Rates to be effective 3/2/2016.
Filed Date: 3/1/16.
Accession Number: 20160301–5182.
Comments Due: 5 p.m. ET 3/14/16.

Docket Numbers: RP16–681–000.
Applicants: Central Kentucky Transmission Company.
Description: Section 4(d) Rate Filing: RAM 2016 to be effective 4/1/2016.
Filed Date: 3/1/16.
Accession Number: 20160301–5186.
Comments Due: 5 p.m. ET 3/14/16.

Docket Numbers: RP16–682–000.
Applicants: Millennium Pipeline Company, LLC.

Description: Section 4(d) Rate Filing: System Map Tariff Update to be effective 4/1/2016.
Filed Date: 3/1/16.
Accession Number: 20160301–5187.
Comments Due: 5 p.m. ET 3/14/16.
Docket Numbers: RP16–683–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Section 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Atlanta Gas 8438 to various eff 3–1–2016) to be effective 3/1/2016.
Filed Date: 3/1/16.
Accession Number: 20160301–5188.
Comments Due: 5 p.m. ET 3/14/16.
Docket Numbers: RP16–684–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Section 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Petrohawk 41455 to Texla 46029) to be effective 3/1/2016.
Filed Date: 3/1/16.
Accession Number: 20160301–5189.
Comments Due: 5 p.m. ET 3/14/16.
Docket Numbers: RP16–685–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Section 4(d) Rate Filing: Cap Rel Neg Rate Agmt (EOG 34687 to Sequent 46028) to be effective 3/1/2016.
Filed Date: 3/1/16.
Accession Number: 20160301–5190.
Comments Due: 5 p.m. ET 3/14/16.
Docket Numbers: RP16–686–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Section 4(d) Rate Filing: Amendment to Neg Rate Agmt (Methanex 42805–6) to be effective 3/1/2016.
Filed Date: 3/1/16.
Accession Number: 20160301–5191.
Comments Due: 5 p.m. ET 3/14/16.
Docket Numbers: RP16–687–000.
Applicants: Central Kentucky Transmission Company.
Description: Section 4(d) Rate Filing: System Map Tariff Update to be effective 4/1/2016.
Filed Date: 3/1/16.
Accession Number: 20160301–5192.
Comments Due: 5 p.m. ET 3/14/16.
Docket Numbers: RP16–688–000.
Applicants: Dauphin Island Gathering Partners.
Description: Storm Surcharge Filing of Dauphin Island Gathering Partners.
Filed Date: 3/1/16.
Accession Number: 20160301–5193.
Comments Due: 5 p.m. ET 3/14/16.
Docket Numbers: RP16–689–000.
Applicants: Crossroads Pipeline Company.
Description: Section 4(d) Rate Filing: System Map Tariff Update to be effective 4/1/2016.
Filed Date: 3/1/16.
Accession Number: 20160301–5195.
Comments Due: 5 p.m. ET 3/14/16.
Docket Numbers: RP16–690–000.
Applicants: Hardy Storage Company, LLC.
Description: Section 4(d) Rate Filing: System Map Tariff Update to be effective 4/1/2016.
Filed Date: 3/1/16.
Accession Number: 20160301–5201.
Comments Due: 5 p.m. ET 3/14/16.
Docket Numbers: RP16–691–000.
Applicants: KPC Pipeline, LLC.
Description: Request for thirty (30) day Extension of Time to Submit Annual Retainage Filing of KPC Pipeline, LLC.
Filed Date: 3/1/16.
Accession Number: 20160301–5218.
Comments Due: 5 p.m. ET 3/14/16.
Docket Numbers: RP16–692–000.
Applicants: Columbia Gas Transmission, LLC.
Description: 2015 Operational Transactions Report of Columbia Gas Transmission, LLC.
Filed Date: 3/1/16.
Accession Number: 20160301–5219.
Comments Due: 5 p.m. ET 3/14/16.
Docket Numbers: RP16–693–000.
Applicants: Crossroads Pipeline Company.
Description: Section 4(d) Rate Filing: TRA 2016 to be effective 4/1/2016.
Filed Date: 3/1/16.
Accession Number: 20160301–5224.
Comments Due: 5 p.m. ET 3/14/16.
Docket Numbers: RP16–694–000.
Applicants: Columbia Gulf Transmission, LLC.
Description: 2015 Operational Transactions Report of Columbia Gulf Transmission, LLC.
Filed Date: 3/1/16.
Accession Number: 20160301–5256.
Comments Due: 5 p.m. ET 3/14/16.
Docket Numbers: RP16–695–000.
Applicants: KO Transmission Company.
Description: Section 4(d) Rate Filing: Transportation Retainage Adjustment Filing 2016 to be effective 4/1/2016.
Filed Date: 3/1/16.
Accession Number: 20160301–5291.
Comments Due: 5 p.m. ET 3/14/16.
Docket Numbers: RP16–696–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: Section 4(d) Rate Filing: WSS–OA Incremental Rate Filing to be effective 4/1/2016.
Filed Date: 3/1/16.
Accession Number: 20160301–5312.
Comments Due: 5 p.m. ET 3/14/16.
Docket Numbers: RP16–697–000.
Applicants: Crossroads Pipeline Company.
Description: 2015 Operational Transactions Report of Crossroads Pipeline Company.
Filed Date: 3/1/16.
Accession Number: 20160301–5359.
Comments Due: 5 p.m. ET 3/14/16.
Docket Numbers: RP16–698–000.
Applicants: Equitrans, L.P.
Description: Section 4(d) Rate Filing: Negotiated Capacity Release Agreements—3/1/2016 to be effective 3/1/2016.
Filed Date: 3/1/16.
Accession Number: 20160301–5364.
Comments Due: 5 p.m. ET 3/14/16.
Docket Numbers: RP16–699–000.
Applicants: Shell Energy North America (US), L.P.,BG Energy Merchants, LLC.
Description: Joint Petition for Temporary Waiver of Commission Policies, Capacity Release Regulations and Related Tariff Provisions of Shell Energy North America (US), L.P., and BG Energy Merchants, LLC.
Filed Date: 3/1/16.
Accession Number: 20160301–5365.
Comments Due: 5 p.m. ET 3/14/16.
Docket Numbers: RP16–700–000.
Applicants: Guardian Pipeline, L.L.C.
Description: Section 4(d) Rate Filing: EPCR Semi-Annual Adjustment—Spring 2016 to be effective 4/1/2016.
Filed Date: 3/1/16.
Accession Number: 20160301–5381.
Comments Due: 5 p.m. ET 3/14/16.
Docket Numbers: RP16–701–000.
Applicants: Colorado Interstate Gas Company, L.L.C.
Description: Section 4(d) Rate Filing: FL&U Effective 4/1/16 to be effective 4/1/2016.
Filed Date: 3/1/16.
Accession Number: 20160301–5384.
Comments Due: 5 p.m. ET 3/14/16.
Docket Numbers: RP16–702–000.
Applicants: Rockies Express Pipeline LLC.
Description: Section 4(d) Rate Filing: FL&U Electric Power Periodic Rate Adjustment to be effective 4/1/2016.
Filed Date: 3/1/16.
Accession Number: 20160301–5388.
Comments Due: 5 p.m. ET 3/14/16.
Docket Numbers: RP16–703–000.
Applicants: Viking Gas Transmission Company.
Description: Section 4(d) Rate Filing: Annual LMCRA—Spring 2016 to be effective 4/1/2016.
Filed Date: 3/1/16.
Accession Number: 20160301–5391.
Comments Due: 5 p.m. ET 3/14/16.
Docket Numbers: RP16–704–000.
Applicants: Columbia Gas Transmission, LLC.
Description: Section 4(d) Rate Filing: TCRA 2016 to be effective 4/1/2016.

Filed Date: 3/1/16.

Accession Number: 20160301–5395.

Comments Due: 5 p.m. ET 3/14/16.

Docket Numbers: RP16–705–000.

Applicants: Viking Gas Transmission Company.

Description: Compliance filing Semi-Annual FLRP—Spring 2016.

Filed Date: 3/1/16.

Accession Number: 20160301–5416.

Comments Due: 5 p.m. ET 3/14/16.

Docket Numbers: RP16–706–000.

Applicants: Hardy Storage Company, LLC.

Description: 2015 Operational Transactions Report of Hardy Storage Company, LLC.

Filed Date: 3/1/16.

Accession Number: 20160301–5440.

Comments Due: 5 p.m. ET 3/14/16.

Docket Numbers: RP16–707–000.

Applicants: TransColorado Gas Transmission Company.

Description: 2015 Annual Fuel Gas Reimbursement Percentage Report of TransColorado Gas Transmission Company, L.L.C.

Filed Date: 3/1/16.

Accession Number: 20160301–5470.

Comments Due: 5 p.m. ET 3/14/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 2, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–05479 Filed 3–10–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–118–000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Schedule for Environmental Review of the Virginia Southside Expansion Project II

On March 23, 2015, Transcontinental Gas Pipe Line Company, LLC (Transco) filed an application in Docket No. CP15–118–000 requesting a Certificate of Public Convenience and Necessity pursuant to Section 7(c) of the Natural Gas Act to construct and operate the Virginia Southside Expansion Project II (Project). The purpose of the Project is to provide up to 250,000 dekatherms per day of firm natural gas transportation service to a planned Virginia Electric and Power Company combined-cycle gas-fired power station in Greensville County, Virginia.

On April 1, 2015, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's Environmental Assessment (EA) for the Project. This instant notice identifies the FERC staff's planned schedule for the completion of the EA for the Project.

Schedule for Environmental Review

Issuance of the EA April 29, 2016
90-day Federal Authorization Decision Deadline July 28, 2016

If a schedule change becomes necessary, an additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

Transco proposes to construct and operate 4.3 miles of 24-inch-diameter pipeline, a meter and regulator station, and pig launcher/receiver facilities in Brunswick and Greensville Counties, Virginia. In addition, Transco would add 21,830 horsepower of compression to Compressor Station 166 in Pittsville County, Virginia; add 25,000 horsepower of compression to Compressor Station 185 in Prince William County, Virginia; and construct minor modifications at 19 facilities in Cherokee and Spartanburg Counties, South Carolina and Polk County, North Carolina, including odorization/deodorization facility modifications, valves, and valve operators.

Background

On May 6, 2015, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Virginia Southside Expansion II Project and Request for Comments on Environmental Issues* (NOI). The NOI was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. In response to the NOI, the Commission received comments from the Virginia Department of Conservation and Recreation, Virginia Department of Environmental Quality, Virginia Department of Historical Resources, Appalachian Mountain Advocates, Sierra Club, and two individuals. The primary issues raised by commentors are potential impacts on the Manassas stonefly and freshwater mussels; affects to historic properties; proximity to residences and easement compensation; pipeline safety; compliance with Virginia's Coastal Zone Management Program; connected, cumulative, and similar actions, with specific reference to Transco's Atlantic Sunrise Project (Docket No. CP15–138–000); and the indirect and cumulative impacts of the Greenville Power Plant.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of filings, document summaries, and direct links to the documents. Go to *http://www.ferc.gov/docs-filing/esubscription.asp.*

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC Web site (*www.ferc.gov*). Using the ''eLibrary'' link, select ''General search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' excluding the last three digits (*i.e.,* CP15–118), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSuppport@ferc.gov.* The eLibrary link on the FERC Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: March 7, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–05505 Filed 3–10–16; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2237–033]

Georgia Power Co.; 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:* Request to amend recreation facilities (Article 408).

b. *Project No:* 2237–033.

c. *Date Filed:* February 19, 2016.

d. *Applicant:* Georgia Power Co.

e. *Name of Project:* Morgan Falls Hydroelectric Project.

f. *Location:* Chattahoochee River in Fulton and Cobb counties, Georgia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Chad Knudsen, Senior Land Management Specialist, Georgia Power, Bin 10151, 241 Ralph McGill Blvd. NE., Atlanta, GA 30308–3374, (404) 506–2395.

i. *FERC Contact:* Mark Carter, (678) 245–3083, *mark.carter@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* March 30, 2016.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, or recommendations using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–2237–033.

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:* Georgia Power Co. proposes to amend Article 408 of the project license to remove its responsibility to provide a canoe portage around Morgan Falls Dam. The licensee's application discusses several public safety concerns with the existing portage as well as recent usage patterns of the existing portage. Due to the availability of a separate upstream boat dock and downstream boat ramp to accommodate those wanting to port around the dam, Georgia Power concludes that its existing canoe portage route is no longer safe and no longer necessary.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above. 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. 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: February 29, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–05506 Filed 3–10–16; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP16–329–000]

Transwestern Pipeline Company LLC; Notice of Technical Conference

Take notice that a technical conference will be held on Tuesday, April 5, 2016, at 9:00 a.m. (Eastern Standard Time), in Hearing Room 5 at the offices of the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

At the technical conference, the Commission Staff and the parties to the proceeding should be prepared to discuss all issues set for technical conference as established in the January 28, 2016 Order (*Transwestern Pipeline Company LLC,* 154 FERC ¶ 61,051 (2016)). All interested persons are permitted to attend.

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 David Faerberg, 202–502–8275, *david.faerberg@ferc.gov.*

Dated: February 29, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–05499 Filed 3–10–16; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG16–63–000.
Applicants: Live Oak Solar, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Live Oak Solar, LLC.
Filed Date: 3/4/16.
Accession Number: 20160304–5291.
Comments Due: 5 p.m. ET 3/25/16.

Docket Numbers: EG16–64–000.
Applicants: White Pine Solar, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of White Pine Solar.
Filed Date: 3/4/16.
Accession Number: 20160304–5305.
Comments Due: 5 p.m. ET 3/25/16.

Docket Numbers: EG16–65–000.
Applicants: White Oak Solar, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of White Oak Solar, LLC.
Filed Date: 3/4/16.
Accession Number: 20160304–5308.
Comments Due: 5 p.m. ET 3/25/16.

Docket Numbers: EG16–66–000.
Applicants: Brady Wind, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Brady Wind.
Filed Date: 3/4/16.
Accession Number: 20160304–5310.
Comments Due: 5 p.m. ET 3/25/16.

Docket Numbers: EG16–67–000.
Applicants: Brady Wind II, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Brady Wind II.
Filed Date: 3/4/16.
Accession Number: 20160304–5311.
Comments Due: 5 p.m. ET 3/25/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–372–001.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance filing: Response to Deficiency Letter in ER16–372–000 to be effective 12/31/9998.
Filed Date: 3/7/16.
Accession Number: 20160307–5000.
Comments Due: 5 p.m. ET 3/28/16.

Docket Numbers: ER16–1085–000.
Applicants: California Independent System Operator Corporation.
Description: Section 205(d) Rate Filing: 2016–03–04 Distributed Energy Resource Provider Initiative to be effective 6/3/2016.
Filed Date: 3/4/16.
Accession Number: 20160304–5258.
Comments Due: 5 p.m. ET 3/25/16.

Docket Numbers: ER16–1086–000.
Applicants: Southwest Power Pool, Inc.
Description: Section 205(d) Rate Filing: Attachment X Article 5A Revisions to Provide for Netting of TCR Credit Portfolio to be effective 5/3/2016.
Filed Date: 3/4/16.
Accession Number: 20160304–5262.
Comments Due: 5 p.m. ET 3/25/16.

Docket Numbers: ER16–1087–000.
Applicants: Entergy Louisiana, LLC, Entergy New Orleans, Inc.
Description: Section 205(d) Rate Filing: ENO–ELL Payment Agreement to be effective 9/1/2016.
Filed Date: 3/7/16.
Accession Number: 20160307–5001.
Comments Due: 5 p.m. ET 3/28/16.

Docket Numbers: ER16–1088–000.
Applicants: Public Service Company of Colorado.
Description: Compliance filing: 3–7–2016_Att R–PSCo Compliance Filing to be effective 10/1/2015.
Filed Date: 3/7/16.
Accession Number: 20160307–5042.
Comments Due: 5 p.m. ET 3/28/16.

Docket Numbers: ER16–1089–000.
Applicants: Duke Energy Florida, LLC.
Description: Section 205(d) Rate Filing: City of Chattahoochee PSA Amendment RS No. 126 to be effective 1/1/2016.
Filed Date: 3/7/16.
Accession Number: 20160307–5047.
Comments Due: 5 p.m. ET 3/28/16.

Docket Numbers: ER16–1090–000.
Applicants: DTE River Rouge No. 1, LLC.
Description: Tariff Cancellation: Cancel Market Based Rate Tariff to be effective 3/8/2016.
Filed Date: 3/7/16.
Accession Number: 20160307–5069.
Comments Due: 5 p.m. ET 3/28/16.

Docket Numbers: ER16–1091–000.
Applicants: DTE Stoneman, LLC.
Description: Tariff Cancellation: Cancel Market Based Rate Tariff to be effective 3/8/2016.
Filed Date: 3/7/16.
Accession Number: 20160307–5070.
Comments Due: 5 p.m. ET 3/28/16.

Docket Numbers: ER16–1092–000.
Applicants: Southwest Power Pool, Inc.
Description: Compliance filing: SPP–MISO JOA Revisions to Sections 5.2, 5.3, 5.4 to be effective 2/1/2016.
Filed Date: 3/7/16.
Accession Number: 20160307–5105.
Comments Due: 5 p.m. ET 3/28/16.

Docket Numbers: ER16–1093–000.
Applicants: PJM Interconnection, L.L.C., PPL Electric Utilities Corporation.
Description: Section 205(d) Rate Filing: PPL Electric submits Interconnection Agreement No. 747 among PPL and Allegheny to be effective 5/6/2016.
Filed Date: 3/7/16.
Accession Number: 20160307–5112.
Comments Due: 5 p.m. ET 3/28/16.

Docket Numbers: ER16–1094–000.
Applicants: PJM Interconnection, L.L.C.
Description: Section 205(d) Rate Filing: Original Service Agreement No. 4410; Queue Z2–077 (WMPA) to be effective 2/9/2016.
Filed Date: 3/7/16.
Accession Number: 20160307–5114.
Comments Due: 5 p.m. ET 3/28/16.

Docket Numbers: ER16–1095–000.
Applicants: PJM Interconnection, L.L.C.
Description: Section 205(d) Rate Filing: Original Service Agreement No. 4411; Queue AA1–059 (WMPA) to be effective 2/9/2016.
Filed Date: 3/7/16.
Accession Number: 20160307–5142.
Comments Due: 5 p.m. ET 3/28/16.

Docket Numbers: ER16–1096–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2016–03–07_SPP–MISO JOA Changes Related to Settlement Agreement to be effective 2/1/2016.
Filed Date: 3/7/16.
Accession Number: 20160307–5181.
Comments Due: 5 p.m. ET 3/28/16.

Docket Numbers: ER16–1097–000.
Applicants: AEP Texas Central Company.
Description: Section 205(d) Rate Filing: TCC-Apex Midway Wind Second Amended & Restated IA to be effective 2/17/2016.
Filed Date: 3/7/16.
Accession Number: 20160307–5196.
Comments Due: 5 p.m. ET 3/28/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings

must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 7, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–05502 Filed 3–10–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CD16–8–000]

White River Electric Association; Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene

On February 24, 2016, White River Electric Association filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act (FPA), as amended by section 4 of the Hydropower Regulatory Efficiency Act of 2013 (HREA).[1] The proposed Miller Creek Ditch Hydropower Project would have an installed capacity of 180 kilowatts (kW), and would be located along the Miller Creek Ditch. The project would be located near the Town of Meeker, in Rio Blanco County, Colorado.

Applicant Contact: Alan Michalewicz, P.O. Box 958, 233 6th Street, Meeker, CO 81641, Phone No. (970) 878–5041.

FERC Contact: Christopher Chaney, Phone No. (202) 502–6778, email: *christopher.chaney@ferc.gov.*

Qualifying Conduit Hydropower Facility Description: The proposed project would consist of: (1) A new powerhouse, approximately 20 feet by 23 feet, adjacent to the downstream end of an existing 30-inch-diameter by approximately 680-foot-long steel pipe used to convey Miller Creek Ditch across County Road 13; (2) an underground tailrace returning flows to the existing 30-inch-diameter steel pipe; (3) a new 450-foot-long, 30-inch-diameter penstock, fed by a new diversion and intake structure adjacent to an existing diversion and intake structure; (4) a cross flow turbine/generating unit with an installed capacity of 180 kW; and (5) appurtenant facilities.

The proposed project would have a total installed capacity of 180 kW.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all of the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

Statutory provision	Description	Satisfies (Y/N)
FPA 30(a)(3)(A), as amended by HREA	The conduit the facility uses is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.	Y
FPA 30(a)(3)(C)(i), as amended by HREA	The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit.	Y
FPA 30(a)(3)(C)(ii), as amended by HREA	The facility has an installed capacity that does not exceed 5 megawatts	Y
FPA 30(a)(3)(C)(iii), as amended by HREA	On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA.	Y

Preliminary Determination: The proposed addition of the hydroelectric project along the Miller Creek Ditch will not alter its primary purpose of distributing water for irrigation. Therefore, based upon the above criteria, Commission staff preliminarily determines that the proposal satisfies the requirements for a qualifying conduit hydropower facility, which is not required to be licensed or exempted from licensing.

Comments and Motions to Intervene: Deadline for filing comments contesting whether the facility meets the qualifying criteria is 45 days from the issuance date of this notice.

Deadline for filing motions to intervene is 30 days from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

Filing and Service of Responsive Documents: All filings must (1) bear in all capital letters the ''COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY'' or ''MOTION TO INTERVENE,'' as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission's regulations.[2] All comments contesting Commission staff's preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior

[1] Hydropower Regulatory Efficiency Act of 2013, Public Law 113–23, § 4, 27 Stat. 493 (2013); 79 FR 2164 (2014).

[2] 18 CFR 385.2001–2005 (2015).

registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Locations of Notice of Intent: Copies of the notice of intent can be obtained directly from the applicant or such copies can be viewed and reproduced at the Commission in its Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the Web at *http://www.ferc.gov/docs-filing/elibrary.asp* using the ''eLibrary'' link. Enter the docket number (*i.e.,* CD16–8) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

Dated: March 7, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–05501 Filed 3–10–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD10–12–007]

Increasing Market and Planning Efficiency Through Improved Software; Notice of Technical Conference: Increasing Real-Time and Day-Ahead Market Efficiency Through Improved Software

Take notice that Commission staff will convene a technical conference on June 27, 28, and 29, 2016 to discuss opportunities for increasing real-time and day-ahead market efficiency through improved software. A detailed agenda with the list of and times for the selected speakers will be published on the Commission's Web site [1] after April 22, 2016.

This conference will bring together experts from diverse backgrounds and experiences, including electric system operators, software developers, government, research centers and academia for the purposes of stimulating discussion, sharing information, and identifying fruitful avenues for research concerning the technical aspects of improved software for increasing efficiency. This conference is intended to build on the discussions initiated in the previous Commission staff technical conferences on increasing market and planning efficiency through improved software. As such, staff will be facilitating a discussion to explore research and operational advances with respect to market modeling that appear to have significant promise for potential efficiency improvements. Broadly, such topics fall into the following categories:

(1) Improvements to the representation of physical constraints that are either not currently modeled or currently modeled using mathematical approximations (*e.g.,* modeling voltage and reactive power though alternating current (AC) optimal power flow modeling, modeling contingencies or events beyond first contingencies);

(2) Consideration of uncertainty to better maximize expected market surplus (*e.g.,* stochastic modeling, or other improved modeling approaches to energy and reserve dispatch that efficiently manage uncertainty);

(3) Improvements to the ability to identify and use flexibility in the existing systems (*e.g.,* optimal transmission switching, active or dynamic transmission ratings, and modeling ramping capability needs);

(4) Improvements to the duality interpretations of the economic dispatch model, with the goal of enabling the calculation of prices which represent better equilibrium and are more incentive-compatible; and

(5) Other improvements in algorithms, model formulations, or hardware that may allow for increases in market efficiency.

Within these or related subject areas, we encourage presentations that discuss best modeling practices, existing modeling practices that need improvement, any advances made since last year's conference, or related perspectives on increasing market efficiency through improved power systems modeling.

The technical conference will be held at the Federal Energy Regulatory Commission headquarters, 888 First Street NE., Washington, DC 20426. All interested participants are invited to attend, and participants with ideas for relevant presentations are invited to nominate themselves to speak at the conference.

Speaker nominations must be submitted on or before April 8, 2016 through the Commission's Web site [2] by providing the proposed speaker's contact information along with a title, abstract, and list of contributing authors for the proposed presentation. Proposed presentations should be related to the topics discussed above. Speakers and presentations will be selected to ensure relevant topics and to accommodate time constraints.

Although registration is not required for general attendance by United States citizens, we encourage those planning to attend the conference to register through the Commission's Web site.[3] We will provide nametags for those who register on or before June 17, 2016.

We strongly encourage attendees who are not citizens of the United States to register for the conference by June 1, 2016, in order to avoid any delay associated with being processed by FERC security.

The Commission will accept comments following the conference, with a deadline of July 31, 2016.

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.

A WebEx will be available. Off-site participants interested in listening via teleconference or listening and viewing the presentations through WebEx must register at *https://www.ferc.gov/whats-new/registration/real-market-6-27-16-form.asp,* and do so by 5:00 p.m. EST on June 17, 2016. WebEx and teleconferencing may not be available to those who do not register.

FERC 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 (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

For further information about these conferences, please contact:

Sarah McKinley (Logistical Information), Office of External Affairs, (202) 502–8004, *Sarah.McKinley@ferc.gov.*

Daniel Kheloussi (Technical Information), Office of Energy Policy

[1] *http://www.ferc.gov/industries/electric/indus-act/market-planning.asp.*

[2] The speaker nomination form is located at *https://www.ferc.gov/whats-new/registration/real-market-6-27-16-speaker-form.asp.*

[3] The registration form is located at *https://www.ferc.gov/whats-new/registration/real-market-6-27-16-form.asp.*

and Innovation, (202) 502–6391, *Daniel.Kheloussi@ferc.gov.*

Dated: February 29, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–05496 Filed 3–10–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD14–14–000]

Price Formation in Energy and Ancillary; Services Markets Operated by Regional Transmission; Organizations and Independent System Operators; Notice of Filing

Take notice that PJM Interconnection, L.L.C., Midcontinent Independent System Operator, Inc., ISO New England, Inc., New York Independent System Operator, Inc., Southwest Power Pool, Inc., and the California Independent System Operator Corporation (collectively, RTOs/ISOs), each separately, filed reports in response to the Order Directing Reports issued by the Commission on November 20, 2015.[1] In the Order Directing Reports, the Commission established that public comment in response to the RTOs/ISOs' reports may be submitted within 30 days of the filing of the reports.[2] Upon consideration, public comment in response to all of the RTOs/ISOs' reports may be submitted by 5:00 p.m. Eastern Time on April 6, 2016.

The Commission encourages electronic submission of comments in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and five copies of their comments to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on April 6, 2016.

Dated: March 7, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–05500 Filed 3–10–16; 8:45 am]

BILLING CODE 6717–01–P

[1] *Price Formation in Energy and Ancillary Services Markets Operated by Regional Transmission Organizations and Independent System Operators,* 153 FERC ¶ 61,221 (2015) (Order Directing Reports).

[2] *Id.* P 7.

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: PR16–29–000.
Applicants: Columbia Gas of Ohio, Inc.
Description: Tariff filing per 284.123(b)(1)/.: COH SOC Effective 3–1–2016 to be effective 3/1/2016; Filing Type: 980.
Filed Date: 2/29/16.
Accession Number: 201602295251.
Comments/Protests Due: 5 p.m. ET 3/14/16.

Docket Numbers: PR16–30–000.
Applicants: Public Service Company of Colorado.
Description: Tariff filing per 284.123(e)/.224: PSCo Statement of Changes Nom to be effective 4/1/2016; Filing Type: 770.
Filed Date: 2/29/16.
Accession Number: 201602295373.
Comments/Protests Due: 5 p.m. ET 3/21/16.

Docket Numbers: PR16–31–000.
Applicants: Enable Oklahoma Intrastate Transmission, LLC.
Description: Tariff filing per 284.123(e) + (g): Enable Revised Fuel Percentages April 1, 2016 through March 31, 2017 to be effective 4/1/2016; Filing Type: 1280.
Filed Date: 2/29/16.
Accession Number: 201602295387.
Comments Due: 5 p.m. ET 3/21/16.
284.123(g) Protests Due: 5 p.m. ET 4/29/16.

Docket Numbers: PR15–1–001.
Applicants: Washington Gas Light Company.
Description: Tariff filing per 284.123(b)(1),: Washington Gas Light Company LAUF Adjustment in Docket PR15–5 to be effective 2/1/2016; Filing Type: 1000.
Filed Date: 3/1/16.
Accession Number: 201603015247.
Comments/Protests Due: 5 p.m. ET 3/15/16.

Docket Numbers: PR16–12–002.
Applicants: Columbia Gas of Maryland, Inc.
Description: Tariff filing per 284.123(b)(1): CMD SOC Amended PR16–12–002 to be effective 1/1/2015; Filing Type: 1000.
Filed Date: 3/2/16.
Accession Number: 201603025154.
Comments/Protests Due: 5 p.m. ET 3/17/16.

Docket Numbers: PR16–12–003.
Applicants: Columbia Gas of Maryland, Inc.
Description: Tariff filing per 284.123(b)(1),: CMD SOC effective 11–5–2015 to be effective 11/5/2015; Filing Type: 1000.
Filed Date: 3/3/16.
Accession Number: 201603035148.
Comments/Protests Due: 5 p.m. ET 3/17/16.

Docket Numbers: RP16–708–000.
Applicants: High Point Gas Transmission, LLC.
Description: Annual Unaccounted for Gas Retention Filing of High Point Gas Transmission, LLC.
Filed Date: 3/1/16.
Accession Number: 20160301–5509.
Comments Due: 5 p.m. ET 3/14/16.

Docket Numbers: RP16–709–000.
Applicants: Gulf Crossing Pipeline Company LLC.
Description: Section 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Newfield 18 to BP 1755) to be effective 3/1/2016.
Filed Date: 3/2/16.
Accession Number: 20160302–5086.
Comments Due: 5 p.m. ET 3/14/16.

Docket Numbers: RP16–710–000.
Applicants: Alliance Pipeline L.P.
Description: Section 4(d) Rate Filing: Seasonal Service April–October 2016 to be effective 4/1/2016.
Filed Date: 3/2/16.
Accession Number: 20160302–5150.
Comments Due: 5 p.m. ET 3/14/16.

Docket Numbers: RP16–711–000.
Applicants: Enable Mississippi River Transmission, L.
Description: Section 4(d) Rate Filing: Negotiated Rate Filing to Amend LER 5680's Attachment A_3_2_16 to be effective 3/2/2016.
Filed Date: 3/2/16.
Accession Number: 20160302–5165.
Comments Due: 5 p.m. ET 3/14/16.

Docket Numbers: RP16–712–000.
Applicants: Sabine Pipe Line LLC.
Description: Section 4(d) Rate Filing: Sabine Fuel Filing to be effective 4/1/2016.
Filed Date: 3/2/16.
Accession Number: 20160302–5194.

Comments Due: 5 p.m. ET 3/14/16.

Docket Numbers: RP16–713–000.

Applicants: Columbia Gulf Transmission, LLC.

Description: Section 4(d) Rate Filing: Negotiated Rate Service Agreement—Kaiser to be effective 4/1/2016.

Filed Date: 3/2/16.

Accession Number: 20160302–5195.

Comments Due: 5 p.m. ET 3/14/16.

Docket Numbers: RP16–714–000.

Applicants: Monroe Gas Storage Company, LLC.

Description: Section 4(d) Rate Filing: MGS—Clean up to be effective 3/3/2016.

Filed Date: 3/3/16.

Accession Number: 20160303–5127.

Comments Due: 5 p.m. ET 3/15/16.

Docket Numbers: RP16–715–000.

Applicants: Empire Pipeline, Inc.

Description: Section 4(d) Rate Filing: Fuel Tracker—Empire to be effective 4/1/2016.

Filed Date: 3/4/16.

Accession Number: 20160304–5245.

Comments Due: 5 p.m. ET 3/16/16.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP16–184–002.

Applicants: Cameron Interstate Pipeline, LLC.

Description: Compliance filing Cameron Interstate Pipeline FERC January 19, 2016 Order Compliance Filing to be effective 3/1/2016.

Filed Date: 3/2/16.

Accession Number: 20160302–5115.

Comments Due: 5 p.m. ET 3/14/16.

Docket Numbers: RP16–131–001.

Applicants: Gulf South Pipeline Company, LP.

Description: Compliance filing Compliance Filing in Docket No. RP16–131–000 (Establish Fuel Tracker) to be effective 4/1/2016.

Filed Date: 3/4/16.

Accession Number: 20160304–5084.

Comments Due: 5 p.m. ET 3/16/16.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 7, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–05503 Filed 3–10–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–93–000; Docket No. CP15–94–000; Docket No. CP15–96–000]

Rover Pipeline, LLC; Panhandle Eastern Pipe Line Company, LP; Trunkline Gas Company, LLC; Notice of Public Meetings for Comments on the Draft Environmental Impact Statement for the Proposed Rover Pipeline, Panhandle Backhaul, and Trunkline Backhaul Projects

On February 19, 2016 the staff of the Federal Energy Regulatory Commission (FERC or Commission) issued a draft environmental impact statement (EIS) for the Rover Pipeline, Panhandle Backhaul, and Trunkline Backhaul Projects (Projects). The draft EIS assesses the potential environmental effects of the construction and operation of the Projects in accordance with the requirements of the National Environmental Policy Act (NEPA). The draft EIS was mailed to the parties on the Commission's environmental mailing list and placed on the FERC's Web site (*www.ferc.gov*).

The Commission invites you to attend one of the public comment meetings its staff will conduct in the Projects' area to receive verbal comments on the draft EIS, scheduled as follows:

Date	Location
Monday, March 21, 2016	Patrick Henry Middle School, 7 E–050 Rd., Hamler, OH 43524, (419) 274–3431.
Tuesday, March 22, 2016	Fayette High School, 400 Gamble Rd., Fayette, OH 43521, (419) 237–2114.
Wednesday, March 23, 2016	Chelsea High School, 740 N. Freer Rd., Chelsea, MI 48118, (734) 433–2201.
Monday, April 4, 2016	Barker Memorial Building, 214 North 4th Avenue, Paden City, WV 26159, (304) 771–2280.
Tuesday, April 5, 2016	Harrison Central High School, 440 East Market Street, Cadiz, OH 43907, (740) 942–7700.
Wednesday, April 6, 2016	Buckeye Central High School, 938 Kibler St., New Washington, OH 44854, (419) 492–2266.
Thursday, April 7, 2016	Fairless High School, 11885 Navarre Rd. SW., Navarre, OH 44662, (330) 767–3444.

We will begin our sign up of speakers at 5:30 p.m. The comments meetings will begin at 6:00 p.m. with a description of our environmental review process by Commission staff, after which speakers will be called. The meetings will end once all speakers have provided their comments or at 10 p.m., whichever comes first. Please note that there may be a time limit of three minutes to present comments, and speakers should structure their comments accordingly. If time limits are implemented, they will be strictly enforced to ensure that as many individuals as possible are given an opportunity to comment. The meetings will be recorded by a court reporter to ensure comments are accurately recorded. Transcripts will be entered into the formal record of the Commission proceeding.

You do not need to attend one of the above comment meetings to provide comment to the Commission on the draft EIS. For your convenience, there are three additional methods you can use to submit your comments to the Commission. The Commission will provide equal consideration to all comments received, whether filed in written form or provided verbally. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature on the Commission's Web site

(*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' If you are filing a comment on a particular project, please select ''Comment on a Filing'' as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the applicable project docket number (CP15–93–000, CP15–94–000, or CP15–96–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

To ensure consideration of your comments on the proposals in the final EIS, it is important that the Commission receive your comments on or before April 11, 2016. Please take note that on February 26, 2016, Commission staff issued a correction to Appendix I–1 of the EIS and placed the document in the public record under accession number 20160226–3005.

Questions?

Additional information about the projects is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search,'' and enter the docket number excluding the last three digits in the Docket Number field (*i.e.,* CP15–93, CP15–94, or CP15–96). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676; for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: February 29, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–05498 Filed 3–10–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP15–117–000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Schedule for Environmental Review of the Dalton Expansion Project

On March 19, 2015, Transcontinental Gas Pipe Line Company, LLC (Transco) filed an application in Docket No. CP15–117–000 requesting a Certificate of Public Convenience and Necessity pursuant to Section 7(c) of the Natural Gas Act to construct and operate certain natural gas pipeline facilities. The proposed project is known as the Dalton Expansion Project (Project), and would provide 448,000 dekatherms per day of incremental firm transportation service to markets in northwest Georgia.

On April 2, 2015, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's Environmental Assessment (EA) for the Project. This instant notice identifies the FERC staff's planned schedule for the completion of the EA for the Project.

Schedule for Environmental Review

Issuance of EA March 31, 2016
90-day Federal Authorization Decision Deadline June 29, 2016

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

Transco plans to construct and operate about 113 miles of new natural gas pipeline, and associated facilities in Coweta, Carroll, Douglas, Paulding, Bartow, Gordon, and Murray Counties, Georgia and install a new 21,830 horsepower compressor station in Carroll County, Georgia. Additionally, Transco plans to modify existing facilities along its mainline transmission system in Maryland, Virginia, and North Carolina to accommodate bidirectional flow.

Background

On October 21, 2014, FERC staff issued a *Notice of Intent To Prepare an Environmental Assessment for the Planned Dalton Expansion Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings* (NOI). FERC staff also issued two supplemental NOIs for the Project on November 14, 2014 and February 13, 2015. The original NOI was issued during the pre-filing review of the Project in Docket No. PF14–10–000. All three NOIs were sent to affected landowners; applicable federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. In response to the NOIs, the Commission received comments from federal, state, and local agencies, the Tuscarora Nation, and several landowners. The primary issues raised by the commentors are alternative routes to minimize impacts on known rare species habitat, alternative routes to follow the existing utility corridor, mitigation measures to minimize right-of-way erosion and stormwater runoff into streams, air emissions, safety, and cultural resources.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC Web site (*www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' excluding the last three digits (*i.e.,* CP15–117), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: March 7, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–05504 Filed 3–10–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–456–001.
Applicants: PJM Interconnection, L.L.C., Baltimore Gas and Electric Company, Potomac Electric Power Company, Delmarva Power & Light Company, Atlantic City Electric Company.
Description: Compliance filing: BGE, Delmarva, Pepco & Atlantic City submit compliance filing per 2/2/2016 order to be effective 12/3/2015.
Filed Date: 2/29/16.
Accession Number: 20160229–5263.
Comments Due: 5 p.m. ET 3/21/16.

Docket Numbers: ER16–1018–000.
Applicants: Guzman Renewable Energy Partners LLC.
Description: Baseline eTariff Filing: Market-Based Rate Tariff #1 to be effective 2/26/2016.
Filed Date: 2/26/16.
Accession Number: 20160226–5360.
Comments Due: 5 p.m. ET 3/18/16.

Docket Numbers: ER16–1019–000.
Applicants: California Independent System Operator Corporation.
Description: Compliance filing: 2016–02–26_EIM–FNM Price Correction Waiver; Petition for Limited Waiver to be effective N/A.
Filed Date: 2/26/16.
Accession Number: 20160226–5368.
Comments Due: 5 p.m. ET 3/18/16.

Docket Numbers: ER16–1020–000.
Applicants: Florida Power & Light Company.
Description: Section 205(d) Rate Filing: FPL and Homestead Energy Services NITSA and NOA to be effective 3/1/2016.
Filed Date: 2/26/16.
Accession Number: 20160226–5373.
Comments Due: 5 p.m. ET 3/18/16.

Docket Numbers: ER16–1021–000.
Applicants: Arizona Public Service Company.
Description: Section 205(d) Rate Filing: Modifications to Service Agreement Nos. 338, 339, 349, 350, 351 and 352 to be effective 2/10/2016.
Filed Date: 2/26/16.
Accession Number: 20160226–5378.
Comments Due: 5 p.m. ET 3/18/16.

Docket Numbers: ER16–1022–000.
Applicants: Southwest Power Pool, Inc.
Description: Section 205(d) Rate Filing: 3174 Southwestern Electric Power Company GIA to be effective 1/29/2016.
Filed Date: 2/26/16.
Accession Number: 20160226–5380.
Comments Due: 5 p.m. ET 3/18/16.

Docket Numbers: ER16–1024–000.
Applicants: ISO New England Inc., New England Power Company.
Description: Section 205(d) Rate Filing: Original Service Agreement LGIA–ISONE/NEP–15–04 under Schedule 22 of the OATT to be effective 1/19/2016.
Filed Date: 2/29/16.
Accession Number: 20160229–5008.
Comments Due: 5 p.m. ET 3/21/16.

Docket Numbers: ER16–1025–000.
Applicants: Southern California Edison Company.
Description: Request of Southern California Edison Company for authorization to recover incurred costs associated with the Coolwater-Lugo Transmission Project.
Filed Date: 2/26/16.
Accession Number: 20160226–5389.
Comments Due: 5 p.m. ET 3/18/16.

Docket Numbers: ER16–1026–000.
Applicants: Pacific Gas and Electric Company.
Description: Notice of Termination of Pacific Gas and Electric Company of Small Generator Interconnection Service Agreement No. 293 for Lemoore PV 2, LLC.
Filed Date: 2/29/16.
Accession Number: 20160229–5192.
Comments Due: 5 p.m. ET 3/21/16.

Docket Numbers: ER16–1027–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Section 205(d) Rate Filing: 2016–02–29_1st Quarter 2016 Clean-Up Filing to be effective 3/1/2016.
Filed Date: 2/29/16.
Accession Number: 20160229–5215.
Comments Due: 5 p.m. ET 3/21/16.

Docket Numbers: ER16–1029–000.
Applicants: Southwest Power Pool, Inc.
Description: Section 205(d) Rate Filing: 2825R4 KMEA and Westar Energy Meter Agent Agreement to be effective 2/1/2016.
Filed Date: 2/29/16.
Accession Number: 20160229–5252.
Comments Due: 5 p.m. ET 3/21/16.

Docket Numbers: ER16–1030–000.
Applicants: Public Service Company of Colorado.
Description: Section 205(d) Rate Filing: 2016–2–29_SPS Loss Percentage Filing to be effective 5/1/2016.
Filed Date: 2/29/16.
Accession Number: 20160229–5275.
Comments Due: 5 p.m. ET 3/21/16.

Docket Numbers: ER16–1031–000.
Applicants: New England Power Pool Participants Committee.
Description: Section 205(d) Rate Filing: March 2016 Membership Filing to be effective 3/1/2016.
Filed Date: 2/29/16.
Accession Number: 20160229–5289.
Comments Due: 5 p.m. ET 3/21/16.

Docket Numbers: ER16–1032–000.
Applicants: Beaver Dam Energy LLC.
Description: Compliance filing: Reactive Power Filing to be effective 6/1/2016.
Filed Date: 2/29/16.
Accession Number: 20160229–5322.
Comments Due: 5 p.m. ET 3/21/16.

Docket Numbers: ER16–1033–000.
Applicants: Windrose Power and Gas LLC.
Description: Baseline eTariff Filing: Market Based Rate Tariff to be effective 3/29/2016.
Filed Date: 2/29/16.
Accession Number: 20160229–5325.
Comments Due: 5 p.m. ET 3/21/16.

Docket Numbers: ER16–1035–000.
Applicants: ITC Midwest LLC.
Description: Section *205(d) Rate Filing: Concurrence IPL Amended Exhibits and Attachments to be effective 4/26/2016.*
Filed Date: 2/29/16.
Accession Number: 20160229–5365.
Comments Due: 5 p.m. ET 3/21/16.

Docket Numbers: ER16–1036–000.
Applicants: Wolverine Power Supply Cooperative, Inc.
Description: Section *205(d) Rate Filing: Wolverine Reactive Supply Service to be effective 5/1/2016.*
Filed Date: 2/29/16.
Accession Number: 20160229–5370.
Comments Due: 5 p.m. ET 3/21/16.

Take notice that the Commission received the following PURPA 210(m)(3) filings:

Docket Numbers: QM16–1–000.
Applicants: Nebraska Public Power District.
Description: Second Supplement to February 12, 2016 Application of Nebraska Public Power District to Terminate Mandatory Purchase Obligation Under the Public Utility Regulatory Policies Act.
Filed Date: 3/25/16.
Accession Number: 20160226–5385.
Comments Due: 5 p.m. ET 3/25/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and

385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 29, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–05497 Filed 3–10–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9025–9]

Environmental Impact Statements; Notice of Availability

AGENCY: Office of Federal Activities, General Information (202) 564–7146 or *http://www2.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EISs)
Filed 02/29/2016 Through 03/04/2016
Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-nepa-public/action/eis/search.*

EIS No. 20160054, Final, NPS, HI, Hawaii Volcanoes National Park General Management Plan, Review Period Ends: 04/11/2016, Contact: Danielle Foster 808–985–6303

EIS No. 20160055, Draft, USFS, ID, Lookout Pass Ski Area Expansion, Comment Period Ends: 04/25/2016, Contact: Kerry Arneson 208–769–3021

EIS No. 20160056, Draft Supplement, BLM, ID, Segments 8 and 9 of the Gateway West Transmission Line Project, Comment Period Ends: 06/09/2016, Contact: Jim Stobaugh 775–861–6478

EIS No. 20160057, Final, USFS, MT, Bitterroot National Forest Travel Management Planning, Review Period Ends: 04/11/2016, Contact: Julie King 406–363–7121

EIS No. 20160058, Final, NOAA, WA, Analyze Impacts of NOAA's National Marine Fisheries Service Proposed 4(d) Determination under Limit 6 for Five Early Winter Steelhead Hatchery Programs in Puget Sound, Review Period Ends: 04/11/2016, Contact: Steve Leider 360–753–4650

Dated: March 8, 2016.

Dawn Roberts,

Management Analyst, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2016–05538 Filed 3–10–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 16–188]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission released a public notice announcing the meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and agenda.

DATES: Thursday, March 24, 2016, 10:00 a.m.

ADDRESSES: Requests to make an oral statement or provide written comments to the NANC should be sent to Carmell Weathers, Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, Portals II, 445 12th Street SW., Room 5–C162, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Carmell Weathers at (202) 418–2325 or *Carmell.Weathers@fcc.gov.* The fax number is: (202) 418–1413. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document in CC Docket No. 92–237, DA 16–188 released February 22, 2016. The complete text in this document is available for public inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the Internet at *http://www.bcpiweb.com.* It is available on the Commission's Web site at *http://www.fcc.gov.*

The North American Numbering Council (NANC) has scheduled a meeting to be held Thursday, March 24, 2016, from 10:00 a.m. until 2:00 p.m. The meeting will be held at the Federal Communications Commission, Portals II, 445 12th Street SW., Room TW–C305, Washington, DC. This meeting is open to members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty). Reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need, including as much detail as you can. Also include a way we can contact you if we need more information. Please allow at least five days advance notice; last minute requests will be accepted, but may be impossible to fill.

Proposed Agenda: Thursday, March 24, 2016, 10:00 a.m.*

1. Announcements and Recent News
2. Approval of Transcript—December 1, 2015
3. Report of the North American Numbering Plan Administrator (NANPA)
4. Report of the National Thousands Block Pooling Administrator (PA)
5. Report of the Toll Free Number Administration (TFNA)
6. Report of the Numbering Oversight Working Group (NOWG)
7. Report of the North American Numbering Plan Billing and Collection (NANP B&C) Agent
8. Report of the Billing and Collection Working Group (B&C WG)
9. Report of the North American Portability Management LLC (NAPM LLC)
10. Report of the Local Number PortabilityAdministration (LNPA) Transition Oversight Manager (TOM)
11. Report of the Local Number Portability Administration Working Group (LNPA WG)

12. Report of the Future of Numbering Working Group (FoN WG)
13. Status of the Industry Numbering Committee (INC) activities
14. Status of the ATIS All-IP Transition Initiatives
15. Report of the Internet Protocol Issue Management Group (IP IMG)
16. Summary of Action Items
17. Public Comments and Participation (maximum 5 minutes per speaker)
18. Other Business

Adjourn no later than 2:00 p.m.

*The Agenda may be modified at the discretion of the NANC Chairman with the approval of the DFO.

Federal Communications Commission.

Ann H. Stevens,

Deputy Chief, Competition Policy Division, Wireline Competition Bureau.

[FR Doc. 2016–05544 Filed 3–10–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1096]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or 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 May 10, 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 Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1096.

Title: Prepaid Calling Card Service Provider Certification, WC Docket No. 05–68.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 121 respondents; 1,452 responses.

Estimated Time per Response: 2.5 hours–20 hours.

Frequency of Response: Quarterly reporting requirement, third party disclosure requirement and recordkeeping requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. 151, 152, 154(i), 201, 202 and 254 of the Communications Act of 1934, as amended.

Total Annual Burden: 12,100 hours.

Total Annual Cost: No cost.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission does not anticipate providing confidentiality of the information submitted by prepaid calling card providers. Particularly, the prepaid calling card providers must send reports to their transport providers. Additionally, the quarterly certifications sent to the Commission will be made public through the Commission's Electronic Comment Filing System (ECFS) process. These certifications will be filed in the Commission's docket associated with this proceeding. If the respondents submit information they believe to be confidential, they may request confidential treatment of such information under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this expiring information collection after this comment period in order to obtain the full three-year clearance from the Office of Management and Budget (OMB).

The Commission is requesting approval for an extension (no change in the reporting, recordkeeping and/or third-party disclosure requirements). Prepaid calling card service providers must report quarterly the percentage of interstate, intrastate and international access charges to carriers from which they purchase transport services. Prepaid calling card providers must also file certifications with the Commission quarterly that include the above information and a statement that they are contributing to the federal Universal Service Fund based on all interstate and international revenue, except for revenue from the sale of prepaid calling cards by, to, or pursuant to contract with the Department of Defense (DoD) or a DoD entity.

Federal Communications Commission.

Gloria J. Miles,

Federal Liaison Officer, Office of the Secretary.

[FR Doc. 2016–05545 Filed 3–10–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, March 15, 2016, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' Meetings.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Discussion Agenda

Update of Projected Deposit Insurance Fund Losses, Income, and Reserve Ratios for the Restoration Plan.

Memorandum and resolution re: Final Rule on Implementing the Dodd-Frank Requirement to Increase the Reserve Ratio from 1.15 Percent to 1.35 Percent.

The meeting will be held in the Board Room located on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, DC

This Board meeting will be Webcast live via the Internet and subsequently made available on-demand approximately one week after the event. Visit *https://fdic.primetime.mediaplatform.com/#!/channel/1232003497484/Board+Meetings* to view the event. If you need any technical assistance, please visit our Video Help page at: *http://www.fdic.gov/video.html.*

The FDIC will provide attendees with auxiliary aids (*e.g.,* sign language interpretation) required for this meeting. Those attendees needing such assistance should call 703–562–2404 (Voice) or 703–649–4354 (Video Phone) to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at 202–898–7043.

Dated: March 8, 2016.

Federal Deposit Insurance Corporation.

Valerie Best,

Assistant Executive Secretary.

[FR Doc. 2016–05609 Filed 3–9–16; 11:15 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 28, 2016.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *James J. Dolan, as trustee of Voting Trust Agreement, Patricia D. Dolan as trustee of Royston Road Trust, all of Naples, Florida; Gregory F. Dolan as trustee of JJD 2012 Family Trust, Washington, DC; Emad Murrar, Homer Glen, Illinois, and Alan Reasoner,* Round Lake, Illinois; to acquire voting shares of Northwest Bancorporation of Illinois, Inc., and thereby indirectly acquire voting shares of First Bank and Trust Company of Illinois, both in Palatine, Illinois.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Margaret M. Brownlee, as trustee of the Margaret March Brownlee Trust, both of Orlando, Florida, and Paula March Romanovsky, as trustee of the Paula March Romanovsky Trust,* both of San Francisco, California, all as members of the March family group; to retain voting shares of Bank Management, Inc., and thereby indirectly retain voting shares of FirstBank of Nebraska, both in Wahoo, Nebraska.

C. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Ann Biggs, as trustee of the Gordon Brian Biggs Trust of 2012, the Edward Barrett Biggs Trust of 2012, the Biggs Grandchildren's Trust, and the Glenn Barrett Biggs Trust of 2012, all of San Antonio, Texas; Steven Mack, Boerne, Texas; and Jack Griggs,* Abilene, Texas, collectively a group acting in concert; to acquire voting shares of Southwestern Bancorp, Inc., and thereby indirectly acquire voting shares of Texas Heritage Bank, both in Boerne, Texas.

Board of Governors of the Federal Reserve System, March 8, 2016.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2016–05495 Filed 3–10–16; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–16–16TM; Docket No. CDC–2016–0026]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project entitled ''Prevalence Survey of Healthcare-Associated Infections (HAIs) and Antimicrobial Use in U.S. Nursing Homes.'' This information collection request will generate data to describe the epidemiology and estimate the burden of HAIs and antimicrobial use in US nursing homes using the prevalence survey method. Results will be used to inform state prevention efforts and federal priority setting for public health initiatives to improve HAI prevention and antimicrobial use.

DATES: Written comments must be received on or before May 10, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2016–0026 by any of the following methods:

- *Federal eRulemaking Portal:* Regulation.gov. Follow the instructions for submitting comments.
- *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to Regulations.gov, including any personal information provided. For access to the docket to read background documents or comments received, go to Regulations.gov.

Please note: All public comment should be submitted through the Federal eRulemaking portal (Regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also

requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Proposed Project

Prevalence Survey of Healthcare-Associated Infections and Antimicrobial Use in U.S. Nursing Homes—New—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Preventing healthcare-associated infections (HAI) and encouraging appropriate use of antimicrobials are priorities of both the U.S. Department of Health and Human Services and the Centers for Disease Control and Prevention (CDC). The burden and epidemiology of HAIs and antimicrobial use in U.S. nursing homes is currently unknown. Understanding the scope and magnitude of all types of HAIs in patient populations across the spectrum of U.S. healthcare facilities is essential to the development of effective prevention and control strategies and policies.

HAI prevalence and antimicrobial use estimates can be obtained through prevalence surveys in which data are collected in healthcare facilities during a short, specified time period. Essential steps in reducing the occurrence of HAIs and the prevalence of resistant pathogens include estimating the burden, types, and causative organisms of HAIs; assessing the nature and extent of antimicrobial use in U.S. healthcare facilities; and assessing the nature and extent of antimicrobial use.

Prevalence surveys, in which data are collected in healthcare facilities during a short, specified time period represent an efficient and cost-effective alternative to prospective studies of HAI and antimicrobial use incidence. Given the absence of existing HAI and antimicrobial use data collection mechanisms for nursing homes, prevalence surveys represent a robust method for obtaining the surveillance data required to identify HAIs and antibiotic use practices that should be targeted for more intensive surveillance and to guide and evaluate prevention efforts.

The methods for the data collection are based on those used in CDC hospital prevalence surveys and informed by a CDC pilot survey conducted in nine U.S. nursing homes. The survey will be performed by the CDC through the Emerging Infections Program (EIP), a collaboration with CDC and 10 state health departments with experience in HAI surveillance and data collection. Respondents are nursing homes certified by the Centers for Medicare & Medicare Services in EIP states. Nursing home participation is voluntary. Nursing homes will be randomly selected for participation, with a goal in each EIP site of recruiting a total of 20 nursing homes.

There will be no anticipated costs to respondents other than their time. Information collection will last approximately one year.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
Director of Nursing, Registered Nurse, Infection Control and Prevention Officer.	Healthcare Facility Assessment	200	1	45/60	150
Registered Nurse	Residents by Location Form	200	38	20/60	2,533
Licensed Practical or Licensed Vocational Nurses.	.....	200	38	20/60	2,533
Total	.....	.....	.....	.....	5,216

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–05520 Filed 3–10–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–16–16TL; Docket No. CDC–2016–0027]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection plan entitled ''Health Risks from Using Private Wells for Drinking Water.'' The purpose of this new generic clearance information collection request (ICR) is to assess the health risks associated with exposure to contaminants in drinking water from private wells across varied geographic areas of the United States in partnership with the requesting agency (state, territorial, local, or tribal health department).

DATES: Written comments must be received on or before May 10, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2016–0027 by any of the following methods:

- *Federal eRulemaking Portal:* Regulation.gov. Follow the instructions for submitting comments.
- *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to Regulations.gov, including any personal information provided. For access to the docket to read background documents or comments received, go to Regulations.gov.

Please note: All public comment should be submitted through the Federal eRulemaking portal (Regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Proposed Project

Health Risks from Using Private Wells for Drinking Water—New—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Safe Drinking Water Act of 1974 ensures that most Americans are provided access to water that meets established public health standards. However, for over 38 million Americans who rely on private wells or other drinking water not protected by the Safe Drinking Water Act (herein referred to as private wells), that is not the case. There is no comprehensive knowledge about the locations of private wells, the populations served by these sources, potential contaminants that might be present in private well water in specific areas of the country, or the potential health risks associated with drinking water from these sources.

The purpose of this new generic clearance information collection request (Generic ICR) is to assess the health risks associated with exposure to contaminants in drinking water from private wells across varied geographic areas of the United States in partnership with the requesting agency (state, territorial, local, or tribal health department). The information obtained from these investigations will be used to describe health risks from exposure to contaminants in drinking water from private wells within a defined time period and geographic distribution. This information will be used to inform public health protection activities conducted by the requesting agencies.

The respondents are defined as adults at least 18 years old, who use private wells for drinking water, who are willing to receive and return a tap water sampling kit and urine specimen kit or to provide a blood specimen, and who are willing to answer survey questions. They will be recruited from geographic areas of interest as defined by the requesting agency.

Based on our historical activities, we estimate that CDC will conduct up to 10 investigations per year. Each investigation will involve, on average, 200 respondents who are adults at least 18 years old and use a private well for tap water.

The total time burden is 2,084 hours. There will be no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
Adult at least 18 years old using a private well for tap water.	Screening Form	2,500	1	6/60	250
	Questionnaire	2,000	1	35/60	1,167
	Urine Specimen and Tap Water Sample Collection.	2,000	1	20/60	667
Total					2,084

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–05519 Filed 3–10–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–359/360, CMS–10003, and CMS–10280]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: The necessity and utility of the proposed information collection for the proper performance of the agency's functions; the accuracy of the estimated burden; ways to enhance the quality, utility, and clarity of the information to be collected; and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by April 11, 2016.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR* Email: *OIRA_submission@omb.eop.gov*.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*.

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*.

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved information collection; *Title of Information Collection:* Comprehensive Outpatient Rehabilitation Facility (CORF) Eligibility and Survey Forms and Supporting Regulations; *Use:* The form CMS–359 is used as the application for health care providers seeking to participate in the Medicare program as a Comprehensive Outpatient Rehabilitation Facility (CORF). This form initiates the process for facilities to become certified as a CORF and it provides the CMS Regional Office State Survey Agency staff identifying information regarding the applicant that is stored in the Automated Survey Processing Environment (ASPEN) system.

The form CMS–360 is a survey tool used by the State Survey Agencies to record information in order to determine a provider's compliance with the CORF Conditions of Participation (CoPs) and to report this information to the Federal government. The form includes basic information on the CoP requirements, check boxes to indicate the level of compliance, and a section for recording notes. We have the responsibility and authority for certification decisions which are based on provider compliance with the CoPs and this form supports this process. *Form Number:* CMS–359/360 (OMB control number: 0938–0267); *Frequency:* Occasionally; *Affected Public:* Private Sector (Business or other for-profits); *Number of Respondents:* 50; *Number of Responses:* 50; *Total Annual Hours:* 123. (For questions regarding this collection contact James Cowher (410) 786–1948.)

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Notice of Denial of Medical Coverage (or Payment); *Use:* Medicare health plans, including

Medicare Advantage plans, cost plans, and Health Care Prepayment Plans, are required to issue the CMS–10003 form when a request for either a medical service or payment is denied in whole or in part. The notice explains why the plan denied the service or payment and informs Medicare enrollees of their appeal rights. The notice is also used, as appropriate, to explain Medicaid appeal rights to full dual eligible individuals enrolled in a Medicare health plan that is also managing the individual's Medicaid benefits. The PRA package has been revised subsequent to the publication of the 60-day **Federal Register** notice (October 16, 2015; 80 FR 62534). *Form Number:* CMS–10003 (OMB control number: 0938–0829). *Frequency:* Occasionally; *Affected Public:* Private sector (Business or other for-profit and Not-for-profit institutions); *Number of Respondents:* 730; *Total Annual Responses:* 33,574,293; *Total Annual Hours:* 5,593,477. (For policy questions regarding this collection contact Staci Paige at 410–786–2045.)

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Home Health Change of Care Notice (HHCCN); *Use:* The Home Health Change of Care Notice (HHCCN) is used to notify original Medicare beneficiaries receiving home health care benefits of plan of care changes. Home health agencies (HHAs) must provide the HHCCN whenever they reduce or terminate a beneficiary's home health services due to physician/provider orders or limitation of the HHA in providing the specific service. Notification is required for covered and non-covered services listed in the plan of care. This iteration contains non-substantive changes which add language informing beneficiaries of their rights under Section 504 of the Rehabilitation Act of 1973 by alerting the beneficiary to CMS' nondiscrimination practices and the availability of alternate forms of this notice if needed. There are no substantive changes. *Form Number:* CMS–10280 (OMB control number: 0938–0829); *Frequency:* Occasionally; *Affected Public:* Private sector (Business or other for-profits and Not-for-profit institutions); *Number of Respondents:* 12,459; *Total Annual Responses:* 13,764,434; *Total Annual Hours:* 917,262. (For policy questions regarding this collection contact Evelyn Blaemire at 410–786–1803).

Dated: March 7, 2016.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2016–05472 Filed 3–10–16; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10146, CMS–10377, CMS–10465 and CMS–10409]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: The necessity and utility of the proposed information collection for the proper performance of the agency's functions; the accuracy of the estimated burden; ways to enhance the quality, utility, and clarity of the information to be collected; and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by May 10, 2016.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov*. Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*.

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*.

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10146 Notice of Denial of Medicare Prescription Drug Coverage
CMS–10377 Student Health Insurance Coverage
CMS–10465 Minimum Essential Coverage
CMS–10409 Long Term Care Hospital (LCTH) Continuity Assessment Record and Evaluation (CARE) Data Set

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Notice of Denial of Medicare Prescription Drug Coverage; *Use:* The notice provides information to enrollees when prescription drug coverage has been denied, in whole or in part, by their Part D plans. The notice must be readable, understandable, and state the specific reasons for the denial. The notice must also remind enrollees about their rights and protections related to requests for prescription drug coverage and include an explanation of both the standard and expedited redetermination processes and the rest of the appeal process. *Form Number:* CMS–10146 (OMB control number: 0938–0976); *Frequency:* Occasionally; *Affected Public:* Private sector (Business or other for-profits); *Number of Respondents:* 580; *Total Annual Responses:* 1,902,055; *Total Annual Hours:* 475,514. (For policy questions regarding this collection contact Amber Casserly at 410–786–0976.)

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Student Health Insurance Coverage; *Use:* Under the Student Health Insurance Coverage Final Rule published March 21, 2012 (77 FR 16453), an issuer that provides student health insurance coverage that does not meet the annual dollar limits requirements under Public Health Service Act (PHS Act) section 2711 must provide notice in the insurance policy or certificate and in any other written materials informing students that the policy being issued does not meet the annual limits requirements under the Affordable Care Act. The Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2017 Final Rule removed outdated provisions in § 147.145(b)(2) and (d) allowing student health insurance issuers to impose restricted annual dollar limits on policies started before January 1, 2014, with an accompanying requirement that student health issuers must provide notice to students. Those provisions, by their own terms, no longer apply and student health insurance issuers are subject to the prohibition on annual dollar limits under PHS Act section 2711 and § 147.126 for policy years beginning on or after January 1, 2014. Therefore, the annual limit notification requirement is being discontinued. The Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2017 Final Rule further provides that, for policy years beginning on or after July 1, 2016, student health insurance coverage is exempt from the actuarial value (AV) requirements under section 1302(d) of the Affordable Care Act, but must provide coverage with an AV of at least 60 percent. This provision also requires issuers of student health insurance coverage to specify in any plan materials summarizing the terms of the coverage the AV of the coverage and the metal level (or the next lowest metal level) the coverage would otherwise satisfy under § 156.140. This disclosure will provide students with information that allows them to compare the student health coverage with other available coverage options. *Form Number:* CMS–10377 (OMB control number 0938–1157); *Frequency:* Annually; *Affected Public:* Private Sector; *Number of Respondents:* 49; *Total Annual Responses:* 1,255,000; *Total Annual Hours:* 49. (For policy questions regarding this collection contact Russell Tipps at 301–492–4371.)

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Minimum Essential Coverage; *Use:* The final rule titled ''Patient Protection and Affordable Care Act; Exchange Functions: Eligibility for Exemptions; Miscellaneous Minimum Essential Coverage Provisions,'' published July 1, 2013 (78 FR 39494) designates certain types of health coverage as minimum essential coverage. Other types of coverage, not statutorily designated and not designated as minimum essential coverage in regulation, may be recognized by the Secretary of Health and Human Services (HHS) as minimum essential coverage if certain substantive and procedural requirements are met. To be recognized as minimum essential coverage, the coverage must offer substantially the same consumer protections as those enumerated in the Title I of Affordable Care Act relating to non-grandfathered, individual health insurance coverage to ensure consumers are receiving adequate coverage. The final rule requires sponsors of other coverage that seek to have such coverage recognized as minimum essential coverage to adhere to certain procedures. Sponsoring organizations must submit to HHS certain information about their coverage and an attestation that the plan substantially complies with the provisions of Title I of the Affordable Care Act applicable to non-grandfathered individual health insurance coverage. Sponsors must also provide notice to enrollees informing them that the plan has been recognized as minimum essential coverage for the purposes of the individual coverage requirement. *Form Number:* CMS–10465 (OMB control number 0938–1189); *Frequency:* Occasionally; *Affected Public:* Private Sector (Business or other for-profits); *Number of Respondents:* 10; *Total Annual Responses:* 10; *Total Annual Hours:* 53. (For policy questions regarding this collection contact Russell Tipps at 301–492–4371.)

4. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Long Term Care Hospital (LCTH) Continuity Assessment Record and Evaluation (CARE) Data Set; *Use:* Section 3004 of the Affordable Care Act authorized the establishment of quality reporting program for long term care hospitals (LTCHs). Beginning in FY 2014, LTCHs that fail to submit quality measure data may be subject to a 2 percentage point reduction in their annual update to the standard Federal rate for discharges occurring during a rate year. The LTCH CARE Data Set was developed specifically for use in LTCHs for data collection of NQF #0678 Pressure Ulcer measures beginning October 1, 2012, with the understanding that the data set would expand in future rulemaking years with the adoption of additional quality measures. Relevant data elements contained in other well-known and clinically established data sets, including but not limited to the Minimum Data Set 3.0 (MDS 3.0) and CARE, were incorporated into the LTCH CARE Data Set V1.01, V2.00 and V2.01. LTCH CARE Data Set V3.00 will be implemented April 1, 2016. *Form Number:* CMS–10409 (OMB control number: 0938–1163); *Frequency:* Occasionally; *Affected Public:* Private Sector: Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 424; *Total Annual Responses:* 405,344; *Total Annual Hours:* 328,346. (For policy questions regarding this collection contact Staci Payne at 410–786–2838.)

Dated: March 7, 2016.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2016–05471 Filed 3–10–16; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[CMS–10596, CMS–906, CMS–1771, CMS–1450, CMS–1500 (02–12)]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Correction

In notice document 2016–02278 beginning on page 6277 in the issue of Friday, February 5, 2016, make the following correction:

On page 6777, in the ''DATES'' section in the first column, ''April 6, 2016'' should read ''March 7, 2016''.

[FR Doc. C1–2016–02278 Filed 3–10–16; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: State Access and Visitation Grant Application.

OMB No.: 0970—NEW.

Description

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) created the ''Grants to States for Access and Visitation'' program (AV grant program). Funding for the program began in FY 1997 with a capped, annual entitlement of $10 million. The statutory goal of the program is to provide funds to states that will enable them to provide services for the purpose of increasing noncustodial parent (NCP) access to and visitation with their children. State governors decide which state entity will be responsible for implementing the AV grant program and the state determines who will be served, what services will be provided, and whether the services will be statewide or in local jurisdictions. The statute specifies certain activities which may be funded, including: Voluntary and mandatory mediation, counseling, education, the development of parenting plans, supervised visitation, and the development of guidelines for visitation and alternative custody arrangements. Even though OCSE manages this program, the funding for the AV grant is separate from funding for federal and state administration of the Child Support program.

Section 469B(e)(3) of the Social Security Act (Pub. L. 104–193) requires that each state receiving an Access and Visitation (AV) grant award monitor, evaluate and report on such programs in accordance with regulations (45 CFR part 303). The AV Grant Program Terms and Conditions Addendum references administration of the grant program in accordance with an approved state application. Additionally, the Catalog of Federal Domestic Assistance, states that there is an application requirement for Grants to States for Access and Visitation Programs (93.597). The application process will assist OCSE in complying with this requirement and will reflect a greater emphasis on program efficiency, coordination of services, and increased attention to family safety.

This new, modified application reflects a greater emphasis on program efficiency, coordination of services, and increased attention to family safety. This application will cover three fiscal years. The applications will include information on how grantees plan to: Spend grant funds, monitor service delivery, and implement safety protocols to ensure client and staff safety. OCSE will review the applications to ensure compliance with federal regulation and provide enhanced targeted technical assistance. The application will also assist states in strategic planning of services and knowledge sharing.

OCSE will review the applications to ensure that planned services meet the requirements laid out in section 469B(e)(3) of the Social Security Act (Pub. L. 104–193). This review will include monitoring of program compliance and the safe delivery of services. In addition to monitoring, the report will also assist in OCSE's ability to provide technical assistance to states that would like assistance.

Respondents

Recipients of the Access & Visitation Grant (54 States andTerritories)

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Fillable word document	54	1	10	540

Estimated Total Annual Burden Hours: 540.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW., Washington, DC 20201. Attention Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2016–05446 Filed 3–10–16; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–0715]

Acrylamide in Foods; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of a guidance for industry entitled ''Acrylamide in Foods.'' The guidance finalizes the ''Draft Guidance for Industry on Acrylamide in Foods,'' modified where appropriate in response to comments we received on the draft guidance dated November 2013. This guidance is intended to provide information that may help growers, manufacturers, and food service operators reduce acrylamide levels in certain foods, which may mitigate potential human health risks from exposure to acrylamide.

DATES: Submit either electronic or written comments on FDA guidances at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. [FDA–2013–D–0715] for the guidance document. 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.

Submit written requests for single copies of the guidance to The Division of Plant Products and Beverages, Office of Food Safety, Center for Food Safety and Applied Nutrition, HFS–317, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Eileen Abt, Center for Food Safety and Applied Nutrition (HFS–317), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1529.

SUPPLEMENTARY INFORMATION:

I. Background

We are announcing the availability of a guidance for industry entitled ''Guidance for Industry: Acrylamide in Foods.'' We are issuing this guidance consistent with our good guidance practices regulation (21 CFR 10.115). The guidance represents our current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

In the **Federal Register** of November 15, 2013, (78 FR 68852), we made available a draft guidance for Industry entitled ''Draft Guidance for Industry on Acrylamide in Foods'' and provided an opportunity for comment prior to our work on the final version of the guidance. The final guidance has been modified in response to comments. The guidance announced in this notice finalizes the draft guidance dated November 2013.

This guidance is intended to provide information that may help growers, manufacturers, and food service operators reduce acrylamide levels in certain foods. Acrylamide is a chemical that can form in some foods during certain types of high-temperature cooking. Acrylamide is a concern because it can cause cancer in laboratory animals at high doses, and is reasonably anticipated to be a human carcinogen. Reducing acrylamide levels in foods may mitigate potential human health risks from exposure to

acrylamide. The guidance is intended to suggest a range of possible approaches to reducing acrylamide levels and not to identify specific recommended approaches.

II. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/FoodGuidances* or *http://www.regulations.gov.* Use the FDA Web site listed in the previous sentence to find the most current version of the guidance.

Dated: March 1, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–05490 Filed 3–10–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–D–0268]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry on Individual Patient Expanded Access Applications: Form FDA 3926

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by April 11, 2016.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–New and title ''Individual Patient Expanded Access Applications: Form FDA 3926.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Industry on Individual Patient Expanded Access Applications: Form FDA 3926—OMB Control Number 0910—NEW

I. Background

In the **Federal Register** of February 10, 2015 (80 FR 7318), FDA announced the availability of a draft guidance for industry entitled ''Individual Patient Expanded Access Applications: Form FDA 3926.'' In the draft guidance, FDA provided draft Form FDA 3926 (Individual Patient Expanded Access—Investigational New Drug Application (IND)) at Appendix 1 and described this draft form, which FDA stated it intended to make available for licensed physicians to use for expanded access requests for individual patient INDs as an alternative to Form FDA 1571 (Investigational New Drug Application (IND)).

As described in the final guidance, Form FDA 3926 provides a streamlined means to request expanded access to an investigational drug outside of a clinical investigation, or to an approved drug where availability is limited by a risk evaluation and mitigation strategy (REMS), for an individual patient who has a serious or immediately life-threatening disease or condition and there is no comparable or satisfactory alternative therapy to diagnose, monitor, or treat the disease or condition. Form FDA 3926 may also be used for certain followup submissions to an individual patient expanded access IND.

FDA may permit expanded access to an investigational new drug outside of a clinical investigation, or to an approved drug where availability is limited by a REMS, for an individual patient when the applicable criteria in § 312.305(a) (21 CFR 312.305(a)) (which apply to all types of expanded access) and the criteria in § 312.310(a) (21 CFR 312.310(a)) (which apply specifically to individual patient expanded access, including for emergency use) are met. The physician may satisfy some of the submission requirements by referring to information in an existing IND, ordinarily the one held by the investigational drug's manufacturer, if the physician obtains permission from that IND holder. If permission is obtained, the physician should then provide to FDA a letter of authorization (LOA) from the existing IND holder that permits FDA to reference that IND.

Section 312.305(b) sets forth the submission requirements for all types of expanded access requests. One of the requirements under § 312.305(b)(2) is that a ''cover sheet'' must be included ''meeting the requirements of § 312.23(a).'' This provision applies to several types of submissions under 21 CFR part 312, ranging from commercial INDs under § 312.23 that involve large groups of patients enrolled in clinical trials to requests from physicians to use an investigational drug for an individual patient. Form FDA 1571 is currently used by sponsors for all types of IND submissions to meet the requirements in § 312.23(a). FDA intends to accept submission of a completed Form FDA 3926 to comply with the IND submission requirements in §§ 312.23, 312.305(b), and 312.310(b). FDA intends to consider a completed Form FDA 3926 with the box in Field 10 checked and the form signed by the physician to be a request in accordance with § 312.10 for a waiver of any additional requirements in part 312 for an IND submission, including additional information currently provided in Form FDA 1571 and Form FDA 1572 (Statement of Investigator, which provides the identity and qualifications of the investigator conducting the clinical investigation).

Under § 312.310(d), in an emergency situation that requires the patient to be treated before a written submission can be made, the request to use the investigational drug for individual patient expanded access may be made by telephone (or other rapid means of communication) to the appropriate FDA review division. Authorization of the emergency use may be given by an FDA official over the telephone, provided the physician explains how the expanded access use will meet the requirements of §§ 312.305 and 312.310 and agrees to submit an expanded access application within 15 working days of FDA's initial authorization of the expanded access use (§ 312.310(d)). The physician may choose to use Form FDA 3926 for the expanded access application.

As explained in the instructions for Form FDA 3926, the following information would be submitted to FDA by those using Form FDA 3926:

- Initials for the patient and date of submission.
- Type of submission (initial or followup submission).
- Clinical information, including indication, brief clinical history of the patient (age, gender, weight, allergies, diagnosis, prior therapy, response to prior therapy), and the reason for

requesting the proposed treatment, including an explanation of why the patient lacks other therapeutic options.

- Treatment information, including the investigational drug's name and the name of the entity supplying the drug (generally the manufacturer), the applicable FDA review division (if known), and the treatment plan. This should include the planned dose, route and schedule of administration, planned duration of treatment, monitoring procedures, and planned modifications to the treatment plan in the event of toxicity.
- LOA, generally obtained from the entity that is the sponsor of the IND (*e.g.,* commercial sponsor/drug manufacturer) being referenced, if applicable.
- Physician's qualification statement. An appropriate statement includes medical school attended, year of graduation, medical specialty, state medical license number, current employment, and job title. Alternatively, the relevant portion of the physician's curriculum vitae may be attached.
- Physician's contact information, including name, physical address, email address, telephone number, facsimile number, and physician's IND number, if previously issued by FDA.
- Contents of submission (for followup/additional submissions), including the type of submission being made. FDA intends to accept Form FDA 3926 for certain followup/additional submissions, which include the following: Initial Written IND Safety Report (§ 312.32(c)); Follow-up to a Written IND Safety Report (§ 312.32(d)); Annual Report (§ 312.33); Summary of Expanded Access Use (treatment completed) (§ 312.310(c)(2)); Change in Treatment Plan (§ 312.30); General Correspondence or Response to FDA Request for Information (§ 312.41); and Response to Clinical Hold (§ 312.42(e)).
- Request for authorization to use Form FDA 3926 for individual patient expanded access application.
- Signature of the physician certifying that treatment will not begin until 30 days after FDA receives the completed application and all required material unless the submitting physician receives earlier notification from FDA that the treatment may proceed. The physician agrees not to begin or continue clinical investigations covered by the IND if those studies are placed on clinical hold. The physician also certifies that informed consent will be obtained in compliance with Federal requirements (including FDA's regulations in 21 CFR part 50) and that an institutional review board (IRB) that complies with all Federal requirements (including FDA's regulations in 21 CFR part 56) will be responsible for initial and continuing review and approval of the expanded access use. The physician also acknowledges that in the case of an emergency request, treatment may begin without prior IRB approval, provided the IRB is notified of the emergency treatment within 5 working days of treatment. The physician agrees to conduct the investigation in accordance with all other applicable regulatory requirements.

In the **Federal Register** of February 10, 2015 (80 FR 7318), FDA published a 60-day notice requesting public comment on the proposed collection of information. Twelve comments were received. However, FDA received no comments concerning the accuracy of FDA's estimate of the burden of the proposed collection of information. FDA received several comments on ways to enhance the quality, utility, and clarity of FDA Form 3926 through, for example, the addition of instructions for completing the form and use of the form for certain followup submissions.

(Comment 1) Five comments requested instructions, clarification, or directions concerning the use and submission of Form FDA 3926.

(Response) FDA updated instructions based on information originally included in the draft guidance that will be provided in conjunction with final Form FDA 3926. Clarifying language on form fields has been added to the instructions and the guidance.

(Comment 2) One comment asked for clarification regarding Field 1 of Form FDA 3926 to indicate that the requesting physician should provide this information (not the patient).

(Response) Clarification on Field 1 has been added to the form instructions to state that the patient need not initial the form. This is to indicate that the requesting physician should enter the patient's initials.

(Comment 3) One comment stated that the information requested in Field 3 of draft Form FDA 3926 could become lengthy to complete and asked if a PDF could be attached to the form to provide this information.

(Response) This information is now requested in Field 5. Field 5 has been enlarged to accommodate more handwritten information. The space also has been updated to allow expansion when information is entered electronically in the fillable PDF. Clarifying language has been added to the form and instructions.

(Comment 4) Three comments requested electronic submission capability to expedite applications.

(Response) FDA is determining whether electronic submissions are feasible. FDA intends to provide additional information via its Web site should this become an option.

(Comment 5) Several comments concerned the use of FDA Form 3926 for followup submissions. One comment suggested that FDA develop a new form for followup submissions (rather than requiring the use of Form FDA 1571). Three comments asked that instructions be developed for ongoing patient reporting (*i.e.,* followup submissions).

(Response) FDA has revised the guidance, instructions, and Form FDA 3926 so that the form may be used instead of Form FDA 1571 for certain followup submissions to an existing single patient expanded access IND. Form FDA 3926, the instructions, and the guidance identify the types of followup submissions that qualify and provide additional information on how to use Form FDA 3926 for such submissions.

II. Burden Estimate

As discussed previously in this document, Form FDA 3926 will be available for licensed physicians to use as a streamlined means to request expanded access to an investigational drug outside of a clinical investigation, or to an approved drug where availability is limited by a REMS, for an individual patient who has a serious or immediately life-threatening disease or condition and there is no comparable or satisfactory alternative therapy to diagnose, monitor, or treat the disease or condition, and to submit certain followup reports. One of the requirements under § 312.305(b)(2) is that a ''cover sheet'' must be included ''meeting the requirements of § 312.23(a).'' This provision applies to several types of submissions under part 312, ranging from commercial INDs under § 312.23 that involve large groups of patients enrolled in clinical trials to requests from physicians to use an investigational drug for an individual patient. Form FDA 1571 is currently used by sponsors for all types of IND submissions. However, FDA is concerned that physicians requesting expanded access for an individual patient may have encountered difficulty in completing Form FDA 1571 and the associated documents because the form is not tailored to requests for individual patient expanded access.

The submission requirements for all types of expanded access requests for investigational drugs are provided under § 312.305(b) of FDA's expanded access regulations. Additional submission requirements for individual

patient expanded access requests are provided under § 312.310(b), and the requirements for requesting individual patient expanded access for emergency use are provided under § 312.310(d). FDA currently has OMB approval under control number 0910–0014 for individual patient expanded access information collection under §§ 312.305(b), 312.310(b), and 312.310(d). The submission requirements concerning the use of Form FDA 3926 for certain followup reports are provided under §§ 312.32(c), 312.32(d), 312.33, 312.310(c)(2), 312.30, 312.41, and 312.42(e).

The estimates for ''number of respondents,'' ''number of responses per respondent,'' and ''total annual responses'' were obtained from the Center for Drug Evaluation and Research (CDER) reports and data management systems and from other sources familiar with the number of submissions received for individual patient expanded access use under part 312. The estimates for ''average burden per response'' were based on information provided by CDER and other Department of Health and Human Services personnel who are familiar with preparing and reviewing expanded access submissions by practicing physicians.

Based on data for the number of submissions to FDA during 2011, 2012, and 2013, we originally estimated that approximately 790 licensed physicians would use Form 3926 to submit 1.46 requests per physician (respondent) for individual patient expanded access, for a total of 1,153 responses annually. In response to comments received, FDA clarifies in the final guidance and in the form instructions that licensed physicians may also use Form FDA 3926 for certain followup submissions. Based on data for the number of followup submissions during 2011, 2012, and 2013, FDA estimates that about 790 physicians will each use Form FDA 3926 to submit 1.57 followup submissions per physician, for approximately 1,241 followup responses annually. Based on these estimates, FDA calculates the total annual responses to be 2,394 (1,153 requests for individual patient expanded access and 1,241 followup submissions) by 790 physicians for an average of 3.03 responses per respondent. FDA estimates the average burden per response to be 45 minutes (0.75 hour). Based on this estimate, FDA calculates the total burden to be 1,795 hours. Under OMB control number 0910–0014, FDA currently has OMB approval of 17,592 hours for these submissions. The use of FDA Form 3926 will reduce the current burden by 15,797 hours.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Guidance on individual patient expanded access applications: Form FDA 3926	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Expanded access submission for treatment of an individual patient, including submission of Form FDA 3926.	790	3.03	2,394	0.75 (45 minutes).	1,795

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: March 8, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–05491 Filed 3–10–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0221]

Agency Information Collection Activities; Proposed Collection; Comment Request; Food Labeling; Notification Procedures for Statements on Dietary Supplements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice invites comments on the information collection provisions of the regulation requiring the manufacturer, packer, or distributor of a dietary supplement to notify us that it is marketing a dietary supplement product that bears on its label or in its labeling a statement provided for in the Federal Food, Drug, and Cosmetic Act (the FD&C Act). The notice also invites comment on a new electronic form that allows manufacturers, packers, and distributors of dietary supplements to notify us via FDA's Unified Registration and Listing System (FURLS).

DATES: Submit either electronic or written comments on the collection of information by May 10, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

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

• For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2009–N–0221 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Food Labeling; Notification Procedures for Statements on Dietary Supplements.'' 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.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, we are publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, we invite comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Food Labeling; Notification Procedures for Statements on Dietary Supplements—21 CFR 101.93

OMB Control Number 0910–0331—Extension

Section 403(r)(6) of the FD&C Act (21 U.S.C. 343(r)(6)) and its implementing regulation, 21 CFR 101.93, require that we be notified by the manufacturer, packer, or distributor of a dietary supplement that it is marketing a dietary supplement product that bears on its label or in its labeling a statement provided for in section 403(r)(6) of the FD&C Act. These provisions require that we be notified, with a submission about such statements, no later than 30 days after the first marketing of the dietary supplement. Information that is required in the submission includes: (1) The name and address of the manufacturer, packer, or distributor of the dietary supplement product; (2) the text of the statement that is being made; (3) the name of the dietary ingredient or supplement that is the subject of the statement; (4) the name of the dietary supplement (including the brand name); and (5) the signature of a responsible individual or the person who can certify the accuracy of the information presented, and who must certify that the information contained in the notice is complete and accurate, and that the notifying firm has substantiation that the statement is truthful and not misleading.

We have developed an electronic form (Form FDA 3955) that interested persons will be able to use to electronically submit their notifications to FDA via FURLS. Firms that prefer to submit a paper notification in a format of their own choosing will still have the option to do so, however. Form FDA 3955 prompts a respondent to include certain elements in their structure/function claim notification (SFCN) described in § 101.93 in a standard format electronically and helps the respondent organize their SFCN to include only the information needed for our review of the claim. Note that the SFCN, whether electronic or paper, is used for all claims made pursuant to section 403(r)(6) of the FD&C Act, including nutrient deficiency claims and general well-being claims in addition to structure/function claims. The electronic form, and any optional elements that would be prepared as attachments to the form (*e.g.,* label), can be submitted in electronic format via FURLS. Submissions of SFCNs will continue to be allowed in paper format. We use this information to evaluate whether statements made for dietary ingredients or dietary supplements are permissible under section 403(r)(6) of the FD&C Act. Draft screenshots of Form FDA 3955 and instructions are available for comment at *http://www.fda.gov/Food/DietarySupplements/IndustryInfo/ucm485532.htm.*

Description of Respondents: Respondents to this collection of information include manufacturers, packers, or distributors of dietary supplements that bear section 403(r)(6) of the FD&C Act statements on their labels or labeling.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
101.93	2,200	1	2,200	0.75 (45 minutes)	1,650

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

We believe that there will be minimal burden on the industry to generate information to meet the notification requirements of section 403(r)(6) of the FD&C Act by submitting information regarding section 403(r)(6) of the FD&C Act statements on labels or in labeling of dietary supplements. We also believe that submission via FURLS will not affect the burden estimates. We are requesting only information that is immediately available to the manufacturer, packer, or distributor of the dietary supplement that bears such a statement on its label or in its labeling. We estimate that, each year, approximately 2,200 firms will submit the information required by section 403(r)(6) of the FD&C Act. This estimate is based on the average number of notification submissions received by us in the preceding 3 years. We estimate that a firm will require 0.75 hours to gather the information needed and prepare a communication to us, for a total of 1,650 hours (2,200 × 0.75).

Dated: March 7, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–05478 Filed 3–10–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Division of Intramural Research Board of Scientific Counselors, NIAID.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL INSTITUTE OF ALLERGY AND INFECTIOUS DISEASES, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Division of Intramural Research Board of Scientific Counselors, NIAID.

Date: June 6–7, 2016.

Time: 7:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 50, Rooms 1227 and 1223, 50 Center Drive, Rockville, MD 20852.

Contact Person: Hugh J. Auchincloss, MD, Deputy Director, NIAID Deputy Director, National Inst. of Allergy and Infectious Diseases, National Institutes of Health, Building 31, Room 7A03, MSC 2520, Bethesda, MD 20892–2520, 301–496–9677, *auchinclossh@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 7, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–05429 Filed 3–10–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; Study To Estimate Radiation Doses and Cancer Risks From Radioactive Fallout From the Trinity Nuclear Test—National Cancer Institute (NCI)

Summary: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function 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, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

To Submit Comments and For Further Information: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Steve Simon, Dosimetry Unit Head and Staff Scientist, Radiation Epidemiology Branch, Division of Cancer Epidemiology & Genetics, National Cancer Institute, NIH, 9609 Medical Center Drive, MSC9778, Bethesda, MD 20892–9778 or call non-toll-free number (240)-276–7371 or Email your request, including your address to: *ssimon@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Proposed Collection: Study to Estimate Radiation Doses and Cancer Risks from Radioactive Fallout from the Trinity Nuclear Test, 0925–NEW, New Submission, National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: This research plan is for a radiation-related cancer risk projection study for the residents of the state of New Mexico (NM) potentially exposed to radioactive fallout from the Trinity nuclear test conducted in 1945. Data will be collected on diet and lifestyle from three groups in NM (non-Hispanic white, Hispanic, and Native American)

alive in the 1940s via focus groups and key informant interviews and will be used to derive means and ranges of exposure-related parameters, such as consumption of contaminated foodstuffs, collection and use of water, time spend outdoors, and building materials. These parameter values will be used with historical fallout deposition data in fallout dose assessment models to estimate external and internal radiation doses to typical persons in all counties in New Mexico by ethnicity and age. The estimated doses will be used with literature-derived risk and parameter values on risk/unit dose to project the excess cancers expected (per 1,000 persons within each stratum) including uncertainty on each estimate. Endpoints are leukemia, thyroid cancer, stomach cancer, colon cancer, and all solid cancers combined.

This data collection is needed to accomplish the overall Trinity Study goals, which are to: (1) Estimate external and internal radiation dose to the four primary organs/tissues of interest (thyroid, stomach, colon, and red bone marrow) from primary radionuclides in nuclear testing fallout in each county of New Mexico as a result of the Trinity test, stratified by age, gender, ethnicity, and conditions of exposure (low, medium, high); (2) in each county, estimate the number of excess cancer cases to organs of interest per 1,000 (hypothetical) persons stratified by age, gender, ethnicity, and conditions of exposure (low, medium, high).

The study data will be collected via focus group and individual interview. Between 10 and 15 focus groups with up to 8 participants are planned. These participants will be 70 years old and older, living in New Mexico, who were alive at the time of the Trinity nuclear test and living in any of 19 Native American pueblos/tribes or Hispanic/Latino and non-Hispanic white communities in or near the fallout region in New Mexico. Additionally, up to 30 individual interviews are planned with key informants chosen to represent a variety of experiences and expertise. Individuals who prefer not to take part in a focus group will be interviewed individually as key informants. The investigators will collaborate with community representatives who will recommend potential participants for either the focus groups or interviews.

The objective of the focus groups and interviews is to collect information directly from community members who were alive at the time of the Trinity test, or with direct knowledge of specific life circumstances, cultural patterns, and dietary practices of Native Americans, Hispanics/Latinos, or non-Hispanic whites living in New Mexico at this time. In this study, two interviewers, including one with extensive experience working with tribal communities, will moderate the focus groups and conduct in-depth interviews. Translators and interpreters with experience in the study populations will be presented when needed. Each focus group and interview will be scheduled for no more than two hours and will take place in office settings, community facilities, or municipal facilities.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 395.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Instrument	Number of respondents	Frequency of response	Average time per response (in hours)	Annual burden hours
Individuals	Screener	300	1	10/60	50
	Consent Form	150	1	10/60	25
	Focus Groups	120	1	120/60	240
	Pre-Focus Group Guide	120	1	10/60	20
	Key Informants and Academics Interview	30	1	120/60	60
Totals		300	720		395

Dated: March 1, 2016.

Karla Bailey,

Project Clearance Liaison, National Cancer Institute, NIH.

[FR Doc. 2016–05426 Filed 3–10–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 60-Day Comment Request; Population Assessment of Tobacco and Health (PATH) Study

Summary: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute on Drug Abuse (NIDA), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function 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, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

To Submit Comments and For Further Information: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Dr. Kevin P. Conway, Deputy Director, Division of Epidemiology, Services, and Prevention Research, National Institute on Drug Abuse, NIH, 6001 Executive Boulevard, Room 5185, Rockville, MD 20852; or call non-toll-free number (301) 443–8755 or Email your request, including your address, to: *PATHprojectofficer@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if

received within 60 days of the date of this publication.

Proposed Collection: Methodological Studies for the Population Assessment of Tobacco and Health (PATH) Study (NIDA), 0925–0675, expiration date 5/31/2016—EXTENSION—NIDA, NIH, in partnership with the Food and Drug Administration (FDA).

Need and Use of Information Collection: This is a request to continue the Population Assessment of Tobacco and Health (PATH) Study's conduct of methodological studies in support of improvements in the Study's approaches for data and biospecimen collection. The PATH Study is a national longitudinal cohort study of tobacco use behavior and health among the U.S. household population of adults age 18 and older and youth ages 12 to 17; the Study conducts annual or biannual interviews and collects biospecimens from adults and youth to inform FDA's regulatory actions under the Family Smoking Prevention and Control Act. The methodological studies under this extension will continue to enhance the approaches used by the PATH Study for data and biospecimen collections to obtain high quality and useful data; minimize respondent burden; and achieve and maintain high response, retention, and follow-up rates.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total annualized burden hours are 29,750.

ESTIMATED ANNUALIZED BURDEN HOURS

Data collection activity	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
In-person surveys	Adults	5,000	1	90/60	7,500
	Youth	3,500	1	90/60	5,250
Web surveys	Adults	5,000	1	90/60	7,500
	Youth	3,500	1	90/60	5,250
Focus groups and individual in-depth qualitative interviews.	Adults	1,000	1	2	2,000
	Youth	1,000	1	2	2,000
Biospecimen collection	Adults	1,000	1	15/60	250
Total		20,000	20,000		29,750

Dated: March 7, 2016.

Genevieve deAlmeida-Morris,

Project Clearance Liaison. NIDA, NIH.

[FR Doc. 2016–05431 Filed 3–10–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; The Clinical Trials Reporting Program (CTRP) Database (NCI)

Summary: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function 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, including the validity of the methodology and assumptions used; (3) The quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

To Submit Comments and For Further Information: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Jose Galvez, MD, Office of the Director, National Cancer Institute, 9609 Medical Center Drive, 1W468, Rockville, MD 20852 or call non-toll-free number 240–276–5206 or Email your request, including your address to: *jose.galvez@nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Proposed Collection: The Clinical Trials Reporting Program (CTRP) Database, 0925–0600, Expiration Date 05/31/2016—EXTENSION, National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: The Clinical Trials Reporting Program (CTRP) Database is an electronic resource that serves as a single, definitive source of information about all NCI-supported clinical research. This resource allows the NCI to consolidate reporting, aggregate information and reduce redundant submissions. Information is submitted by clinical research administrators as designees of clinical investigators who conduct NCI-supported clinical research. The designees can electronically access the CTRP Web site to complete the initial trial registration. Subsequent to registration, four amendments and four study subject accrual updates occur per trial annually.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The estimated annualized burden hours are 18,000.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Forms	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hours
Clinical Research Administrators	Initial Registration	3,000	1	1	3,000
	Amendment	3,000	4	1	12,000
	Accrual Updates	3,000	4	15/60	3,000
Totals		9,000	27,000		18,000

Dated: March 2, 2016.

Karla Bailey,

Project Clearance Liaison, National Cancer Institute, NIH.

[FR Doc. 2016–05425 Filed 3–10–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Nonhuman Primate Reagent Resource (U24).

Date: April 8, 2016.

Time: 10:30 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Nancy Vazquez-Maldonado, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room 3F52B, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9834, Bethesda, MD 20892–9834, (240) 669–5044, *nvazquez@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 4, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–05430 Filed 3–10–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

NIH Pathways to Prevention Workshop: Advancing Research To Prevent Youth Suicide

SUMMARY: The National Institutes of Health (NIH) will host a workshop on Advancing Research To Prevent Youth Suicide on March 29–30, 2016. The workshop is free and open to the public.

DATES: March 29, 2016, from 8:30 a.m.–4:50 p.m. and March 30, 2016, from 8:30 a.m.–1:00 p.m.

ADDRESSES: The workshop will be held at the NIH, Masur Auditorium, Building 10 (Clinical Center), 9000 Rockville Pike, Bethesda, Maryland 20892. Registration and workshop information are available on the NIH Office of Disease Prevention (ODP) Web site at *<https://prevention.nih.gov/p2psp>*.

FOR FURTHER INFORMATION CONTACT: For further information concerning this workshop, contact the ODP at *<NIHP2P@mail.nih.gov>*, 6100 Executive Blvd., Room 2B03, MSC 7523, Bethesda, MD 20892–7523; Telephone: 301–496–1508; FAX: 301–480–7660.

SUPPLEMENTARY INFORMATION: Suicide was the second leading cause of death for youth (10- to 24-year-olds) in 2014, resulting in 5,504 deaths in the United States. This mortality has not decreased compared to other external causes of death, and youth suicide attempts have remained at consistent rates for decades. According to the 2011 Youth Risk Behavior Surveillance System, 2.4% of high school students received medical treatment for attempted suicide, and 7.8% attempted suicide one or more times within the year. Some groups (*e.g.,* American Indian youth; young adults with substance use problems; children of depressed parents; youth and young adults who identify as a sexual and gender minority) are at increased risk for suicidal behaviors.

One of the challenges in suicide prevention research is that the primary outcome of interest is multidetermined and, depending on the target population, suicide can be a low base rate occurrence. Many studies examining risk in important subgroups (*e.g.,* racial, ethnic, sexual and gender minorities) often lack sufficient power to accurately determine the effectiveness of the intervention. Because suicidal behavior is often multidetermined, it may be that interventions addressing suicide risk factors have benefits for suicide reduction, but these benefits are not obvious in research findings, nor can the larger community know of these benefits. Pooling studies and being able to link data from individual studies to multiple data surveillance systems would be important to better understand the effectiveness of prevention strategies on outcomes such as suicide, suicide attempts, and suicide ideation. Preventing attempts and self-harm ideation would likely result in a reduction in deaths, as well as reductions in health care and social burden associated with suicidal behavior.

Closing the research gaps related to youth suicide could lead to improved prevention strategies. The NIH is engaging in a rigorous assessment of the available scientific evidence to better understand the importance of identifying efforts that could be effective in preventing suicidal thoughts and behaviors as early as possible. The National Institute of Mental Health, the National Institute on Drug Abuse, the National Center for Complementary and Integrative Health, and the NIH Office of Disease Prevention (ODP) are sponsoring the Pathways to Prevention Workshop: Advancing Research To Prevent Youth Suicide on March 29–30, 2016, in Bethesda, Maryland. The workshop will evaluate the current state of knowledge on youth suicide and identify opportunities for future

research. Specifically, the workshop will seek to clarify the following questions:

- Key Question 1: How can national, state, and community data systems be linked to existing data from suicide prevention efforts in order to add possible value for stakeholders? What methods are available to link the data systems?
- Key Question 2: Which statistical methods are reliable and valid for understanding possible mediators and moderators in suicide prevention programs to improve targeting interventions to populations?
- Key Question 3: Which statistical methods are reliable and valid for analyzing linked national, state, and community data systems and suicide prevention data to avoid misleading conclusions?
- Key Question 4: Given the current state of research, what types of methodological/analytic advances would promote further evaluation of youth suicide prevention efforts (*e.g.,* new approaches to data linkage; increased use of common data elements; approaches to intervention harmonization) and facilitate intervention selection and implementation decisions by local community and state-level policymakers?
- Key Question 5: What is the way forward that will help the suicide prevention research community realize the potential benefits of early prevention? What are the immediate and longer-term research investments needed to accomplish this?

Initial planning for each Pathways to Prevention workshop, regardless of the topic, is coordinated by a Content-Area Expert Group that nominates panelists and speakers and develops and finalizes questions that frame the workshop. After the questions are finalized, an evidence report is prepared by an Evidence-based Practice Center, through a contract with the Agency for Healthcare Research and Quality. During the 1½-day workshop, invited experts discuss the body of evidence, and attendees provide comments during open discussion periods. After weighing evidence from the evidence report, expert presentations, and public comments, an unbiased, independent panel prepares a draft report that identifies research gaps and future research priorities. The draft report is posted on the ODP Web site for public comment. After reviewing the public comments, the panel prepares a final report, which is also posted on the ODP Web site. The ODP then convenes a Federal Partners Meeting to review the panel report and identify possible opportunities for collaboration.

Please Note: As part of measures to ensure the safety of NIH employees and property, all visitors must be prepared to show a photo ID upon request. Visitors may be required to pass through a metal detector and have bags, backpacks, or purses inspected or x-rayed as they enter the NIH campus. For more information about the security measures at the NIH, please visit <*http://www.nih.gov/about/visitorsecurity.htm*>.

Dated: March 7, 2016.

Lawrence A. Tabak,

Deputy Director, National Institutes of Health.

[FR Doc. 2016–05564 Filed 3–10–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye 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 Eye Institute Special Emphasis Panel; NEI RFA–EY–15–002 Factors Influencing Neural Regeneration in the Visual System.

Date: April 7, 2016.

Time: 8:00 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Brian Hoshaw, Ph.D., Scientific Review Officer, National Eye Institute, National Institutes of Health, Division of Extramural Research, 5635 Fishers Lane, Suite 1300, Rockville, MD 20892, 301–451–2020, *hoshawb@mail.nih.gov.*

Name of Committee: National Eye Institute Special Emphasis Panel; NEI Loan Repayment Program Applications.

Date: April 7–8, 2016.

Time: 9:00 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, 5635 Fishers Lane, Bethesda, MD 20814 (Virtual Meeting).

Contact Person: Anna E Mazzucco, Ph.D., Scientific Review Officer, National Eye Institute, National Institutes of Health, Division of Extramural Research, 5635 Fishers Lane, Suite 1300, Bethesda, MD 20852, 301–594–6074, *anna.mazzucco@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: March 7, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–05428 Filed 3–10–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye 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 Eye Institute Special Emphasis Panel; NEI Pathways to Independence Grant Applications (K99).

Date: April 4–6, 2016.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Anne E. Schaffner, Ph.D., Chief, Scientific Review Branch Division of Extramural Research, National Eye Institute, 5635 Fishers Lane, Suite 1300, MSC 9300, Bethesda, MD 20892–9300, (301) 451–2020, *aes@nei.nih.gov.*

Name of Committee: National Eye Institute Special Emphasis Panel; NEI Cooperative Agreement and Clinically-Oriented Applications.

Date: April 18, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Anne E. Schaffner, Ph.D., Chief, Scientific Review Branch Division of Extramural Research, National Eye Institute, 5635 Fishers Lane, Suite 1300, MSC 9300, Bethesda, MD 20892–9300, (301) 451–2020, *aes@nei.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: March 4, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–05427 Filed 3–10–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Primary and Behavioral Health Care Integration Evaluation—NEW

The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Behavioral Health Statistics and Quality (CBHSQ) is requesting approval from the Office of Management and Budget (OMB) for new data collection activities associated with their Primary and Behavioral Health Care Integration (PBHCI) program.

This information collection is needed to provide SAMHSA with objective information to document the reach and impact of the PBHCI program. The information will be used to monitor quality assurance and quality performance outcomes for organizations funded by this grant program. The information will also be used to assess the impact of services on behavioral health and physical health services for individuals served by this program.

Collection of the information included in this request is authorized by Section 505 of the Public Health Service Act (42 U.S.C. 290aa–4)—Data Collection.

SAMHSA launched the PBHCI program in FY 2009 with the understanding that adults with serious mental illness (SMI) experience heightened rates of morbidity and mortality, in large part due to elevated incidence and prevalence of risk factors such as obesity, diabetes, hypertension, and dyslipidemia. These risk factors are influenced by a variety of factors, including inadequate physical activity and poor nutrition; smoking; side effects from atypical antipsychotic medications; and lack of access to health care services. Many of these health conditions are preventable through routine health promotion activities, primary care screening, monitoring, treatment and care management/coordination strategies and/or other outreach programs.

The purpose of the PBHCI grant program is to establish projects for the provision of coordinated and integrated services through the co-location of primary and specialty care medical services in community-based behavioral health settings. The program's goal is to improve the physical health status of adults with serious mental illnesses (and those with co-occurring substance use disorders) who have or are at risk for co-occurring primary care conditions and chronic diseases.

As the largest federal effort to implement integrated behavioral and physical health care in community behavioral health settings, SAMHSA's PBHCI program offers an unprecedented opportunity to identify which approaches to integration improve outcomes, how outcomes are shaped by the characteristics of the treatment setting and community, and which models have the greatest potential for sustainability and replication. SAMHSA awarded the first cohort of 13 PBHCI grants in fiscal year (FY) 2009, and between FY 2009 and FY 2014, SAMHSA funded a total of seven cohorts comprising 127 grants. An eighth cohort, funded in fall 2015, included 60 new grants.

The data collection described in this request will build upon the first PBHCI evaluation and provide essential data on the implementation of integrated primary and behavioral health care, along with rigorous estimates of its effects on health.

The Center for Behavioral Health Statistics and Quality is requesting clearance for ten data collection instruments and forms related to the implementation and impact studies to be conducted as part of the evaluation:

1. PBHCI grantee director survey
2. PBHCI frontline staff survey
3. Telephone interview protocol
4. On-site staff interview protocol
5. Client focus group guide
6. Data extraction tool for grantee registry/electronic health records (EHRs)
7. Initial client letter for physical exam and health assessment
8. Consent form for client physical exam and health assessment
9. Consent form for client focus group
10. Client physical exam and health assessment questionnaire

The table below reflects the annualized hourly burden.

Respondents/activity	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden
Web surveys:					
Grantee director	78	2	[b] 149	0.5	[b] 75
Grantee frontline staff survey	782	2	[c] 1,494	0.5	[c] 747
Phone interviews:					
Grantee director	60	1	60	1.0	60
Grantee director—site interview	10	2	20	2.0	40
Grantee mental health providers—site interview	40	2	80	1.0	80
Grantee primary care providers—site interview	40	2	80	1.5	120
Grantee care coordinators—site interview	20	2	40	1.5	60

Respondents/activity	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden
Focus groups:					
Focus group participants	120	2	240	1.0	240
Extraction of grantee registry/EHR data	92	11	1,012	8.0	8,096
SMI clients—baseline physical exam and health assessment	2,500	1	2,500	1.0	2,500
SMI clients—follow-up physical exam and health assessment	1,750	1	1,750	1.0	1,750
Comparison group clinic director—coordination [d]	10	1	10	8.0	80
Total	[e] 3,752		7,435		13,848

[a] Hourly wage estimates are based on salary information provided in 10 PBHCI grant proposals representing mostly urban locations across the country and represent an average across responders of each type.
[b] Cohort VI funding ends before the administration of the second survey. Total number of responses excludes the Cohort VI directors, who will not receive the second survey.
[c] Cohort VI funding ends before the administration of the second survey. Total number of responses excludes the Cohort VI frontline staff, who will not receive the second survey.
[d] Includes logistical coordination between the evaluation and site staff to conduct the physical exam and health assessment as well as oversight of client recruitment.
[e] Excludes physical exam and health assessment follow-up respondents.

Send comments to Summer King, SAMHSA Reports Clearance Officer, 5600 Fishers Lane, Room 15E57–B, Rockville, Maryland, 20857. *OR* email her a copy at *summer.king@samhsa.hhs.gov.* Written comments should be received by May 10, 2016.

Summer King,

Statistician.

[FR Doc. 2016–05474 Filed 3–10–16; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0054]

Agency Information Collection Activities: Exportation of Used Self-Propelled Vehicles

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Exportation of Used Self-Propelled Vehicles. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before April 11, 2016 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** (80 FR 79056) on December 18, 2015, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10. CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden, including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Exportation of Used-Propelled Vehicles.

OMB Number: 1651–0054.

Abstract: CBP regulations require an individual attempting to export a used self-propelled vehicle to furnish documentation to CBP, at the port of export, the vehicle and documentation describing the vehicle, which includes the Vehicle Identification Number (VIN) or, if the vehicle does not have a VIN, the product identification number. Exportation of a vehicle will be permitted only upon compliance with these requirements. This requirement does not apply to vehicles that were entered into the United States under an in-bond procedure, a carnet, or temporary importation bond. The required documentation includes, but is not limited to, a Certificate of Title or a Salvage Title, the VIN, a Manufacture's Statement of Origin, etc. CBP will accept originals or certified copies of Certificate of Title. The purpose of this information is to help ensure that stolen vehicles or vehicles associated with other criminal activity are not exported.

Collection of this information is authorized by 19 U.S.C. 1627a which

provides CBP with authority to impose export reporting requirements on all used self-propelled vehicles, and by title IV, section 401 of the Anti-Car Theft Act of 1992, 19 U.S.C. 1646(c), which requires all persons exporting a used self-propelled vehicle to provide to the CBP, at least 72 hours prior to export, the VIN and proof of ownership of each automobile. This information collection is provided for by 19 CFR part 192. Further guidance regarding these requirements is provided at: *http://www.cbp.gov/xp/cgov/trade/basic_trade/export_docs/motor_vehicle.xml*.

Action: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Individuals and Businesses.

Estimated Number of Respondents: 750,000.

Estimated Number of Total Annual Responses: 750,000.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 125,000.

Dated: March 7, 2016.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2016–05574 Filed 3–10–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5907–N–11]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, and suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to: Ms. Theresa M. Ritta, Chief Real Property Branch, the Department of Health and Human Services, Room 5B–17, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301)–443–2265 (This is not a toll-free number). HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: AGRICULTURE: Ms. Debra Kerr, Department of Agriculture, Reporters Building, 300 7th Street SW., Room 300, Washington, DC 20024, (202) 720–8873; ENERGY: Mr. David Steinau, Department of Energy, Office of Property Management, OECM MA–50, 4B122, 1000 Independence Ave. SW., Washington, DC 20585, (202) 287–1503; GSA: Mr. Flavio Peres, General Services Administration, Office of Real Property Utilization and Disposal, 1800 F Street NW., Room 7040 Washington, DC 20405, (202) 501–0084; INTERIOR: Mr. Michael Wright, Acquisition & Property Management, Department of the Interior, 3960 N. 56th Ave. #104, Hollywood, FL 33021, (443) 223–4639; NASA: Mr. Frank T. Bellinger, Facilities Engineering Division, National Aeronautics & Space Administration, Code JX, Washington, DC 20546, (202)–358–1124; NAVY: Mr. Steve Matteo, Department of the Navy, Asset Management Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave. SW., Suite 1000, Washington, DC 20374, (202) 685–9426; VA: Ms. Jessica L. Kaplan, Department of Veteran Affairs, 810 Vermont Ave. NW., (0031E), Washington, DC 20420, (202) 632–5831 (These are not toll-free numbers).

Dated: March 3, 2016.

Brian P. Fitzmaurice,

Director, Division of Community Assistance, Office of Special Needs Assistance Programs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 03/11/2016

Suitable/Available Properties

Building

California

Buck Hotshot Office RPUID: B113
24545 Highway 120
Groveland CA 95321
Landholding Agency: Agriculture
Property Number: 15201610018
Status: Excess
Directions: Site 5401, Building 2205, Groveland RS
Comments: off-site removal only; 33+ yrs. old; 2,000 sq. ft.; storage; beyond economical repair; contact Agriculture for more information.

Buck Meadow Bone Yard RPUID: B1
24545 Hwy 120
Groveland CA 95321
Landholding Agency: Agriculture
Property Number: 15201610021
Status: Excess
Directions: Site 5401, Building 2114, Groveland RS
Comments: off-site removal only; 83+ yrs. old; 2,400 sq. ft.; office/warehouse; beyond economical repair; contact Agriculture for more information.

Florida

Tract 104–113/M.R.D. Properties
98710 Overseas Highway
Key Largo FL 33037
Landholding Agency: Interior
Property Number: 61201610003
Status: Excess
Comments: off-site removal only; 90+ yrs. old; 1,439 sq. ft.; office; poor condition; contact Interior for more information.

Louisiana

3 Buildings & 12.9 Fee Acres
400 Edwards Ave./Harahan FSS Depot
Elmwood LA 70123
Landholding Agency: GSA
Property Number: 54201610009
Status: Surplus
GSA Number: 7–G–LA–0532–AA
Directions: Warehouse 201,964.79 sq ft.; office/garage 5,034.67 sq ft.; pump house 1,493.33 sq ft.
Comments: 47+ yrs. old; warehouse storage; roof leaks; walls deteriorated; contact GSA for more information.

New York

5 Buildings
Jamaica Bay Unit, Floyd Bennett Field
Brooklyn NY 11234
Landholding Agency: Interior
Property Number: 61201610004
Status: Excess
Directions: Building's 129, 130, 131, 132, 132A
Comments: off-site removal only; 50+ yrs. old; 45,463 sq. ft.; 20+ yrs. vacant; plant; residential; office; poor conditions; contact Interior for more information.

Compensated Work Therapy (CWT) Transitional Residences
113 Holland Avenue
Albany NY 12208
Landholding Agency: VA
Property Number: 97201610001
Status: Unutilized
Comments: 85+ yrs. old; 1,636 sq. ft.; residential; heating system inefficient; no future agency need; contact VA for more information.

Compensated Work Therapy Property (CWT) Transitional Residences
223 Delaware Ave.,
Delmar NY 12054
Landholding Agency: VA
Property Number: 97201610002
Status: Unutilized
Comments: 124+ yrs. old; 1,720 sq. ft.; residential; heating system inefficient; no future agency need; contact VA for more information.

Compensated Work Therapy Property (CWT) Transitional Residences
893 5th Avenue
Troy NY 12181
Landholding Agency: VA
Property Number: 97201610003
Status: Unutilized
Directions: Sits on 0.06 acres of land
Comments: 85+ yrs. old; 2,280 sq. ft.; residential; water damage to walls; no future agency need; contact VA for more information.

Virginia

BG John Cropper Memorial Center
R1 & R2 Kearsarge Circle
Wallops Island VA 23337
Landholding Agency: Navy
Property Number: 77201610026
Status: Unutilized
Directions: Sits on 5.3 Acres of land
Comments: 46+ yrs. old; 16,654 sq. ft.; vacant 1 mo.; storage; no future agency need; contact Navy for more information.

Washington

Norwood Garden Shed
5001 (274009010602)
17 Liscumm Road
Quinault WA 98575
Landholding Agency: Agriculture
Property Number: 15201610022
Status: Excess
Directions: 07665 00
Comments: off-site removal only; 36+ yrs. old; 358 sq. ft.; 4+ mos. vacant; storage; poor conditions; failing roof; contact Agriculture for more information.

USARC Moses Lake
Arnold Dr., at Newell St.,
Building 4306
Moses Lake WA 98837
Landholding Agency: GSA
Property Number: 54201610010
Status: Excess
GSA Number: 9–I–WA–1141
Directions: Sits on 2.86 acres; Disposal Agency: GSA; Landholding Agency: Nat'l Park Service
Comments: 62+ yrs. old; 4,499 sq. ft.; boys & girls club; 4+ yrs. vacant; roof needs repairs; contact GSA for more information.

Unsuitable Properties

Building

Alaska

Annette Island WSO
NWS Compound
Annette AK 99920
Landholding Agency: GSA
Property Number: 54201610007
Status: Excess
GSA Number: 9–C–AK–00017–S
Directions: Landholding Agency: NOAA; Disposal Agency: GSA
Comments: property is inaccessible because it is located on a (small) off-shore island; Annette Island is an extremely remote part of rural Alaska in the Alletuain Island chain.
Reasons: Isolated area

California

NASA/BE 1071/SAP Property ID 2
Map Grid N27, South Perimeter Road
NASA Ames Research Ce CA
Landholding Agency: NASA
Property Number: 71201610004
Status: Unutilized
Directions: Property name Public Works Riggers Shop, No. 343; Sits on 1,785 sq. ft. of land
Comments: public access denied and no alternative method to gain access without compromising national security; located within floodway which has not been correct or contained.
Reasons: Secured Area

Colorado

Quarters #699—Eagle Cliff
699 Falcon Lane
Estes Park CO 80517
Landholding Agency: Interior
Property Number: 61201610002
Status: Excess
Comments: structure compromised from the flood of 2013.
Reasons: Extensive deterioration

Illinois

2 Buildings
Fermi National Accelerator Lab
Batavia IL 60510
Landholding Agency: Energy
Property Number: 41201610006
Status: Excess
Directions: Building 002 & T121
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Massachusetts

Tract 15–2376 Cudworth House
15 Kimberly Lane
Truro MA 02667
Landholding Agency: Interior
Property Number: 61201610001
Status: Excess
Comments: property located within floodway which has not been correct or contained.
Reasons: Floodway

Mississippi

2 Buildings
Stennis Space Center
Hancock County MS 39529
Landholding Agency: NASA

Property Number: 71201610003
Status: Unutilized
Directions: Building #4312 & 8304
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

New Mexico

7 Buildings
2000 Wyoming Blvd. SE
Albuquerque NM 87117
Landholding Agency: Energy
Property Number: 41201610004
Status: Unutilized
Directions: Building #105, 106, 112, 116, 128, 129, 132
Comments: public access denied and no alternative method to gain access without compromising national security; property located within an airport runway clear zone or military airfield.
Reasons: Secured Area
Sandia National Laboratories
892E
Albuquerque NM 87123
Landholding Agency: Energy
Property Number: 41201610005
Status: Excess
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Ohio

8133, Pump Station No. 1
6100 Columbus Avenue
Sandusky OH 44870
Landholding Agency: NASA
Property Number: 71201610002
Status: Unutilized
Comments: public access denied and no alternative method to gain access without compromising national security; property located within floodway which has not been correct or contained.
Reasons: Floodway; Secured Area

Washington

Norwood Storage Sheds
07665 00; Liscumm Road
Quinault WA 98575
Landholding Agency: Agriculture
Property Number: 15201610019
Status: Excess
Directions: 5002 (273986010602); 5004 (273987010602); 5006 (273989010602); 5007 (273990010602; 5008 (273992010602); 5009 (273993010602); 5010 (273995010602); 5011 (273996010602); 5012 (273997010602); 5013 (273998010602)
Comments: documented deficiencies: buildings are collapsing; severe deterioration; significant overgrown vegetation around and inside buildings.
Reasons: Extensive deterioration

Land

Mississippi

NAS Meridian Solar Farm;
460 Acres
Fuller & Rabbit Farm
Meridian MS
Landholding Agency: Navy
Property Number: 77201610027
Status: Underutilized
Comments: property located within a floodway which has not been corrected or contained.
Reasons: Floodway
[FR Doc. 2016–05217 Filed 3–10–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5173–N–08]

Affirmatively Furthering Fair Housing Assessment Tool for States and Insular Areas: Solicitation of Comment—60-Day Notice Under Paperwork Reduction Act of 1995

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: On July 16, 2015, HUD published the Affirmatively Furthering Fair Housing (AFFH) final rule that provides HUD program participants with a new process for planning for fair housing outcomes that will assist them in meeting their statutory obligation to affirmatively further fair housing. This process includes an assessment tool that must be used by program participants to evaluate fair housing choice and access to opportunity in their jurisdictions, to identify barriers to fair housing choice and opportunity at the local and regional levels, and to set fair housing goals to overcome such barriers and advance fair housing choice.

HUD committed to issue three assessment tools for its program participants covered by the AFFH final rule. One assessment tool is for use by local governments (Local Government Assessment Tool) that receive assistance under certain grant programs administered by HUD's Office of Community Planning and Development (CPD), as well as by joint and regional collaborations between: (i) Local governments; (ii) one or more local governments and one or more public housing agency (PHA) partners; and (iii) other collaborations in which such a local government is designated as the lead for the collaboration. The second tool (the subject of this Notice) is to be used by States and Insular Areas (State and Insular Area Assessment Tool), including joint or regional collaborations (with local governments and/or PHAs) where the State is designated as the lead entity. The third assessment tool is for PHAs (including for joint collaborations among multiple PHAs) (PHA Assessment Tool). On December 31, 2015, HUD issued the Local Government Assessment.

This notice solicits public comment for a period of 60 days on the proposed State and Insular Area Assessment Tool. In seeking comment for a period of 60 days, this notice commences the process for compliance with the Paperwork Reduction Act of 1995 (PRA). The PRA requires two public comment periods—a public comment period of 60 days and a second comment period of 30 days. After consideration of the public comments submitted in response to this notice, HUD will solicit a second round of public comments for a period of 30 days.

To further facilitate public input on the State and Insular Areas Assessment Tool, HUD will post sample maps and tables that are intended to provide options for presenting relevant data. Sample data will be posted on *https://www.hudexchange.info/programs/affh/* and *https://www.huduser.gov/portal/affht_pt.html* no later than March 18, 2016.

DATES: *Comment Due Date:* May 10, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make public comments immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals who are deaf or hard of hearing and individuals with speech impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Dustin Parks, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street SW., Room 5249, Washington, DC 20410–0500; telephone number 202–708–1112 (this is not a toll-free number). Persons who are deaf or hard of hearing and persons with speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On July 16, 2015, at 80 FR 42272, HUD issued its final AFFH rule. The AFFH rule provides a new approach to enable program participants to more fully incorporate fair housing considerations into their existing planning processes and assist them in their efforts to comply with their duty to affirmatively further fair housing as required by the Fair Housing Act, which is Title VIII of the Civil Rights Act, and other authorities. The Fair Housing Act not only prohibits discrimination, but, in conjunction with other statutes, directs HUD's program participants to take meaningful actions to overcome historic patterns of segregation, promote fair housing choice, and foster inclusive communities that are free from discrimination.

The new approach established by HUD replaces the existing analysis of impediments (AI) process. The approach is designed to assist program participants in analyzing their fair housing environment, identifying fair housing issues and the related contributing factors, and setting fair housing goals, and, ultimately, taking meaningful actions to affirmatively further fair housing. This approach builds upon and refines the fair housing elements of the existing fair housing planning processes that are in the process of being replaced as the AFH process is being phased in pursuant to the AFFH rule.

To assist program participants in improving planning to achieve meaningful fair housing outcomes, the new approach involves an ''assessment tool'' for use in completing the regulatory requirement to conduct an assessment of fair housing (AFH) as set out in the AFFH rule. To aid in the completion of an AFH, HUD committed to provide program participants and the public with certain nationally available data, and State, local, and regional data relevant to the AFH, including data on certain demographics; patterns of integration and segregation; racially or ethnically concentrated areas of poverty (R/ECAPs); disparities in access to education, employment, low-poverty neighborhoods, transportation, and environmental health, among other critical opportunity indicators; disproportionate housing needs; data on publicly supported housing, including location and occupancy patterns; and data on individuals with disabilities and families with children. Using these data, together with other available local data and local knowledge, program participants will evaluate their present fair housing environment to assess fair housing issues, identify significant contributing factors that create, contribute to, perpetuate, or increase the severity of those issues, and set forth fair housing priorities and goals to address fair housing issues and significant contributing factors. The expected benefit of this approach is that by engaging in the analysis of this information, program participants, with the input of the community, can set better priorities and goals that will better inform their AFFH strategies and actions by enabling program participants to improve the integration of fair housing planning with other planning processes.

As noted in the Summary of this document, HUD has committed to issue three assessment tools: the Local Government Assessment Tool, the State and Insular Area Assessment Tool, and the PHA Assessment Tool. The final Local Government Assessment Tool issued by HUD on December 31, 2015, and announced by HUD on that same date in the **Federal Register**, at 80 FR 81840, provides the basic structure and primary areas to be covered by all three assessment tools. The final Local Government Assessment Tool, the instructions for this tool, an AFFH Rule Guidebook, and the AFFH Data and Mapping Tool can all be found at *https://www.hudexchange.info/programs/affh/.*

It is the proposed State and Insular Area Assessment Tool that HUD is submitting for public comment through this Notice. References to ''States'' in the assessment tool are inclusive of ''Insular Areas.''

As with the Local Government Assessment Tool issued on December 31, 2015, the State and Insular Area Assessment Tool allows for collaboration with other program participants that may include either local government or PHAs. HUD is particularly interested in soliciting public comment on joint collaborations between States and Qualified PHAs,[1] as these entities may especially benefit from such collaborations, and HUD encourages such collaboration.

II. The Proposed State and Insular Area Assessment Tool

A. Sources of Data and Information To Complete the Assessment of Fair Housing

HUD-Provided Data: One of HUD's major considerations in formulating the new AFFH planning process is to provide certain nationally uniform data to program participants that would be useful in completing an AFH. All program participants must use the HUD-provided data, which includes data for the program participant's jurisdiction and region, to complete the AFH. A collaborative AFH must reference the HUD-provided data for each program participant's jurisdiction and region. The HUD-provided data will be used by various types of program participants (*e.g.* those in urban areas, rural areas, suburban areas, majority-minority communities), which may have unique characteristics, issues, and challenges. The HUD-provided data will help program participants assess local and regional fair housing issues and contributing factors and set priorities and goals to overcome them. However, certain HUD-provided data may have limitations, including limitations in

[1] A Qualified PHA, defined at 24 CFR 5.142, includes a PHA that: (1) Has a combined unit total of 550 or less public housing units and section 8 vouchers; and (2) is not designated troubled under section 6(j)(2) of the 1937 Act, the Public Housing Assessment System (PHAS), as a troubled public housing agency during the prior 12 months; and (3) does not have a failing score under the Section 8 Management Assessment Program (SEMAP) during the prior 12 months.

how they apply to geographic areas with different characteristics (*e.g.,* rural versus urban, majority minority areas). While HUD is providing nationally uniform data, as with the Local Government Assessment Tool, HUD recognizes in this proposed State and Insular Area Assessment Tool that there are other important data sources that may be available and relevant locally, including data that are unavailable from a nationally uniform source.

HUD is only able to provide data for those protected class groups for which nationally uniform data are available. For this reason, some questions in the proposed State and Insular Area Assessment Tool focus on specific protected classes based on the availability of such data. For these questions, local data and local knowledge may provide information to supplement the analysis for protected classes not covered by the HUD-provided data. Local data and local knowledge can be particularly helpful when program participants have local data that are more up-to-date or more accurate than the HUD-provided data or when the HUD-provided data do not cover all of the protected classes that would be relevant to program participants' analyses. Consequently, although HUD will provide nationally available data that are expected to be of significant assistance to program participants, the AFFH rule recognizes the value of local data and knowledge.

Local Data and Local Knowledge: In addition to the nationally uniform data provided by HUD, program participants are required to use local data and local knowledge to inform their assessments. However, the AFH process does not require program participants to create or compile new data. Rather program participants must consider existing local data and local knowledge that is relevant in order to answer questions in the assessment tool. Local data and local knowledge include data and information gained through the community participation, consultation, and coordination processes set out in the AFFH rule at § 5.158.

Local data are existing data pertaining to the State or Insular Area or its region that are relevant to the AFH, that are either known or become known to the program participant or that can be found through a *reasonable* amount of searching, and that are readily available at little or no cost.

Local knowledge, on the other hand, is information relating to the State's or Insular Area's jurisdiction or its region that is relevant to the AFH and is known or becomes known to the program participant.

A program participant must complete its AFH using the assessment tool designated for its use and HUD-provided data, as well as any local data, and local knowledge that are relevant. To the extent that HUD does not provide data for a program participant to respond to a question in the assessment tool, and there is no local data and no local knowledge that would be responsive to the question, stating that data and knowledge are unavailable to the program participant is an acceptable and complete response to that particular question. However, if HUD finds that an AFH is materially inconsistent with HUD-provided data or finds that local data or local knowledge relevant to a question were available to the program participant, HUD will determine, as applicable, that the AFH is substantially incomplete and/or inconsistent with fair housing and other civil rights requirements, and not accept the AFH.

B. Structure of the Proposed State and Insular Area Assessment Tool

This proposed State and Insular Area Assessment Tool is designed with the same three key objectives that HUD had in mind in its design of the first assessment tool, the Local Government Assessment Tool. First, the assessment tool must ask questions that would be sufficient to enable program participants to perform a meaningful assessment of key fair housing issues and contributing factors and set meaningful fair housing goals and priorities. Second, the assessment tool must clearly convey the analysis of fair housing issues and contributing factors that program participants must undertake in order for an AFH to be accepted by HUD. Third, the assessment tool must be designed so program participants would be able to use it to prepare an AFH that HUD would accept without unnecessary burden.

The following presents the structure for the proposed State and Insular Area Assessment Tool, which closely tracks the structure of the Local Government Assessment Tool, with some key changes. For example, States and Insular Areas have different responsibilities compared to local governments. One of the key considerations in the proposed State and Insular Area Assessment Tool pertains to how to include questions designed to elicit a fair housing analysis for Qualified PHAs that will sufficiently address fair housing issues, contributing factors, goals and priorities relating to the PHA's service area (jurisdiction) and region. The AFFH rule strongly encourages program participants to collaborate on an AFH. While the AFFH rule encourages collaboration among all types of program participants, this Notice specifically solicits public input on how best to facilitate collaborative participation between States and Qualified PHAs.

Qualified PHAs vary in their size of operations and scope. HUD believes that Qualified PHAs collaborating with a State may be beneficial to both parties. There are resources available to States that may not be available to all Qualified PHAs, so this collaboration can help reduce burden for Qualified PHAs while also informing the State's analysis with supplemental information available to the Qualified PHA. Section F of this document presents issues for which HUD is specifically seeking comment, with respect to how HUD may design the assessment tool to facilitate collaborations between States and Qualified PHAs. In addition to including specific questions focused on collaboration with Qualified PHAs, HUD is interested in all public comments on the types of collaborations that are likely to occur and how to facilitate collaboration with other program participants of any size that may wish to collaborate with a State.

Section I. As is the case with the Local Government Assessment Tool, Section I of the proposed State and Insular Area Assessment Tool contains the Cover Sheet and Certification and addresses basic information applicable to the program participant or program participants (where there are joint submissions), such as the name of the entity making the submission, the type of submission (*e.g.,* whether it is a submission by a State or Insular Area, individually, or a State or Insular Area in collaboration with another program participant), the time period covered by the assessment, and the required certifications.

Section II. This section of the proposed State and Insular Area Assessment Tool is an Executive Summary to provide the State or Insular Area, and any other program participant that joins in collaboration with the State or Insular Area, the opportunity to present a general overview of the AFH's findings and the fair housing priorities and goals established.

Section III. This section of the proposed State and Insular Area Assessment Tool addresses the community participation process and directs the State or Insular Area to describe outreach activities to encourage community participation in the development and review of the AFH, to describe how successful its outreach efforts were in obtaining community participation related to the AFH, and to

summarize all comments obtained in the community participation process, including a summary of any comments or views not accepted and the reasons why.

Section IV. This section of the proposed State and Insular Area Assessment Tool, entitled ''Assessment of Past Goals and Actions,'' asks States and Insular Areas to explain the fair housing goals they selected in their recent AIs, AFHs, or other relevant planning documents, and the progress that was made in achieving these goals. In essence, this section requires program participants to reflect upon the progress of past goals and actions and the efforts undertaken to achieve fair housing goals. This section also solicits information on how such experience influenced the selection of fair housing goals that the State or Insular Area sets in the current AFH.

Section V. This section of the proposed State and Insular Area Assessment Tool, entitled ''Fair Housing Analysis,'' presents the core analysis to be undertaken by States, Insular Areas, and program participants that may be participating with the State or Insular Area in a collaborative AFH. This section of the proposed State and Insular Area Assessment Tool is structured to help program participants identify the fair housing issues and contributing factors in their jurisdiction and region. The proposed State and Insular Area Assessment Tool, as is the case with the Local Government Assessment Tool, requires the State or Insular Area to examine fair housing issues that exist within the State or Insular Area and those that may go beyond the boundaries of the State or Insular Area. As stated in the Local Government Assessment Tool, fair housing issues are often not constrained by political-geographic boundaries, and the State or Insular Area must determine if such is the case for any fair housing issues identified in their AFH.

Section V includes an assessment of certain key fair housing issues—segregation and integration, racially or ethnically concentrated areas of poverty, disparities in access to opportunity, disproportionate housing needs, publicly supported housing, and disability and access. Each subsection of Section V also includes targeted questions in order to help ensure that the AFH includes appropriate analysis from a fair housing perspective.

An area of analysis included in the proposed State and Insular Area Assessment Tool that has been expanded upon from the Local Government Assessment Tool pertains to low-income housing tax credits (LIHTCs). The LIHTC questions presented in the proposed State and Insular Area Assessment Tool include questions pertaining to a State's Qualified Allocation Plan (QAP).[2] This section of the proposed State and Insular Area Assessment Tool, which differs from the Local Government Assessment Tool, also includes questions pertaining to other State-administered programs relating to housing and urban development. These questions differ from those in the Local Government Assessment Tool because of the unique role played by States in connection with the LIHTC program and other programs such as State Housing Trust Funds. HUD recognizes that at least some Insular Areas may not have all of the same programs as States.

Section VI. Section VI, Fair Housing Goals and Priorities, contains a summary table of the fair housing issues that the State or Insular Area and any program participant collaborating with them on an AFH have identified. The table includes a framework for the State or Insular Area to establish fair housing goals to overcome contributing factors and related fair housing issues by setting specific goals that include metrics and milestones, and a timeframe for achievement. The table also includes a space to identify the responsible party in the event the State or Insular Area conducts a joint AFH with other program participants.

The preceding presented a brief overview of the structure and content of the State and Insular Area Assessment Tool. For States, Insular Areas, other HUD program participants and the public generally, HUD provides at *https://www.hudexchange.info/programs/affh/* a comparison of the proposed State and Insular Area Assessment Tool to the final Local Government Assessment Tool so that covered program participants and interested parties can see in detail the differences between this proposed State and Insular Area Assessment Tool and the Local Government Assessment Tool issued on December 31, 2015.

[2] Low-income housing tax credits are managed by the Department of Treasury. The Qualified Allocation Plan is a federally mandated planning requirement that States annually use to explain the basis upon which they distribute their LIHTC allocations. Based on their QAP, states establish preferences and set-asides within their tax credit competitions so as to target the credits towards specific places (such as rural areas) or types of people (such as elderly households). See *https://www.huduser.gov/portal/publications/hsgfin/analysis_of_sqa_plans.html.*

C. Instructions To Accompany the Proposed State and Insular Area Assessment Tool

The instructions, which will be part of the proposed State and Insular Area Assessment Tool, are also provided for public comment at the Web site listed above. The comparison of this proposed State and Insular Area Assessment Tool to the Local Government Assessment Tool issued on December 31, 2015, also highlights the differences in instructions provided in the Local Government Assessment Tool and the proposed State and Insular Area Assessment Tool. Please note that the instructions provided in the proposed State and Insular Area Assessment Tool include placeholders where HUD intends to provide data pertaining to specific questions. HUD intends to generally provide States with thematic maps at the county or statistically equivalent level in the AFFH Data and Mapping Tool. HUD intends to provide additional functionality to allow States to zoom in to the dot density maps that are currently provided for local governments and PHAs submitting an AFH using the Local Government Assessment Tool issued on December 31, 2015. HUD is currently in the process of compiling such data, which will be incorporated into the AFFH Data and Mapping Tool prior to the final issuance of the State and Insular Area Assessment Tool.

D. PHA Assessment Tool

As noted earlier in this document, HUD has not only committed to issuance of a State and Insular Area Assessment Tool, but to issuance of a PHA Assessment Tool for PHAs' use in conducting the AFH individually or in collaboration with other PHAs. HUD will soon issue the 60-day public comment notice for the proposed PHA Assessment Tool. It should be noted that the questions contained in the proposed PHA Assessment Tool will differ from the questions addressed to Qualified PHAs that collaborate with States using the proposed State and Insular Area Assessment Tool. HUD expects that collaborations between States and Qualified PHAs may reduce burden for Qualified PHAs. Although program participants will decide among themselves how to divide the work on a collaborative AFH, a State's analysis of the entire State and region is expected to fulfill the regional analysis that Qualified PHAs would otherwise be required to perform if submitting an individual AFH using the PHA Assessment Tool. As discussed more fully below, the proposed State and

Insular Area Assessment Tool contains specific questions relating to collaborating with Qualified PHAs. HUD would like feedback on the circumstances in which these collaborations are likely to occur and the structure of the State and Insular Area Assessment Tool that would be most effective in facilitating those collaborations while still ensuring that the required fair housing analysis and priority and goal setting for each collaborating program participant is conducted.

E. Small Entities

Whether the proposed State and Insular Area Assessment Tool, which is the subject of this Notice, the proposed PHA Assessment Tool, which remains to be issued, or the Local Government Assessment Tool that HUD has already issued, HUD is cognizant that completion of the AFH will place some burden on small entities, and HUD welcomes comments on how burden may be reduced for all program participants, but especially for small entities, while still achieving the necessary fair housing analysis.

F. Solicitation of Specific Comment on the Proposed State and Insular Area Assessment Tool

While the primary purpose of comment under the Paperwork Reduction Act is to determine the burden of any information collection requirement, HUD, as was the case for the Local Government Assessment Tool, also solicits comment on the content of the proposed State and Insular Area Assessment Tool, the clarity of the questions presented and whether there are areas of information sought that program participants believe are not necessary to a meaningful AFH, or whether there are important areas of information for conducting a meaningful fair housing analysis that HUD may have overlooked. HUD also solicits comments for the following questions:

Content of the Proposed State and Insular Assessment Tool

In developing the proposed State and Insular Area Assessment Tool, HUD has made changes to the Local Government Assessment Tool in order to capture the appropriate level of information for States and Insular Areas conducting a fair housing analysis and goal setting. Some questions have been removed, new questions have been added, and some questions remain but with revisions. As noted earlier in this notice, HUD's AFFH Web page at *https://www.hudexchange.info/programs/affh/* provides a comparison of the Local Government Assessment Tool and this proposed State and Insular Area Assessment Tool, which includes a section of questions to facilitate collaborations between States and Qualified PHAs.

One of the differences between the Local Government Assessment Tool and the proposed State and Insular Area Assessment Tool pertains to the analysis of disparities in access to opportunity. HUD is considering different ways of structuring this section to obtain an appropriate fair housing analysis of disparities in access to opportunity. The proposed State and Insular Area Assessment Tool seeks analysis relating to States' programs and policies and how they affect protected class groups in new areas including emergency preparedness, prisoner re-entry, public health, public safety, and housing and financial opportunities (access to rental housing, home ownership, and mortgage loans). The proposed State and Insular Assessment Tool, through a general question, solicits information from States and Insular Areas on these five areas. In this Notice, HUD provides specific questions on certain areas that HUD is also considering for inclusion with the tool.

Specific solicitation of comment: HUD is considering two approaches to the section of the proposed State and Insular Area Assessment Tool in which program participants will analyze disparities in access to opportunity. One approach asks more general questions and relies on States and Insular Areas to be diligent in identifying specific subjects involving disparities in access to opportunity for protected class groups. The other approach asks more targeted questions that would guide program participants through the required analysis and reduce the risk of an inadvertent omission of a key point of analysis. HUD specifically solicits comment from States and Insular Areas and other interested parties on which of these approaches would be more beneficial in eliciting an appropriate fair housing analysis from States and Insular Areas. The following presents proposed targeted questions on these areas for which HUD solicits comment not only on whether such targeted questions should be included in the proposed State and Insular Area Assessment Tool, but also on whether these questions appropriately target information on these five areas for purposes of conducting a meaningful fair housing analysis, and if there are better ways to pose the questions or additional questions that should be included:

Disparities Related to Emergency Management and Preparedness

- Identify and describe any disparities in access to emergency management and preparedness programs, policies, practices, and resources, including prevention, protection, mitigation, response, and recovery within the State by protected class. What role does a person's place of residence have on access to emergency preparedness opportunities?
- Describe any effects on emergency management and preparedness for protected class groups in your State of the emergency preparedness programs, policies, practices, and resources in neighboring states or a broader geographic area.

Re-Entry Opportunities (Re-entry Relates to Offenders Transitioning Back Into the Community)

- Describe the demographics of the State's population involved in re-entry in terms of race, ethnicity, national origin (including LEP persons), sex, and disability. Which protected class groups are least successful in accessing housing, employment, counseling, education, or other opportunities in the State?

Disparities Related to Public Health Services

- What role does a person's place of residence have on access to public health programs and resources (chronic disease prevention, environmental health, family health, healthcare quality, and exposure to communicable diseases) in the State? Which protected class groups have the least access to public health programs and resources and the greatest exposure to public health hazards?

Disparities Related to Public Safety

- Describe disparities related to public safety, including law enforcement, fire and rescue, and emergency medical services, in the State by protected class. What role does a person's place of residence have on disparities related to public safety in the State? Which protected class groups experience the most disparities related to public safety in the State?

Housing and Financial Opportunities

- Describe any laws, policies, and practices affecting affordable rental housing, homeownership and mortgage access in the State, including occupancy codes and homeownership programs. Describe disparities in access to rental housing, homeownership, and mortgage access, including State lending programs, tax incentives,

homeownership programs, and State housing assistance or subsidies, in the State by protected class.

- What role does a person's place of residence have on access to affordable rental housing, homeownership and mortgage access in the State? Which protected class groups have the least access to affordable rental housing, homeownership, and financial opportunities in the State?

Specific solicitation of comment: Through the questions presented in the proposed State and Insular Area Assessment Tool (and the alternate questions included immediately above in this Notice), has HUD captured the appropriate level of information from States and Insular Areas in conducting their AFH? Are there additional areas of analysis that should be included in the State and Insular Area Assessment Tool given their areas of responsibility, programs, policymaking, and jurisdictions? HUD solicits comment on any additional areas of analysis or specific questions that should be included in the State and Insular Area Assessment Tool and HUD asks commenters responding to this question to indicate the section of the assessment tool where these additional subject areas or questions should be included. HUD also solicits comment on any questions included in the State and Insular Area Assessment Tool that should be excluded and the reasons why.

States With Rural Areas and Other Key Differences Among States and Insular Areas

HUD recognizes that many States include rural areas and is particularly interested in obtaining comment on how the State and Insular Area Assessment Tool can ensure an appropriate fair housing analysis for rural areas. HUD is also interested in other differences that may cause States and Insular Areas to have to have different fair housing issues that need to be assessed. HUD seeks solicits comment on how to best accommodate these differences between States and Insular Areas while still providing an appropriate vehicle for fair housing analysis.

Specific Solicitation of Comment: States and Insular Areas must assess their entire jurisdiction; however, HUD recognizes that rural areas may present certain challenges in conducting such an assessment. Are there particular questions that HUD should include in the State and Insular Area Assessment Tool to ensure the appropriate focus on rural areas? What sources of information do States have access to when considering fair housing issues in rural areas? HUD seeks comment on any additional questions or additional data that should be included and the applicable section of the State and Insular Area Assessment Tool to address how States and Insular Areas can assess rural areas.

Specific Solicitation of Comments: States and Insular Areas can have different populations, can have many different characteristics, and, as a result, can have different types of program and policies that affect fair housing. HUD seeks comment on any key areas beyond those HUD has already presented in the proposed State and Insular Area Assessment Tool and this notice? If a commenter suggests other key areas to be added, HUD asks the commenter to indicate why the area is important to include when conducting a fair housing analysis, what questions to ask about it, and any relevant data a State or Insular Area may use.

Specific Solicitation of Comment: Native American considerations. Indian tribes receiving HUD assistance are not required to comply with AFFH requirements. However, under certain HUD programs, grantees that are subject to AFFH requirements also provide assistance to tribal communities on reservations. For example, under the HOME program, a State may fund projects on Indian reservations if the State includes Indian reservations in its Consolidated Plan. Does the Assessment Tool adequately take into account, including in the terminology used, the issues and needs of Indian families and tribal communities while also factoring in the unique circumstances of tribal communities?

Disability and Access

Section V.D of the proposed State and Insular Area Assessment Tool requires an analysis of disability and access in the State or Insular Area. This section of the proposed State and Insular Assessment Tool is intended to solicit specific information about disability and access issues, while incorporating the rest of the analysis completed in prior sections of the assessment tool.

Specific Solicitation of Comment: Is the Disability and Access section of the proposed State and Insular Area Assessment Tool adequately clear such that it includes the analysis of prior sections as it relates to disability and access issues.

Contributing Factors

A key part of the AFH analysis is the identification of contributing factors. HUD seeks comment on the contributing factor analysis in the proposed State and Insular Area Assessment Tool.

Specific Solicitation of Comment: Many of the contributing factors contained in the Local Government Assessment Tool remain in the proposed State and Insular Area Assessment Tool. HUD specifically seeks comment on whether there are additional contributing factors that should be included in the State and Insular Area Assessment Tool that are of particular importance for States and Insular Areas to consider while conducting their fair housing analysis. If a commenter suggests additional contributing factors to be included in the State and Insular Area Assessment Tool, HUD asks the commenter to identify to which fair housing issues or sections of the assessment tool these additional factors should be added. HUD also asks commenters to provide a description of the additional factor and why the commenter(s) believe it is of particular relevance for States and Insular Areas. HUD also solicits comment on any contributing factors included in the State and Insular Area Assessment Tool that should be excluded and the reasons why.

Regional Analysis

As provided in the AFFH rule, all program participants must conduct an analysis not only for their jurisdiction but also for the larger area that is their region. The proposed State and Insular Assessment Tool generally keeps analysis for the jurisdiction and analysis for the region together in the same question, except in circumstances where a specific question does not provide for a regional analysis. The instructions provide guidance on the appropriate region to be considered. HUD generally combined the questions relating to jurisdiction and region so that the proposed State and Insular Area Assessment Tool was shorter and considered both jurisdictional and regional fair housing issues concurrently but recognizes that it could take a different approach to the structure and organization of questions that call for a regional analysis.

Specific Solicitation of Comment: HUD is seeking comment on the best approach for States to conduct an effective fair housing regional analysis addressing the fair housing issues and contributing factors affecting their State. HUD is considering different approaches to accomplish this. One approach, as presented in the proposed State and Insular Area Assessment Tool, would include ''region'' throughout the tool in specific questions. An alternative approach would be to include the regional analysis questions required for an appropriate fair housing analysis in

a separate section of the proposed State and Insular Area Assessment Tool. These regional questions could be placed in either a separate section, or within appropriate sub-sections (*e.g.* Segregation, R/ECAPs, etc.).

Specific Solicitation of Comment: Insular Areas—like other program participants—are impacted by circumstances happening outside their borders. HUD wants to make sure that the proposed State and Insular Areas Assessment Tool appropriately captures fair housing regional impacts without imposing undue burden on Insular Areas. HUD seeks specific comment on whether the proposed format appropriately provides for Insular Areas to describe regional fair housing impacts without imposing undue burdens. HUD welcomes recommendations for specific questions tailored to capture regional fair housing analysis for Insular Areas while not imposing unnecessary burdens in view of the unique characteristics of Insular Areas.

Data

As with the Local Government Assessment Tool, HUD intends to provide data that States and Insular Areas will use to conduct their AFH. HUD contemplates that the geographic scale of the new data HUD intends to provide will generally be at a higher geographic level, *i.e.,* county or statistically equivalent level, than the data provided for local governments. States will be able to access the lower level data through the AFFH data and mapping tool by zooming in to smaller levels of geography, such as Census tracts.

Specific Solicitation of Comment: Acknowledging the geographic limitation of the Jobs Proximity Opportunity Index at the State level, HUD is seeking comment on providing alternative types of data (*e.g.,* by education level, sector of the economy, race/ethnicity, numbers of jobs by location) that might be most useful for States in conducting an appropriate fair housing analysis in connection with disparities in access to employment opportunities.

The extent of nationally uniform data available for Insular Areas is limited. HUD notes some data limitations for some sources of information used in the overall AFFH Data and Mapping Tool in relation to Insular Areas. The American Community Survey, used for some maps and data elements, is not available for Insular Areas. However, the 2010 Decennial Census along with HUD administrative data on program activities and assisted housing residents are available. HUD intends to improve the provision of data it will be providing for Insular Areas to assist them in conducting an AFH.

Given these data limitations, HUD expects that the questions in the proposed State and Insular Area Assessment Tool that direct program participants to data tables or maps to inform their answers may be more challenging for an Insular Area to answer. However, Insular Areas, like States, are required to use available local data and local knowledge to answer questions in the proposed State and Insular Area Assessment Tool. To the extent that HUD does not provide data for a program participant to use in responding to a question in the assessment tool, and local data and local knowledge relevant to the question are not available to the program participant, the program participant may answer the question by stating that the program participant lacks available data and knowledge to answer the question. Under those circumstances, if HUD determined that the program participant did not have available data and knowledge relevant to the question, HUD would consider that an acceptable and complete response to that particular question.

Specific Solicitation of Comment: HUD specifically seeks comment on what data are available to States and Insular Areas, including data at the local level, that would be relevant and most helpful to States or Insular Areas in conducting their respective analyses of fair housing issues and contributing factors in their jurisdiction and region? HUD asks commenters responding to this question to identify data sources for States or Insular Areas that would be helpful to States and Insular areas and are already available and to what extent the State or Insular Area intends to rely on certain data sources to answer the questions included in the proposed State and Insular Area Assessment Tool.

State or Insular Area Collaboration With Qualified PHAs

As stated in the AFFH rule and earlier in this document, HUD encourages Qualified PHAs to conduct and submit a joint AFH with their State or Insular Area. Under the AFFH rule, States and Insular Areas must consult with PHAs that administer public housing or Section 8 programs on a statewide basis or that certify consistency with the State's or Insular Area's consolidated plan.[3] PHAs are encouraged to work in collaboration with a State or Insular Area pursuant to HUD's AFFH regulations in 24 CFR 5.156 and HUD's Public Housing regulations in 24 CFR 903.15(a)(1). In addition, as provided in HUD's AFFH regulations at 24 CFR 5.156(a)(3), all collaborating program participants are accountable for the joint analysis and any joint goals and priorities to be included in the collaborative AFH, and collaborating program participants are also accountable for their individual analysis, goals, and priorities to be included in the collaborative AFH. HUD strongly encourages collaboration by program participants because HUD expects that program participants working together will be better positioned to affirmatively further fair housing, and may be able to reduce burdens and costs by sharing resources.

HUD believes that collaboration, specifically, between States or Insular Areas and Qualified PHAs, can benefit both program participants. The State or Insular Area benefits by being able to align its goals established to address fair housing issues it has identified with other program participants, such as a Qualified PHA that has resources to assist the State at the local level, which would aid the State in accomplishing its goals and ultimately taking meaningful actions to affirmatively further fair housing. All collaborating program participants will have both a jurisdictional (in the case of a PHA, its jurisdiction is its service area) and regional analysis. A Qualified PHA collaborating with a State is aided because the regional portion of the analysis of the Qualified PHA is expected to be fulfilled by the State's analysis of the entire State.

All program participants, regardless of size, have the legal duty to affirmatively further fair housing and to conduct an AFH. Each program participant may choose to submit an individual AFH or a collaborative AFH as set out in the AFFH rule. A Qualified PHA collaborating with a State or Insular Area is aided to the extent that it may rely on the State for completing its background regional analysis and otherwise be generally informed by the State's analysis.

In order to assist Qualified PHAs and States or Insular Areas in collaborating to conduct and submit joint AFHs, HUD is seeking additional information from States and Insular Areas, Qualified PHAs, and other interested parties about how to best facilitate these collaborations while ensuring the fair housing analysis required of Qualified PHAs is complete. HUD is seeking input on how this proposed State and Insular Area Assessment Tool can facilitate collaboration with Qualified PHAs by

[3] See HUD's AFFH final rule published on July 16, 2015, at 80 FR 42293.

ensuring that the State's or Insular Area's analysis of the entire State or Insular Area provides a sufficiently detailed analysis to inform the Qualified PHA's fair housing analysis and goal setting. The regional portion of the Qualified PHA analysis is expected to be fulfilled by the State's or Insular Area's analysis of the entire state. For purposes of this proposed State and Insular Area Assessment Tool, the region of a Qualified PHA is defined as the State or Insular Area that is smaller than the State or Insular Area. For Qualified PHAs whose service area is an entire State, and for purposes of this proposed State and Insular Area Assessment Tool, the region of a Qualified PHA is the same as the State's region.

The questions to be included in this State and Insular Area Assessment Tool strive to facilitate collaboration while ensuring individual analysis and accountability for each collaborating program participant. With this objective in mind, HUD has placed questions designed to address the fair housing analysis relating to the Qualified PHA's service area in a separate section of the proposed State and Insular Area Assessment Tool. In addition to soliciting comment on these specific questions, HUD also seeks input about how to best facilitate collaboration between States or Insular Areas and Qualified PHAs.

Specific Solicitation of Comment: As provided in this Notice, HUD believes that collaboration between a State or Insular Area and a Qualified PHA can be a beneficial collaboration. While HUD sees such collaboration as having the potential to be beneficial, HUD seeks comment on whether other program participants contemplate collaborating with a State or Insular Area on an AFH. With respect to possible collaboration by States or Insular Areas and Qualified PHAs, HUD seeks comment on whether these two categories of program participants anticipate collaborating on a joint AFH. If not, why is such collaboration not contemplated at this time and are there ways HUD could better facilitate this collaboration? HUD specifically solicits comments on actions that HUD could take to facilitate collaborations between States or Insular Areas and Qualified PHAs. For commenters responding to this question, HUD asks the commenter(s) to provide specific questions or structure for the proposed State and Insular Area Assessment Tool, and the sections of this assessment tool to which those questions are recommended to be included.

Specific Solicitation of Comment: Related to the above question, HUD specifically seeks feedback on how the State and Insular Assessment Tool can facilitate collaboration with Qualified PHAs and strive to ensure that the State's or Insular Area's analysis of the entire State or Insular Area provides sufficiently detailed analysis to inform the Qualified PHA's fair housing analysis and goal setting.

Specific Solicitation of Comment: HUD generally intends to provide States with thematic maps at the county or statistically equivalent level. HUD intends to provide additional functionality to the AFFH Data and Mapping Tool, including the ability to access the dot density maps currently available for local governments submitting alone or in collaboration with other local governments and PHAs. HUD notes that the service areas for Qualified PHAs vary greatly. Some Qualified PHAs have statewide service areas. Others are the size of multiple counties. And yet other Qualified PHAs have service areas smaller than a county or statistically equivalent level. Given that HUD currently intends to focus States on thematic maps at the county or statistically equivalent level, how can this proposed State and Insular Area Assessment Tool facilitate collaboration with Qualified PHAs by ensuring that the State's analysis of the entire State provides sufficiently detailed analysis to inform the Qualified PHA's fair housing analysis and goal setting?

Specific Solicitation of Comment: In this proposed State and Insular Area Assessment Tool, the questions designed to address the fair housing analysis relating to the Qualified PHA's service area are included in a separate section. HUD is seeking comment on whether this organizational structure is the most efficient and useful means of conducting the analysis or whether these questions should be inserted into the respective sections of the proposed State and Insular Area Assessment Tool to which they apply.

Insular Areas

There is limited nationally uniform data available for Insular Areas. HUD notes some data limitations for some sources of information used in the overall AFFH Data and Mapping Tool in relation to Insular Areas. The American Community Survey, used for some maps and data elements, is not available for Insular Areas. However, the 2010 Decennial Census along with HUD administrative data on program activities and assisted housing residents are available. HUD intends to improve the data it will be providing for Insular Areas to assist them in assessing demographic information to better inform local planning and decisionmaking and to better inform the analysis of fair housing issues and contributing factors in the AFH.

Given these data limitations, HUD expects that questions in the proposed State and Insular Area Assessment Tool that tend to rely largely on data tables or maps to answer may be more challenging for an Insular Area to answer. In general, the Insular Area will need to rely on local data and local knowledge to answer these questions. As the instructions to the proposed State and Insular Area Assessment Tool explain, to the extent an Insular Area does not have any relevant HUD-provided data, local data, or local knowledge to answer a question in this assessment tool, the Insular Area may answer the question by stating that it does not have HUD-provided data, local data, or local knowledge to respond to the question. For an Insular Area, local data are existing data pertaining to the Insular Area or its region that are relevant to the AFH, that are either known or become known to the program participant or that can be found through a *reasonable* amount of searching, and that are readily available at little or no cost. Local knowledge is information relating to the Insular Area's geographic area of the State or Insular Area itself or its region that is relevant to the AFH and is known or becomes known to the Insular Area. Local data and local knowledge may both be obtained through the community participation process.

Specific Solicitation of Comment: How can HUD assist Insular Areas to complete an AFH in terms of providing data, or, where data is lacking, are there areas where HUD can provide further assistance or guidance for Insular Areas? To what extent will Insular Areas be able to use the State and Insular Area Assessment Tool to analyze fair housing issues and contributing factors and set goals and priorities without HUD-provided data? Are there ways in which HUD could adapt this assessment tool for Insular Areas? To what extent do Insular Areas have access to local data and/or local knowledge, including information that can be obtained through community participation, that could help identify areas of segregation, R/ECAPs, disparities in access to opportunity, and disproportionate housing needs where the HUD-provided data may be unavailable? HUD asks that comments in response to these questions provide specifics as to sources of data relating to Insular Areas that are available beyond the HUD-provided

data, including data from national sources.

Small Entities That Collaborate With States

HUD is seeking public comment on how use of the proposed State and Insular Assessment Tool may reduce burdens for small entities that collaborate with States in conducting an AFH.

Specific Solicitation of Comment: Will collaboration with a State in conducting an AFH using the proposed State and Insular Area Assessment Tool reduce the burden that a small entity such as a Qualified PHA would otherwise have in conducting an individual AFH? To what extent do small entities, such as Qualified PHAs, expect to rely on outside resources such as a consultant in conducting a collaborative AFH with a State?

Burden of Compiling Information Required by the Proposed State and Insular Area Assessment Tool

In addition to comment on the preceding questions, HUD specifically seeks comment from the States or Insular Areas on the degree of difficulty or cooperation that may be involved in gathering information from the specific State or Insular Area agencies that possess the information solicited by the proposed State and Insular Area Assessment Tool.

III. Compliance With the Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a valid control number issued by the Office of Management and Budget (OMB). Through this notice, HUD commences the process for obtaining the requisite approval by OMB under the PRA process.

The public reporting burden for the proposed State and Insular Area Assessment Tool is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

This State and Insular Area Assessment Tool is primarily designed for use by State and Insular Area program participants. These include the 50 States, the Commonwealth of Puerto Rico, and 4 Insular Areas (American Samoa, the Territory of Guam, the Commonwealth of the Northern Marianas Islands and the U.S. Virgin Islands).

The estimate of burden hours is an average within a range, with some AFHs requiring either more or less time and effort based on the size and complexity of the relevant program participant's assessment. Smaller program participants will have less total burden both in terms of staff hours and costs. A separate estimate for Insular Areas is included, at 240 hours per Insular Area program participant, which is the same level of burden that HUD estimated for the Local Government Assessment Tool.

This estimate assumes that approximately one-third of the 3,942 PHAs may seek to enter into joint AFHs with their relevant State program participant. This is consistent with the burden estimate included in the 30-Day PRA Notice for the Local Government Assessment Tool. The 120 hours per PHA is also consistent with the previous estimate, however, this may be an over-estimate given that numerous smaller sized PHAs may be more likely to enter into joint assessments with State program participants.

This burden estimate assumes there would be cost savings for PHAs that opt to partner with a State agency. For instance, the proposed State and Insular Area Tool includes a distinct set of questions that would be required for Qualified PHAs (*i.e.* those with 550 or fewer public housing units and/or Housing Choice Vouchers). Qualified PHAs would also benefit from having the State agency's analysis fulfill the regional portion of the PHA's assessments. While there may be some cost savings for Qualified PHAs opting to participate in joint submissions using the proposed State and Insular Assessment Tool, they are still assumed to have some fixed costs, including those relating to staff training and conducting community participation, but reduced costs for conducting the analysis in the assessment tool itself.

While local government program participants may also choose to partner with State agencies, the burden estimate for the Assessment Tool designed for their use included a total estimate for all of the 1,192 local government agencies.

All HUD program participants are greatly encouraged to conduct joint AFHs and to consider regional cooperation. More coordination in the initial years between State and local government program participants one the one hand and PHAs on the other will reduce total costs for both types of program participants in later years. In addition, combining and coordinating some elements of the Consolidated Plan and the PHA Plan will reduce total costs for both types of program participants. Completing an AFH in earlier years will also help reduce costs later, for instance by incorporating the completed analysis into later planning documents, such as the PHA plan, will help to better inform planning and goal setting decisions ahead of time.

Information on the estimated public reporting burden is provided in the following table:

	Number of respondents	Number of responses per respondent	Frequency of response	Estimated average time for requirement (in hours)	Estimated total burden (in hours)
States *	51	1	Once every five years	1,500	76,500
Insular Areas **	4	1	Once every five years	240	960
Public Housing Agencies	1,314	1	Once every five years	120	157,680
Total Burden					235,140

The estimates represent the average level of burden for these grantee types. It should be noted that this staff cost is not an annual cost, but is incurred every five years.

* The term 'State' includes the 50 States as well as Puerto Rico. See 42 U.S.C. 5302(2) & 42 U.S.C. 12704(2).

** The term ''Insular Area'' includes Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.'' See 42 U.S.C. 5302(24) & 42 U.S.C. 12704(24).

In accordance with 5 CFR 1320.8(d)(1), HUD is specifically soliciting comment on the proposed State and Insular Area Assessment Tool from members of the public and affected program participants 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 not only program participants but interested persons to submit comments regarding the information collection requirements in this proposal. Comments must be received by *May 10, 2016* to *www.regulations.gov* as provided under the **ADDRESSES** section of this notice. Comments must refer to the proposal by name and docket number (FR–5173–N–02).

Following consideration of public comments submitted in response to this notice, HUD will submit for further public comment, for a period of 30 days, a version of the Assessment Tool that reflects consideration of the public comments received in response to this notice.

Dated: March 7, 2016.

George D. Williams,

Deputy Assistant Secretary for Policy, Legislative Initiatives and Outreach.

[FR Doc. 2016–05521 Filed 3–10–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2015–N229; FXES11130000–156–FF08E00000]

Endangered and Threatened Wildlife and Plants; Draft Recovery Plan for the Central California Distinct Population Segment of the California Tiger Salamander *(Ambystoma californiense)*

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of the Draft Recovery Plan for the Central California Distinct Population Segment of the California tiger salamander (*Ambystoma californiense*) (Central California tiger salamander) for public review and comment. This draft recovery plan includes delisting objectives and criteria, and specific actions necessary to remove the species from the Federal Lists of Endangered and Threatened Wildlife and Plants.

DATES: We must receive any comments on this revised draft recovery plan on or before May 10, 2016.

ADDRESSES: You may obtain a copy of this draft recovery plan from our Web site at *http://www.fws.gov/endangered/species/recovery-plans.html.* Alternatively, you may contact the Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W–2605, Sacramento, CA 95825 (telephone 916–414–6700).

FOR FURTHER INFORMATION CONTACT: Jennifer Norris, Field Supervisor, at the above street address or telephone number (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of our endangered species program and the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*). Recovery means improvement of the status of listed species to the point at which listing is no longer appropriate under the criteria specified in section 4(a)(1) of the Act. The Act requires the development of recovery plans for listed species, unless such a plan would not promote the conservation of a particular species.

The Central California tiger salamander (*Ambystoma californiense*) was federally listed as a threatened species on August 4, 2004 (69 FR 47212). Central California tiger salamanders are endemic to the San Joaquin-Sacramento River valleys, bordering foothills, and coastal valleys of Central California and inhabit primarily annual grasslands and open woodlands. California tiger salamanders spend the majority of their lives underground in small mammal burrows, although ponds play an equally important role because they are required for breeding. Breeding sites are typically fish-free ephemeral ponds that fill during winter and dry by summer. Historically, California tiger salamanders utilized vernal pools as breeding sites, but the species now also commonly breeds in livestock ponds.

The loss and subsequent fragmentation of habitat is the primary threat to the Central California tiger salamander. Habitat loss has primarily occurred from urban expansion and agricultural conversion. Habitat fragmentation restricts dispersal and isolates populations of the Central California tiger salamander, thereby increasing the likelihood of inbreeding, decreasing fitness, and reducing genetic diversity. In addition to habitat loss, Central California tiger salamanders are subject to the cumulative effects of a number of other existing and potential threats, including: Hybridization with non-native barred tiger salamanders, road mortality, climate change, contaminants, disease, and predation by non-native species.

Recovery Plan Goals

The purpose of a recovery plan is to provide a framework for the recovery of species so that protection under the Act is no longer necessary. A recovery plan includes scientific information about the species and provides criteria that enable us to gauge whether downlisting or delisting the species is warranted. Furthermore, recovery plans help guide our recovery efforts by describing actions we consider necessary for each species' conservation and by estimating time and costs for implementing needed recovery measures.

The goal of this draft recovery plan is to improve the status of Central California tiger salamander so that it can be delisted. To meet the recovery goal of delisting, the following objectives have been identified:

1. Secure self-sustaining populations of Central California tiger salamander throughout their full range, ensuring conservation of genetic variability and diverse habitat types (*e.g.,* variation in elevation and precipitation).

2. Ameliorate or eliminate the threats that caused the species to be listed, and any future threats.

3. Restore and conserve a healthy ecosystem supportive of Central California tiger salamander populations.

The strategy to recover the Central California tiger salamander focuses on alleviating the threat of habitat loss and fragmentation in order to increase population resiliency (ensure a large enough population to withstand stochastic events) and redundancy (a sufficient number of populations to ensure the species can withstand catastrophic events). Recovery of this species can be achieved by addressing the conservation of remaining aquatic and upland habitat that provides essential connectivity, reduces fragmentation, and sufficiently buffers

against encroaching development and intensive agricultural land uses. Appropriate management of these areas will also reduce mortality by addressing non-habitat related threats, including those from non-native and hybrid tiger salamanders, other non-native species, contaminants, disease, and road mortality. Research and monitoring should be undertaken to determine the extent of known threats, identify new threats, and reduce them to the extent possible. As the Central California tiger salamander meets delisting criteria, we will review its status and consider it for removal from the Federal Lists of Endangered and Threatened Wildlife and Plants.

Public Comments Solicited

We invite written comments on the draft recovery plan. All comments received by the date specified in **DATES** will be considered in development of a final recovery plan for the Central California tiger salamander. You may submit written comments and information by mail or in person to the Sacramento Fish and Wildlife Office (see **ADDRESSES**).

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We developed this draft recovery plan under the authority of section 4(f) of the Act, 16 U.S.C. 1533(f). We publish this notice under section 4(f) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Alexandra Pitts,

Acting Regional Director, Pacific Southwest Region.

[FR Doc. 2016–05492 Filed 3–10–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

[GX16ED00CPN00]

Agency Information Collection Activities: Request for Comments on the Earth Explorer User Registration Service

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of a new information collection, Earth Explorer User Registration Service.

SUMMARY: We (the U.S. Geological Survey) are notifying the public that we have submitted to the Office of Management and Budget (OMB) the information collection request (ICR) described below. To comply with the Paperwork Reduction Act of 1995 (PRA) and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this ICR.

DATES: To ensure that your comments on this ICR are considered, we must receive them on or before April 11, 2016.

ADDRESSES: Please submit written comments on this information collection directly to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, via email: (*OIRA_SUBMISSION@omb.eop.gov*); or by fax (202) 395–5806; and identify your submission with 'OMB Control Number 1028–NEW Earth Explorer User Registration Service'. Please also forward a copy of your comments and suggestions on this information collection to the Information Collection Clearance Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive MS 807, Reston, VA 20192 (mail); (703) 648–7195 (fax); or *gs-info_collections@usgs.gov* (email). Please reference 'OMB Information Collection 1028–NEW: Earth Explorer User Registration Service' in all correspondence.

FOR FURTHER INFORMATION CONTACT: Ryan Longhenry, Earth Resources Observation and Science (EROS) Center, U.S. Geological Survey, 47914 252nd St., Sioux Falls, SD 57198 (mail); 605–594–6179 (phone); or *rlonghenry@usgs.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Abstract

The USGS proposes to collect general demographic information about public users that download products from the USGS using Earth Explorer (EE) application. This information is used to help address reports to Congress, OMB and DOI management with planning public uses of Landsat and other remote sensing data. The most common uses of these data are used to justify the maintenance and the free distribution of the USGS land remote sensing data. EE also stores information about users that download source code products, Global Visualization Viewer (GloVis) for example. The information collected in the database includes the names, affiliations, addresses, email address and telephone numbers of individuals. The information is gathered to facilitate the reporting of demographic data for use of the EE Application. Demographic data is also used to make decisions on future functional requirements within the system.

Earth Explorer is a Web application that enables users to find, preview, and download or order digital data published by the U.S. Geological Survey. There are more than 300 USGS Datasets available from the site. To download or order products from EE, users must register with the EE system.

The information is stored on an internal encrypted database. The data is provided by the customer and utilized to notify the customer of data ready for download. If downloads are unsuccessful, the customer is contacted to provide updated information. In addition, EE requires certain fields to be completed such as name, address, city and zip code before an account can be established and an order can be submitted.

EE does not derive new data and does not create new data through aggregation.

Personal information is not used as search criteria. Access to the information uses the least privileged access methodology. Authorized individuals with specifically granted access to the Privacy Act data can retrieve only by account number or order number Personal data is encrypted while stored in the Database.

II. Data

OMB Control Number: 1028–NEW.

Title: Earth Explorer User Registration Service.

Type of Request: Approval of new information collection.

Respondent Obligation: Required to obtain or retain a benefit.

Frequency of Collection: The information is collected at the time of registration and is only updated by the individual. Updates to the information are accomplished by the individual when they feel the need to update. Occasions' that user might want to

update would be if something has changed in their demographic (email address as an example).

Description of Respondents: Private individuals who have requested USGS products from USGS/Earth Explorer application are covered in this system.

Estimated Total Number of Annual Responses: Approximately 84,000 on an annual basis.

Estimated Time per Response: We estimate that it will take 2 minutes per response to submit the requested information.

Estimated Annual Burden Hours: 2,800.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: There are no ''non-hour cost'' burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. Until the OMB approves a collection of information, you are not obliged to respond.

Comments: On May 4, 2015, we published a **Federal Register** notice (80 FR 25321) announcing that we would submit this ICR to OMB for approval and soliciting comments. The comment period closed on Juley 6, 2015. We received no comments.

III. Request for Comments

We again invite comments concerning this ICR as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) how to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this notice are a matter of public record. Before including your personal mailing address, phone number, email address, or other personally identifiable information in your comment, you should be aware that your entire comment, including your personally identifiable information, may be made publicly available at any time. While you can ask the OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Francis Kelly,

USGS EROS Center Director.

[FR Doc. 2016–05550 Filed 3–10–16; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[15XL LLWY9200000.L51010000.ER0000. LVRWK09K0990.241A.00; 4500083323; IDI–35849]

Notice of Availability of the Draft Supplemental Environmental Impact Statement and Draft Land Use Plan Amendments for Segments 8 and 9 of the Gateway West 500-kV Transmission Line Project, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) has prepared a Draft Supplemental Environmental Impact Statement (EIS) and Draft Resource Management Plan (RMP) Amendments for the right-of-way (ROW) application for Segments 8 and 9 of the Gateway West 500-kilovolt (kV) Transmission Line Project in Idaho, and by this notice is announcing the opening of the comment period.

DATES: To ensure that comments will be considered, the BLM must receive written comments on the Draft Supplemental EIS and Draft RMP Amendments by June 9, 2016. To provide the public an opportunity to review the proposal and project information, the BLM will hold the following public meetings during the public comment period. Additional announcements about these meetings will be made by news releases to the media, newsletter mailings, and posting on the project Web site listed below.

Tuesday, April 19, 2016

10 a.m.–1 p.m. Boise, Best Western Vista Inn at the Airport, 2645 W. Airport Way, Boise, ID 83705

4 p.m.–7 p.m. Kuna, Kuna Senior Center, 229 N. Ave. A, Kuna, ID 83634

Wednesday, April 20, 2016

4 p.m.–7 p.m. Twin Falls, BLM District Office, 2878 Addison Avenue East, Twin Falls, ID 83301

Thursday, April 21, 2016

4 p.m.–7 p.m. Murphy, Owyhee County Historical Society Museum, 17085 Basey St., Murphy, ID 83650

ADDRESSES: You may submit comments related to the Draft Supplemental EIS and Draft RMP Amendments by any of the following methods:

- *Web site: http://www.blm.gov/id/st/en/prog/nepa_register/gateway-west.html*
- *Email: blm_id_gateway_west@blm.gov*
- *Mail:* Bureau of Land Management Idaho State Office, Gateway West Transmission Project, 1387 South Vinnell Way, Boise, ID 83709.

Copies of the Draft Supplemental EIS and Draft RMP Amendments are available in the BLM Idaho State Office Public Room, at the above address; the BLM Boise District Office, 3948 Development Avenue, Boise, ID 83705; and the BLM Twin Falls District Office, 2878 Addison Avenue East, Twin Falls, ID 83301.

FOR FURTHER INFORMATION CONTACT: Heather Feeney, Public Affairs Specialist, telephone 208–373–4060; address 1387 South Vinnell Way, Boise, ID 83709; email *hfeeney@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact Mrs. Feeney. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question for Mrs. Feeney. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Documents pertinent to this proposal may be examined at:

- Bureau of Land Management, Idaho State Office, Public Room, 1387 South Vinnell Way, Boise, ID 83709, Telephone: 208–373–3863.
- Bureau of Land Management, Boise District Office, 3948 Development Avenue, Boise, ID 83705, Telephone: 208–384–3300.
- Online: *http://www.blm.gov/id/st/en/prog/nepa_register/gateway-west.html*

PacifiCorp, dba Rocky Mountain Power, and Idaho Power (Applicants) have submitted a ROW application to locate 500 kV- electric transmission lines on Federal lands as part of the Gateway West Transmission Line Project. The initial application proposed to construct electric transmission lines from the Windstar Substation near Glenrock, Wyoming, to the Hemingway Substation near Melba, Idaho, approximately 20 miles southwest of Boise, Idaho. The original project comprised 10

transmission line segments with a total length of approximately 1,000 miles and was analyzed in a Final EIS published in April 2013. The BLM issued a Record of Decision in November 2013 which authorized routes on Federal lands for Segments 1 through 7 and Segment 10 but deferred a decision for Segments 8 and 9.

In August 2014, the BLM received from the Applicants a revised ROW application for Segments 8 and 9 and a revised Plan of Development (POD) for the project. The BLM determined that new information in the revised ROW application and POD, including revised proposed routes for the transmission lines and several modified design features, would require additional NEPA analysis of potential environmental effects to supplement the analysis in the 2013 Final EIS. A Notice of Intent to prepare a Supplemental EIS was published in the *Federal Register* on September 19, 2014 (79 FR 56399), initiating a 45-day scoping period which included 4 open-house style public meetings in communities in the project area.

The BLM must determine whether to authorize the use of public lands under its management for Segments 8 and 9 of the Gateway West project. The BLM must consider existing RMPs and management framework plans (MFPs) in the decision to issue a ROW grant in accordance with 43 CFR 1610.0–5(b). Portions of the proposed transmission line are not in conformance with several BLM land management plans, and therefore, amendments to these plans are analyzed as part of the Supplemental EIS. In addition, the BLM must ensure that the authorized project would be compatible with the purposes for which the Morley Nelson Snake River Birds of Prey National Conservation Area (SRBOP) is designated in Public Law 103–64 and with current policy for managing units of the National Landscape Conservation System.

This notice announces the availability of the Draft Supplemental EIS for Segments 8 and 9 of the Gateway West Transmission Line Project and begins a 90-day public comment period on the range of alternatives, effects analysis and draft RMP/MFP amendments associated with authorizing the project on BLM-managed lands. Analysis in the Supplemental EIS will support a decision on whether to approve, approve with modifications, or deny the revised ROW application for Segments 8 and 9.

The BLM is the lead Federal agency for the NEPA analysis process and preparation of the supplemental EIS. The State of Idaho and Federal agencies with specialized expertise and/or jurisdictional responsibilities in the area of Segments 8 and 9 are participating as cooperating agencies. Cooperating agencies include the U.S. Fish and Wildlife Service; National Park Service; U.S. Army Corps of Engineers; Idaho State Historic Preservation Office; Idaho Department of Fish and Game; and the Idaho Governor's Office of Energy Resources.

The BLM is also engaging in government-to-government consultations on the Supplemental EIS with the Shoshone-Bannock Tribes of Fort Hall and the Shoshone-Paiute Tribes of Duck Valley, under Federal laws and policies including but not limited to the National Historic Preservation Act, NEPA, Archaeological Resources Protection Act, American Indian Religious Freedom Act, Native American Graves Protection and Repatriation Act, and Executive Orders 12875, 12898, 13007, 13084, and 13175. Relevant issues and concerns that influenced the scope of the environmental analysis in the Draft but which were not addressed in the original EIS were identified during scoping. Alternatives considered in the Draft Supplemental EIS are analyzed based on all the issues included in the 2013 Final EIS (refer to Section 1.10 of the Final EIS), as well as new issues, direction in agency handbooks, and requirements of Federal and State laws and regulations. The following issue categories were identified from public and internal scoping conducted for the Supplemental EIS:

- Air quality and greenhouse gas;
- Agriculture, including effects to farming and dairy operations;
- Cultural resources and historic trails, including Oregon National Historic Trail, Native American cultural sites, Snake River Canyon cultural sites;
- Cumulative effects, especially to native vegetation and sage-grouse habitat;
- Effects on State lands and counties;
- Wildland fire risks;
- Safety, electrical environment and noise;
- Land uses;
- Plants, including invasive species and noxious weeds;
- Threatened, endangered and sensitive species (plants and wildlife);
- Recreation;
- Scenery and visual resources;
- Socioeconomic effects;
- Transportation and travel management;
- Water and riparian resources;
- Wild horses and burros;
- General wildlife and wildlife habitat; and
- Effects to resources, objects and values which the SRBOP enabling statute directs the BLM to conserve, protect and enhance.

The Draft Supplemental EIS analyzes in detail seven pairings of route alternatives for Segments 8 and 9 as Action Alternatives. Analysis of the No Action Alternative, under which the ROW application would be denied and Segments 8 and 9 would not be constructed, is included in the 2013 Final EIS for the original Gateway West project and is incorporated by reference in the Draft Supplemental EIS. In general, routes for Segment 8 are the more northerly of the two. Alternative 1 is the pair of revised proposed routes for Segments 8 and 9, as presented by the Applicants. Alternative 2 pairs the revised proposed route for Segment 8 and the Final EIS proposed route for Segment 9. Alternative 3 is the revised proposed route for Segment 8 and a route designated 9K, which was developed as a result of scoping for the Draft Supplemental EIS. Alternative 4 pairs the Final EIS proposed route for Segment 9 and route designated as 8G, which was developed as a result of scoping for the Draft Supplemental EIS. Alternative 5 pairs routes 8G and 9K. Alternative 6 consists of the Final EIS proposed route for Segment 9 and a Draft Supplemental EIS route 8H. Alternative 7 is routes 8H and 9K. The ROW width requested for all segments is 250 feet, except for Alternative 5, where a 500-foot ROW is required to accommodate two lines at the minimum separation distance. Portions of all route alternatives would cross the SRBOP.

Both segments terminate at the Hemingway substation under all action alternatives. Segments are separated at distances of 250 feet to more than 30 miles, varying within routes and/or across alternatives. The Applicants propose wider separation to increase system reliability. Analysis of several other routes for Segments 8 and 9 in the 2013 Final EIS is carried forward by reference into the Draft Supplemental EIS.

Alternative 1

This alternative represents the routes the Applicants propose in their revised ROW application. Segment 8 of this pairing is similar to the 2013 Final EIS proposed route except that it would parallel an existing 500-kilovolt (kV) line to the north instead of the south, from the point where it would enter the SRBOP to the Hemingway substation. It would cross 17.6 miles of the SRBOP.

Segment 9 of this alternative is proposed to double-circuit the new 500-kV line with existing 138-kV lines for most of the 54.2 miles it would cross the SRBOP. The Draft Supplemental EIS analyzes two variations of the revised proposed route for Segment 9 that were

recommended by the BLM Jarbidge Field Office to avoid or minimize impacts to the Toana Freight Wagon Road, a National Register historic site.

Alternative 2

Alignment of Segment 8 under this alternative allows separation from populated areas and existing transmission infrastructure outside the SRBOP to the north while minimizing the disturbance footprint for the segment in the SRBOP (17.6 miles crossed) by paralleling an existing 500-kV line. The alignment for Segment 9 in this pairing is the shortest (162.2 miles) analyzed in the Draft Supplemental EIS for this segment and follows the West-wide Energy Corridor (WWEC) south of the SRBOP. It would cross the SRBOP for 13.6 miles.

Alternative 3

This alternative would allow Segment 8 to be separated from populated areas and existing transmission infrastructure outside the SRBOP to the north while minimizing the disturbance footprint in the SRBOP (17.6 miles crossed) by paralleling an existing 500-kV line. Segment 9 would be routed to avoid impacts to agricultural operations and would cross the SRBOP for 8.7 miles.

Alternative 4

In this pairing, the route for Segment 9 is aligned to the north, while the route for Segment 8 follows the more southerly alignment. Segment 8 is aligned to avoid crossing the northern portion of the SRBOP, the Hagerman Fossil Beds National Monument and development near the town of Hagerman, Idaho. It crosses the SRBOP for 8.8 miles, at the southeast corner of the area. Segment 9 would be routed to avoid impacts to agricultural operations and would cross the SRBOP for 13.6 miles.

Alternative 5

Route 8G is aligned to avoid crossing the northern portion of the SRBOP, the Hagerman Fossil Beds National Monument and development near the town of Hagerman, Idaho. It would cross the southeast corner of the SRBOP for 8.8 miles, at the southeast corner of the area.

Route 9K is also aligned to avoid crossing the SRBOP, especially when paired with 8G, and to minimize direct and indirect impacts to priority Greater sage-grouse habitat. It would cross the southeast corner of the SRBOP for 8.7 miles, at the southeast corner of the area, where it would run parallel to 8G in a 500-foot wide ROW. This alternative makes most use of the reduced mandatory minimum separation distance for transmission lines adopted by the Western Electricity Coordinating Council in 2011 and would involve the shortest crossing of the SRBOP.

Alternative 6

This alternative includes a route for Segment 8 (8H) that follows the 8G alignment for the first 44 miles and then follows the alignment of the revised proposed route for Segment 9 for the remainder of the route to the Hemingway substation. The BLM developed this alternative to depict opportunities for compensatory mitigation in the SRBOP. It would cross the SRBOP for a total of 67.8 miles.

Alternative 7

This alternative pairs two BLM-developed routes: 8H for Segment 8 and 9K for Segment 9. It would cross the SRBOP for a total of 62.9 miles.

Mitigation

The Draft Supplemental EIS incorporates by reference the analysis related to Segments 8 and 9 in the Gateway West 2013 Final EIS, including relevant Proposed Environmental Protection Measures identified in Table 2.7–1 of that document. The Draft Supplemental EIS supplements the analysis found in that Final EIS by assessing new information that has become available since the FEIS and ROD were published, including the identification of new routes and route variations for segments 8 and 9.

All of those new routes and route variations would have some impact on the SRBOP, a National Conservation Area and unit of the National Landscape Conservation System. The Presidential Memorandum on Mitigation (November 3, 2105) requires that agencies ''[e]stablish a net benefit goal or, at a minimum, a no net loss goal for natural resources the agency manages that are important, scarce, or sensitive. . .''. The Memorandum further provides that: ''[w]hen a resource's value is determined to be irreplaceable, the preferred means of achieving either of these goals is through avoidance, consistent with applicable legal authorities.'' Memorandum at section 3(a).

As part of their revised POD, the Applicants have proposed a mitigation and enhancement portfolio (MEP) with design features specific to the SRBOP, aimed at mitigating the effects of project-related impacts within the SRBOP, as well as complying with the SRBOP's enabling statute. The BLM is required under existing policies to determine the measurable environmental impacts of proposed mitigation. The Draft Supplemental EIS analyzes the impacts associated with the MEP, and finds that the MEP does not provide sufficient details or specifics for development of mitigation actions to allow BLM to determine how the MEP goals would be achieved.

Thus, in addition to application of the Proposed Environmental Protection Measures identified in Table 2.7–1 of the Final EIS, the BLM will continue to work with all stakeholders to identify any impacts that would remain on the SRBOP after implementation of the MEP, and to design a mitigation plan that addresses those remaining impacts. This plan will ensure that impacts to resources and values on the SRBOP that require mitigation are fully compensated, and that enhancement of these resources is provided in a manner that complies with all existing policies and the enabling statute of the SRBOP.

The following mitigation categories are among those being considered to address remaining impacts to vegetation resources within the SRBOP:

- Habitat and vegetation restoration efforts;
- Fuels management/fuel breaks
- Wildfire preparedness and suppression;
- Applied research and monitoring to inform adaptive management; and
- Acquisition of private land from willing sellers if found to be appropriate by the Authorizing Officer.

The Draft Supplemental EIS also presents a framework the BLM has developed for assessing compensatory mitigation required under FLPMA and for implementing Bureau and Department of the Interior mitigation policies for mitigation and the Presidential Memorandum on landscape-scale mitigation (November 3, 2015) for impacts to National Historic Trails, cultural resources, wetlands, and resources, objects and values in the SRBOP. The framework discusses avoidance, minimization and compensation measures that would be required under each alternative. Impacts to Greater sage-grouse and migratory birds are addressed in the 2013 Final EIS for the entire, 10-segment project and the 2013 Record of Decision.

Agency Preferred Alternative

In accordance with U.S. Department of the Interior regulations (43 CFR 46.425), the BLM identifies Alternatives 2 and 5 as co-Preferred Alternatives for the purposes of public review and comment. Identification of these alternatives does not represent final agency direction, and the Final Supplemental EIS may reflect changes or adjustments based on information

received during public comment on the Draft Supplemental EIS, on new, relevant information acquired after the Draft Supplemental EIS is published, or on changes in BLM policies or priorities. The Final Supplemental EIS may include actions described in the other analyzed alternatives as well.

Alternative 2 would require 12 plan amendments to six current land use plans so that the project would conform to the respective plans. The following land use plans would be amended in a decision selecting Alternative 2:

Twin Falls MFP
Jarbidge RMP (1987, for areas not covered by the 2015 Jarbidge RMP)
Snake River Birds of Prey RMP
Bennett Hills/Timmerman Hills MFP
Kuna MFP
Bruneau MFP.

In order to authorize Segment 8 in this alternative, four land use plans would need to be amended. The Kuna MFP would need an amendment to add a new major transmission line ROW. The SRBOP RMP would need amendments to allow the project within 0.5 mile of sensitive plant habitat, and to designate an additional corridor to include the Summer Lake 500-kV line and one additional 500-kV line. The 1987 Jarbidge RMP would need amendments to reclassify an avoidance/restricted area to allow an overhead 500-kV powerline, to change the cultural resource direction to allow disturbance within 0.5 mile of National-Historic-Trail ruts where visual resources are already compromised, and to change an area of VRM Class I to VRM Class IV, consistent with new policy guidance. The Bennett Hills/Timmerman Hills MFP would need amendments changing VRM Class II area to VRM Class III and changing management direction regarding archaeological sites.

In order to authorize Segment 9 in this alternative, three land use plans would need to be amended. The SRBOP RMP would need an amendment to allow the project within 0.5 mile of sensitive plant habitat (the same amendment as for Segment 8 in this alternative) and to designate an additional corridor to include one additional 500-kV line. The Bruneau MFP would require an amendment to change the classification for a VRM Class II parcel near Castle Creek to VRM Class III. The Twin Falls MFP would need amendments to allow the ROW outside of existing corridors and to reclassify VRM Class I and II areas adjacent to the Roseworth corridor to VRM class III, while allowing a 500-kV line to cross the Salmon Falls Creek Area of Critical Environmental Concern (ACEC).

Alternative 5 would require five plan amendments to three current land use plans so that the project would conform to the respective plans. The following land use plans would be amended in a decision selecting Alternative 5:

Twin Falls MFP
Snake River Birds of Prey RMP
Bruneau MFP.

In order to authorize the Segment 8 alignment in this alternative, two land use plans would need to be amended. The SRBOP RMP would require an amendment to allow an additional ROW and designate an additional corridor for two 500-kV lines, as well as an amendment to allow the project within 0.5 mile of sensitive plant habitat. The Bruneau MFP would also need to be amended to change the classification for a VRM Class II parcel near Castle Creek to VRM Class III. These same amendments to the SRBOP RMP and Bruneau MFP would be needed for Segment 9 in this alternative, as the routes would parallel each other in these planning areas. Authorizing the Segment 9 alignment in this alternative would also require two additional amendments. The Twin Falls MFP would need amendments to allow the ROW outside of existing corridors, and to reclassify VRM Class I and II areas adjacent to the Roseworth corridor to VRM class III, while allowing a 500-kV line to cross the Salmon Falls Creek ACEC.

Please note that public comments and information submitted, including names, street addresses, and email addresses of persons who submit comments, will be available for public review and disclosure at the above **ADDRESSES** during regular business hours (8 a.m. to 4 p.m.), 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: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2.

Timothy M. Murphy,

BLM Idaho State Director.

[FR Doc. 2016–05572 Filed 3–10–16; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAC09000 L12100000 MD0000 15X]

Notice of Proposed Supplementary Rules for Shooting on Public Lands Managed by the BLM Hollister Field Office, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed supplementary rules.

SUMMARY: The Bureau of Land Management (BLM) is proposing supplementary rules for shooting on public lands administered by the Hollister Field Office, California. The proposed supplementary rules would help protect public safety, facilitate resource protection, and improve recreation opportunities in the area.

These proposed supplementary rules are intended to allow for enforcement as a tool in minimizing the adverse effects of shooting activities. Upon completion, the supplementary rules will be available for inspection in the Hollister Field Office, and they will be announced broadly through the news media and direct mail to the constituents included on the Hollister Field Office mail list. BLM personnel will also provide personal briefings with interested agencies and organizations.

DATES: Comments on the proposed supplementary rules must be received or postmarked by May 10, 2016 to be assured of consideration.

ADDRESSES: Mail or hand deliver all comments concerning the proposed supplementary rules to the Bureau of Land Management, 20 Hamilton Court, Hollister, CA 95023 or email comments to *dtmoore@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Cooper, Hollister Field Manager or Brian Martin, Outdoor Recreation Planner, BLM Hollister Field Office, 20 Hamilton Court, Hollister, CA 95023, or telephone 831–630–5000.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

The public is now invited to provide comments on the proposed supplementary rules. See the **DATES** and **ADDRESSES** sections for information on submitting comments. This notice and a map depicting the area that would be affected by the proposed supplementary rules are available for public review at the Hollister Field Office. The affected area is also shown on a map on the Hollister Field Office's Web site at *http://www.blm.gov/ca/hollister.*

Written comments on the proposed supplementary rules should be specific,

confined to issues pertinent to the proposed supplementary rules, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the rule that the comment is addressing. The BLM need not consider (a) comments that the BLM receives after the close of the comment period (see **DATES**), unless they are postmarked or electronically dated before the deadline, or (b) comments delivered to an address other than those listed above (See **ADDRESSES**).

Comments, including names, street addresses, and other contact information of respondents, will be available for public review at the 20 Hamilton Court, Hollister, CA 95023, during regular business hours (7:30 a.m. to 4:00 p.m.), Monday through Friday, except Federal holidays.

Before including your address, telephone 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. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

II. Background

The BLM establishes supplementary rules under the authority of 43 CFR 8365.1–6, which allows the BLM State Directors to establish such rules for the protection of persons, property, and public lands and resources. This regulatory provision allows the BLM to issue rules of less than national effect without codifying the rules in the Code of Federal Regulations.

III. Discussion of Proposed Supplementary Rules

As noted in the Record of Decision (ROD) for the Resource Management Plan for the Southern Diablo Mountain Range and the Central Coast of California (September 2007), the BLM has allowed shooting on public lands for several years, and has been monitoring activities at popular shooting areas. As use has increased, the BLM has observed increasing hazards to visitors and to natural resources due to fires and improper disposal of household items, garbage, and electronic waste abandoned on the public lands.

These hazards have been observed in connection with the use of firearms and shooting activities. Thus, the proposed supplementary rules would apply to all shooting activities. Persons performing tasks central to the BLM's mission would be exempt. Such persons would include, for example, members of any organized law enforcement, rescue, or fire-fighting force.

The proposed supplementary rules are needed to provide consistency and uniformity for shooting on BLM-administered lands throughout the Hollister Field Office, and to prevent user conflicts and provide greater safety to the visiting public.

Recreational target shooting is recognized as a legitimate use of public lands; however, in areas where target shooting is concentrated, excessive resource damage and serious conflicts with other uses often occur. Therefore, supplementary rules related to target shooting are necessary to address the following issues and concerns:

Public Safety: As visitation increases among all types of recreational users, so do the conflicts between user groups. In crowded areas, shooting increases conflicts among users and threatens user safety. Other recreationists and nearby landowners have concerns for their personal safety, as well as damage to property.

Resource Damage: Concentrated target shooting areas result in high levels of damage and impacts. Direct impacts associated with these areas are the shooting of trees and rocks and soil contamination from lead bullets. The indirect impacts include: Increased risk and frequency of wildfires, litter, new route proliferation, vandalism, illegal dumping and other illegal activities. These areas require more clean-up efforts, monitoring and law enforcement presence, and user education efforts than areas where concentrated target shooting does not occur.

Noise: Repetitive noise from concentrated target shooting areas impacts all other recreational activities and the quality of life for nearby residents.

Exclusive use: Exclusive use is created as target shooting becomes concentrated and displaces other recreation users from the area. Many other types of recreational users such as hikers, equestrians, and mountain bikers tend to avoid these areas because of the continuous noise of gunfire and concerns for their own personal safety.

At present, no supplementary rules are in effect for shooting on lands managed by the Hollister Field Office where issues associated with target shooting are most prevalent. Therefore, these supplementary rules are proposed to implement the ROD for the Resource Management Plan for the Southern Diablo Mountain Range and the Central Coast of California (September 2007) with respect to use of firearms and shooting activities.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These proposed supplementary rules are not a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. The proposed supplementary rules would not have an annual effect of $100 million or more on the economy. They are not intended to affect commercial activity, but impose rules of conduct on recreational visitors for public safety and resource protection reasons in a limited area of public lands. These supplementary rules would not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These proposed supplementary rules would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. These proposed supplementary rules do not materially alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients, nor do they raise novel legal or policy issues. They merely strive to protect public safety and the environment.

Clarity of the Rules

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. The BLM invites your comments on how to make these proposed supplementary rules easier to understand, including answers to questions such as the following:

(1) Are the requirements in the proposed supplementary rules clearly stated?

(2) Do the proposed supplementary rules contain technical language or jargon that interferes with their clarity?

(3) Does the format of the proposed supplementary rules (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

(4) Would the proposed supplementary rules be easier to understand if they were divided into more (but shorter) sections?

(5) Is the description of the proposed supplementary rules in the **SUPPLMENTARY INFORMATION** section of this preamble helpful in understanding the proposed supplementary rules? How could this description be more helpful in making the proposed supplementary rules easier to understand?

Please send any comments you may have on the clarity of the proposed supplementary rules to one of the addresses specified in the **ADDRESSES** section.

National Environmental Policy Act

The BLM prepared an environmental assessment (EA) dated April 6, 2015, and found that the proposed supplementary rules would not constitute a major Federal action significantly affecting the quality of the human environment under Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The proposed supplementary rules merely contain rules of conduct for the BLM public lands administered by the Hollister Field Office within the Central California District. These rules are designed to protect the environment and public safety. A detailed statement under NEPA is not required. The BLM has placed the EA and the Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section.

As documented in Environmental Assessment DOI–BLM–CA–0900–2012–49–EA, and the associated Finding of No Significant Impact and Decision Record, the proposed supplementary rules do not constitute a major Federal action significantly affecting the quality of the human environment under Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C).

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The proposed supplementary rules do not pertain specifically to commercial or governmental entities of any size, but to public recreational use of specific public lands. Therefore, the BLM has determined under the RFA that the proposed supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

These proposed supplementary rules do not constitute a ''major rule'' as defined at 5 U.S.C. 804(2). These proposed supplementary rules merely contain rules of conduct for recreational use of certain public lands. These proposed supplementary rules would not affect business, commercial, or industrial use of the public lands.

Unfunded Mandates Reform Act

These proposed supplementary rules would not impose an unfunded mandate on State, local, or tribal Governments in the aggregate, or the private sector, of more than $100 million per year; nor would they have a significant or unique effect on small governments. These proposed supplementary rules do not require anything of State, local, or tribal governments. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act, 2 U.S.C. 1531 *et seq.*

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

These proposed supplementary rules are not a government action capable of interfering with constitutionally protected property rights. These proposed supplementary rules do not address property rights in any form, and do not cause the impairment of anybody's property rights. Therefore, the BLM has determined that these proposed supplementary rules would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

These proposed supplementary rules would not have a substantial direct effect on the states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government. These proposed supplementary rules apply on a limited area of land in only one State, California. Therefore, the BLM has determined that these proposed supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the BLM has determined that these proposed supplementary rules would not unduly burden the judicial system and that the requirements of sections 3(a) and 3(b)(2) of the Order are met. These supplementary rules contain rules of conduct for recreational use of certain public lands to protect public safety and the environment.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, the BLM has found that these proposed supplementary rules do not include policies that have tribal implications. These proposed supplementary rules do not affect lands held in trust for the benefit of Native American tribes, individual Indians, Aleuts, or others.

Paperwork Reduction Act

These proposed supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

These proposed supplementary rules do not comprise a significant energy action. These supplementary rules would not have an adverse effect on energy supplies, production, or consumption. They only address rules of conduct for recreational use of certain public lands to protect public safety and the environment, and have no connection with energy policy.

Author

The principal author of the proposed supplementary rules is Brian Martin, BLM Chief Law Enforcement Officer for the Hollister Field Office, California.

For the reasons stated in the Preamble, and under the authority for supplementary rules at 43 U.S.C. 1740 and 43 CFR 8365.1–6, the California State Director, Bureau of Land Management, proposes to issue these supplementary rules for public lands managed by the BLM in California, to read as follows:

Supplementary Rules

Definitions

Alcoholic beverage means any beverage that, when consumed, will produce intoxication.

Controlled substance means any substance so designated by law whose availability is restricted, including, but not limited to, narcotics, stimulants, depressants, hallucinogens, and marijuana.

Destructive device means any type of weapon, by whatever name known, which will, or which may be readily converted to expel a projectile by the action of an explosive or other propellant, the barrel or barrels of which have a bore of more than 0.60 caliber, except a shotgun or shotgun shell, which is generally recognized as particularly suitable for sporting purposes.

Developed recreation area/site means any site or area that contains structures or capital improvements primarily used by the public for recreation purposes. Such areas or sites may include such features as: Delineated spaces for parking, camping, boat launching, sanitary facilities, potable water, grills, fire rings, tables, or controlled access.

Explosive, chemical, or incendiary device means any tracer round, incendiary bomb, grenade, fire bomb, chemical bomb, or device which consists of or includes a breakable or non-breakable container including a flammable liquid or compound, or any breakable container which consists of or includes a chemical mixture that explodes with fire or force and can be shot at or shot from a firearm, carried, or thrown. A cartridge containing or carrying an explosive agent and bullet is not an explosive device as that term is used here.

Firearm means an instrument used in the propulsion of shot, shell, or bullets by the action of gunpowder exploded within it.

Loaded firearm means a firearm that has an unexpended cartridge of powder and a bullet or shot in or attached in any manner to the firearm including, but not limited to, in the firing chamber, magazine, or clip thereof attached to the firearm or a muzzle loader firearm that is capped or primed and has a powder charge and ball or shot in the cylinder or barrel.

Target means items designed, manufactured, or built specifically for the purpose of target shooting which can be completely removed following use.

Target shooting means shooting a weapon for recreational purposes when game is not being legally pursued.

Public lands means any lands or interest in lands managed by the BLM.

Pyrotechnic device means any device manufactured or used to produce a visible or audible effect by combustion, deflagration, or detonation. This includes, but is not limited to, such devices as exploding targets that are detonated when struck by a projectile such as a bullet fired from a firearm.

Weapon means any firearm, cross bow, bow and arrow, paint gun, fireworks, or explosive device capable of propelling a projectile either by means of an explosion, compressed gas, or by string or spring.

1. These supplementary rules apply, except as specifically exempted, to all shooting activities on public lands administered by the Hollister Field Office, California.

2. These supplementary rules are in effect year-around and will remain in effect until modified by the State Director.

3. The following persons are exempt from these supplementary rules: Any Federal, State, or local government officer or employee in the scope of their duties; members of any organized law enforcement, rescue, or fire-fighting force in performance of an official duty; and any person whose activities are authorized in writing by the Bureau of Land Management.

4. All persons must abide by all Federal and State laws, rules, and regulations pertaining to firearms and weapons for all shooting activities on public lands.

5. No person shall, unless it is posted as allowed, target shoot with a weapon within 50 feet of the center line of any public road.

6. No person shall shoot or discharge any weapon across any public road or signed trail.

7. No person shall, unless it is posted as allowed, shoot or discharge any weapon within 150 yards of any developed recreation area/site.

8. No person shall shoot or discharge any weapon toward or in the direction of any public road, signed trail, or developed recreation area/site where this action could create a hazard to life or property.

9. No person shall consume or be under the influence of an alcoholic beverage or a controlled substance while shooting or discharging any weapon on public lands.

10. No person shall shoot or discharge any firearm loaded with tracer bullets on public lands.

11. No person shall shoot or discharge any weapon at any construction materials, office products, or household items including, but not limited to, appliances, furniture, electronic waste, or other objects containing glass on public lands. Targets designed, manufactured, or built specifically for the purpose of target shooting and which can be completely removed following use are allowed.

12. No person shall shoot or discharge any weapon at clay pigeons on public lands.

13. No person shall shoot or discharge any weapon at any tree, cactus, shrub, or similar vegetative object, fence post, or any other public lands infrastructure. This includes the use of these objects to support targets.

14. Persons shooting or discharging any weapon on public lands are required to remove and properly dispose of all shooting materials, including targets, shell boxes, shell casings, hulls, and brass.

15. No person shall transport in a vehicle or conveyance or its attachments on any public land, or roads, a firearm, unless it is unloaded or dismantled.

16. No person shall have a loaded firearm on display when in any developed recreation area.

17. No person shall shoot or discharge any weapon from a powerboat, sailboat, motor vehicle, or aircraft.

18. No person shall, except with a valid permit, carry a concealed firearm on public lands.

19. No person shall possess or use any pyrotechnic device on public lands. This prohibition includes, but is not limited to, devices such as exploding targets that are detonated when struck by a projectile such as a bullet fired from a firearm.

20. No person shall possess or use any destructive, explosive, or incendiary (including chemical) device on public lands. This prohibition includes, but is not limited to, any homemade or manufactured bomb, cannon, mortar, or similar device.

Enforcement

Any person who violates any of these supplementary rules may be tried before a United States Magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned no more than 12 months under 43 U.S.C. 1733(a) and 43 CFR 8360.0–7, or both. In accordance with 43 CFR 8365.1–7, State or local officials may also impose penalties for violations of California law.

Joe Stout,

Acting BLM California State Director.

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCA932000.L13400000.DP0000.LXSSB0020000.16X]

Notice of Areas of Critical Environmental Concern in the Desert Renewable Energy Conservation Plan Proposed Land Use Plan Amendment, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) announced availability of the Proposed Land Use Plan Amendment (LUPA) and Final Environmental Impact Statement (EIS) for the Desert Renewable Energy Conservation Plan (DRECP) with a Notice of Availability published in the **Federal Register** on November 13, 2015 (80 FR 70254). The Proposed LUPA would amend the California Desert Conservation Area (CDCA) Plan and the Bakersfield and Bishop Resource Management Plans (RMPs). The Proposed DRECP LUPA/Final EIS considers designation of 134 Areas of Critical Environmental Concern (ACECs). In order to comply with Federal Regulations at 43 CFR 1610.7–2(b), the BLM through this notice is announcing a 60-day public comment period on those 134 ACECs. The 134 ACECs listed in this notice are identical to those identified in the alternatives found within the Proposed DRECP LUPA/Final EIS addressed by the publication of the Federal Notice of Availability on November 13, 2015. The scope of this 60-day comment period is

limited to these 134 ACEC designations. Comments on other topics are outside the scope of this public comment process

DATES: The comment period pertaining to these ACEC designations closes on May 10, 2016. All comments must be in writing and must be postmarked no later than the close of the last day of the comment period. The BLM provided a 152-day comment period on the Draft DRECP LUPA and Environmental Impact Report (EIR)/EIS. All comments received on the Draft DRECP were considered while developing the Proposed LUPA/Final EIS. As such, the BLM is only seeking comments on the 134 ACECs included in the Proposed LUPA/Final EIS, which are listed in this notice. While the BLM will consider all such comments, it does not intend to respond to each comment individually.

ADDRESSES: Comments must be in writing and must be sent to Vicki Campbell, DRECP Program Manager, 2800 Cottage Way, Suite W–1623, Sacramento, CA 95825; or email *blm_ca_drecp@blm.gov*.

Copies of the DRECP Proposed LUPA/Final EIS were sent to affected Federal, State, and local government agencies, affected tribal governments, and to other stakeholders concurrent with the November 13, 2015 Notice of Availability. The environmental analysis for the DRECP, including the Draft DRECP and the DRECP Proposed LUPA/Final EIS, is available for review online at *www.drecp.org* and *www.blm.gov/ca/drecp*. Please see **SUPPLEMENTARY INFORMATION** below for a list of locations where copies of the DRECP Proposed LUPA/Final EIS are available for public inspection.

FOR FURTHER INFORMATION CONTACT: Vicki Campbell, Program Manager, DRECP, telephone 916–978–4401; address BLM California State Office, 2800 Cottage Way, Suite W–1623, Sacramento, CA 95825; email *vlcampbell@blm.gov*. To request a DVD, please send an email to *drecp.info@energy.ca.gov* or call 916–978–4401 and include the mailing address in the message. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The DRECP was developed with broad public participation through an 6-year collaborative planning process, beginning with publication of a Notice of Intent to amend the CDCA Plan in the **Federal Register** on November 20, 2009 (74 FR 60291). Subsequently, the BLM and U.S. Fish and Wildlife Service (USFWS) as co-lead agencies jointly published on July 29, 2011 a Notice of Intent to prepare an EIS for the proposed DRECP (76 FR 45606). The BLM published a third Notice of Intent on April 4, 2012 (77 FR 20409), amending the November 20, 2009, and July 29, 2011, notices to include the Bishop, Caliente/Bakersfield, and Eastern San Diego County RMPs in the DRECP LUPA.

As explained in more detail below, the Draft DRECP, which included a Draft BLM LUPA for the CDCA Plan, and the Bishop and Caliente/Bakersfield RMPs, was published on September 26, 2014, (76 FR 57971). The Notice of Availability for the DRECP Proposed LUPA and Final EIS was published on November 13, 2015. In each of these documents and at associated public meetings, the BLM presented a robust discussion of ACECs. The Draft DRECP identified 147 ACECs (58 new and 89 existing), while the Proposed LUPA/Final EIS considered 134 ACECs (all of which are listed below) based on cooperator and stakeholder comments.

The Draft DRECP was developed by the BLM, USFWS, California Energy Commission, and California Department of Fish and Wildlife (collectively, ''DRECP Partner Agencies'') to: (1) Advance Federal and State natural resource conservation goals and other Federal land management goals; (2) Meet the requirements of the Federal Endangered Species Act, California Endangered Species Act, Natural Community Conservation Planning Act, and Federal Land Policy and Management Act in the Mojave and Colorado/Sonoran desert region of Southern California; and (3) Facilitate the timely and streamlined permitting of renewable energy projects.

In December 2012, the DRECP Partner Agencies published the *Description and Comparative Evaluation of Draft DRECP Alternatives* to inform the public about the status of the DRECP alternatives. Members of the public were invited to provide input regarding the development scenarios, conservation designations, and BLM LUPA alternatives, as well as other specific elements presented. Specific to the LUPA, this document included maps showing existing and proposed ''Desert Conservation Lands'' (existing and proposed ACECs, proposed National Conservation Lands, and proposed Wildlife Allocations), as well as areas managed for recreation and existing and proposed Special Recreation Management Areas. The BLM also disclosed that the land use plan amendments would identify: (1) Desired outcomes expressed as specific goals and objectives; and (2) Allowable uses and management actions designed to achieve those specific goals and objectives. The public was especially encouraged to provide input about the differences among the alternatives.

The Draft DRECP included a strategy that identified and mapped potential areas for renewable energy development and areas for long-term natural resource conservation. The Draft DRECP was released for comment on September 26, 2014, with comments being accepted until February 23, 2015. It included a Draft BLM LUPA for the CDCA Plan, and the Bishop and Caliente/Bakersfield RMPs. The Draft BLM LUPA included six alternatives for the expansion, reduction, modification, and creation of ACECs, ranging from 3,308,000 acres (including 1,048,000 acres within Wilderness Study Areas (WSAs) and Wilderness Areas (No Action)) to 6,199,000 acres (including 1,209,000 acres within WSAs and Wilderness Areas (Alternative 3)). The Preferred Alternative proposed 6,077,000 acres of ACEC (including 1,209,000 acres within WSAs and Wilderness Areas).

The Draft DRECP also proposed Conservation and Management Actions (CMAs) to manage ACECs. CMAs included various resource use limitations. The Draft DRECP included 147 ACECs. Of these, 58 were newly proposed ACECs, and 89 were existing. The alternatives considered a range of footprints and CMAs for both existing and newly proposed ACECs. Maps of each ACEC were included in Appendix L of the Draft DRECP. CMAs were listed in Volume II, with management specific to individual ACECs listed in Appendix L.

In March 2015, the DRECP Partner Agencies announced a phased approach to completing the DRECP. As part of the approach, the BLM component of the DRECP (the LUPA) is being finalized first in Phase I, outlining important designations for conservation and renewable energy on public lands.

The Proposed DRECP LUPA would amend the CDCA Plan for the entire CDCA, and the RMPs for portions of the Bishop and Bakersfield Field Offices. This includes the Mojave Desert and Colorado/Sonoran Desert ecoregion subareas in California. The DRECP Plan Area includes all or a portion of the following counties: Imperial, Inyo, Kern, Los Angeles, Riverside, San Bernardino, and San Diego. The DRECP LUPA Area covers approximately 10,869,000 of

BLM-administered lands. The Proposed LUPA also included six alternatives for the expansion, reduction, modification, and creation of ACECs. The 134 ACECs listed in this notice include all the ACECs identified within the range of alternatives analyzed in the Final EIS. Based on comments received on the Draft DRECP, the Proposed LUPA would designate 130 ACECs covering approximately 5,976,000 acres (including 1,101,000 acres within WSAs and Wilderness Areas) and includes CMAs and resource use limitations to manage those ACECs. Those 130 ACECs are a subset of the 134 listed below. The Proposed LUPA clarifies CMAs as they applied to the ACECs. It includes a detailed methodology for implementing and managing for ground disturbance caps in ACECs, including the addition of ground disturbance mitigation. As part of the Proposed LUPA, additional areas were moved into proposed conservation that were not included in the preferred alternative in the Draft EIS, including Silurian Valley, Cadiz Valley, the entirety of the Desert Tortoise Research Natural Area, the Palen-Ford cultural and sand resources areas. Some ACECs included in the Draft DRECP were combined with, or subsumed by other existing ACECs for manageability in the Proposed LUPA. Small amounts of acres were removed from the ACECs to ensure that boundaries were manageable and enforceable, and to remove active mining areas from the ACECs in the Proposed LUPA.

The Notice of Availability for the DRECP Proposed LUPA and Final EIS was published on November 13, 2015, (80 FR 70254), which initiated a 30-day protest period. During the initial review of protest letters received, the BLM determined that it had missed a regulatory requirement, stated in 43 CFR 1610.7–2(b), to specifically list in a **Federal Register** Notice the proposed ACECs being considered. In order to fulfill this regulatory requirement, the BLM is releasing this NOA to identify the 134 ACECs and associated resource use limitations considered in the Proposed LUPA/Final EIS, and providing an additional 60-day public comment period on those ACECs.

The BLM accepted and considered input from the public on ACEC values and potential designation during scoping for the LUPA, during public comment on the *Description and Comparative Evaluation of Draft DRECP Alternatives* published in December 2012, and during the five-month comment period on the Draft DRECP LUPA and EIR/EIS. The alternatives analyzed in the Draft DRECP and EIR/EIS varied in number and size of potential ACECs as discussed above.

The BLM then considered comments on the Draft DRECP in the development of the DRECP Proposed LUPA and Final EIS. Of the ACECs analyzed in the draft plan, the Proposed LUPA would designate 130 of the 134 area listed below as ACECs with their associated management and resource use limitations. The remaining four areas identified as potential ACECs were determined to not be appropriate for designation at this time. Resource use limitations were included in Volume II and Appendix L of the Draft DRECP. The BLM considered public comments received during the comment period and refined the CMAs included in the Proposed LUPA.

Special Unit Management Plans were developed specific for each ACEC and are contained in Appendix L of the DRECP Proposed LUPA and Final EIS. The BLM evaluated each proposed and existing ACEC within the DRECP to determine if special management was needed for the following resources and uses:

- Soil, water, air;
- Vegetation—including special status species;
- Fish and wildlife—including special status species;
- Cultural resources;
- Paleontology;
- Trails and travel management;
- Recreation;
- Land tenure;
- Rights of way;
- Minerals (including locatable minerals, mineral materials, and non-energy leasables); and
- Wild horses and burros.

Where special management, including resource use limitations, is proposed for a specific ACEC, it is identified in that unit's Special Unit Management Plan.

The proposed resource use limitations for all ACECs listed below include limitations on ground disturbing activities. Ground disturbing activities in ACECs would be constrained by specified disturbance caps, which limit the total ground disturbance in the area. The specific ACEC disturbance caps were first disclosed in the Draft DRECP LUPA, are defined in the individual Special Unit Management Plans (Appendix L for the Draft DRECP LUPA and Proposed LUPA/Final EIS), and range from 1.0 percent to 0.1 percent. The methodology for applying the disturbance caps is listed in CMAs ACEC–DIST–1 through ACEC–DIST–3 in Section II.3.4 of the Proposed DRECP LUPA/Final EIS.

Other resource use limitations include limitations on rights-of-way (including prohibition of renewable energy activities and right-of-way avoidance or exclusion for all other rights-of-way), specific design features and mitigation measures to protect cultural and biological resources. These CMAs are listed in Section II.3.4.2.2 and II.3.4.2.4 of the Proposed LUPA/Final EIS.

The DRECP Proposed LUPA includes the following ACECs (note that acreage figures are rounded to the nearest 1000, 100, or 10, as appropriate) (due to rounding and designation overlap, columns do not sum to the total acreage figures discussed above):

Proposed ACEC	Acres (No Action)	Acres (Proposed LUPA)	Relevant and important values
Afton Canyon	8,800	8,800	Hydrologic and geologic features, paleontological resources, cultural values, wildlife resources.
Alligator Rock	6,800	6,800	Cultural values.
Amargosa North	7,100	115,900	Wildlife resources, plant assemblages, riparian resources, cultural values (includes portions of the existing Amargosa River ACEC).
Amargosa South	19,500	147,900	Wildlife resources, plant assemblages, riparian resources, cultural values (includes portions of the existing Amargosa River ACEC).
Amboy Crater National Natural Area	600	600	Plant assemblage.
Avawatz Mountains Wilderness Study Area	0	49,800	Wildlife resources.
Ayers Rock	0	1,600	Cultural values.
Barstow Carbonate Endemic Plants Research Natural Area.	4,400	5,000	Vegetative resources, wildlife resources.

Proposed ACEC	Acres (No Action)	Acres (Proposed LUPA)	Relevant and important values
Barstow Woolly Sunflower	19,100	19,100	Vegetative resources, wildlife resources.
Bedrock Spring	800	800	Cultural values, wildlife resources.
Bendire's Thrasher	11,700	9,800	Wildlife resources (portions of existing ACEC are proposed to be managed as part of the Jawbone/Butterbredt ACEC).
Big Morongo Canyon	24,900	24,900	Wildlife and vegetative resources, cultural values, riparian resources.
Big Rock Creek Wash	0	300	Geologic features, vegetative resources, wildlife resources.
Bigelow Cholla	100	4,400	Wildlife and vegetative resources.
Black Mountain Cultural Area	51,300	51,300	Cultural values, wildlife and vegetative resources.
Brisbane Valley Monkey Flower	0	11,700	Vegetative resources.
Bristol Mountains	0	214,200	Wildlife resources, plant assemblages, cultural values.
Cadiz Valley	0	190,800	Wildlife resources, unique plant assemblages.
Cady Mountains Wilderness Study Area	0	101,400	Wildlife resources.
Calico Early Man Site	800	800	Cultural values.
Caliente Creek Area of Ecological Importance	0	0	Wildlife resources (Note—this area is being identified as important for wildlife, but not as an ACEC in the Proposed LUPA).
Castle Mountain	0	22,900	Unique plant assemblage, wildlife resources, cultural values.
Cerro Gordo-Conglomerate Mesa	9,000	12,100	Cultural values, rare plant and animal species and habitat.
Cerro Gordo Wilderness Study Area	0	600	Cultural values, desert wildlife species.
Chemehuevi	818,900	875,400	Wildlife resources, usual plant assemblages, cultural values.
Christmas Canyon	3,400	3,400	Cultural values.
Chuckwalla	493,600	514,400	Cultural values, scenic values, vegetative and wildlife resources.
Chuckwalla to Chemehuevi Tortoise Linkage	0	319,900	Wildlife resources, cultural values.
Chuckwalla Valley Dune Thicket	2,200	2,200	Vegetation resources, cultural values.
Clark Mountain	4,300	0	The majority of this ACEC is now within the Mojave National Preserve. Lands outside the Preserve are proposed to be managed within the Ivanpah ACEC.
Coachella Valley Fringe-toad Lizard	10,300	10,300	Unique geologic features, wildlife resources, cultural values.
Coolgardie Mesa	9,800	9,800	Vegetative resources.
Corn Springs	2,500	2,500	Cultural values, hydrologic features, wildlife and vegetation resources.
Coyote Mountains Fossil Site	5,900	5,900	Geologic features, paleontological resources, wildlife resources, cultural values.
Crater Mountain Wilderness Study Area	0	1,000	Wildlife resources.
Cronese Basin	8,500	8,500	Cultural values.
Dagget Ridge Monkey Flower	26,000	26,000	Vegetative resources.
Dead Mountains	27,200	27,200	Cultural values.
Death Valley Wilderness Study Area	0	47,900	Cultural values, wildlife resources.
Denning Springs	400	400	Cultural values.
Desert Lily Preserve	2,100	2,100	Vegetative resources.
Desert Tortoise Research Natural Area	22,200	22,200	Wildlife resources.
Dos Palmas	8,300	8,300	Unique geologic features, wildlife and fish resources, cultural values.
Eagles Flyway	0	11,000	Wildlife resources.
East Mesa	42,100	88,500	Cultural values, wildlife resources.
El Paso to Golden Valley Wildlife	0	57,900	Wildlife resources, geologic features, vegetative resources.
Fossil Falls	1,600	1,600	Wildlife resources, prehistoric and historic cultural values, unique geological features.
Fremont-Kramer	311,500	310,200	Wildlife resources.
Granite Mountain Wildlife Linkage	0	39,300	Wildlife resources, plant assemblages.
Great Falls Basin Argus Range Wilderness Study Area.	0	10,300	Wildlife resources.
Halloran Wash	1,700	1,700	Cultural values.
Harper Dry Lake	500	500	Riparian resources, wildlife resources.
Horse Canyon	1,500	1,500	Cultural values, paleontological resources, vegetative resources.
Independence Creek Wilderness Study Area	0	6,800	Wildlife resources.
Indian Pass	1,900	1,900	Cultural values, vegetative resources.
Ivanpah	35,000	78,300	Wildlife resources, cultural values.
Jawbone/Butterbredt	147,800	153,200	Wildlife resources, cultural values, vegetative resources.
Juniper Flats Cultural Area	2,400	2,400	Cultural values, wildlife resources.
Kelso Creek Monkeyflower	1,900	1,900	Vegetative resources.

Proposed ACEC	Acres (No Action)	Acres (Proposed LUPA)	Relevant and important values
Kingston Range	18,900	18,900	Wildlife and vegetative resources, cultural values.
Kingston Range Wilderness Study Area	0	40,000	Wildlife resources.
Lake Cahuilla	14,000	8,600	Cultural values.
Last Chance Canyon	5,100	5,100	Cultural values, wildlife resources.
Manix Paleontological Area	2,900	2,900	Paleontological resources, cultural values, wildlife resources.
Manzanar	0	500	Cultural values.
Marble Mountain Fossil Bed	200	200	Geologic features, paleontological resources.
McCoy Valley	0	26,200	Wildlife resources.
McCoy Wash	0	6,400	Plant assemblage, wildlife resources.
Mesquite Hills/Crucero	5,000	5,000	Cultural values.
Mesquite Lake	6,700	6,700	Cultural values.
Middle Knob	17,800	17,800	Vegetative resources.
Mojave Fishhook Cactus	600	600	Vegetative resources.
Mojave Fringe-toad Lizard	22,200	22,400	Wildlife and vegetative resources.
Mojave Ground Squirrel	0	198,600	Wildlife and vegetative resources.
Mopah Spring	1,900	1,900	Wildlife resources, cultural values.
Mountain Pass Dinosaur Trackway	600	600	Paleontological resources.
Mule McCoy Linkage	0	51,500	Wildlife resources, plant assemblage, cultural values.
Mule Mountains	4,100	4,100	Wildlife resources.
North Algodones Dunes	0	0	During the DRECP process, this ACEC designation was removed through the Imperial Sand Dunes Recreation Area (ISDRA) Management Plan ROD (June 2013). It is reflected in the range of alternatives. The Proposed LUPA would adopt the decision made in the ISDRA ROD.
Northern Lucerne Wildlife Linkage	0	21,900	Wildlife resources, plant assemblages.
Ocotillo	0	14,600	Cultural values, wildlife resources.
Olancha Greasewood	0	25,600	Unusual plant assemblage.
Old Woman Springs Wildlife Linkage	0	56,000	Wildlife resources.
Ord-Rodman	218,800	230,900	Wildlife resources.
Owens Lake	0	10,300	Cultural values, wildlife and plant resources.
Palen Dry Lake	0	3,600	Cultural values, wildlife resources.
Palen Ford Playa Dunes	0	41,400	Playa/dune system, wildlife resources, cultural values.
Panamint and Argus	0	125,500	Desert wetland communities, cultural values.
Parish's Phacelia	500	500	Vegetative resources.
Patton Military Camps	3800	16,500	Cultural values.
Picacho	0	184,500	Wildlife and vegetative resources, cultural values.
Pilot Knob	900	900	Cultural values.
Pinto Mountains	110,000	110,000	Wildlife resources.
Pipes Canyon	0	8,500	Cultural values.
Pisgah Research Natural Area	18,100	42,100	Wildlife resources, plant assemblages.
Piute-Fenner	151,900	155,700	Wildlife resources, cultural resources.
Plank Road	300	300	Cultural values.
Rainbow Basin/Owl Canyon	4,100	4,100	Wildlife resources, geologic features, paleontological resources.
Red Mountain Spring	700	700	Cultural values, wildlife resources.
Rodman Mountains Cultural Area	6,200	6,200	Cultural values, wildlife resources.
Rose Spring	800	800	Cultural values.
Saline Valley	1,400	1,400	Cultural values, wildlife resources, unique vegetation communities.
Salt Creek Hills	2,200	2,200	Vegetation resources, riparian resources, cultural values.
Salton Seas Hazardous	0	7,100	Public hazard.
San Sebastian Marsh/San Felipe Creek	6,500	6,500	Cultural values, wildlife resources.
Sand Canyon	2,600	2,600	Wildlife and vegetative resources, cultural values.
Santos Manuel	0	27,500	Wildlife resources, cultural values.
Shadow Valley	95,800	197,500	Wildlife resources, cultural values.
Shoreline	11,600	35,800	Cultural values.
Short Canyon	800	800	Wildlife and vegetative resources.
Sierra Canyons	0	26,400	Cultural values, wildlife resources.
Singer Geoglyphs	1,900	1,900	Cultural values, vegetative resources.
Soda Mountain Expansion	0	16,700	Wildlife resources, cultural values.
Soda Mountains Wilderness Study Area	0	88,800	Cultural values, wildlife and vegetative resources.
Soggy Dry Lake Creosote Rings	200	200	Unusual plant assemblage.
Southern Inyo Wilderness Study Area	0	2,900	Wildlife resources.
Steam Well	40	40	Cultural values.
Superior-Cronese	404,800	397,400	Wildlife resources.
Surprise Canyon	4,600	4,600	Wildlife resources, riparian resources.
Symmes Creek Wilderness Study Area	0	8,400	Wildlife resources, cultural values.
Tehachapi Linkage	0	0	Wildlife resources (Note—this area is being identified as important for wildlife, but not as an ACEC in the Proposed LUPA.).

Proposed ACEC	Acres (No Action)	Acres (Proposed LUPA)	Relevant and important values
Trona Pinnacles National Natural Landmark	4,000	4,000	Unique geologic features, wildlife resources.
Turtle Mountains	50,400	50,400	Wildlife resources.
Upper Johnson Valley Yucca Rings	300	300	Unusual plant assemblage.
Upper McCoy	0	37,300	Wildlife resources, cultural values, unusual plant assemblage.
Warm Sulfur Springs	300	300	Desert marsh habitat, unique geologic and hydrologic features, cultural values.
West Mesa	20,300	82,600	Wildlife resources, cultural values.
West Paradise	200	200	Vegetative resources.
Western Rand Mountains	31,100	30,300	Wildlife resources.
Whipple Mountains	2,800	2,800	Geologic features, cultural values.
White Mountain City	800	800	Cultural values.
White Mountains Wilderness Study Area	0	8,800	Wildlife resources.
Whitewater Canyon	14,000	14,000	Riparian resources, wildlife resources, scenic resources, cultural values.
Yuha Basin	68,300	77,300	Cultural values, vegetative and wildlife resources.

Copies of the DRECP Proposed LUPA/Final EIS are available for public inspection at the following locations:

- BLM California State Office, 2800 Cottage Way, Suite W–1623, Sacramento, CA;
- BLM California Desert District Office, 22835 Calle San Juan De Los Lagos, Moreno Valley, CA 92553;
- BLM Barstow Field Office, 2601 Barstow Road, Barstow, CA 92311;
- BLM El Centro Field Office, 1661 S. 4th Street, El Centro, CA 92243;
- BLM Needles Field Office, 1303 S. Highway 95, Needles, CA 92363;
- BLM Palm Springs South Coast Field Office, 1201 Bird Center Drive, Palm Springs, CA 92262;
- BLM Ridgecrest Field Office, 300 S. Richmond Road, Ridgecrest, CA 93555;
- BLM Bakersfield Field Office, 3801 Pegasus Drive, Bakersfield, CA 93308; and
- BLM Bishop Field Office, 351 Pacu Lane, Suite 100, Bishop, CA 93514.

Before including your phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment letter—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: 43 CFR 1610.2, 43 CFR 1610.5, 43 CFR 1610.7–2(b)

Thomas Pogacnik,

Deputy State Director, Bureau of Land Management.

[FR Doc. 2016–05562 Filed 3–10–16; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZ910000.L12100000.XP0000 15X 6100.241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM), Arizona Resource Advisory Council (RAC) will meet in Phoenix, Arizona, as indicated below.

DATES: The Arizona RAC Business meeting will take place April 28, 2016, from 8:30 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the BLM Arizona State Office located at One North Central Avenue, Suite 800, Phoenix, Arizona 85004.

FOR FURTHER INFORMATION CONTACT: Dorothea Boothe, Arizona RAC Coordinator at the Bureau of Land Management, Arizona State Office, One North Central Avenue, Suite 800, Phoenix, Arizona 85004–4427, 602–417–9500. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Arizona. Planned agenda items include: A Welcome and Introduction of Council Members; BLM State Director's Update on BLM Programs and Issues; Threatened and Endangered Species Program Overview; Update on Northstar 2025 Project; RAC Review of the Paria Canyon/Coyote Buttes Special Management Area Proposed Business Plan; RAC Committee Reports; RAC Questions on BLM District Manager Reports and other items of interest to the RAC. Members of the public are welcome to attend the RAC Business meeting. A public comment period is scheduled from 1:45 to 2:15 p.m. and again around 3:00 during the Recreation RAC Session for any interested members of the public who wish to address the Council on BLM programs and business. Depending on the number of persons wishing to speak and time available, the time for individual comments may be limited. Written comments may also be submitted during the meeting for the RAC's consideration. The final meeting agenda will be available two weeks prior to the meeting and posted on the BLM Web site at: *http://www.blm.gov/az/st/en/res/rac.html.* Additionally, directions to the meeting site and parking information may be found on the BLM Web site at: *http://www.blm.gov/az/st/en/res/pub_room/location.html.* Individuals who need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the RAC Coordinator listed above no later than two weeks before the start of the meeting.

Under the Federal Lands Recreation Enhancement Act, the RAC has been designated as the Recreation RAC and has the authority to review all BLM and

Forest Service recreation fee proposals in Arizona. The Recreation RAC will review the Paria Canyon Business Plan at this meeting.

Raymond Suazo,

Arizona State Director.

[FR Doc. 2016–05518 Filed 3–10–16; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–PVE–UPARR–20492; PPWOSLAD00, PUA00UA08.GA0000 (166)]

Proposed Information Collection; Urban Park and Recreation Recovery Program Grants

AGENCY: National Park Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service, NPS) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on October 31, 2016. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: To ensure that we are able to consider your comments on this IC, we must receive them by May 10, 2016.

ADDRESSES: Please send your comments on the ICR to Madonna L. Baucum, Information Collection Clearance Officer, National Park Service, 12201 Sunrise Valley Drive, Room 2C114—Mail Stop 242, Reston, VA 20192 (mail); or *madonna_baucum@nps.gov* (email). Please include ''1024–0048—UPARR'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Elisabeth Fondriest, Recreation Grants Chief, State and Local Assistance Programs Division at 202–354–6916; or 1849 C Street NW. (2225), Washington, DC 20240 (mail); or *elisabeth_fondriest@nps.gov* (email). Please include ''1024–0048'' in the subject line.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Urban Park and Recreation Recovery (UPARR) Act (16 U.S.C. 2501 *et seq.*) was passed as Title X of the National Parks and Recreation Act of 1978. The UPARR Act authorized the Secretary of the Interior to establish a grant program to help economically distressed urban areas improve recreation opportunities for their residents.

We administer the UPARR program in accordance with regulations at 36 CFR 72 and the UPARR Grant Manual. These (1) explain the policies to be followed for awarding grants; (2) list the requirements and criteria to be met for each type of grant and discretionary eligibility; (3) discuss fundable uses and limitations; (4) explain how proposals will be selected and funding; and (5) describe the application process and administrative procedures for awarding grants. The three types of grants available under the program are:

- Rehabilitation—renovate or redesign existing close-to-home recreation facilities.
- Innovation—specific activities that either increase recreation programs or improve the efficiency of the local government to operating existing programs.
- Planning—development of a Recovery Action Program plan.

The following are the information collection requirements for the UPARR Program:

(1) Recovery Action Program: In accordance with 36 CFR 72.10–13, any eligible jurisdiction or discretionary applicant desiring to apply for a grant must develop and submit for NPS approval, a local Recovery Action Program (RAP). The RAP documents the recreation needs of the community and is linked to the objectives, needs, plans, and institutional arrangements of the community. The RAP consists of two sections, which are the Assessment and the Action Plan.

The Assessment describes the existing park and recreation system; issues and problems; goals and objectives. The Assessment summarizes the entire system including: Operation and maintenance; employment and training; programs and services; rehabilitation of existing facilities; and the need for new facilities. The six parts of the Assessment include: Context; physical issues; rehabilitation issues; service issues; management issues; and conclusions, implications, and issues.

The Action Plan is a clear statement of the community's specific objectives, priorities and implementation strategies in relation to the intent of the UPARR Program and the local government's overall recreation system goals. Citizen involvement in the development of the Action Plan is required and may include surveys, hearings, meetings, and/or consultation, as appropriate, which is essential in the development of goals, objectives and the setting of project priorities. The Action Plan identifies: The goals for the system; strategies to address national and local concerns, recommendations; program priorities and implementation schedule; and an evaluation of and update to the Action Program.

In accordance with 36 CFR 72.30, applicants must have an approved RAP on file with the appropriate NPS Regional Office prior to applying for Rehabilitation or Innovation grants. Rehabilitation and Innovation proposals must be based on priorities identified in the applicant jurisdiction's RAP.

(2) Recovery Action Program Grant Applications: In accordance with 36 CFR 72.52, ranking and selection for funding of Recovery Action Program grants will be initiated on the basis of a full application, preparation of which will be assisted through meetings with NPS regional staff. The following documents are required to be submitted with the Recovery Action Program Grant Application: OMB Standard Forms such as the SF–424, the RAP Grant Agreement (Form # 10–911), narrative statements with a description and scope of the planning product(s) to be developed, a project budget, and a work schedule.

(3) Preapplication for Rehabilitation and Innovation Grants: In accordance with 36 CFR 72.53, a preapplication procedure is used to reduce the amount of time and documentation needed for a full application, and to foster the competitive aspects of the UPARR Program. The preapplication must include those items as set forth in the Preapplication Handbook, to include: A letter of transmittal, SF–424, proposal description statement, a narrative describing how the project meets the selection criteria, maps, photographs (for construction projects), cost estimates, and pass through certifications (if applicable). The application must describe the problem addressed by the proposal, including existing conditions, the reason for the problem or why the condition exists, and what the UPARR assistance would do to alleviate the problem or condition. Discretionary applicants must also submit a narrative statement, signed by the chief executive of the applicant jurisdiction, explaining and quantifying the degree of physical and economic distress in the community must be included in each preapplication.

(4) Full Application—Rehabilitation and Innovation Grants: In accordance with 36 CFR 72.54, once a Rehabilitation or Innovation proposal

has received a tentative grant offer, applicants will be responsible for completing a full application, which addresses compliance with the OMB regulation at 2 CFR part 200, as well as other applicable Federal laws and regulations such as environmental and historic preservation laws. A list of specific Acts and Executive Orders is in 36 CFR 72.56. A grant will not be approved until the applicant has completed a full application, which is due 120 days from the date of the grant offer.

Grant respondents must also complete and sign the UPARR Program Grant Rehabilitation and Innovation Agreement (currently approved under 1024–0089; Form #10–912). We use this information to document the obligations assumed by the respondent through its acceptance of Federal assistance including the rules and regulations applicable to the conduct of a project under the UPARR Act and any special terms and conditions to the project established by the NPS and agreed to by the respondent. This information also obligates the Federal government to provide grants up to the designated amount for eligible costs incurred on the project on the basis of information and estimates contained in the proposal.

(5) Amendments: Grantees must request prior written approval from NPS for an amendment to a project if the revision causes substantial changes in the scope, objective, or work elements such as the project period. To alter the grant agreement, grantees must complete and sign the Amendment to UPARR Grant Agreement (Form #10–915). The request must also include an SF–424, an explanation of and justification for the change(s), and if applicable, new budget information.

(6) Performance Reports: The UPARR Program Project Performance Report details the annual status of the projects and any changes that need to be implemented. We use this information to ensure that the grantee is accomplishing the work on schedule and to identify any problems that the grantee may be experiencing in accomplishing that work. Performance Reports are needed to show quarterly or annual progress reports on the physical completion per percentage of each grant, financial expenditures to date, budget revisions if needed, work planned for the next year, and any additional information pertinent for grant completion.

(7) Conversion of Use: In accordance with Section 1010 of the UPARR Act and as codified in 36 CFR 72.72, no property improved or developed with UPARR assistance can be converted to other than public recreation uses without the approval of the NPS. A conversion will only be approved if it is found to be in accord with the current local park and recreation Recovery Action Program and/or equivalent recreation plans and only upon such conditions as deemed necessary to assure the provision of adequate recreation properties and opportunities of reasonably equivalent location and usefulness. To request a conversion, the grantee must submit the following documentation: An amendment request, a narrative statement comparing the site to be converted with the proposed replacement site addressing factors such as physical size, location, carrying capacity, and facilities; maps (location, site, and Section 1010 boundary); and evidence of the grantee's control and tenure over the replacement site.

(8) Recordkeeping Requirements: In accordance with 36 CFR 72.60(b), applicants must maintain adequate financial records to support all expenditures or costs covered by a Recovery Action Program, Rehabilitation, or Innovation project grant, as specified in the OMB regulations at 2 CFR part 200 for a period of 3 years after final payment on a project. The records must be retained beyond the 3-year period if audit findings have not been resolved.

II. Data

OMB Control Number: 1024–0048.

Title: Urban Park and Recreation Recovery Program Grants, 36 CFR 72.

Service Form Numbers: NPS Forms 10–911, 10–912, and 10–915.

Type of Request: Extension of a currently approved collection.

Description of Respondents: State Governments; the Commonwealths of Puerto Rico and the Northern Mariana Islands; the District of Columbia; and the territories of Guam, U.S. Virgin Islands, and American Samoa.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Activity	Number of respondents	Number of annual responses	Completion time per response (hours)	Total annual burden hours
Recovery Action Program	1	1	80 hours	80
Recovery Action Program Grant Applications	1	1	3.5 hours	3.5
Pre-application for Rehabilitation or Innovation Grants	1	1	10 hours	10
Final Application for Rehabilitation or Innovation Grants	1	1	10.5 hours	10.5
Grant Amendments	1	1	3.5 hours	3.5
Performance Reports	1	1	1 hour	1
Conversion of Use Request	1	1	70 hours	70
Recordkeeping Requirements	1	1	2 hours	2
Totals	8	8		180.5

Estimated Annual Nonhour Cost Burden: None.

III. Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. 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.

Dated: March 7, 2016.

Madonna L. Baucum,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2016–05560 Filed 3–10–16; 8:45 am]

BILLING CODE 4310–EH–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NCR–WHHO–20523; PPNCWHHOP0, PPMVSIE1Z.I00000 (166)]

Information Collection Request Sent to the Office of Management and Budget (OMB) for Approval; National Park Service President's Park National Christmas Tree Music Program Application

AGENCY: National Park Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service, NPS) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. 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 April 11, 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 Madonna L. Baucum, Information Collection Clearance Officer, National Park Service, 12201 Sunrise Valley Drive, Room 2C114, Mail Stop 242, Reston, VA 20192; or *madonna_baucum@nps.gov* (email). Please include ''1024–WHHO'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Katie Wilmes, National Park Service, 1100 Ohio Drive SW., Rm 344, Washington, DC 20242; or via email: *Katie_Wilmes@nps.gov.* 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:

I. Abstract

The National Park Service (NPS) Organic Act of 1916 (Organic Act) (54 U.S.C. 100101 *et seq.*) gives the NPS broad authority to regulate the use of the park areas under its jurisdiction. Consistent with the Organic Act, as well as the Constitution's Establishment Clause which mandates government neutrality and allows the placement of holiday secular and religious displays, the National Christmas Tree Music Program's holiday musical entertainment may include both holiday secular and religious music. To ensure that any proposed music selection is consistent with the Establishment Clause, and presented in a prudent and objective manner as a traditional part of the culture and heritage of this annual holiday event, it must be approved in advance by the NPS.

The NPS National Christmas Tree Music Program at President's Park is intended to provide musical entertainment for park visitors during December on the Ellipse, where in celebration of the holiday season, visitors can observe the National Christmas Tree, visit assorted yuletide displays, and attend musical presentations. Each year, park officials accept applications from musical groups who wish to participate in the annual National Christmas Tree Program. The NPS utilizes Form 10–942, ''National Christmas Tree Music Program Application'' to accept applications from the public for participation in the program. Park officials utilize the following information from applicants in order to select, plan, schedule, and contact performers for the National Christmas Tree Program:

- Contact name, phone number, and email.
- Group name and location (city, state).
- Preferred performance dates and times.
- Music selections/song list.
- Equipment needs.
- Number of performers.
- Type of group (choir, etc.).
- Acknowledgement of the musical entertainment policy.

II. Data

OMB Control Number: 1024–WHHO.

Title: National Park Service President's Park National Christmas Tree Music Program Application.

Service Form Number(s): NPS Form 10–942, ''National Christmas Tree Music Program Application''.

Type of Request: Existing collection in use without approval.

Description of Respondents: Local, national, and international bands, choirs, or dance groups.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Estimated Number of Annual Responses: 75.

Estimated Number of Annual Burden Hours: 19.

Estimated Annual Nonhour Burden Cost: None.

III. 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 in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: March 7, 2016.

Madonna L. Baucum,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2016–05558 Filed 3–10–16; 8:45 am]

BILLING CODE 4310–EH–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–PWR–PWRO–20008; PX.PR113509L.00.1]

Final General Management Plan/Wilderness Study/Environmental Impact Statement: Hawaii Volcanoes National Park, Hawaii

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: The National Park Service (NPS) has prepared a Final Environmental Impact Statement (FEIS) for the General Management Plan (GMP)

for Hawaii Volcanoes National Park (Hawaii Volcanoes NP or park). This FEIS describes and analyzes three GMP alternatives that respond to public concerns and issues identified during the overall public engagement process. Each alternative presents management strategies for resource protection and preservation, education and interpretation, visitor use and facilities, land protection and boundaries, and long-term operations and management of Hawaii Volcanoes NP. The potential environmental consequences of all the alternatives, and mitigation strategies, are analyzed and the ''environmentally preferred'' alternative is identified. The proposed GMP also includes a wilderness study (WS) which analyzes wilderness suitability of park lands and includes a recommendation for wilderness designation. With due consideration for the minimal public and agency response to the Draft EIS (no substantive new information has been received), the NPS has utilized an abbreviated format in preparing the FEIS. Upon approval, this GMP will supersede the 1975 Master Plan.

DATES: The NPS will execute a Record of Decision not sooner than April 11, 2016 *after* the U.S. Environmental Protection Agency's notice of filing for this FEIS.

ADDRESSES: Printed copies of both the Draft and Final GMP/WS/EIS will be available for public inspection at local public libraries; an electronic version of the final document is also available on the GMP project Web site (*http://parkplanning.nps.gov/havo*). A limited number of printed copies of each document are available upon written request to: Superintendent, Hawaii Volcanoes National Park, P.O. Box 52, Hawaii National Park, HI 96718–0052.

FOR FURTHER INFORMATION CONTACT: Cindy Orlando, Superintendent, Hawaii Volcanoes National Park, P.O. Box 52, Hawaii National Park, HI 96718–0052 or via telephone at (808) 985–6026.

SUPPLEMENTARY INFORMATION:

Background: A Notice of Intent announcing preparation of the EIS for the GMP was published in the **Federal Register** on April 13, 2009. During spring 2009, the NPS distributed approximately 8,500 newsletters describing the GMP process and soliciting feedback on issues which should be addressed. A comprehensive scoping outreach effort elicited public comment regarding issues and concerns, the nature and extent of potential environmental impacts, and possible alternatives that should be addressed in the preparation of the GMP. Agencies, organizations, governmental representatives, and Native Hawaiian organizations were sent letters of invitation to attend the public workshops or stakeholder meetings. Press releases were distributed to local and regional news media, and local radio stations aired public service announcements. News articles featuring these meetings were published in West Hawaii Today, Hawaii Tribune Herald, and the Kau Calendar.

The NPS held seven public meetings on the islands of Hawaii, Oahu and Maui in April and May 2009 to provide the public with an opportunity to learn about the GMP project and to offer comments; a total of 95 people attended the meetings. The park also conducted several stakeholder meetings to obtain input from representatives of city, county, and federal agencies, business and community organizations, Native Hawaiian organizations, and research permit holders. Park staff also gave poster presentations at local meetings of the Kau Chamber of Commerce, Volcano Community Association, and Friends of Hawaii Volcanoes National Park. Altogether during the 2009 scoping phase, the park planning team spoke with approximately 2000 people at public and stakeholder meetings and park and community events. Correspondence received from over 130 individuals and organizations engendered approximately 1,250 specific comments.

During August 2011, the NPS distributed a Draft Alternatives Newsletter, which outlined concepts and actions in the preliminary GMP alternatives and proposed management zones, and explained the completed wilderness eligibility process and the subsequent wilderness study that would be included in the Draft EIS (DEIS). The Newsletter contained a business reply questionnaire option to facilitate public comments. In addition to the planning schedule included in the Newsletter, information was distributed to local and regional press media in advance of the public meetings and articles were printed in three local papers: West Hawaii Today, Hawaii Tribune Herald, and the Kau Calendar.

Expanding the scope of the EIS was announced in the **Federal Register** on December 2, 2011. The scope of analysis was expanded to include a wilderness study in order to evaluate foreseeable effects associated with possible designation of additional wilderness within the park. This notification also formally extended the GMP preliminary alternatives comment period through January 2, 2012, in order to gain additional comments about wilderness and the recently evaluated wilderness-eligible lands within the Kahuku Unit. The NPS undertook additional public involvement at the draft alternatives phase to ensure ample opportunity for formal scoping for the wilderness study. During this phase the park planning team described the wilderness eligibility analysis that had been completed for the Kahuku Unit and elicited public comments specifically focused on the wilderness study.

The NPS conducted five public open house and stakeholder meetings; a total of 66 people participated. Overall the NPS received 72 written responses in the form of letters, emails, comment forms, and comments submitted on the PEPC Web site. All comments received were reviewed by the GMP team to inform preparation of the DEIS/GMP/WS. A summary of public comments on the preliminary alternatives and wilderness study was created and made available to the public in February 2012.

The 60 day review period for the DEIS/GMP/WS was formally initiated through publication by the U.S. Environmental Protection Agency of its Notice of Availability in the **Federal Register** on May 1, 2015. A press release announcing availability of the document was distributed to local and regional news media on April 30, 2015. Electronic and printed copies of the draft plan were available on NPS Web sites and at public libraries, as well through distribution to state congressional offices, Native Hawaiians, governmental agencies, and other interested organizations and individuals. The NPS also distributed the DEIS/GMP/WS Executive Summary Newsletter #4 to over 800 contacts on the GMP mailing list.

The NPS held a ''talk story'' session and formal wilderness hearing on June 10, 2015, at the Kīlauea Visitor Center; approximately 20 people participated in these meetings and provided oral comments. The ''talk story'' session is a traditional Hawaiian practice which is similar to an open house information meeting. The wilderness hearing was facilitated by the NPS, and an independent court reporter conducted the proceedings and responded to questions about wilderness protection and management and recorded formal comments regarding the Wilderness Study. This talk story session and wilderness hearing was announced via the Newsletter, the project Web site, and a separate press release that was distributed to media on June 5, 2015.

Throughout the public review period, the public had opportunities to provide comments through attending the talk story session and wilderness hearing, submitting comments on NPS Web sites,

writing a letter or email, or providing comments on the postage paid comment form enclosed in the newsletter. Overall the NPS received approximately 32 responses. Of the comments received, two were from businesses, two were from non-profit conservation organizations, two were from other federal agencies, and the remaining comments were from interested individuals. None of the comments received were opposed to or critical of the proposals for wilderness designation or boundary modification included within the plan. Most comments were supportive of the NPS preferred alternative, Alternative 2. Because the comments received required only minor changes involving only factual corrections or clarifications, the NPS has prepared an Abbreviated FEIS which includes an analysis of comments received on the Draft GMP/WS/EIS with NPS responses, errata sheets detailing editorial corrections to the DEIS, and copies of letters received from agencies and organizations. No substantial changes have been made to the alternatives or to the impact analyses presented in the Draft GMP/WS/EIS, and Alternative 2 remains the preferred alternative.

Range of Alternatives: Alternative 1 (no action)—Existing programming, facilities, staffing, and funding would generally continue at current levels to protect the values of Hawaii Volcanoes National Park. There would be no major changes in current management or visitor use. Implementation of currently approved plans would continue as funding allows. This alternative provides the baseline for evaluating actions and impacts in other alternatives.

Alternative 2 (agency preferred; environmentally preferred)—Strengthens and expands opportunities to connect people with the volcanic world treasure, Hawaii Volcanoes NP, and provide a wide range of high quality visitor experiences based on different geographic areas. Kīlauea summit would continue to be the most actively visited area of the park with the greatest concentration of services and amenities for park visitors. Along Chain of Craters Road and Mauna Loa Road, the park would strive to provide visitors with improved opportunities to experience and connect with park resources and values, including new opportunities at places like Mauna Ulu and Kealakomowaena, while dispersing use to create a less congested and more tranquil experience. At Kahuku, although visitor access and recreation opportunities would be expanded from what is currently offered, infrastructure and development would be minimal, gradually phased in over time, and remain rustic in design to allow for a primitive visitor experience. Natural and cultural resources would continue to be managed and protected with a high degree of integrity, consistent with direction provided by existing laws and policies. This alternative emphasizes the park's role as a refuge and haven for native biota, people, and cultures in a world constantly adapting to volcanic activity and island building processes. Native Hawaiian people and cultural values such as malama aina (nourishing or taking care of the land) and kuleana (responsibility), and perspectives from Native Hawaiian land management such as ahupuaa management (managing land from mauka (mountains) to makai (sea)), are incorporated as important concepts in park stewardship of resources. Native Hawaiian traditional ecological knowledge would be used to enhance current scientific understanding to protect park resources and provide additional interpretive and educational opportunities for visitors.

Alternative 3—Emphasizes building new connections with the park primarily through expanded education and hands-on stewardship opportunities. Traditional visitor opportunities would continue and capacity could be expanded at some existing sites to allow for increased visitation, but new development would be very limited and a suite of management tools would be used to disperse visitors and manage congestion throughout the park. A greater focus would be placed on science and learning opportunities for visitors from mauka (mountains) to makai (sea). The park would immerse visitors in the protection and restoration of native species and ecosystems by maximizing opportunities to participate in restoration activities and additional emphasis would be placed on providing opportunities for visitors to engage in research, scientific investigation, and projects associated with natural and cultural resources management, notably in Kahuku. This alternative also emphasizes the park's role as a refuge and haven for native biota, people, and cultures in a world constantly adapting to volcanic activity and island building processes. This alternative honors the Native Hawaiian people and culture by recognizing Native Hawaiian values, such as malama aina and kuleana, and perspectives from Native Hawaiian land management such as ahupuaa management (managing land from mauka to makai). Native Hawaiian traditional ecological knowledge would be used to enhance current scientific understanding to protect park resources and provide additional interpretive and educational opportunities for visitors.

Actions Common to All Alternatives—Many aspects of natural and cultural resource management (*i.e.,* emphasis on restoring native ecosystems, preservation of wilderness character, and continued support for research), visitor use and experience (*i.e.,* providing access to the iconic places and volcanic processes), park operations and concession services, and partner collaborations on a variety of issues (including coastal and shoreline management) are common to all alternatives. Moreover, flexibility in managing the park is necessary given proximity to two active volcanoes, and volcanic eruptions are possible at any time. Park management is influenced by the magnitude of individual events. Rather than provide specific recommendations park responses to a given event, the GMP provides general ''adaptive management'' guidance for managers facing volcanic activity in the future, notably with respect to facilities and infrastructure in the park.

Notably, in 1989 a 5.5 mile segment of the historic Chain of Craters Road through the park towards Kalapana and Pahoa was buried by lava flows. Due to change in the direction of other lava flows, in 2014 the remaining access to the Pahoa area became threatened. Consequently, an unpaved emergency access route was constructed along the old alignment. This route is only available for emergency access, in the event of existing access to Pahoa being cut off. Under all alternatives, when this route is no longer needed for emergency access, it could be used as an equestrian, biking, and hiking trail to provide for non-motorized visitor use—it would continue to be available in the future as an emergency route without compromising natural values and avoiding complexity of managing a new coastal entrance to the park.

Wilderness Study—Wilderness designation of 121,015 acres found eligible in the Kahuku Unit is proposed as an extension of existing wilderness within the park. Designation would advance the park's conservation vision for high-elevation protection of unique natural and cultural resources and create connectivity for park wilderness that would span from the summit of Mauna Loa Volcano all the way down its massive Southwest Rift. This rugged and remote environment offers outstanding opportunities for solitude and potential for high-challenge recreational hiking, and nearly all of this area is a place where the imprint of

humans is scarcely noticeable, overpowered by the vast lava expanse and aura of wildness. Consistent with NPS policy, the park would continue to manage these eligible lands for their wilderness qualities prior to formal designation.

Decision Process: As noted above, not sooner than 30 days after the U.S. Environmental Protection Agency notice of filing of the FEIS/GMP/WS is published in the **Federal Register**, the NPS will execute a Record of Decision. Notice of GMP approval will be publicized on the park's Web site, via direct mailings, and through local and regional press media. Because this is a delegated EIS, the NPS official responsible for approval of the GMP is the Regional Director, Pacific West Region. Subsequently, the official responsible for project implementation is the Superintendent, Hawaii Volcanoes National Park.

Dated: December 17, 2015.

Martha J. Lee,

Acting Regional Director, Pacific West Region.

[FR Doc. 2016–05542 Filed 3–10–16; 8:45 am]

BILLING CODE 4312–FF–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–PVE–LWCF–20491, PSSSLAD0016001 (166)]

Proposed Information Collection; Land and Water Conservation Fund State Assistance Program

AGENCY: National Park Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service, NPS) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on October 31, 2016. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: To ensure that we are able to consider your comments on this IC, we must receive them by May 10, 2016.

ADDRESSES: Please send your comments on the ICR to Madonna L. Baucum, Information Collection Clearance Officer, National Park Service, 12201 Sunrise Valley Drive, Mail Stop 242—Room 2C114, Reston, VA 20192 (mail); or *madonna_baucum@nps.gov* (email). Please include ''1024–0031 LWCF'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Elisabeth Fondriest, Recreation Grants Chief, State and Local Assistance Programs Division at 202–354–6916; or 1849 C Street NW. (2225), Washington, DC 20240 (mail); or *elisabeth_fondriest@nps.gov* (email). Please include ''1024–0031 LWCF'' in the subject line.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Land and Water Conservation Fund Act of 1965 (LWCF Act) (54 U.S.C. 2003305 *et seq.*) was enacted to help preserve, develop, and ensure public access to outdoor recreation facilities. The LWCF Act provides funds for and authorizes Federal assistance to the States for planning, acquisition, and development of needed land and water areas and facilities. As used for this information collection, the term ''States'' includes the 50 States; the Commonwealths of Puerto Rico and the Northern Mariana Islands; the District of Columbia; and the territories of Guam, the U.S. Virgin Islands, and American Samoa.

In accordance with the LWCF Act, we administer the LWCF State Assistance Program, which provides matching grants to States, and through the States to local units of government. LWCF grants are provided to States on a matching basis for up to 50 percent of the total project-related allowable costs. Grants to eligible insular areas may be for 100 percent assistance. The LWCF State Assistance Program gives maximum flexibility and responsibility to the States. States establish their own priorities and criteria and award their grant money through a competitive selection process based on a Statewide recreation plan. Payments for all projects are made to the State agency that is authorized to accept and administer funds paid for approved projects. Local units of government participate in the program as subgrantees of the State with the State retaining primary grant compliance responsibility.

We collect the following information for the LWCF State Assistance Program:

Statewide Comprehensive Outdoor Recreation Plan (SCORP). The LWCF Act requires that to be eligible for LWCF financial assistance, each State must prepare and submit to NPS for approval a new or revised SCORP at least once every 5 years.

Open Project Selection Process (OPSP). Each State must develop an OPSP that provides objective criteria and standards for grant selection that are explicitly based on each State's priority needs for the acquisition and development of outdoor recreation resources as identified in the SCORP. The OPSP is the connection between the SCORP and the use of LWCF grants to assist State efforts in meeting high priority outdoor recreation resource needs.

Application. States may seek financial assistance for acquisition, development, or planning projects to be conducted under the LWCF Act. To receive a grant, States must submit an application to NPS for review to determine eligibility under the authorizing legislation and to select those projects that will provide the highest return on the Federal investment. Project proposals for LWCF grants comprise the following:

- *Proposal Description and Environmental Screening Form (PD/ESF).* The PD assists the applicant in developing a narrative that provides administrative and descriptive information to help the Federal decisionmaker understand the nature of the proposed project. The ESF indicates the resources that could be impacted by the project, enabling States and/or local project sponsors to more accurately follow an appropriate pathway for compliance with the National Environmental Policy Act (NEPA). The analysis serves as part of the Federal administrative record required by NEPA and its implementing regulations.
- *Project Agreement (Form 10–902).* This form documents the agreement between the NPS and the State for accomplishing the project. It binds the Federal Government and the State to certain obligations through its acceptance of Federal assistance, including the rules and regulations applicable to the conduct of a project under the Act and any special terms and conditions to the project established by the NPS and agreed to by the State.
- *Description and Notification Form (DNF) (Form 10–903).* The State must submit a DNF for each project. This form provides data about assisted project sites, such as location, acreages and details about improvements, as understood at the beginning of each project.
- *Pre-award Onsite Inspection Report.* The State must physically inspect proposed project sites prior to the award of grant funds and report on the findings. The inspection must be conducted in accord with the onsite inspection agreement between the State

and NPS. See additional information under Reports, below.

• Maps and other supporting documentation. Applicants must develop and submit two maps: one depicting the general location of the park as well as the entrance area; the other delineating the boundaries of the outdoor recreation area that will be subject to the conversion provisions of Section 6(f)(3) of the Act. Applicants should submit other documents that have a significant bearing on the project.

Grant Amendments. After initial award but during the award performance period, a State or project sponsor may seek to modify the agreed-upon terms, such as the award end date, the scope of work, or the budget. NPS must review and approve such changes. States must submit an amendment request on behalf of themselves or the local sponsor, which depending on the nature of the change, could comprise the following elements: Amendment to Project Agreement, revised Standard Forms, a letter from the State Liaison Officer (SLO) describing the proposed changes and the impact to the project, the PD/ESF, a revised boundary map, and a revised DNF.

• *Amendment to Project Agreement (Form 10–902A).* An amendment form is required to alter the signed Project Agreement. When the amendment is signed by the NPS, it becomes part of the agreement and supersedes it in the specified matters.

• *Description and Notification Form (Form 10–903).* A revised DNF may be required for changes in scope that alter the planned facility development or the acreage of the site or area to be protected under 6(f).

Conversions of Use. In accordance with section 6(f)(3) of the Act and as codified in 36 CFR part 59, no lands acquired or developed with LWCF funds can be converted to other than public outdoor recreation uses unless the NPS approves. States must submit a formal request to the appropriate NPS Regional Office with documentation to substantiate that: (a) All alternatives to the conversion have been evaluated and then rejected on a sound basis; (b) required replacement land being offered as a substitute is of reasonably equivalent location and recreational usefulness as the assisted sites proposed for conversion; (c) the property proposed for substitution meets the eligibility requirements for LWCF assistance; and (d) replacement property is of at least equal fair market value as established by an appraisal developed in accordance with Federal appraisal standards. Required documentation is similar to that submitted for grant amendment requests. Additional documents include maps identifying the existing 6(f) boundary with the area to be converted, and of the proposed replacement property; and appraisal reports establishing property values.

Proposal for a Public Facility. Project sponsors must seek NPS approval to construct public indoor or non-recreation facilities within a Section 6(f) area. In most cases, development of such facilities would constitute a conversion, but, in certain cases NPS may approve them where it can be shown that there will be a net gain in outdoor recreation benefits and enhancements for the entire park. The request comprises the PD/ESF, which is used to describe the nature of the facility, how it will support and enhance the outdoor recreation use of the site, and ownership and management; as well as a copy of a proposed revised 6(f) map indicating the location of the proposed facility.

Requests for Temporary Non-Conforming Uses Within Section 6(f)(3) Areas. Project sponsors must seek NPS approval for the temporary (up to 6 months) use of an LWCF-assisted site for purposes that do not conform to the public outdoor recreation requirement. The State's proposal to NPS must include: (a) The PD/ESF (used to describe the proposed temporary use); (b) SLO recommendations; and (c) an acknowledgement by the SLO that a full conversion will result if the temporary use has not ceased after 6 months.

Proposal for a Significant Change of Use. Project sponsors must seek NPS approval to change the use of an assisted site from one eligible use to another when the proposed use significantly contravenes the plans or intent for the area as they were outlined in the original LWCF application for Federal assistance; *e.g.,* changing a site's use from passive to active recreation. The PD/ESF is used for this request.

Proposal to Shelter Facilities. Project sponsors must seek NPS approval to construct new or partially or fully enclose an existing outdoor recreation facility, such as a pool or ice rink to shelter them from cold climatic conditions and thereby increase the recreational opportunities. This approval is required whether seeking to use grant funds for this purpose or not. The PD/ESF is used for this request.

Extension of the 3-Year Limit for Delayed Outdoor Recreation Development. Project sponsors must seek NPS approval to continue a non-recreation use beyond the 3-year limit for acquisition projects that were previously approved with delayed outdoor recreation development. The State must submit a written request and justification for such an extension to NPS before the end of the initial 3-year period. This request must include: (a) A full description of the property's current public outdoor recreation resources and the public's current ability to use the property; and (b) an update of the project sponsor's plans and schedule for developing outdoor recreation facilities on the property.

Reports. We use this information provided in reports to ensure that the grantee is accomplishing the work on schedule and to identify any problems that the grantee may be experiencing in accomplishing that work.

• *Onsite Inspection Reports.* States must administer a regular and continuing program of onsite inspections of projects. Onsite inspection reports are prepared for all inspections conducted and are included in the official project files maintained by the State. Progress onsite inspection reports occur during the project period and are generally combined with the annual performance report or when grant payments are made. Final onsite inspection reports must be submitted to the NPS within 90 days after the date of completing a project and prior to final reimbursement and administrative closeout. Post-completion onsite inspection reports must be completed within 5 years after the final project reimbursement and every 5 years thereafter. If there are problems, the report should include a description of the discrepancy and the corrective action to be taken. Reports indicating problems are forwarded to the NPS for review and necessary action; all other reports are maintained in State files.

• *Financial and Program Performance Reports.* In accordance with 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), grantees must monitor grant and subgrant supported activities to ensure compliance with applicable Federal requirements and that performance goals are being achieved. States must submit reports to NPS at least annually that include performance and financial information.

Recordkeeping. In accordance with 2 CFR part 200, States must maintain financial records, supporting documents, statistical records, and all other records pertinent to a grant program for a period of 3 years after final payment on a project. The records must be retained beyond the 3-year period if audit findings have not been resolved.

Request for Reimbursement/Record of Electronic Payment. States use the

Automated Standard Application for Payments (ASAP) system for drawing funds on approved grants. For planning grants, States must submit to NPS a progress report and request for reimbursement before they may request payments. Acquisition and development projects do not require prior approval, but upon completion of an electronic payment on a given date the State must concurrently (within 24 hours) submit a completed ''LWCF Record of Electronic Payment'' to the program offices in Washington, DC and their applicable NPS Region.

The information collection requirements associated with the LWCF State Assistance Program are discussed in detail in the Land and Water Conservation Fund State Assistance Program Federal Financial Assistance Manual, available online at *http://www.nps.gov/ncrc/programs/lwcf/manual/lwcf.pdf.*

II. Data

OMB Control Number: 1024–0031.

Title: Land and Water Conservation Fund State Assistance Program, 36 CFR 59.

Service Form Numbers: NPS Forms 10–902, 10–902A, and 10–903.

Type of Request: Extension of a currently approved collection.

Description of Respondents: States; the Commonwealths of Puerto Rico and the Northern Mariana Islands; the District of Columbia; and the territories of Guam, U.S. Virgin Islands, and American Samoa.

Number of Respondents: 56.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Activity	Number of annual responses	Completion time per response (hours)	Total annual burden hours
Statewide Comprehensive Outdoor Recreation Plan	11	500	5,500
Open Project Selection Process	11	20	220
Applications	300	12	3,600
Grant Amendments	90	6	540
Conversions of Use	50	150	7,500
Public Facility Requests	8	16	128
Request for Temporary Non-Conforming Uses	5	16	80
Request for a Significant Change of Use	2	16	32
Request to Shelter Facilities	1	16	16
Extension of 3-Year Limit for Delayed Outdoor Recreation Development	5	161	805
Onsite Inspection Reports	4,368	5.5	24,024
Financial and Program Performance Reports	661	1	661
Recordkeeping	56	40	2,240
Requests for Reimbursement/Record of Electronic Payment	336	.5	168
Totals	5,904	.....	45,514

Estimated Annual Nonhour Burden Cost: None.

III. Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. 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.

Dated: March 7, 2016.

Madonna L. Baucum,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2016–05559 Filed 3–10–16; 8:45 am]

BILLING CODE 4310–EH–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–16–008]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: March 15, 2016 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

Matters To Be Considered

1. Agendas for future meetings: none.

2. Minutes.

3. Ratification List.

4. Vote in Inv. No. AA1921–167 (Fourth Review) (Pressure Sensitive Plastic Tape from Italy). The Commission is currently scheduled to complete and file its determination and views of the Commission on April 4, 2016.

5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: March 8, 2016.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2016–05618 Filed 3–9–16; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act and Emergency Planning and Community Right-To-Know Act

On March 7, 2016, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Western District of Washington in the lawsuit entitled *United States* v. *Ocean Gold Seafoods, Inc. and Ocean Cold, LLC,* Civil Action No. 3:16–cv–5179.

The United States, on behalf of the United States Environmental Protection Agency (''EPA''), filed a complaint against Ocean Gold Seafoods, Inc. and Ocean Cold, LLC (the ''Ocean Companies''), seeking injunctive relief and the imposition of civil penalties for violations of the Clean Air Act and the Emergency Planning and Community Right-to-Know Act in connection with the Companies' use of refrigerant and refrigeration appliances at their seafood processing and cold storage facilities in Westport, Washington. The Consent Decree requires the Companies to implement a comprehensive refrigerant compliance management plan and an employee training program; hire a third party verifier to conduct independent inspections and audits of their records and appliances; and report annually to EPA. The Consent Decree also requires the Companies to mitigate past releases by maintaining refrigerant loss rates below regulatory standards (subject to stipulated penalties), and to pay a civil penalty of $495,000.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Ocean Gold Seafoods, Inc. and Ocean Cold, LLC,* D.J. Ref. No. 90–5–2–1–10698. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $29.00 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits and signature pages, the cost is $11.00.

Susan M. Akers,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2016–05548 Filed 3–10–16; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting; Record of Vote of Meeting Closure (Public Law 94–409) (5 U.S.C. Sec. 552b)

I, J. Patricia W. Smoot, of the United States Parole Commission, was present at a meeting of said Commission, which started at approximately 11:00 a.m., on Tuesday, February 23, 2016 at the U.S. Parole Commission, 90 K Street NE., Third Floor, Washington, DC 20530. The purpose of the meeting was to discuss five original jurisdiction cases pursuant to 28 CFR Section 2.27. Three Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of the General Counsel that this meeting may be closed by votes of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: J. Patricia W. Smoot, Patricia Cushwa and Charles T. Massarone.

In witness whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: February 24, 2016.

J. Patricia W. Smoot,

Chairman, U.S. Parole Commission.

[FR Doc. 2016–05635 Filed 3–9–16; 4:15 pm]

BILLING CODE 4410–31–P

DEPARTMENT OF LABOR

Employment and Training Administration

Comment Request for the Extension With No Revisions of the Information Collection for Trade Adjustment Assistance (TAA) Reserve Funding Request Form (OMB Control Number 1205–0275)

AGENCY: Employment and Training Administration (ETA), Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3506(c)(2)(A)]. This program helps ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the ETA is soliciting comments concerning the proposed extension, with no revisions, of data collections using the ETA Form 9117, Trade Adjustment Assistance (TAA) Reserve Funding Request Form (OMB Control Number 1205–0275). The current expiration date is May 31, 2016.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before May 10, 2016.

ADDRESSES: Submit written comments to Frankie Russell, Office of Trade Adjustment Assistance, Room N–5428, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone number: 202–693–2738 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD). Fax: 202–693–3584. Email: *Russell.Frankie@dol.gov.* A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed above.

SUPPLEMENTARY INFORMATION:

I. Background

The administration of the Trade Act of 1974, as amended by the Trade Adjustment Assistance Extension Act of 2015 (TAAEA 2015), is the responsibility of the Secretary of Labor. Through agreements (Governor-Secretary Agreements) established with states, states serve as agents of the Department in making payments to workers who have lost their jobs as a result of foreign trade and are certified eligible for the TAA Program. Section 241 of the Trade Act provides that: *''the Secretary shall from time to time certify to the Secretary of the Treasury for payment to each cooperating state the sums necessary to enable such State as agents of the United States to make payments provided for by this chapter.''*

As such, states may request reserve funds before the Final Distribution to cover the costs of Training, Job Search Allowances and Relocation Allowances, Employment and Case Management Services and State Administration of these benefits. Reserve funds will be distributed to states in accordance with 20 CFR 618.920 on an as-needed basis in response to reserve fund requests to provide monies to those states that experience large, unexpected layoffs or otherwise have training needs that are not met by their initial allocation. These funds must be requested using the Form ETA–9117 (OMB No. 1205–0275).

II. Review Focus

The Department is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

Type of Review: Extension with no revisions.

Title: Investigative Data Collections for the Trade Act of 1974, as amended.

OMB Number: 1205–0275.

Affected Public: Individuals or Households, Businesses, State, Local or Tribal Governments.

Form(s): ETA 9117, Trade Adjustment Assistance (TAA) Reserve Funding Request Form (1205–0275).

Total Annual Respondents: 25.

Annual Frequency: On occasion.

Total Annual Responses: 25.

Average Time per Response: 2 Hours.

Estimated Total Annual Burden Hours: 50.

Total Annual Burden Cost for Respondents: $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the ICR; they will also become a matter of public record.

Portia Wu,

Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2016–05450 Filed 3–10–16; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Surface Coal Mine Daily Inspection, Certified Person, and Report of Inspection

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Mine Safety and Health Administration (MSHA) sponsored information collection request (ICR) titled, ''Surface Coal Mine Daily Inspection, Certified Person, and Report of Inspection,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before April 11, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201508-1219-002* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–MSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Surface Coal Mine Daily Inspection, Certified Person, and Report of Inspection information collection requirements codified in regulations 30 CFR 77.1713 that requires an operator of either or both a surface coal mine and surface facility to keep a record of the results of required examinations for hazardous conditions. These records consist of the nature and location of any hazardous condition found and the actions taken to abate the hazardous condition. Federal Mine Safety and Health Act of 1977 sections 101(a) and 103(h) authorize this information collection. *See* 30 U.S.C. 811(a), 813(h).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1219–0083.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on

March 31, 2016. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on September 23, 2015 (80 FR 57397).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1219–0083. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–MSHA.

Title of Collection: Surface Coal Mine Daily Inspection, Certified Person, and Report of Inspection.

OMB Control Number: 1219–0083.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 1,100.

Total Estimated Number of Responses: 343,200.

Total Estimated Annual Time Burden: 514,800 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: March 7, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–05451 Filed 3–10–16; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2012–0035]

Traylor Bros., Inc.; Grant of a Permanent Variance

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA grants a permanent variance to Traylor Bros., Inc., from the provisions of OSHA standards that regulate work in compressed-air environments at 29 CFR 1926.803.

DATES: The permanent variance specified by this notice becomes effective on March 11, 2016 and shall remain in effect until it is modified or revoked.

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 Variance Program (see *http://www.osha.gov/dts/otpca/variances/index.html*).

SUPPLEMENTARY INFORMATION:

Copies of this ***Federal Register*** *notice.*

Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This **Federal Register** notice, as well as news releases and other relevant information, also are available at OSHA's Web page at *http://www.osha.gov.*

I. Notice of Application

On April 26, 2012, Traylor Bros., Inc., 835 N. Congress Ave., Evansville, IN 47715, and Traylor/Skanska/Jay Dee Joint Venture, Blue Plains Tunnel, 5000 Overlook SW., Washington, DC 20032, submitted under Section 6(d) of the Occupational Safety and Health Act of 1970 (''OSH Act''; 29 U.S.C. 655) and 29 CFR 1905.11 (''Variances and other relief under section 6(d)''), an application for a permanent variance from several provisions of the OSHA standard that regulates work in compressed air at 29 CFR 1926.803. Subsequently, OSHA addressed this request as two separate applications: (1) Traylor Bros., Inc. (''Traylor'' or ''the applicant'') request for a permanent variance for future tunneling projects; and (2) Traylor/Skanska/Jay Dee Joint Venture, Blue Plains Tunnel (''Traylor JV''). This notice only addresses the Traylor application for a permanent variance for future tunneling projects. This notice does not address Traylor JV's application for a permanent variance for the Blue Plains Tunnel project. On March 27, 2015, OSHA granted Traylor JV a permanent variance for completion of the Blue Plains Tunnel (80 FR 16440).

As previously indicated, this notice addresses grant of a permanent variance to Traylor applicable to future tunneling projects, from the provisions of the standard that: (1) Prohibit compressed-air worker (CAW) exposure to pressures exceeding 50 pounds per square inch (p.s.i.) except in an emergency (29 CFR 1926.803(e)(5)); [1] (2) require the use of the decompression values specified in decompression tables in Appendix A of the compressed-air standard for construction (29 CFR 1926.803(f)(1)); and (3) require the use of automated operational controls and a special decompression chamber (29 CFR 1926.803(g)(1)(iii) and .803(g)(1)(xvii), respectively).

According to its application, Traylor is a contractor that works on complex tunnel projects using newly developed advanced equipment and procedures for soft-ground tunneling. The applicant's workers engage in the construction of tunnels using advanced shielded mechanical excavation techniques in conjunction with an earth pressure balanced tunnel boring machine (EPBTBM).

Further, as stated in its application, Traylor is likely to be the sole contractor, as well as the general contractor in association with future Joint Venture partners for the construction of future tunnels at various sites throughout the nation. Traylor asserts that generally, it bores tunnels

[1] The decompression tables in Appendix A of subpart S express the maximum working pressures as pounds per square inch gauge (p.s.i.g.), with a maximum working pressure of 50 p.s.i.g. Therefore, throughout this notice, OSHA expresses the 50 p.s.i. value specified by § 1926.803(e)(5) as 50 p.s.i.g., consistent with the terminology in Appendix A, Table 1 of subpart S.

(*i.e.,* Blue Plains, as well as future tunnels) below the water table through soft soils consisting of clay, silt, and sand.

Traylor employs specially trained personnel for the construction of the tunnel, and states that this construction will use shielded mechanical-excavation techniques. Traylor asserts that its workers perform hyperbaric interventions at pressures greater than 50 p.s.i.g. in the excavation chamber of the EPBTBM; these interventions consist of conducting inspections and maintenance work on the cutter-head structure and cutting tools of the EPBTBM.

Additionally, Traylor asserts that innovations in tunnel excavation, specifically with EPBTBMs, have, in most cases, eliminated the need to pressurize the entire tunnel. This technology negates the requirement that all members of a tunnel-excavation crew work in compressed air while excavating the tunnel. These advances in technology modified substantially the methods used by the construction industry to excavate subaqueous tunnels compared to the caisson work regulated by the current OSHA compressed-air standard for construction at 29 CFR 1926.803. Such advances reduce the number of workers exposed, and the total duration of exposure to hyperbaric pressure during tunnel construction.

Using shielded mechanical-excavation techniques, in conjunction with precast concrete tunnel liners and backfill grout, EPBTBMs provide methods to achieve the face pressures required to maintain a stabilized tunnel face through various geologies, and isolate that pressure to the forward section (the working chamber) of the EPBTBM. Interventions in the working chamber (the pressurized portion of the EPBTBM) take place only after halting tunnel excavation and preparing the machine and crew for an intervention. Interventions occur to inspect or maintain the mechanical-excavation components located in the working chamber. Maintenance conducted in the working chamber includes changing replaceable cutting tools and disposable wear bars, and, in rare cases, repairing structural damage to the cutter head.

In addition to innovations in tunnel-excavation methods, Traylor asserts that innovations in hyperbaric medicine and technology improve the safety of decompression from hyperbaric exposures. According to Traylor, the use of decompression protocols incorporating oxygen is more efficient, effective, and safer for tunnel workers than compliance with the decompression tables specified by the existing OSHA standard (29 CFR part 1926, subpart S, Appendix A decompression tables). These hyperbaric exposures are made safe by advances in technology, a better understanding of hyperbaric medicine, and the development of a project-specific Hyperbaric Operations Manual (HOM) that requires specialized medical support and hyperbaric supervision to provide assistance to a team of specially trained man-lock attendants and hyperbaric workers or CAWs.

OSHA initiated a technical review of the Traylor's variance application and developed a set of follow-up questions that it sent to Traylor on September 17, 2012 (Ex. OSHA–2012–0035–0003). On October 26, 2012, Traylor submitted its response and a request for an interim order for the Blue Plains Tunnel Project, as well as future projects (Ex. OSHA–2012–0035–0013). In its response to OSHA's follow-up questions, Traylor indicated that the maximum pressure to which it is likely to expose workers during future project interventions is 75 p.s.i.g and may involve the use of trimix breathing gas (composed of a mixture of oxygen, nitrogen, and helium in varying concentrations used for breathing by divers and CAWs for compression and decompression when working at pressures exceeding 73 p.s.i.g.). Therefore, to work effectively on future projects, Traylor must perform hyperbaric interventions in compressed air at pressures higher than the maximum pressure specified by the existing OSHA standard, 29 CFR 1926.803(e)(5), which states: ''No employee shall be subjected to pressure exceeding 50 p.s.i.g. except in emergency'' (see footnote 1).

As noted above, on March 27, 2015, OSHA published the **Federal Register** notice announcing the grant of a permanent variance to Traylor JV for completion of the Blue Plains Tunnel (80 FR 16440).

OSHA continued its technical review of Traylor's variance application focusing on the use of trimix breathing gas (proposed for use in future tunneling projects at pressures exceeding 73 p.s.i.g.) and developed a second set of follow-up questions that it sent to Traylor on December 18, 2013 (Ex. OSHA–2012–0035–0002). On January 21, 2014, Traylor submitted its response (Ex. OSHA–2012–0035–0009). In its response to OSHA's follow-up questions, Traylor provided additional technical and scientific information concerning successful trimix use on tunneling projects throughout the United States, as well as in Europe and Asia. Additionally, Traylor reaffirmed that the maximum pressure to which it is likely to expose workers during interventions for future tunneling projects is 75 p.s.i.g. and may involve the use of trimix breathing gas.

In reviewing Traylor's application for future tunneling projects, OSHA focused on the following important considerations:

- Variances are granted only to specific employers that submitted a properly completed and executed variance application. Traylor has met this requirement (for the single employer application);
- This notice announces only Traylor's (single employer) grant of a permanent variance dealing with future projects. It does not address Traylor's future hyperbaric tunneling projects in association with unnamed joint venture partners;
- The variance conditions require Traylor to submit for OSHA's review and approval a project-specific HOM at least one year prior to the start of work on any future project;
- The variance conditions require the HOM to demonstrate that the EPBTBM to be used on the project is designed, fabricated, inspected, tested, marked, and stamped in accordance with the requirements of ASME PVHO–1.2012 (or most recent edition of Safety Standards for Pressure Vessels for Human Occupancy) for the EPBTBM's hyperbaric chambers.
- This condition ensures that each future tunneling project can be comprehensively reviewed on a case-by-case basis prior to OSHA granting its approval to Traylor to proceed with its new project;
- Traylor may not begin hyperbaric interventions at pressures exceeding 50 p.s.i.g. until OSHA completes its review of the project-specific HOM and determines that the safety and health instructions and measures it specifies are appropriate, comply with the conditions of the variance, adequately protect the safety and health of CAWs, and so notifies the applicant; and
- Traylor is required to submit new applications requesting modification of its single employer variance and approval of its project-specific HOM [with sufficient lead time (at least one year prior to start of work on any future project), to allow OSHA to complete the variance modification process], upon forming any future joint ventures.

Further, on December 6, 2012, OSHA published a **Federal Register** notice (77 FR 72781) announcing a request for information (RFI) for its continuing regulatory reviews named standards improvement projects (SIPs). The Agency conducted similar regulatory reviews of its existing standards

previously and issued this latest RFI to initiate another of these regulatory reviews, and naming this review the Standards Improvement Project—Phase IV (SIP—IV). The purpose of SIP—IV is to improve and streamline OSHA standards by removing or revising requirements that are confusing or outdated, or that duplicate, or are inconsistent with other standards. Additionally, the regulatory review also is designed to reduce regulatory burden while maintaining or enhancing employees' safety and health. SIP—IV will focus primarily on OSHA's construction standards.

As part of SIP–IV, OSHA is considering updating the decompression tables in Appendix A (1926.803(f)(1)) (77 FR 72783). This proposed action would permit employers to use decompression procedures and updated decompression tables that take advantage of new hyperbaric technologies used widely in extreme hyperbaric exposures. If the planned SIP–IV revises Appendix A, Traylor (and similar tunneling contractors previously granted a variance) will still require hyperbaric tunneling variances to address portions of the standard not covered by SIP–IV (*i.e.,* 29 CFR 1926.803(e)(5); .803(g)(1)(iii) and .803(g)(1)(xvii)).

If SIP–IV is completed (including the update of the decompression tables in Appendix A (1926.803(f)(1)), OSHA will modify Traylor's (single employer) and similar variances granted to other employers to include the applicable SIP–IV provisions as appropriate.

OSHA considered Traylor's application for a permanent variance and interim order for future tunneling projects. OSHA determined that Traylor proposed an alternative that provides a workplace at least as safe and healthful as that provided by the standard.

On July 27, 2015, OSHA published a **Federal Register** notice announcing Traylor's application for a permanent variance and interim order, grant of an interim order, and request for comments (80 FR 44386). The comment period expired August 26, 2015, and OSHA received no comments. Accordingly, through this notice, OSHA grants a permanent variance to Traylor.

II. The Variance Application

A. Background

Traylor asserts that the advances in tunnel excavation technology described in Section I of this notice modified significantly the equipment and methods used by contractors to construct subaqueous tunnels, thereby making several provisions of OSHA's compressed-air standard for construction at 29 CFR 1926.803 inappropriate for this type of work. These advances reduce both the number of workers exposed, and the total duration of exposure to the hyperbaric conditions associated with tunnel construction.

Using shielded mechanical-excavation techniques, in conjunction with pre-cast concrete tunnel liners and backfill grout, EPBTBMs provide methods to achieve the face pressures required to maintain a stabilized tunnel face, through various geologies, while isolating that pressure to the forward section (working or excavation chamber) of the EPBTBM.

Interventions involving the working chamber (the pressurized chamber at the head of the EPBTBM) take place only after the applicant halts tunnel excavation and prepares the machine and crew for an intervention. Interventions occur to inspect or maintain the mechanical-excavation components located in the forward portion of the working chamber. Maintenance conducted in the forward portion of the working chamber includes changing replaceable cutting tools, disposable wear bars, and, in rare cases, repairs to the cutter head due to structural damage.

In addition to innovations in tunnel-excavation methods, research conducted after OSHA published its compressed-air standard for construction in 1971, resulted in advances in hyperbaric medicine. In this regard, the applicant asserts that the use of decompression protocols incorporating oxygen and trimix is more efficient, effective, and safer for tunnel workers than compliance with the existing OSHA standard (29 CFR 1926, subpart S, Appendix A decompression tables). According to the applicant, contractors routinely and safely expose employees performing interventions in the working chamber of EPBTBMs to hyperbaric pressures up to 75 p.s.i.g., which is 50% higher than maximum pressure specified by the existing OSHA standard (see 29 CFR 1926.803(e)(5)).

The applicant contends that the alternative safety measures included in its application provide its workers with a place of employment that is at least as safe and healthful as they can obtain under the existing provisions of OSHA's compressed-air standard for construction. The applicant certifies that it provided employee representatives of affected workers with a copy of the variance application.[2] The applicant also certifies that it notified its workers of the variance application by posting at prominent locations where it normally posts workplace notices, a summary of the application and information specifying where the workers can examine a copy of the application. In addition, the applicant informed its workers and their representatives of their rights to petition the Assistant Secretary of Labor for Occupational Safety and Health for a hearing on the variance application.

B. Variance From Paragraph (e)(5) of 29 CFR 1926.803, Prohibition of Exposure to Pressure Greater Than 50 p.s.i.g. (See Footnote 1)

The applicant states that it may perform hyperbaric interventions at pressures greater than 50 p.s.i.g. in the working chamber of the EPBTBM; this pressure exceeds the pressure limit of 50 p.s.i.g. specified for nonemergency purposes by 29 CFR 1926.803(e)(5). The EPBTBM has twin man locks, with each man lock having two compartments. This configuration allows workers to access the man locks for compression and decompression, and medical personnel to access the man locks if required in an emergency.

EPBTBMs are capable of maintaining pressure at the tunnel face, and stabilizing existing geological conditions, through the controlled use of propel cylinders, a mechanically driven cutter head, bulkheads within the shield, ground-treatment foam, and a screw conveyor that moves excavated material from the working chamber. As noted earlier, the forward-most portion of the EPBTBM is the working chamber, and this chamber is the only pressurized segment of the EPBTBM. Within the shield, the working chamber consists of two sections: The staging chamber and the forward working chamber. The staging chamber is the section of the working chamber between the man-lock door and the entry door to the forward working chamber. The forward working chamber is immediately behind the cutter head and tunnel face.

The applicant will pressurize the working chamber to the level required to maintain a stable tunnel face. Pressure in the staging chamber ranges from atmospheric (no increased pressure) to a maximum pressure equal to the pressure in the working chamber. The applicant asserts that most of the hyperbaric interventions will be around 14.7 p.s.i.g. However, the applicant maintains that they may have to perform interventions at pressures up to 75 p.s.i.g.

During interventions, workers enter the working chamber through one of the

[2] See the definition of ''Affected employee or worker'' in section III. D.

twin man locks that open into the staging chamber. To reach the forward part of the working chamber, workers pass through a door in a bulkhead that separates the staging chamber from the forward working chamber. The maximum crew size allowed in the forward working chamber is three. At certain hyperbaric pressures (*i.e.,* when decompression times are greater than work times), the twin man locks allow for crew rotation. During crew rotation, one crew can be compressing or decompressing while the second crew is working. Therefore, the working crew always has an unoccupied man lock at its disposal.

Further, the applicant asserts that it will develop a project-specific HOM for each future tunnel project that describes in detail the hyperbaric procedures and required medical examinations used during the planned tunnel-construction project. The HOM will be project-specific, and will discuss standard operating procedures and emergency and contingency procedures. The procedures will include using experienced and knowledgeable man-lock attendants who have the training and experience necessary to recognize and treat decompression illnesses and injuries. The attendants will be under the direct supervision of the hyperbaric supervisor and attending physician. In addition, procedures will include medical screening and review of prospective CAWs. The purpose of this screening procedure is to vet prospective CAWs with medical conditions (*e.g.,* deep vein thrombosis, poor vascular circulation, and muscle cramping) that could be aggravated by sitting in a cramped space (*e.g.,* a man lock) for extended periods or by exposure to elevated pressures and compressed gas mixtures. A transportable recompression chamber (shuttle) will be available to extract workers from the hyperbaric working chamber for emergency evacuation and medical treatment; the shuttle attaches to the topside medical lock, which is a large recompression chamber. The applicant believes that the procedures included in the variance application and in its project-specific HOM will provide safe work conditions when interventions are necessary, including interventions above 50 p.s.i.g. OSHA will comprehensively review the project-specific HOM for each of Traylor's future projects prior to granting its approval for Traylor to proceed with its new project. Therefore, Traylor may not begin hyperbaric interventions at pressures exceeding 50 p.s.i.g. until OSHA completes its review of the project-specific HOM and determines that the safety and health instructions and measures it specifies are appropriate, conform with the conditions in the variance, and adequately protect the safety and health of the CAWs. OSHA will notify the applicant that: (1) Its project-specific HOM was found to be acceptable; and (2) the applicant may begin hyperbaric interventions at pressures exceeding 50 p.s.i.g. by complying fully with the conditions of the variance (as an alternative to complying with the requirements of the standard).

C. Variance From Paragraph (f)(1) of 29 CFR 1926.803, Requirement To Use OSHA Decompression Tables

OSHA's compressed-air standard for construction requires decompression in accordance with the decompression tables in Appendix A of 29 CFR part 1926, subpart S (see 29 CFR 1926.803(f)(1)). As an alternative to the OSHA decompression tables, the applicant proposes to use newer decompression schedules that supplement breathing air used during decompression with air, nitrox, or trimix (as appropriate). The applicant asserts decompression protocols using the 1992 French Decompression Tables for air, nitrox, or trimix as specified by the HOM are safer for tunnel workers than the decompression protocols specified in Appendix A of 29 CFR part 1926, subpart S.

Accordingly, the applicant proposes to use the 1992 French Decompression Tables to decompress CAWs after they exit the hyperbaric conditions in the working chamber. Also, Traylor proposes to decompress with trimix gas, under certain conditions specific to and described in detail in the project-specific HOM associated with each future tunneling project. Depending on the maximum working pressure and exposure times, the 1992 French Decompression Tables provide for air decompression with or without oxygen or trimix. Traylor asserts that using the 1992 French Decompression Tables for air, nitrox, or trimix decompression has many benefits, including (1) keeping the partial pressure of nitrogen in the lungs as low as possible; (2) keeping external pressure as low as possible to reduce the formation of bubbles in the blood; (3) removing nitrogen from the lungs and arterial blood and increasing the rate of elimination of nitrogen; (4) improving the quality of breathing during decompression stops to reduce worker fatigue and to prevent bone necrosis; (5) reducing decompression time by about 33 percent as compared to air decompression; and (6) reducing inflammation. Traylor asserts that the 1992 French Decompression Tables, Appendix B provide for air decompression with trimix supplementation for staged decompression for pressures ranging from 58 to 75 p.s.i.g. As described in Section IV of this notice, OSHA's review of the use of air, nitrox, or trimix in several major tunneling projects completed in the past indicates that it contributed significantly to the reduction of decompression illness (DCI) and other associated adverse effects observed and reported among CAWs.

In addition, the project-specific HOM will require a physician certified in hyperbaric medicine to manage the medical condition of CAWs during hyperbaric exposures and decompression. A trained and experienced man-lock attendant also will be present during hyperbaric exposures and decompression. This man-lock attendant will operate the hyperbaric system to ensure compliance with the specified decompression table. A hyperbaric supervisor (competent person), trained in hyperbaric operations, procedures, and safety, will directly oversee all hyperbaric interventions, and ensures that staff follow the procedures delineated in the HOM or by the attending physician.

The applicant asserts that at higher hyperbaric pressures, decompression times exceed 75 minutes. The project-specific HOMs will establish protocols and procedures that provide the basis for alternate means of protection for CAWs under these conditions. Accordingly, based on these protocols and procedures, the applicant requests to use the 1992 French Decompression Tables for hyperbaric interventions up to 75 p.s.i.g. for future projects. The applicant is committed to follow the decompression procedures described in the project-specific HOM during these interventions.

D. Variance From Paragraph (g)(1)(iii) of 29 CFR 1926.803, Automatically Regulated Continuous Decompression

According to the applicant, breathing air under hyperbaric conditions increases the amount of nitrogen gas dissolved in a CAW's tissues. The greater the hyperbaric pressure under these conditions, and the more time spent under the increased pressure, the greater the amount of nitrogen gas dissolved in the tissues. When the pressure decreases during decompression, tissues release the dissolved nitrogen gas into the blood system, which then carries the nitrogen gas to the lungs for elimination through

exhalation. Releasing hyperbaric pressure too rapidly during decompression can increase the size of the bubbles formed by nitrogen gas in the blood system, resulting in DCI, commonly referred to as ''the bends.'' This description of the etiology of DCI is consistent with current scientific theory and research on the issue (see footnote 12 in this notice discussing a 1985 NIOSH report on DCI).

The 1992 French Decompression Tables proposed for use by the applicant provide for stops during worker decompression (*i.e.,* staged decompression) to control the release of nitrogen gas from tissues into the blood system. Studies show that staged decompression, in combination with other features of the 1992 French Decompression Tables such as the use of oxygen, result in a lower incidence of DCI than the OSHA decompression requirements of 29 CFR 1926.803, which specify the use of automatically regulated continuous decompression (see footnotes 9 through 18 in this notice for references to these studies).[3] In addition, the applicant asserts that staged decompression is at least as effective as an automatic controller in regulating the decompression process because:

1. A hyperbaric supervisor (a competent person experienced and trained in hyperbaric operations, procedures, and safety) directly supervises all hyperbaric interventions and ensures that the man-lock attendant, who is a competent person in the manual control of hyperbaric systems, follows the schedule specified in the decompression tables, including stops; and

2. The use of the 1992 French Decompression Tables for staged decompression offers an equal or better level of management and control over the decompression process than an automatic controller and results in lower occurrences of DCI.

Accordingly, the applicant is applying for a permanent variance from the OSHA standard at 29 CFR 1926.803(g)(1)(iii), which requires automatic controls to regulate decompression. As noted above, the applicant is committed to conduct the staged decompression according to the 1992 French Decompression Tables under the direct control of the trained man-lock attendant and under the oversight of the hyperbaric supervisor.

E. Variance From Paragraph (g)(1)(xvii) of 29 CFR 1926.803, Requirement of Special Decompression Chamber

The OSHA compressed-air standard for construction requires employers to use a special decompression chamber of sufficient size to accommodate all CAWs being decompressed at the end of the shift when total decompression time exceeds 75 minutes (see 29 CFR 1926.803(g)(1)(xvii)). Use of the special decompression chamber enables CAWs to move about and flex their joints to prevent neuromuscular problems during decompression.

As an alternative to using a special decompression chamber, the applicant notes that since only the working chamber of the EPBTBM is under pressure, and only a few workers out of the entire crew are exposed to hyperbaric pressure, the man locks (which, as noted earlier, connect directly to the working chamber) and the staging chamber are of sufficient size to accommodate the exposed workers during decompression. In addition, space limitations in the EPBTBM do not allow for the installation and use of an additional special decompression lock or chamber. Again, the applicant uses the existing man locks, each of which adequately accommodates a three-member crew for this purpose when decompression lasts up to 75 minutes. When decompression exceeds 75 minutes, crews can open the door connecting the two compartments in each man lock (during decompression stops) or exit the man lock and move into the staging chamber where additional space is available. The applicant asserts that this alternative arrangement is as effective as a special decompression chamber in that it has sufficient space for all the CAWs at the end of a shift and enables the CAWs to move about and flex their joints to prevent neuromuscular problems.

F. Previous Tunnel Construction Variances

OSHA notes that it previously granted several sub-aqueous tunnel construction permanent variances from the same provisions of the standard that regulate work in compressed air (at 29 CFR 1926.803(e)(5), (f)(1), (g)(1)(iii), and (g)(1)(xvii)) that are the subject of the present application. These permanent variances were granted to: (1) Tully/OHL USA Joint Venture for the completion of the New York Harbor Syphon Tunnel [on May 23, 2014 (79 FR 29809)]; (2) Traylor JV for the completion of the Blue Plains Tunnel in Washington, DC [on March 27, 2015 (80 FR 16440)]; and (3) Impregilo Healy Parsons Joint Venture (IHP JV) for the completion of the Anacostia River Tunnel in Washington, DC [on August 20, 2015 (80 FR 50652)].

Generally, the conditions included in this notice are based on and very similar to the conditions of the previous permanent variances.

G. Multi-State Variance

Traylor stated that it performs construction of sub-aqueous tunnels using EPBTBM in compressed-air environments in a number of states that operate safety and health plans that have been approved by OSHA under Section 18 of the Occupational Safety and Health (OSH) Act of 1970 (29 U.S.C. 651 *et seq.*) and 29 CFR part 1952 (''Approved State Plans for Enforcement of State Standards''). Because Traylor performs tunnel construction work nationwide, OSHA processed Traylor's application as one for a permanent, multi-state variance covering all states.

Twenty-eight state safety and health plans have been approved by OSHA under Section 18 of the OSH Act.[4] As part of the permanent variance process, the Directorate of Cooperative and State Programs notified the State Plans of Traylor's variance application and grant of the interim order, and the states were provided the opportunity to comment. As previously noted, OSHA received no comments. Further, the Directorate of Cooperative and State Programs will notify the State Plans of Traylor's grant of a permanent multi-state variance.

[3] In the study cited in footnote 10, starting at page 338, Dr. Eric Kindwall notes that the use of automatically regulated continuous decompression in the Washington State safety standards for compressed-air work (from which OSHA derived its decompression tables) was at the insistence of contractors and the union, and against the advice of the expert who calculated the decompression table and recommended using staged decompression. Dr. Kindwall then states, ''Continuous decompression is inefficient and wasteful. For example, if the last stage from 4 p.s.i.g. . . . to the surface took 1 h, at least half the time is spent at pressures less than 2 p.s.i.g. . . ., which provides less and less meaningful bubble suppression . . . .'' In addition, the report referenced in footnote 5 under the section titled, ''Background on the Need for Interim Decompression Tables'' addresses the continuous-decompression protocol in the OSHA compressed-air standard for construction, noting that ''[a]side from the tables for saturation diving to deep depths, no other widely used or officially approved diving decompression tables use straight line, continuous decompressions at varying rates. Stage decompression is usually the rule, since it is simpler to control.''

[4] Six State Plans (Connecticut, Illinois, Maine, New Jersey, New York, and the Virgin Islands) limit their occupational safety and health authority to state and local employers only. State Plans that exercise their occupational safety and health authority over both public- and private-sector employers are: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming.

Additionally, in consideration of Traylor's grant of this permanent multi-state variance, OSHA notes that four states have previously granted sub-aqueous tunnel construction variances and imposed different or additional requirements and conditions (California, Nevada, Oregon, and Washington). California also promulgated a different standard [5] for similar sub-aqueous tunnel construction work. In these states that previously granted variances or promulgated a different standard, Traylor has to continue meeting state-specific requirements, despite OSHA's grant of this permanent multi-state variance. Traylor must apply separately to these states for a variance for tunnel construction work addressing the same or similar conditions specified by this permanent multi-state variance.

Six State Plans (Connecticut, Illinois, Maine, New Jersey, New York, and the U.S. Virgin Islands) cover only public-sector workers and have no authority over the private-sector workers addressed in this variance (*i.e.,* that authority continues to reside with Federal OSHA).

III. Description of the Conditions Specified for the Permanent Variance

This section describes the alternative means of compliance with 29 CFR 1926.803(e)(5), (f)(1), (g)(1)(iii), and (g)(1)(xvii) and provides additional detail regarding the conditions that form the basis of Traylor's permanent variance.

Condition A: Scope

The scope of the permanent variance limits coverage to the work situations specified under this condition. Clearly defining the scope of the permanent variance provides Traylor, Traylor's employees, potential future applicants, other stakeholders, the public, and OSHA with necessary information regarding the work situations in which the permanent variance applies.

As previously indicated in this notice, according to 29 CFR 1905.11, an employer (or class or group of employers [6]) may request a permanent variance for a specific workplace or workplaces (multiple sites). When granted, the variance applies to the specific employer(s) that submitted the application. In this instance, the permanent variance applies to Traylor only. As a result, it is important to understand that Traylor's permanent variance does not apply to any other employers such as other joint ventures the applicant may undertake in the future. However, the variance rules of practice do contain provisions for future modification of permanent variances. Under the provisions of 29 CFR 1905.13, an applicant may submit an application to modify or amend a permanent variance to add or include additional employers (*i.e.,* when future joint ventures are established).

Condition B: Application

This condition specifies the circumstances under which the permanent variance is in effect, notably only for hyperbaric work performed during interventions. The condition places clear limits on the circumstances under which the applicant can expose its employees to hyperbaric pressure.

Condition C: List of Abbreviations

This condition defines a number of abbreviations used in the permanent variance. OSHA believes that defining these abbreviations serves to clarify and standardize their usage, thereby enhancing the applicant's and its employees' understanding of the conditions specified by the permanent variance.

Condition D: Definitions

This condition defines a series of terms, mostly technical terms, used in the permanent variance to standardize and clarify their meaning. Defining these terms serves to enhance the applicant's and its employees' understanding of the conditions specified by the permanent variance.

Condition E: Safety and Health Practices

This condition requires the applicant to develop and submit to OSHA a project-specific HOM at least one year before using the EPBTBM for tunneling operations. The HOM will have to demonstrate that the EPBTBM planned for use in tunneling operations is designed, fabricated, inspected, tested, marked, and stamped in accordance with the requirements of ASME PVHO–1.2012 (or most recent edition of Safety Standards for Pressure Vessels for Human Occupancy) for the TBM's hyperbaric chambers. These requirements ensure that the applicant develops hyperbaric safety and health procedures suitable for each specific project. The HOM enables OSHA to determine that the safety and health instructions and measures it specifies are appropriate to the field conditions of the planned future tunnel (including expected geological conditions), conform to the conditions of the variance, and adequately protect the safety and health of the CAWs. It also enables OSHA to enforce these instructions and measures. Additionally, the condition includes a series of related hazard prevention and control requirements and methods (*e.g.,* decompression tables, job hazard analysis (JHA), operation and inspection checklists, investigations, recording and notification to OSHA of recordable hyperbaric injuries and illnesses, etc.) designed to ensure the continued effective functioning of the hyperbaric equipment and operating system.

Review of the project-specific HOM enables OSHA to: (1) Determine that the safety and health instructions and measures it specifies are appropriate, conform to the conditions of the variance, and adequately protect the safety and health of CAWs; and (2) request the applicant to revise or modify the HOM if it finds that the hyperbaric safety and health procedures are not suitable for the specific project and do not adequately protect the safety and health of the CAWs. The applicant may not begin hyperbaric interventions at pressures exceeding 50 p.s.i.g. until OSHA completes its review of the project-specific HOM and notifies the applicant that: (1) Its project-specific HOM was found to be acceptable; and (2) it may begin hyperbaric interventions at pressures exceeding 50 p.s.i.g. by complying fully with the conditions of the permanent variance.

Once approved, the project-specific HOM becomes part of this variance, thus enabling OSHA to enforce its safety and health procedures and measures.

Condition F: Communication

This condition requires the applicant to develop and implement an effective system of information sharing and communication. Effective information sharing and communication ensures that affected workers receive updated information regarding any safety-related hazards and incidents, and corrective actions taken, prior to the start of each shift. The condition also requires the applicant to ensure that reliable means of emergency communications are available and maintained for affected workers and support personnel during hyperbaric operations. Availability of such reliable means of communications enables affected workers and support personnel to respond quickly and effectively to hazardous conditions or emergencies that may develop during EPBTBM operations.

[5] See California Code of Regulations, Title 8, Subchapter 7, Group 26, Article 154, available at *http://www.dir.ca.gov/title8/sb7g26a154.html.*

[6] A class or group of employers (such as members of a trade alliance or association) may apply jointly for a variance provided an authorized representative for each employer signs the application and the application identifies each employer's affected facilities.

Condition G: Worker Qualification and Training

This condition requires the applicant to develop and implement an effective qualification and training program for affected workers. The condition specifies the factors that an affected worker must know to perform safely during hyperbaric operations, including how to enter, work in, and exit from hyperbaric conditions under both normal and emergency conditions. Having well-trained and qualified workers performing hyperbaric intervention work ensures that they recognize, and respond appropriately to, hyperbaric safety and health hazards. These qualification and training requirements enable affected workers to cope effectively with emergencies, as well as the discomfort and physiological effects of hyperbaric exposure, thereby preventing injury, illness, and fatalities.

Paragraph (2)(e) of this condition also requires the applicant to provide affected workers with information they can use to contact the appropriate healthcare professionals if it is suspected that they are developing hyperbaric-related health effects. This requirement provides for early intervention and treatment of DCI and other health effects resulting from hyperbaric exposure, thereby reducing the potential severity of these effects.

Condition H: Inspections, Tests, and Accident Prevention

This condition requires the applicant to develop, implement, and operate a program of frequent and regular inspections of the EPBTBM's hyperbaric equipment and support systems, and associated work areas. This condition serves to: Enhance worker safety, to ensure safe operation and physical integrity of the equipment and work areas necessary to conduct hyperbaric operations, and to reduce the risk of hyperbaric-related emergencies.

Paragraph (3) of this condition requires the applicant to document tests, inspections, corrective actions, and repairs involving the EPBTBM, and to maintain these documents at the job site for the duration of the job. This requirement provides the applicant with information needed to schedule tests and inspections, to ensure the continued safe operation of the equipment and systems, and to determine that the actions taken to correct defects in hyperbaric equipment and systems were appropriate, prior to returning them to service.

Condition I: Compression and Decompression

This condition requires the applicant to consult with its designated medical advisor regarding special compression or decompression procedures appropriate for any unacclimated CAW. This provision ensures that the applicant consults with and involves the medical advisor in the evaluation, development, and implementation of compression or decompression protocols appropriate for any CAW requiring acclimation to the hyperbaric conditions encountered during EPBTBM operations. Accordingly, CAWs requiring acclimation have an opportunity to acclimate prior to exposure to these hyperbaric conditions. OSHA believes this condition will prevent or reduce adverse reactions among CAWs to the effects of compression or decompression associated with the intervention work they perform in the EPBTBM.

Condition J: Recordkeeping

This condition requires the applicant to maintain records of specific factors associated with each hyperbaric intervention. The information gathered and recorded under this provision, in concert with the information provided under condition K (using OSHA 301 Incident Report form to investigate, record, and provide notice to OSHA of hyperbaric recordable injuries as defined by 29 CFR 1904.4, 1904.7, 1904.8 through 1904.12), enables the applicant and OSHA to determine the effectiveness of the permanent variance in preventing DCI and other hyperbaric-related effects.[7]

Condition K: Notifications

Under the provisions of this condition, the applicant is required, within specified periods, to notify OSHA of: (1) Any recordable injury, illness, in-patient hospitalization, amputation, loss of an eye, or fatality that occurs as a result of hyperbaric exposures during EPBTBM operations; (2) provide OSHA with a copy of the hyperbaric exposures incident investigation report (using OSHA 301 form) of these events within 24 hours of the incident; (3) include on the 301 form information on the hyperbaric conditions associated with the recordable injury or illness, the root-cause determination, and preventive and corrective actions identified and implemented; (4) provide its certification that it informed affected workers of the incident and the results of the incident investigation; (5) notify the Office of Technical Programs and Coordination Activities (OTPCA) and the OSHA Area Office closest to the tunnel project site within 15 working days should the applicant need to revise its HOM to accommodate changes in its compressed-air operations that affect its ability to comply with the conditions of the permanent variance; and (6) at the end of the project provide OTPCA and the OSHA Area Office closest to the tunnel project site with a report evaluating the effectiveness of the decompression tables.

It should be noted that the requirement of completing and submitting the hyperbaric exposure-related (recordable) incident investigation report (OSHA 301 form) is more restrictive than the current recordkeeping requirement of completing the OSHA 301 form within 7 calendar days of the incident (1904.29(b)(3)). This modified and more stringent incident investigation and reporting requirement is restricted to intervention-related hyperbaric (recordable) incidents only. Providing this type of notification is essential because time is a critical element in OSHA's ability to: (1) Determine the continued effectiveness of the variance conditions in preventing hyperbaric incidents; (2) identify and implement appropriate hyperbaric incident-related corrective and preventive actions; (3) determine the effectiveness of the variance conditions in providing the requisite level of safety to the applicant's workers; and (4) determine whether to revise or revoke said conditions. Timely notification enables OSHA to take whatever action may be necessary and appropriate to prevent further injuries and illnesses. Providing notification to employees also informs them of the precautions taken by the applicant to prevent similar incidents in the future.

Additionally, this condition also requires the applicant to notify OSHA if it ceases to do business, has a new address or location for its main office, or transfers the operations covered by the variance to a successor company. The condition also specifies that OSHA must approve the transfer of the permanent variance to a successor company, allows OSHA to communicate effectively with the applicant regarding the status of the variance, and serves to

[7] See 29 CFR 1904 Recording and Reporting Occupational Injuries and Illnesses (*http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=9631*); recordkeeping forms and instructions (*http://www.osha.gov/recordkeeping/RKform300pkg-fillable-enabled.pdf*); and updates to OSHA's recordkeeping rule and Web page ((79 FR 56130); *http://www.osha.gov/recordkeeping2014/index.html*).

expedite the administration and enforcement of the variance provisions. Stipulating that an applicant is required to have OSHA's approval to transfer a variance to a successor company provides assurance that the successor company has knowledge of, and will comply with the conditions specified by the variance.

IV. Decision

As noted earlier, on July 27, 2015, OSHA published a **Federal Register** notice announcing Traylor's application for a permanent variance and interim order, grant of an interim order, and request for comments (80 FR 44386). The comment period expired August 26, 2015, and OSHA received no comments.

During the period starting with the July 27, 2015, publication of the preliminary **Federal Register** notice announcing grant of the interim order (80 FR 44386), until the Agency modifies or revokes the interim order or makes a decision on its application for a permanent variance, the applicant was required to comply fully with the conditions of the interim order as an alternative to complying with the requirements of 29 CFR 1926.803 (hereafter, ''the standard'') that:

A. Prohibit employers using compressed air under hyperbaric conditions from subjecting workers to pressure exceeding 50 p.s.i.g., except in an emergency (29 CFR 1926.803(e)(5));

B. Require the use of decompression values specified by the decompression tables in Appendix A of the compressed-air standard (29 CFR 1926.803(f)(1)); and

C. Require the use of automated operational controls and a special decompression chamber (29 CFR 1926.803(g)(1)(iii) and .803(g)(1)(xvii), respectively). After reviewing the proposed alternatives OSHA determined that:

D. Traylor developed, and proposed to implement, effective alternative measures to the prohibition of using compressed air under hyperbaric conditions exceeding 50 p.s.i.g. The alternative measures include use of engineering and administrative controls of the hazards associated with work performed in compressed-air conditions exceeding 50 p.s.i.g. while engaged in the construction of a subaqueous tunnel using advanced shielded mechanical-excavation techniques in conjunction with an EPBTBM. Prior to conducting interventions in the EPBTBM's pressurized working chamber, the applicant halts tunnel excavation and prepares the machine and crew to conduct the interventions. Interventions involve inspection, maintenance, or repair of the mechanical-excavation components located in the working chamber.

E. Traylor developed, and proposed to implement, safe hyperbaric work procedures, emergency and contingency procedures, and medical examinations for future tunneling projects' CAWs. The applicant will compile these standard operating procedures into a project-specific HOM. The HOM will discuss the procedures and personnel qualifications for performing work safely during the compression and decompression phases of interventions. The HOM will also specify the decompression tables the applicant will use. Depending on the maximum working pressure and exposure times during the interventions, the tables provide for decompression using the 1992 French Decompression Tables for air, nitrox, or trimix as specified by the HOM. The decompression tables also include delays or stops for various time intervals at different pressure levels during the transition to atmospheric pressure (*i.e.,* staged decompression). In all cases, a physician certified in hyperbaric medicine will manage the medical condition of CAWs during decompression. In addition, a trained and experienced man-lock attendant, experienced in recognizing decompression sickness or illnesses and injuries will be present. Of key importance, a hyperbaric supervisor (competent person), trained in hyperbaric operations, procedures, and safety, will directly supervise all hyperbaric operations to ensure compliance with the procedures delineated in the project-specific HOM or by the attending physician.

F. Traylor developed, and proposed to implement, a training program to instruct affected workers in the hazards associated with conducting hyperbaric operations.

G. Traylor developed, and proposed to implement, an effective alternative to the use of automatic controllers that continuously decrease pressure to achieve decompression in accordance with the tables specified by the standard. The alternative includes using: (1) The 1992 French Decompression Tables for guiding staged decompression to achieve lower occurrences of DCI; (2) decompression protocols of air, nitrox, or trimix again to achieve lower occurrences of DCI; (3) a trained and competent attendant for implementing appropriate hyperbaric entry and exit procedures, and (4) a competent hyperbaric supervisor and attending physician certified in hyperbaric medicine, to oversee all hyperbaric operations.

H. Traylor developed, and proposed to implement, an effective alternative to the use of the special decompression chamber required by the standard. EPBTBM technology permits the tunnel's work areas to be at atmospheric pressure, with only the face of the EPBTBM (*i.e.,* the working chamber) at elevated pressure during interventions. The applicant limits interventions conducted in the working chamber to performing required inspection, maintenance, and repair of the cutting tools on the face of the EPBTBM. The EPBTBM's man lock and working chamber provide sufficient space for the maximum crew of three CAWs to stand up and move around, and safely accommodate decompression times up to 360 minutes. Therefore, OSHA determined that the EPBTBM's man lock and working chamber function as effectively as the special decompression chamber required by the standard.

OSHA conducted a review of the scientific literature regarding decompression to determine whether the alternative decompression method (*i.e.,* the 1992 French Decompression Tables) Traylor proposed provides a workplace as safe and healthful as that provided by the standard. Based on this review, OSHA determined that tunneling operations performed with these tables [8] resulted in a lower occurrence of DCI than the decompression tables specified by the standard. [9] [10] [11]

[8] In 1992, the French Ministry of Labour replaced the 1974 French Decompression Tables with the 1992 French Decompression Tables, which differ from OSHA's decompression tables in Appendix A by using: (1) Staged decompression as opposed to continuous (linear) decompression; (2) decompression tables based on air or both air and pure oxygen; and (3) emergency tables when unexpected exposure times occur (up to 30 minutes above the maximum allowed working time).

[9] Kindwall, EP (1997). Compressed-air tunneling and caisson work decompression procedures: Development, problems, and solutions. *Undersea and Hyperbaric Medicine,* 24(4), pp. 337–345. This article reported 60 treated cases of DCI among 4,168 exposures between 19 and 31 p.s.i.g. over a 51-week contract period, for a DCI incidence of 1.44% for the decompression tables specified by the OSHA standard.

[10] Sealey, JL (1969). Safe exit from the hyperbaric environment: Medical experience with pressurized tunnel operations. *Journal of Occupational Medicine,* 11(5), pp. 273–275. This article reported 210 treated cases of DCI among 38,600 hyperbaric exposures between 13 and 34 p.s.i.g. over a 32-month period, for an incidence of 0.54% for the decompression tables specified by the Washington State safety standards for compressed-air work, which are similar to the tables in the OSHA standard. Moreover, the article reported 51 treated cases of DCI for 3,000 exposures between 30 and 34 p.s.i.g., for an incidence of 1.7% for the Washington State tables.

[11] In 1985, the National Institute for Occupational Safety and Health (NIOSH) published a report

Continued

The review conducted by OSHA focused on the use of the 1992 French Decompression Tables with air, nitrox, or trimix and found several research studies supporting the determination that such use resulted in a lower rate of DCI than the decompression tables specified by the standard. For example, H. L. Anderson studied the occurrence of DCI at maximum hyperbaric pressures ranging from 4 p.s.i.g. to 43 p.s.i.g. during construction of the Great Belt Tunnel in Denmark (1992–1996); [12] this project used the 1992 French Decompression Tables to decompress the workers during part of the construction. Anderson observed 6 decompression sickness (DCS) cases out of 7,220 decompression events, and reported that switching to the 1992 French Decompression tables reduced the DCI incidence to 0.08%. The DCI incidence in the study by H. L. Andersen is substantially less than the DCI incidence reported for the decompression tables specified in Appendix A. OSHA found no studies in which the DCI incidence reported for the 1992 French Decompression Tables were higher than the DCI incidence reported for the OSHA decompression tables, nor did OSHA find any studies indicating that the 1992 French Decompression Tables were more hazardous to employees than the OSHA decompression tables.[13]

OSHA also reviewed the use of trimix in tunneling operations. In compressed-air atmospheres greater than 73 p.s.i.g., it becomes increasingly more difficult to work due to increased breathing resistance, increased risk of DCI, and the adverse effects of the increased partial pressures of nitrogen and oxygen. Nitrogen narcosis occurs when a diver or CAW breathes a gas mixture with a nitrogen partial pressure greater than 2.54 ATA (*i.e.,* 73 p.s.i.g.). Nitrogen narcosis compromises judgment, performance, and reaction time of divers and CAWs and can lead to loss of consciousness.[14] There is concern that nitrogen narcosis may impair CAWs leading to possible safety issues.[15] Exposure to oxygen at partial pressures greater than normal daily living may be toxic to the lungs and central nervous system under certain conditions. The higher the partial pressure of oxygen and the longer the exposure, the more severe the toxic effects. One way to reduce oxygen exposure is to alter the percentage of oxygen in the breathing mixture (see footnote 15). Trimix is a mixture of the inert gas helium, oxygen and nitrogen. Because helium is less dense than air, use of helium in compressed atmospheres decreases breathing resistance and allows for adjustment of the partial pressures of oxygen and nitrogen to reduce the incidence of nitrogen narcosis and oxygen toxicity.

Trimix has been successfully used in deep caisson work and tunneling projects including the construction of the Meiko West Bridge,[16] the Western Scheldt Tunnel (see footnote 15), and in the Seattle Brightwater Tunneling Project.[17] During the construction of the Western Scheldt Tunnel, there were fewer reported cases of DCIs in CAWs using trimix than in other CAWs using just compressed air, despite working at higher pressures (see footnotes 15 and 16). Additionally, the use of compressed air during the construction of the Western Scheldt Tunnel was also associated with a slower working pace and operational errors that the authors associated with the adverse effects of nitrogen at high pressure ((*i.e.,* nitrogen narcosis) (see footnote 15)). Trimix decompression tables are proprietary so large studies of workers with specific pressure exposures for specific trimix schedules are not available. Additional concerns include the lack of a defined recompression protocol in the case of DCI and some studies have found evidence of cardiopulmonary strain in divers using trimix but at pressures greater than those submitted for this variance (see footnote 13).

Review of the literature and reports from presentations to professional societies support that the incidence of DCI with this technique is lower than the incidence of DCIs reported with the use of OSHA tables. In addition, use of trimix reduces the risk of impairment from nitrogen narcosis and allows for the adjustment of oxygen partial pressure to reduce exposure to elevated oxygen partial pressures (see footnotes 15 and 17). Therefore, OSHA concludes that use of the 1992 French Decompression Tables protects workers at least as effectively as the OSHA decompression tables.

Based on a review of available evidence, the experience of State Plans that either granted variances (Nevada, Oregon, and Washington) [18] or promulgated a different standard (California) [19] for hyperbaric exposures occurring during similar subaqueous tunnel-construction work, and the information provided in the applicant's variance application, OSHA is granting this multi-state permanent variance for future tunneling projects.

Under section 6(d) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(d)), and based on the record discussed above, the Agency finds that when the employer complies with the conditions of the variance, the working conditions of the employer's workers are at least as safe and healthful as if the employer complied with the working conditions specified by paragraphs (e)(5), (f)(1), (g)(1)(iii), and (g)(1)(xvii) of 29 CFR 1926.803. Therefore, under the terms of this variance Traylor must: (1) Comply with the conditions listed below under section V of this notice (''Order'') for the period between the date of this notice and until the Agency modifies or revokes this final order in accordance with 29 CFR 1905.13; (2) comply fully with all other applicable provisions of 29 CFR part 1926; and (3) provide a copy of this **Federal Register** notice to all employees affected by the conditions, including the affected employees of other employers, using the same means it used to inform these employees of its application for a permanent variance.

entitled, ''Criteria for Interim Decompression Tables for Caisson and Tunnel Workers''; this report reviewed studies of DCI and other hyperbaric-related injuries resulting from use of OSHA's tables. This report is available on NIOSH's Web site: *http://www.cdc.gov/niosh/topics/decompression/default.html.*

[12] Anderson HL (2002). Decompression sickness during construction of the Great Belt Tunnel, Denmark. *Undersea and Hyperbaric Medicine,* 29(3), pp. 172–188.

[13] Le Péchon JC, Barre P, Baud JP, Ollivier F (September 1996). Compressed-air work—French Tables 1992—operational results. *JCLP Hyperbarie Paris, Centre Medical Subaquatique Interentreprise, Marseille: Communication a l'EUBS,* pp. 1–5 (see Ex. OSHA–2012–0036–0005).

[14] United States Navy. (2011) U.S. Navy Diving Manual, Revision 6. Department of the Navy.

[15] Van Rees, Vellinga T, Verhoevan A, Jan Dijk F, Sterk W (November-December 2006) Health and efficiency in trimix versus air breathing in CAWs. *Undersea Hyperbaric Medicine* 33 (6), pp 419–427. This article reported that during construction of the Western Scheldt Tunneling Project, there were 52 exposures to trimix at 81.2–84.1 p.s.i. with no reported cases of DCI. Three of 318 exposures to compressed air resulted in DCI in this study.

[16] Takishima R, Sterk W, Nashimoto T (1996) Trimix breathing in deep caisson work for the construction of Pier (P2) for the Meiko West Bridge. Undersea and Hyperbaric Medical Society Meeting Abstract. During construction of the Meiko West Bridge, there were 11 cases of DCI in 2059 trimix exposures for a reported DCI rate of 1%.

[17] Hamilton R, Kay E (November 2008) Boring deep tunnels. Proceedings, 3rd of U.S.-Japan Panel on Aerospace-Diving Physiology and Technology, and Hyperbaric Medicine.

[18] These state variances are available in the docket: Exs. OSHA–2012–0035–0006 (Nevada), OSHA–2012–0035–0007 (Oregon), and OSHA–2012–0035–0008 (Washington).

[19] See California Code of Regulations, Title 8, Subchapter 7, Group 26, Article 154, available at *http://www.dir.ca.gov/title8/sb7g26a154.html.*

V. Order

As of the effective date of this final order, OSHA is revoking the interim order granted to the employer on July 27, 2015 (80 FR 44386).

OSHA issues this final order authorizing Traylor Bros., Inc. (''Traylor'' or ''the applicant''), to comply with the following conditions instead of complying with the requirements of paragraphs 29 CFR 1926.803(e)(5), (f)(1), (g)(1)(iii), and (g)(1)(xvii). This final order applies to all employees of Traylor Bros., Inc. exposed to hyperbaric conditions. These conditions are:

A. Scope

The permanent variance applies only to work:

1. That occurs in conjunction with construction of future subaqueous tunnels using advanced shielded mechanical-excavation techniques and involving operation of an EPBTBM;

2. Performed under compressed-air and hyperbaric conditions up to 75 p.s.i.g;

3. In the EPBTBM's forward section (the working chamber) and associated hyperbaric chambers used to pressurize and decompress employees entering and exiting the working chamber;

4. Except for the requirements specified by 29 CFR 1926.803(e)(5), (f)(1), (g)(1)(iii), and (g)(1)(xvii), Traylor must comply fully with all other applicable provisions of 29 CFR part 1926; and

5. This final order will remain in effect until OSHA modifies or revokes it in accordance with 29 CFR 1905.13.

B. Application

The permanent variance applies only when Traylor stops the tunnel-boring work, pressurizes the working chamber, and the CAWs either enter the working chamber to perform interventions (*i.e.,* inspect, maintain, or repair the mechanical-excavation components), or exit the working chamber after performing interventions.

C. List of Abbreviations

Abbreviations used throughout this permanent variance include the following:

1. ATA—Atmosphere Absolute
2. CAW—Compressed-air worker
3. CFR—Code of Federal Regulations
4. DCI—Decompression Illness
5. DCS—Decompression Sickness (or the bends)
6. EPBTBM—Earth Pressure Balanced Tunnel Boring Machine
7. HOM—Hyperbaric Operations and Safety Manual
8. JHA—Job hazard analysis
9. OSHA—Occupational Safety and Health Administration
10. OTPCA—Office of Technical Programs and Coordination Activities

D. Definitions

The following definitions apply to this permanent variance. These definitions supplement the definitions in each project-specific HOM.

1. *Affected employee or worker*—an employee or worker who is affected by the conditions of this proposed permanent variance, or any one of his or her authorized representatives. The term ''employee'' has the meaning defined and used under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*).

2. *Atmospheric pressure*—the pressure of air at sea-level, generally, 14.7 p.s.i.a., 1 atmosphere absolute, or 0 p.s.i.g.

3. *Compressed-air worker*—an individual who is specially trained and medically qualified to perform work in a pressurized environment while breathing air at pressures up to 75 p.s.i.g.

4. *Competent person*—an individual who is capable of identifying existing and predictable hazards in the surroundings or working conditions that are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.[20]

5. *Decompression illness*—an illness (also called decompression sickness (DCS) or the bends) caused by gas bubbles appearing in body compartments due to a reduction in ambient pressure. Examples of symptoms of decompression illness include (but are not limited to): Joint pain (also known as the 'bends' for agonizing pain or the 'niggles' for slight pain); areas of bone destruction (termed dysbaric osteonecrosis); skin disorders (such as cutis marmorata, which causes a pink marbling of the skin); spinal cord and brain disorders (such as stroke, paralysis, paresthesia, and bladder dysfunction); cardiopulmonary disorders, such as shortness of breath; and arterial gas embolism (gas bubbles in the arteries that block blood flow).[21]

Note: Health effects associated with hyperbaric intervention but not considered symptoms of DCI can include: Barotrauma (direct damage to air-containing cavities in the body such as ears, sinuses and lungs); nitrogen narcosis (reversible alteration in consciousness that may occur in hyperbaric environments and is caused by the anesthetic effect of certain gases at high pressure); and oxygen toxicity (a central nervous system condition resulting from the harmful effects of breathing molecular oxygen (O_2) at elevated partial pressures).

6. *Earth Pressure Balanced Tunnel Boring Machine*—the machinery used to excavate the tunnel.

7. *Hot work*—any activity performed in a hazardous location that may introduce an ignition source into a potentially flammable atmosphere.[22]

8. *Hyperbaric*—at a higher pressure than atmospheric pressure.

9. *Hyperbaric intervention*—a term that describes the process of stopping the EPBTBM and preparing and executing work under hyperbaric pressure in the working chamber for the purpose of inspecting, replacing, or repairing cutting tools and/or the cutterhead structure.

10. *Hyperbaric Operations Manual*—a detailed, project-specific health and safety plan developed and implemented by Traylor for working in compressed air during future hyperbaric tunnel projects.

11. *Job hazard analysis*—an evaluation of tasks or operations to identify potential hazards and to determine the necessary controls.

12. *Man lock*—an enclosed space capable of pressurization, and used for compressing or decompressing any employee or material when either is passing into or out of a working chamber.

13. *Nitrox*—a mixture of oxygen and air and refers to mixtures which are more than 21% oxygen.

14. *Pressure*—a force acting on a unit area. Usually expressed as pounds per square inch (p.s.i.).

15. *p.s.i.*—pounds per square inch, a common unit of measurement of pressure; a pressure given in p.s.i. corresponds to absolute pressure.

16. *p.s.i.a*—pounds per square inch absolute, or absolute pressure, is the sum of the atmospheric pressure and gauge pressure. At sea-level, atmospheric pressure is approximately 14.7 p.s.i. Adding 14.7 to a pressure expressed in units of p.s.i.g. will yield the absolute pressure, expressed as p.s.i.a.

17. *p.s.i.g.*—pounds per square inch gauge, a common unit of pressure; pressure expressed as p.s.i.g. corresponds to pressure relative to atmospheric pressure. At sea-level, atmospheric pressure is approximately 14.7 p.s.i. Subtracting 14.7 from a pressure expressed in units of p.s.i.a.

[20] Adapted from 29 CFR 1926.32(f).

[21] See Appendix 10 of ''A Guide to the Work in Compressed-Air Regulations 1996,'' published by the United Kingdom Health and Safety Executive available from NIOSH at *http://www.cdc.gov/niosh/docket/archive/pdfs/NIOSH-254/compReg1996.pdf.*

[22] Also see 29 CFR 1910.146(b).

yields the gauge pressure, expressed as p.s.i.g.

18. *Qualified person*—an individual who, by possession of a recognized degree, certificate, or professional standing, or who, by extensive knowledge, training, and experience, successfully demonstrates an ability to solve or resolve problems relating to the subject matter, the work, or the project.[23]

19. *Trimix*—a mixture of oxygen, nitrogen and helium that is used in hyperbaric environments instead of air to reduce nitrogen narcosis and the hazards of oxygen toxicity.

20. *Working chamber*—an enclosed space in the EPBTBM in which CAWs perform interventions, and which is accessible only through a man lock.

E. Safety and Health Practices

1. Traylor must develop and implement a project-specific HOM, and submit the HOM to OSHA at least one year before using the EPBTBM on the project for which the HOM applies. The HOM shall provide the governing requirements regarding expected safety and health hazards (including anticipated geological conditions) and hyperbaric exposures during the tunnel-construction project.

2. The HOM must demonstrate that the EPBTBM to be used on the project is designed, fabricated, inspected, tested, marked, and stamped in accordance with the requirements of ASME PVHO–1.2012 (or most recent edition of Safety Standards for Pressure Vessels for Human Occupancy) for the EPBTBM's hyperbaric chambers.

3. When submitting the project-specific HOM to OSHA for approval, Traylor must demonstrate that it informed its employees of the HOM and their right to petition the Assistant Secretary for a variance by:

a. Giving a copy of the proposed project-specific HOM to the authorized employee representatives;

b. posting a statement giving a summary of the proposed project-specific HOM and specifying where its employees may examine a copy of the proposed HOM (at the place(s) where the applicant normally posts notices to employees or, instead of a summary, posting the proposed HOM itself); or

c. using other appropriate means.

4. Traylor must not begin hyperbaric interventions at pressures exceeding 50 p.s.i.g. until OSHA completes its review of the project-specific HOM and determines that the safety and health instructions and measures it specifies are appropriate, comply with the conditions of the variance, and adequately protect the safety and health of CAWs. Traylor must receive a written acknowledgement from OSHA stating that: (1) OSHA found its project-specific HOM acceptable; and (2) OSHA determined that it can begin hyperbaric interventions at pressures exceeding 50 p.s.i.g. by complying fully with the conditions of the permanent variance (as an alternative to complying with the requirements of the standard). Once approved by OSHA, the HOM becomes part of this variance for the purposes of the project for which it was developed.

5. Traylor must implement the safety and health instructions included in the manufacturer's operations manuals for the EPBTBM, and the safety and health instructions provided by the manufacturer for the operation of decompression equipment.

6. Traylor must use air or trimix as the only breathing gas in the working chamber.

7. Traylor must use the 1992 French Decompression Tables for air, nitrox, and trimix decompression specified in the HOM, specifically, the extracted portions of the 1992 French Decompression tables titled, ''French Regulation Air Standard Tables.''

8. Traylor must equip man locks used by its employees with an air, nitrox, or trimix-delivery system as specified by the HOM approved by OSHA for the project. Traylor is required to not store oxygen or other compressed gases used in conjunction with hyperbaric work in the tunnel.

9. Workers performing hot work under hyperbaric conditions must use flame-retardant personal protective equipment and clothing.

10. In hyperbaric work areas, Traylor must maintain an adequate fire-suppression system approved for hyperbaric work areas.

11. Traylor must develop and implement one or more JHAs for work in the hyperbaric work areas, and review, periodically and as necessary (*e.g.,* after making changes to a planned intervention that affects its operation), the contents of the JHAs with affected employees. The JHAs shall include all the job functions that the risk assessment[24] indicates are essential to prevent injury or illness.

12. Traylor must develop a set of checklists to guide compressed-air work and ensure that employees follow the procedures required by this permanent variance (including all procedures required by the HOM approved by OSHA for the project, which this variance incorporates by reference). The checklists shall include all steps and equipment functions that the risk assessment indicates are essential to prevent injury or illness during compressed-air work.

13. Traylor must ensure that the safety and health provisions of each HOM adequately protect the workers of all contractors and subcontractors involved in hyperbaric operations for the project to which the HOM applies.[25]

F. Communication

1. Prior to beginning a shift, Traylor must implement a system that informs workers exposed to hyperbaric conditions of any hazardous occurrences or conditions that might affect their safety, including hyperbaric incidents, gas releases, equipment failures, earth or rock slides, cave-ins, flooding, fires, or explosions.

2. Traylor must provide a power-assisted means of communication among affected workers and support personnel in hyperbaric conditions where unassisted voice communication is inadequate.

a. Traylor must use an independent power supply for powered communication systems, and these systems shall have to operate such that use or disruption of any one phone or signal location will not disrupt the operation of the system from any other location.

b. Traylor must test communication systems at the start of each shift and as necessary thereafter to ensure proper operation.

G. Worker Qualifications and Training

Traylor must:

1. Ensure that each affected worker receives effective training on how to safely enter, work in, exit from, and undertake emergency evacuation or rescue from, hyperbaric conditions, and document this training.

2. Provide effective instruction, before beginning hyperbaric operations, to each worker who performs work, or controls the exposure of others, in hyperbaric conditions, and document this instruction. The instruction must include:

a. The physics and physiology of hyperbaric work;

b. Recognition of pressure-related injuries;

c. Information on the causes and recognition of the signs and symptoms

[23] Adapted from 29 CFR 1926.32(m).

[24] See ANSI/AIHA Z10–2012, American National Standard for Occupational Health and Safety Management Systems, for reference.

[25] See ANSI/ASSE A10.33–2011, American National Standard for Construction and Demolition Operations—Safety and Health Program Requirements for Multi-Employer Projects, for reference.

associated with decompression illness, and other hyperbaric intervention-related health effects (*e.g.,* barotrauma, nitrogen narcosis, and oxygen toxicity).

d. How to avoid discomfort during compression and decompression;

e. Information the workers can use to contact the appropriate healthcare professionals should the workers have concerns that they may be experiencing adverse health effects from hyperbaric exposure; and

f. Procedures and requirements applicable to the employee in the project-specific HOM.

3. Repeat the instruction specified in paragraph (G)(2) of this condition periodically and as necessary (*e.g.,* after making changes to its hyperbaric operations).

4. When conducting training for its hyperbaric workers make this training available to OSHA personnel and notify the OTPCA at OSHA's National Office and OSHA's nearest affected Area Office before the training takes place.

H. Inspections, Tests, and Accident Prevention

1. Traylor must initiate and maintain a program of frequent and regular inspections of the EPBTBM's hyperbaric equipment and support systems (such as temperature control, illumination, ventilation, and fire-prevention and fire-suppression systems), and hyperbaric work areas, as required under 29 CFR 1926.20(b)(2) by:

a. Developing a set of checklists to be used by a competent person in conducting weekly inspections of hyperbaric equipment and work areas; and

b. Ensuring that a competent person conducts daily visual checks and weekly inspections of the EPBTBM.

2. If the competent person determines that the equipment constitutes a safety hazard, Traylor shall remove the equipment from service until it corrects the hazardous condition and has the correction approved by a qualified person.

3. Traylor must maintain records of all tests and inspections of the EPBTBM, as well as associated corrective actions and repairs, at the job site for the duration of the job.

I. Compression and Decompression

Traylor must consult with its attending physician concerning the need for special compression or decompression exposures appropriate for CAWs not acclimated to hyperbaric exposure.

J. Recordkeeping

Traylor must maintain a record of any recordable injury, illness, in-patient hospitalization, amputation, loss of an eye, or fatality (as defined by 29 CFR part 1904 Recording and Reporting Occupational Injuries and Illnesses), resulting from exposure of an employee to hyperbaric conditions by completing the OSHA 301 Incident Report form and OSHA 300 Log of Work Related Injuries and Illnesses.

Note: Examples of important information to include on the OSHA 301 Incident Report form (along with the corresponding question on the form) must address the following: The task performed (Question (Q) 14); an estimate of the CAW's workload (Q 14); the composition of the gas mixture (*e.g.,* air or trimix (Q 14)); the pressure worked at (Q 14); temperature in the work and decompression environments (Q 14); did something unusual occur during the task or decompression (Q 14); time of symptom onset (Q 15); duration of time between decompression and onset of symptoms (Q 15); nature and duration of symptoms (Q 16); a medical summary of the illness or injury (Q 16); duration of the hyperbaric intervention (Q 17); any possible contributing factors (Q 17); the number of prior interventions completed by injured or ill CAW (Q 17); the number of prior interventions completed by injured or ill CAW at that pressure (Q 17); the contact information for the treating healthcare provider (Q 17); and the date and time of last hyperbaric exposure for this CAW.

In addition to completing the OSHA 301 Incident Report form and OSHA 300 Log of Work Related Injuries and Illnesses, Traylor must maintain records of:

1. The date, times (*e.g.,* began compression, time spent compressing, time performing intervention, time spent decompressing), and pressure for each hyperbaric intervention.

2. The name of each individual worker exposed to hyperbaric pressure and the decompression protocols and results for each worker.

3. The total number of interventions and the amount of hyperbaric work time at each pressure.

4. The post-intervention physical assessment of each individual CAW for signs and symptoms of decompression illness, barotrauma, nitrogen narcosis, oxygen toxicity or other health effects associated with work in compressed air or mixed gasses for each hyperbaric intervention.

K. Notifications

1. To assist OSHA in administering the conditions specified herein, Traylor must:

a. Notify the OTPCA and the nearest affected Area Office of any recordable injury, illness, in-patient hospitalization, amputation, loss of an eye, or fatality (by submitting the completed OSHA 301 Incident Report form)[26] resulting from exposure of an employee to hyperbaric conditions including those that do not require recompression treatment (*e.g.,* nitrogen narcosis, oxygen toxicity, barotrauma), but still meet the recordable injury or illness criteria (of 29 CFR part 1904). The notification must be made within 8 hours of the incident, or after becoming aware of a recordable injury or illness, and a copy of the incident investigation (OSHA 301) shall be provided within 24 hours of the incident, or after becoming aware of a recordable injury or illness. In addition to the information required by the OSHA 301, the incident-investigation report must include a root-cause determination, and the preventive and corrective actions identified and implemented.

b. Provide certification within 15 days of the incident that it informed affected workers of the incident and the results of the incident investigation (including the root-cause determination and preventive and corrective actions identified and implemented).

c. Notify the OTPCA and the nearest affected Area Office within 15 working days and in writing, of any change in the compressed-air operations that affects Traylor's ability to comply with the conditions specified herein.

d. Upon completion of each hyperbaric tunnel project, evaluate the effectiveness of the decompression tables used throughout the project, and provide a written report of this evaluation to the OTPCA and the neared affected Area Office.

Note: The evaluation report must contain summaries of: (1) The number, dates, durations, and pressures of the hyperbaric interventions completed; (2) decompression protocols implemented (including composition of gas mixtures (air, oxygen, nitrox, and trimix), and the results achieved; (3) the total number of interventions and the number of hyperbaric incidents (decompression illnesses and/or health effects associated with hyperbaric interventions as recorded on OSHA 301 and 300 forms, and relevant medical diagnoses and treating physicians' opinions); and (4) root-causes, and preventive and corrective actions identified and implemented.

e. To assist OSHA in administering the conditions specified herein, inform the OTPCA and the nearest affected Area Office as soon as possible after it has knowledge that it will:

i. Cease to do business;

ii. Change the location and address of the main office for managing the tunneling operations specified by the project-specific HOM; or

iii. Transfer the operations specified herein to a successor company.

[26] See footnote 7.

f. Notify all affected employees of this permanent variance by the same means required to inform them of its application for a variance.

2. OSHA must approve the transfer of the permanent variance to a successor company.

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 Section 29 U.S.C. 655(6)(d), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1905.11.

Signed at Washington, DC, on March 7, 2016.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2016–05485 Filed 3–10–16; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2012–0040]

The Standard on 4,4′-Methylenedianiline for General Industry; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Standard on 4,4′-Methylenedianiline for General Industry (29 CFR 1910.1050).

DATES: Comments must be submitted (postmarked, sent, or received) by May 10, 2016.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2012–0040, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and the OSHA docket number (OSHA–2012–0040) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments 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 (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The information collection requirements specified in the 4,4′-Methylenedianiline Standard for General Industry (the ''MDA Standard'') (29 CFR 1910.1050) protect workers from the adverse health effects that may result from their exposure to MDA, including cancer, liver and skin disease. The major paperwork requirements specify that employers must perform initial, periodic, and additional exposure monitoring; notify each worker in writing of their results as soon as possible but no longer than 5 days after receiving exposure monitoring results; and routinely inspect the hands, face, and forearms of each worker potentially exposed to MDA for signs of dermal exposure to MDA. Employers must also: Establish a written compliance program; institute a respiratory protection program in accordance with 29 CFR 1910.134 (OSHA's Respiratory Protection standard); and develop a written emergency plan for any construction operation that could have an MDA emergency (*i.e.,* an unexpected and potentially hazardous release of MDA).

Employers must label any material or products containing MDA, including containers used to store MDA-contaminated protective clothing and equipment. They also must inform personnel who launder MDA-contaminated clothing of the requirement to prevent release of MDA, while personnel who launder or clean MDA-contaminated protective clothing or equipment must receive information about the potentially harmful effects of MDA. In addition, employers are to post warning signs at entrances or access ways to regulated areas, as well as train workers exposed to MDA at the time of their initial assignment, and at least annually thereafter.

Other paperwork provisions of the MDA standard require employers to

provide workers with medical examinations, including initial, periodic, emergency and follow-up examinations. As part of the medical surveillance program, employers must ensure that the examining physician receives specific written information, and that they obtain from the physician a written opinion regarding the worker's medical results and exposure limitations.

The MDA standard also specifies that employers are to establish and maintain exposure monitoring and medical surveillance records for each worker who is subject to these respective requirements, make any required record available to OSHA compliance officers and the National Institute for Occupational Safety and Health (NIOSH) for examination and copying, and provide exposure monitoring and medical surveillance records to workers and their designated representatives. Finally, employers who cease to do business within the period specified for retaining exposure monitoring and medical surveillance records, and who have no successor employer, must notify NIOSH at least 90 days before disposing of the records and transmit the records to NIOSH if so requested.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

The Agency is requesting an adjustment decrease in burden hours from 370 hours to 335 hours. The decrease is the result of a slight decrease in the number of impacted secondary-use plants and a reduction in workers receiving initial medical examinations, receiving exposure monitoring training, and requesting access to records. There is an overall adjustment decrease in capital costs of $3,802 (from $27,982 to $24,180) resulting from a decrease in the cost to analyze a sample of airborne MDA from $119 to $87 each. However, the cost of a medical exam increased from $187 to $207.

The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB to extend the approval of the information collection requirements contained in the MDA Standard.

Type of Review: Extension of a currently approved collection.

Title: 4,4′-Methylenedianiline Standard for General Industry (29 CFR 1910.1050).

OMB Control Number: 1218–0184.

Affected Public: Business or other for-profits; Not-for-profit organizations; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 10.

Total Responses: 574.

Frequency: On occasion.

Average Time per Response: Varies from 5 minutes (.08 hour) for employers to provide information to the physician to 1.5 hours to review and maintain a compliance plan.

Estimated Total Burden Hours: 335.

Estimated Cost (Operation and Maintenance): $24,180.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number (Docket No. OSHA–2012–0040) for the ICR. You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627). Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this Web site.

All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available from the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Ph.D., MP, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on March 7, 2016.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2016–05486 Filed 3–10–16; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0020]

Additional Requirements for Special Dipping and Coating Operations (Dip Tanks); Extension of the Office of Management and Budget's (OMB) Approval of the Information Collection (Paperwork) Requirement

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend The Office of Management and Budget (OMB) approval of the information collection requirement specified in its Standard on Dipping and Coating Operations (Dip Tanks) (29 CFR 1910.126(g)(4)).

DATES: Comments must be submitted (postmarked, sent, or received) by May 10, 2016.

ADDRESSES: *Electronically:* You may submit comments and attachments

electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, OSHA Docket No. OSHA–2010–0020, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and the OSHA docket number (OSHA–2010–0020) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments 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 (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The Standard on Dipping and Coating Operations (29 CFR 1910.126(g)(4)) requires employers to post a conspicuous sign near each piece of electrostatic detearing equipment that notifies employees of the minimum safe distance they must maintain between goods undergoing electrostatic detearing and the electrodes or conductors of the equipment used in the process. Doing so reduces the likelihood of igniting the explosive chemicals used in electrostatic detearing operations.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirement is necessary for the proper performance of the Agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirement, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirement contained in the Standard on Additional Requirements for Special Dipping and Coating Operations (Dip Tanks) (29 CFR 1910.126(g)(4)). The Agency is requesting to retain its previous burden hour estimate of one (1) hour. This provision requires the employer to determine how far away goods being electrostatically deteared should be separated from electrodes or conductors. This distance is called the ''safe distance.'' This minimum distance must be displayed conspicuously on a sign located near the equipment.

OSHA has determined that where electrostatic equipment is being used, the information has already been ascertained and that the ''safe distance'' has been displayed on a sign in a permanent manner. The Agency does not believe that this equipment is currently being manufactured or used due to changes in technology. OSHA does not believe there is any burden associated with the information collection requirement in the provision and is, therefore, estimating zero burden hours and no cost to the employer.

The Agency will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved information collection.

Title: Additional Requirements for Special Dipping and Coating Operations (Dip Tanks) (29 CFR 1910.126(g)(4)).

OMB Control Number: 1218–0237.

Affected Public: Business or other for-profits; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 1.

Frequency of Recordkeeping: On occasion.

Total Responses: 1.

Average Time per Response: 0.

Estimated Total Burden Hours: 1.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2010–0020). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you

must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Due to security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available from the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on March 7, 2016.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2016–05487 Filed 3–10–16; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket Nos. OSHA–2014–0025, 0026, OSHA–2015–0004, 0007, 0011, 0016, 0023]

Authorization To Open Dockets of Denied Variance Applications for Public Access

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces its intent to update the publication of the dockets of variance applications that it denied in the period from 2014 to 2015. Previously OSHA published a **Federal Register** notice announcing the denied variance application dockets for the 2010 to 2014 (79 FR 76387) period. OSHA is making this information available to the public to enhance transparency concerning the variance process, to assist the public in understanding the variance process, and to reduce errors in applying for future variances.

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. Background

The principal objective of the Occupational Safety and Health Act of 1970 (''the OSH Act'') is ''to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources'' (29 U.S.C. 651 *et seq.*). In fulfilling this objective, the OSH Act authorizes the implementation of ''such rules and regulations as [the Assistant Secretary of Labor for Occupational Safety and Health] may deem necessary to carry out [his/her] responsibilities under this Act'' (29 U.S.C. 657(g)(2)).

Under several provisions of the OSH Act, employers may apply for four different types of variances from the requirements of OSHA standards. Employers submit variance applications voluntarily to OSHA, and the applications specify alternative means of complying with the requirements of OSHA standards. The four types of variances are temporary, experimental, permanent, and national-defense variances. OSHA promulgated rules implementing these statutory provisions in 29 CFR part 1905 (''Rules of Practice for Variances, Limitations, Variations, Tolerances, and Exemptions under the William-Steiger Occupational Safety and Health Act of 1970''). The following paragraphs further describe each of these four types of variances.

Temporary variance.[1] This variance delays the date on which an employer must comply with requirements of a newly issued OSHA standard. The employer must submit the variance application to OSHA after OSHA issues the standard, but prior to the effective date of the standard. In the variance application, the employer must demonstrate an inability to comply with the standard by its effective date ''because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date.'' Employers also must establish that they are ''taking all available steps to safeguard [their] employees against the hazards covered by the standard,'' and that they have ''an effective program for coming into compliance with the standard as quickly as practicable.'' (29 U.S.C. 655(b)(6)(A)).

Experimental variance.[2] OSHA may grant this variance as an alternative to complying with the requirements of a standard whenever it determines that the variance ''is necessary to permit an employer to participate in an experiment . . . designed to demonstrate or validate new and improved techniques to protect the health or safety of employees.'' (29 U.S.C. 655(b)(6)(C)).

Permanent variance.[3] This variance authorizes employers (or groups of employers) to use alternative means of complying with the requirements of OSHA standards when the employers demonstrate, with a preponderance of

[1] See Section 6(b)(6)(A) of the OSH Act (29 U.S.C. 655) and 29 CFR 1905.10.

[2] See Section 6(b)(6)(C) of the OSH Act (29 U.S.C. 655).

[3] See Section 6(d) of the OSH Act (29 U.S.C. 655) and 29 CFR 1905.11.

evidence, that the proposed alternative protects employees at least as effectively as the requirements of the standards.

National defense variance.[4] Under this variance, OSHA, ''may provide such reasonable limitations and may make such rules and regulations allowing reasonable variations, tolerances, or exceptions to and from'' the requirements of its standards that it ''find[s] are necessary and proper to avoid serious impairment of the national defense'' (29 U.S.C. 665). Such variances can be in effect no longer than six months without notifying the affected employees and affording them an opportunity for a hearing.

Additionally, OSHA developed optional stardardized variance application forms, and obtained the requried Office of Management and Budget (OMB) approval for the information collection requirement (OMB control no. 1218–0265/Expires 6/30/2018), in order to assist employers in meeting the paperwork requirements contained in these regulations. Further, in order to facilitate and simplify the completion of the complex variance applications and reduce the information collection burden on applicants, OSHA made the variance application forms and accompanying completion instructions, as well as variance application checklists, accessible from its ''How to Apply for a Variance'' Web page (*http://www.osha.gov/dts/otpca/variances/index.html*).

II. Denied Variance Applications

Generally, when receiving a variance application, OSHA conducts an administrative and technical review, which includes verifying an applicant completed the application fully and included required information and evaluating the effectiveness of the alternate safety measures proposed by the applicant. Part of OSHA's administrative variance application evaluation is to establish a docket for each case. OSHA then places the variance application and other related materials submitted by the applicant in the docket without revision. Initially, these materials are not made public.

Upon completion of the technical review, if OSHA determines to move forward with the grant of a variance, it develops and publishes a preliminary **Federal Register** notice (FRN) announcing the variance application, grant of an interim order (when such was requested by the applicant), and request for public comment. When the preliminary FRN is published, OSHA makes the case docket public and available online at the Federal eRulemaking Portal (*http://www.regulations.gov).*

Following publication of the preliminary FRN, interested parties may submit their comments and attachments electronically to the Federal eRulemaking Portal. OSHA monitors public comments received (if any), and at the expiration of the comment period reviews and analyzes them. Based on the review results, OSHA develops and publishes the final FRN granting or denying the variance.

If OSHA determines not to move forward with the grant of a variance, it does not publish the variance docket. A variance application may be denied for a variety of reasons upon completion of the technical review. Often these reasons stem from errors employers commit in completing their applications. Reviewing the variance application forms' completion instructions, the application checklists, and previously denied variance applications prior to completing a variance application will assist applicants in determining whether their applications are complete and appropriate, as well as to avoid common errors. The following are examples of common errors that lead to the denial of applications:

Denied—unresolved citation. An employer cannot use a variance application to avoid or resolve an existing citation while contesting the citation. If OSHA has issued a citation on the standard (or provision of the standard) for which an employer is seeking a variance, OSHA may deny the application or place it on hold until the parties resolve the citation (29 CFR 1905.5). Therefore, in order to avoid this type of error, a variance application should not contain a request for resolving a contested citation.

Denied—exemption requested. An application for a variance is a request proposing use of alternate means for protecting workers that are at least as effective as the standards from which the applicant is seeking the variance. Therefore, in order to avoid this type of error, a variance application should not contain a request for an outright exemption or waiver that permits the applicant to avoid complying with the requirements of an applicable standard. Only national-defense variances may provide outright exemptions from OSHA standards (29 CFR 1905.12).

Denied—not as protective as standard. The technical review of the variance application found that it failed to demonstrate by a preponderance of evidence that the proposed alternate means of compliance protects workers at least as effectively as the protection afforded by the standard from which the applicant is seeking the variance (29 CFR 1905.11). Therefore, in order to avoid this type of error, a variance application should contain proposed alternate safety measures that are at least as effective as the protection afforded by the applicable standard.

Denied—standard or interpretation already exists. The applicant proposes use of alternate means that OSHA previously determined acceptable for use by issuing a letter of interpretation (LOI). Since use of the proposed alternate was allowed prior to the filing of the variance application, the application is unnecessary. The applicant may use the means of compliance in the manner determined acceptable and described by the LOI.

Denied—site located solely in State-Plan state.[5] When obtaining a variance for establishment(s) located solely in states that operate their own OSHA-approved occupational safety and health plans, employer(s) must follow the variance-application procedures specified by the State Plan(s) covering states in which they have establishment(s) named in the variance application(s) (29 CFR 1952). Therefore, in order to avoid this type of error, a variance application for establishment(s) located solely in State Plan states should be filed in the state(s) where the establishments are located.

Denied—application missing side-by-side comparison. When obtaining a multi-state variance (involving at least one location in a state under Federal OSHA authority and one location in a state under State Plan authority) and the application does not contain side-by-side comparison of federal and state plan standard(s), the application will be denied. Therefore, in order to avoid this type of error, the application for a multi-state variance should contain a side-by-side comparison of the federal standard from which the employer is requesting a variance with the corresponding state standard. The corresponding state standard must be essentially identical in substance to the federal standard.

Denied—application inappropriately requests product or product design approval. The variable working conditions at jobsites and the possible alteration or misapplication of an otherwise safe piece of equipment could easily create hazardous conditions beyond the control of the equipment manufacturer. Therefore, it is OSHA's

[4] See Section 16 of the OSH Act (29 U.S.C. 665) and 29 CFR 1905.12.

[5] Section 18 of the OSH Act of 1970 encourages States to develop and operate their own job safety and health programs.

policy not to approve or endorse products or product designs.[6] In order to avoid this type of error, a variance application should not contain a request for product or product design approval.

Denied—application inappropriately addresses proposed standard. The applicant is seeking a variance from a proposed standard that has not been published as a final rule and is subject to possible alteration and revision. A variance is an alternate means of compliance that is different from the means of compliance required by a specific (in effect) OSHA standard (29 CFR 1905.11). Therefore, in order to avoid this type of error, a variance application should not contain a request for a variance from a proposed standard that has not been published as a final rule.

Denied—application inappropriately addresses a ''performance'' standard or ''definition'' in a standard. The variance application did not propose use of alternate means of compliance from a standard that describes a specific method for meeting its safety requirements. Instead, the applicant is requesting a variance from a ''performance standard,'' ''definition,'' ''scope,'' ''applicability'' or ''purpose'' portion(s) of a standard that leaves ''open ended'' or ''unspecified'' the means and methods for meeting its safety requirements (29 CFR 1905.11). Therefore, in order to avoid this type of error, a variance application should not contain a request for a variance from a performance standard or definition in a standard.

Denied—application inappropriately requests a temporary variance filed after the standard's effective date. As stated earlier in this SOP, a temporary variance is an alternative means of implementing a new standard during a specified period of time that it will take the employer to come into compliance with the new standard. Employers must request a temporary variance prior to the effective date of the new standard (Section 6(b)(6)(A) of the OSH Act and 29 CFR 1905.10). However, the applicant incorrectly submitted a request for a temporary variance after the effective date of the standard.

Denied—application inappropriately requests a variance from the General Duty clause (Section 5(a)(1) of the OSH Act). OSHA does not have authority to grant variances from Section 5(a)(1) of the Act. Section 5(a)(1) is not a specific occupational safety and health standard, but a statutory provision of the Occupational Safety and Health Act (OSH Act). This section states that ''Each employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or likely to cause death or serious physical harm to his employee.'' Experience indicates that generally an applicant seeks a Section 5(a)(1) variance as a result of receiving a General Duty clause citation. A citation issued under Section 5(a)(1) constitutes a serious violation that must be abated in such a manner as to provide a safe and healthful workplace that is free from recognized hazards that are causing or likely to cause death or serious physical harm.

Denied—application inappropriately requests a variance from a consensus standard. A variance from a consensus standard (developed by industry or other standards development organization (SDO)) is inappropriate and cannot be granted because variances only apply to specific occupational safety and health standards or regulations promulgated by OSHA. Consensus standards developed by industry or other standard development organizations are not specific occupational safety and health standards promulgated by OSHA.

Withdrawn—During the administrative and technical evaluations, OSHA will evaluate a variance application for appropriateness, completeness, and effectiveness. When an application fails to pass the administrative review, OSHA will inform the applicant regarding the application's defect(s). At that point, an applicant may choose to amend its application to fix its defect(s) or withdraw its application without prejudice. For example, an applicant may withdraw its application when it determines that: a variance is no longer necessary; its application is incomplete and the applicant chooses to stop pursuing the matter; or the applicant's work place is located solely in a state operating an OSHA-approved State Plan so that the application should have been submitted to the State Plan.

II. Denial of Multi-State Variance Applications

Under the provisions of Section 18 of the OSH Act of 1970 and 29 CFR part 1952, states can develop and operate their own job safety and health programs. OSHA approves and monitors State Plans and provides up to 50 percent of an approved plans' operating costs. Currently, there are 22 states and territories operating complete State Plans (covering both the private sector and State and local government employees) and six states covering state and local government employees only. States with OSHA-approved State Plans may have additional requirements for variances.

For more information on these requirements, as well as State Plan addresses, visit OSHA's State Plans Web page: (*http://www.osha.gov/dcsp/osp/index.html*).

Employers filing a variance application for multiple workplaces located in one or more states under Federal OSHA authority may submit their applications to Federal OSHA by meeting the requirements set forth in the OSH Act and the implementing regulations (29 CFR 1905). Employers filing a variance application for multiple workplaces located in one or more states exclusively under State Plan authority must submit their applications in that particular state or states. Note that State Plans vary in their applicability to public sector and private sector places of employment. For example, Virginia's plan does not cover private-sector maritime employers, while California's plan covers most private-sector maritime employer activities, except as specified by 29 CFR 1952.172. Employers should follow the variance-application procedures specified by the State Plan(s) for states in which they have an establishment named in the variance application.

Applicants with workplaces in one or more states under State Plan authority and at least one state under Federal OSHA authority may apply to Federal OSHA for a variance by meeting the requirements set forth in the OSH Act and the implementing regulations (29 CFR 1905 and 1952). When applicants perform work in a number of states that operate OSHA-approved safety and health programs, such states (and territories) have primary enforcement responsibility over the work performed within their borders. Under the provisions of 29 CFR 1952.9 (''Variance affecting multi-state employers'') and 29 CFR 1905.14(b)(3) (''Actions on applications''), a permanent variance or interim order granted, denied, modified, or revoked by the Agency becomes effective in State Plans as an authoritative interpretation of the applicants' compliance obligation when: (1) The variance request involves the same material facts for the places of employment; (2) the relevant state standards are the same as the Federal OSHA standards from which the applicants are seeking the variance; and (3) the State Plan does not object to the terms of the variance application.

[6] See LOI dated December 30, 1983 @ *http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=19170.*

III. Granting Public Access to Dockets of Denied Variance Applications

OSHA has denied a large number of variance applications since its inception in the early 1970s. As previously indicated in this notice, because OSHA denied these applications, initially they were not published in the **Federal Register** for public review.[7]

However, in 2010, OSHA made public a sizable number of illustrative variance applications (approximately 200) that it denied during the period from 1995 through 2010.

Further, on December 22, 2014, OSHA published an FRN announcing the dockets of the variances that it denied from 2010 through 2014 (79 FR 76387). The dockets for these denied or withdrawn variance applications are accessible online at the Federal eRulemaking Portal (*http://www.regulations.gov),* as well as on OSHA's ''Denied and Withdrawn Variance Applications for 1995–2014'' Web page: (*http://www.osha.gov/dts/otpca/variances/denied_withdrawn95-10.html).*

OSHA made this information available to the public to enhance transparency concerning the variance process, to assist the public in understanding the variance process, and to reduce errors in applying for future variances.

This action was consistent with the policy established by the Open Government Directive, M–10–06, issued by the Office of Management and Budget on December 8, 2009 (*http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda_2010/m10–06.pdf*).

OSHA published the dockets of the variance applications that the Agency denied during 2014–2015 [8] on the Federal eRulemaking Portal and OSHA's ''Denied and Withdrawn Variance Applications for 1995–2015'' Web page. These denied variance application dockets are presented in the table below:

Docket ID	Company name	Standard from which variance requested	Date of denial or withdrawal	State(s)	Reason denied or withdrawn
OSHA–2015–0016	J.W. Fowler, Co	1926.803	12/4/2015	ND	Withdrawn—variance not necessary.
OSHA–2015–0023	Wahlco—D.W. Tool	General-duty clause Section 5(a)(1) of the Act.	10/5/2015	MO	Denied—No variances from the general-duty clause.
OSHA–2015–0011	Rosenwach Tank Co. LLC	1926.501(b)(1)	06/04/2015	NY	Denied—Not as protective as standard.
OSHA–2015–0007	Avantor Performance Materials, Inc.	1910.1200; Appendix C, (C.2.3.1).	04/14/2015	PA, NJ, KY	Denied—Not as protective as standard.
OSHA–2015–0004	Devin Kieschnick (DK) Farms.	1910.142(b)(2)	03/10/2015	TX	Denied—Not as protective as standard and exemption requested.
OSHA–2014–0026	Transfield Services	1910.134	12/15/2014	TX, CA	Withdrawn—variance not necessary.
OSHA–2014–0025	Union Pacific Railroad (UPRR).	1910.110(b)(6)(ii)	10/8/2014	IL	Denied—not as protective as standard and exemption requested.

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. 655, Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR part 1905.

Signed at Washington, DC, on March 7, 2016.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2016–05488 Filed 3–10–16; 8:45 am]

BILLING CODE 4510–26–P

OFFICE OF MANAGEMENT AND BUDGET

Request for Comments on Federal Source Code Policy

AGENCY: Office of Management and Budget.

ACTION: Notice of public comment period.

SUMMARY: The Office of Management and Budget (OMB) is seeking public comment on a draft memorandum titled, ''*Federal Source Code Policy—Achieving Efficiency, Transparency, and Innovation through Reusable and Open Source Software.''*

DATES: The 30-day public comment period on the draft memorandum closes on April 11, 2016.

ADDRESSES: Interested parties should provide comments and feedback to *https://SourceCode.cio.gov* or to *SourceCode@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Alvand A. Salehi, OMB, at *SourceCode@omb.eop.gov* or *AAbdolsalehi@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The Administration committed to adopting a Government-wide Open Source Software policy in its Second Open Government National Action Plan that ''will support improved access to custom software code developed for the Federal Government,'' emphasizing that using and contributing back to Open Source Software can fuel innovation, lower costs, and benefit the public. In support of that commitment, today the White House Office of Management and Budget (OMB) is releasing a draft policy to improve the way custom-developed Government code is acquired and distributed moving forward. This policy requires that, among other things: (1)

[7] Sections 6(b), 6(d), and 16 of the OSH Act and 29 CFR 1905 set out the laws and regulations applicable to Variances. Whereas, these provisions require OSHA to announce variance applications and grants by publication in the **Federal Register,** no such provisions are in place for denied variance applications.

[8] Completed between the governmental fiscal years of October 1, 2010 and September 30, 2014.

New custom code whose development is paid for by the Federal Government be made available for re-use across Federal agencies; and (2) a portion of that new custom code be released to the public as Open Source Software. Authority for this notice is granted under the Clinger-Cohen Act, 40 U.S.C. Subtitle III.

Tony Scott,

Administrator, Office of the Federal Chief Information Officer.

[FR Doc. 2016–05601 Filed 3–10–16; 8:45 am]

BILLING CODE 3110–05–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

NOTICE: (16–021).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration developed the Technology Portfolio System (TechPort). TechPort is an integrated, Agency wide software system designed to capture, track, and manage NASA's portfolio of technology investments. TechPort provides detailed information on individual technology programs and projects throughout NASA. This system enables the public to explore NASA's technology portfolio and learn about technology Programs, and Projects, as NASA works to mature the technologies for aeronautics, space exploration, and scientific discovery missions. In March, 2015 NASA released a beta version of the system to allow the public the opportunity to give the system a trial run and provide feedback. This RFI solicits inputs on the beta version of TechPort.

DATES: The Web site, *https://techport.nasa.gov/rfi,* will open for comments beginning on March 14, 2016, and will close on April 14, 2016. No submissions will be accepted after April 14, 2016.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or instructions should be directed to Faith Chandler, Director Strategic Integration, Office of the Chief Technologist, NASA Headquarters, 300 E Street SW., Washington, DC 20546, at *HQ-TechPort@mail.nasa.gov.*

SUPPLEMENTARY INFORMATION:

Title: NASA's Technology Portfolio System, TechPort, Beta Version Request for Information (RFI).

Abstract: NASA embraces the development and advancement of technology to support U.S. industries, enhance academic research, spur innovation, and promote the building and sharing of knowledge. By making technology development information easy to find, accessible, and usable, NASA will fuel entrepreneurship, innovation, and scientific discovery. Industry and academia will have insight into the technology portfolio, and will be able to use this information to identify possible areas of technology development collaboration, forecast when technologies may be released for public use and commercialization, and identify areas of aeronautics and aerospace technology development need. Information about NASA's technology development activities is a valuable national resource and a strategic asset that will expand the knowledge base, spur innovation in U.S. industry and help grow American businesses.

The general public can use TechPort to find technology Programs and Projects of interest and discover how these projects have led to breakthroughs and discoveries. TechPort is equipped with features that allow users to efficiently search technology Projects, conduct analysis, identify technology gaps, and generate comprehensive technology reports. TechPort was released as a beta system to provide the public with an opportunity to use the system and provide feedback, and influence the design and type of information provided in future versions of the system. The questions in this RFI gather input on the public experience with the TechPort system, specifically:

- The design of the system and ease of use,
- The features provided (search, reports, data sheets) and if the public finds them useful, and
- The content and the range of collected data in the system.

In addition to questions about using the system, this RFI will collect system information, including:

- Organization type (Academic Institution, Industry, Government or Public),
- Device and browser used to access TechPort.

Your system information will enable us to troubleshoot and understand problems, if our system is not functioning for all the intended users. Respondents will also be given the opportunity to provide their name and email address if they would like to be contacted with possible follow up questions. There are a total of 18 questions and it is expected that it will take about 5 to 10 minutes to complete. You may complete only one question, or all of the questions.

When arriving at the home page of the Web site titled: ''TechPort—User Request for Information'' located at: *https://techport.nasa.gov/rfi* respondents can proceed to answer the questions. Upon submission, respondents will get a notification of the receipt of their responses in their browser.

The respondent should *NOT* include information of a confidential nature, such as sensitive personal information or proprietary information.

Faith Chandler,

Director, Strategic Integration, Office of the Chief Technologist.

[FR Doc. 2016–05483 Filed 3–10–16; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0001]

Sunshine Act Meeting Notice

DATE: March14, 21, 28, April 4, 11, 18, 2016.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of March 14, 2016

Tuesday, March 15, 2016

9:00 a.m. Briefing on Power Reactor Decommissioning Rulemaking (Public Meeting); (Contact: Jason Carneal: 301–415–1451).

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Thursday, March 17, 2016

9:30 a.m. Meeting with the Advisory Committee on the Medical Uses of Isotopes (Public Meeting); (Contact: Douglas Bollock: 301–415–6609).

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of March 21, 2016—Tentative

There are no meetings scheduled for the week of March 21, 2016.

Week of March 28, 2016—Tentative

Tuesday, March 29, 2016

9:30 a.m. Briefing on Project Aim (Public Meeting); (Contact: Janelle Jessie: 301–415–6775).

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Wednesday, March 30, 2016

9:30 a.m. Briefing on Security Issues (Closed Ex. 1).

Week of April 4, 2016—Tentative

Tuesday, April 5, 2016

9:30 a.m. Briefing on Threat Environment Assessment (Closed Ex. 1).

Week of April 11, 2016—Tentative

There are no meetings scheduled for the week of April 11, 2016.

Week of April 18, 2016—Tentative

Tuesday, April 19, 2016

9:30 a.m. Meeting with the Organization of Agreement States and the Conference of Radiation Control Program Directors (Public Meeting); (Contact: Paul Michalak: 301–415–5804).

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

* * * * *

The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.*

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or email *Brenda.Akstulewicz@nrc.gov* or *Patricia.Jimenez@nrc.gov.*

Dated: March 9, 2016.

Denise McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2016–05723 Filed 3–9–16; 4:15 pm]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016–93 and CP2016–118; Order No. 3133]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Express Contract 34 negotiated service agreement to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* March 14, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Commission Action
III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30-.35, the Postal Service filed a formal request and associated supporting information to add Priority Mail Express Contract 34 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. Request, Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

[1] Request of the United States Postal Service to Add Priority Mail Express Contract 34 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, March 4, 2016 (Request).

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2016–93 and CP2016–118 to consider the Request pertaining to the proposed Priority Mail Express Contract 34 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than March 14, 2016. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Jennaca D. Upperman to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2016–93 and CP2016–118 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Jennaca D. Upperman is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than March 14, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–05423 Filed 3–10–16; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail Express Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* March 11, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on March 4, 2016, it filed with the Postal Regulatory

Commission a *Request of the United States Postal Service to Add Priority Mail Express Contract 34 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–93, CP2016–118.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–05514 Filed 3–10–16; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* March 11, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on March 4, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 195 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–92, CP2016–117.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–05513 Filed 3–10–16; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* March 11, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on March 4, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 194 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–91, CP2016–116.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–05516 Filed 3–10–16; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service.™

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* March 11, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on March 4, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 193 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–90, CP2016–115.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–05511 Filed 3–10–16; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77308; File No. SR–BYX–2016–07]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Rules as Well as Certain Corporate Documents of the Exchange To Reflect a Legal Name Change by BATS Global Markets, Inc. and the Legal Names of Certain Subsidiaries

March 7, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 26, 2016, Bats BYX Exchange, Inc. f/k/a BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as one being concerned solely with the administration of the Exchange pursuant to section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(3) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing a rule change to amend its rules as well as certain corporate documents of the Exchange to reflect a legal name change by the Exchange's ultimate parent entity, BATS Global Markets, Inc. (the ''Parent'') to Bats Global Markets, Inc., and the legal names of certain of the Parent's subsidiaries. As a result of this change, the Exchange also proposes to amend its rules to change its name from BYX Exchange, Inc. to Bats BYX Exchange, Inc. throughout its rules and corporate documents.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(3).

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange, on behalf of its Parent, recently filed to change the Parent's legal name from ''BATS Global Markets, Inc.'' to ''Bats Global Markets, Inc.'' [5] For the purposes of consistency, certain of the Parent's subsidiaries have also undertaken to change their legal names. As a result, the Exchange also proposes to change its name from BATS Y-Exchange, Inc. to Bats BYX Exchange, Inc. throughout its rules and corporate documents (collectively, with the other legal name changes for the Parent and certain of its subsidiaries, the ''name changes'').[6] Therefore, the Exchange proposes to amend its: (i) Rulebook; (ii) fee schedule issued pursuant to Exchange Rules 15.1(a) and (c) (''Fee Schedule''); (iii) Certificate of Incorporation (''Certificate''); and (iv) Third Amended and Restated Bylaws of the Exchange (''Bylaws'') (collectively, the ''Operative Documents'') to reflect the name change and to replace all references to ''BATS'' with ''Bats''.

The Exchange proposes to replace all references to BATS with Bats throughout the Exchange's Rulebook and Fee Schedule. The Exchange understands that its affiliated Exchanges also intend to file similar proposed rule changes with the Commission to amend their exchange names.[7] Therefore, the Exchange proposes to amend the following rules to reflect the name changes, including the expected filings by its affiliates to amend their names: Rule 1.5 (Definitions), Rule 2.3 (Member Eligibility), Rule 2.10 (Affiliation Between Exchange and a Member), Rule 2.11 (BATS Trading, Inc. as Outbound Router), Rule 2.12 (BATS Trading, Inc. as Inbound Router), Rule 11.1 (Hours of Trading and Trading Days), Rule 11.8 (Obligations of Market Makers), Rule 11.9 (Orders and Modifiers), Rule 11.12 (Priority of Orders), Rule 11.13 (Order Execution and Routing), Rule 11.14 (Trade Execution and Reporting), Rule 11.18 (Trading Halts Due to Extraordinary Market Volatility), Rule 11.22 (Data Products), Rule 11.23 (Opening Process), Rule 11.24 (Retail Price Improvement Program), Rule 11.26 (Usage of Data Feeds), Rule 13.8 (BATS Connect), Rule 14.2 (Investment Company Units), and Rule 14.8 (Portfolio Depository Receipts). Throughout these rules, the Exchange proposes the following changes:

- All references to ''BATS Y-Exchange'', ''BATS Y-EXCHANGE'' and ''BATS Y-EXCHANGE, Inc.'' are proposed to be changed to ''Bats BYX Exchange, Inc.'';
- All references to ''BATS'' are proposed to be changed to ''Bats'';
- All references to ''BATS Exchange, Inc.'' are proposed to be changed to ''Bats BZX Exchange, Inc.'';
- All references to ''EDGX Exchange, Inc.'' are proposed to be changed to ''Bats EDGX Exchange, Inc.'';
- All references to ''EDGA Exchange, Inc.'' are proposed to be changed to ''Bats EDGA Exchange, Inc.''
- All references to ''BATS Book'', ''BATS market orders'', ''BATS Post Only Orders'', and ''BATS Only Orders'', are proposed to be changed to ''BYX Book'', ''BYX market orders'', ''BYX Post Only Orders'', and ''BYX Only Orders'', respectively.[8]

In addition to these changes, the Exchange proposes to modify its Fee Schedules to reflect the name change of the Exchange to Bats BYX Exchange [9] and to change all references to ''BATS'' to instead refer to ''Bats''. The Exchange also proposes on its Fee Schedule to refer to its affiliate, Bats BZX Exchange, Inc. (as proposed to be re-named), simply as ''BZX''. The Exchange believes that this is more consistent with other references on the Fee Schedule, such as the general references to ''EDGA'', which refer to the Exchange's affiliate, Bats EDGA Exchange, Inc. (as proposed to be re-named).

The Exchange also proposes to amend Article First of the Certificate to change the name of the Exchange to Bats BYX Exchange, Inc. and make conforming changes throughout, including the title of the Certificate. The Exchange proposes to amend the Bylaws to amend the title to reflect that the Bylaws will be titled the ''FOURTH AMENDED AND RESTATED BYLAWS OF BATS BYX EXCHANGE, INC.'' The Exchange also proposes to amend Article I, paragraph (f) and Article XI, section 2 to reflect the name changes.

The name change from BATS Y-Exchange, Inc. to Bats BYX Exchange, Inc. is a non-substantive change. No changes to the ownership or structure of the Exchange or BATS Global Markets, Inc. have taken place.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[10] in general, and furthers the objectives of section 6(b)(5) of the Act,[11] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange also believes that the proposed rule change is consistent with section 6(b)(1) of the Act [12] in that it is designed to continue to ensure that the Exchange is so organized and has the capacity to carry out the purposes of Act and to comply, and enforce compliance by its members with the provisions of the Act and the rules and regulations thereunder, and rules of the Exchange. The Exchange is proposing amendments to the Operative Documents to effectuate its name change to Bats BYX Exchange, Inc. and to reflect the name changes of its affiliates. These changes are limited to capitalization and ministerial name changes and to reflect similar proposed rule changes to be submitted to the Commission by the Exchange's affiliates. The Exchange believes that the changes will protect investors and the public interest by eliminating confusion that may exist because of differences between its corporate name and the new naming conventions of the Parent and its subsidiaries, including the Exchange.

[5] *See* Securities Exchange Act Release No. 77156 (February 17, 2016) (SR–BYX–2016–02).

[6] The Exchange initially filed the proposed fee [sic] change on February 19, 2016 (SR–BYX–2016–06). On February 26, 2016, the Exchange withdrew that filing and submitted this filing.

[7] The Exchange's affiliates are EDGA Exchange, Inc., BATS Exchange, Inc. and EDGX Exchange, Inc. The Exchange understands that proposed rule changes are to be filed by each of its affiliates to amend their names as follows: EDGA Exchange, Inc. would be changed to Bats EDGA Exchange, Inc., BATS Exchange, Inc. would be amended to Bats BZX Exchange, Inc., and EDGX Exchange, Inc. would be amended to Bats EDGX Exchange, Inc.

[8] The Exchange notes that ''BATS'' has previously been used by the Exchange as a generic term to describe various types of functionality and services offerings. In other instances, the Exchange has indeed used the acronym BYX to describe its functionality and offerings. For example, Rule 11.22(k) is titled ''BYX Book Viewer'' and described a market data product offered by the Exchange. In addition, the Fee Schedule also includes BYX in the title of the Exchange's market data products. The Exchange does not propose to amend the names of these products and, as noted above, proposes to convert the types of functionality referring to ''BATS'' to instead refer to ''BYX''.

[9] The Exchange notes that the Exchange will continue to be referred to as ''BYX'' in certain areas of the Fee Schedules. These areas of the Fee Schedules are: (i) The Fee Codes and Associated Fees table; (ii) footnote 6; (ii) footnote 7; (iii) the Bats Connect pricing table; and (iv) in the Unicast Access—Order Entry section of its Fee Schedule.

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(1).

B. Self-Regulatory Organization's Statement on Burden on Competition

Because the rule change proposes ministerial changes related to the administration, and not the governance or operation, of the Exchange, 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because it is concerned solely with the administration of the Exchange, the foregoing proposed rule change has become effective pursuant to section 19(b)(3)(A)(iii) of the Act [13] and Rule 19b–4(f)(3) thereunder.[14]

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: (1) Necessary or appropriate in the public interest; (2) for the protection of investors; or (3) 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–BYX–2016–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BYX–2016–07. 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–BYX–2016–07, and should be submitted on or before April 1, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–05439 Filed 3–10–16; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] 17 CFR 240.19b–4(f)(3).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77305; File No. SR–NYSE–2016–18]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending Rule 123C To Provide for How the Exchange Would Determine an Official Closing Price if the Exchange is Unable To Conduct a Closing Transaction

March 7, 2016.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on February 25, 2016, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 123C to provide for how the Exchange would determine an Official Closing Price if the Exchange is unable to conduct a closing transaction. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its rules to specify back-up procedures for determining an Official Closing Price for Exchange-listed securities if it is unable to conduct a closing transaction in one or more securities due to a systems or technical issue.[4] Specifically, the Exchange proposes to amend Rule 123C to provide for how the Exchange would determine an Official Closing Price if the Exchange is impaired.

The Exchange developed this proposal in consultation with its affiliated exchanges, NYSE Arca, Inc. (''NYSE Arca'') and NYSE MKT LLC (''NYSE MKT''), and the NASDAQ Stock Market LLC (''Nasdaq''), and took into consideration feedback from discussions with industry participants, including meeting the following key goals important to market participants:

- Providing a pre-determined, consistent solution that would result in a closing print to the applicable securities information processor (''SIP'') within a reasonable time frame from the normal closing time;
- Minimizing the need for industry participants to modify their processing of data from the SIPs; and
- Providing advance notification of the applicable closing contingency plan to provide sufficient time for industry participants to route any closing interest to an alternate venue to participate in that venue's closing auction.

Background

The Exchange recently amended Rule 123C to add the definition of ''Official Closing Price'' for all Exchange-listed securities and, once implemented, will disseminate to the SIP the Official Closing Price as an ''M'' value.[5] In that filing, the Exchange amended Rule 123C(1)(e)(i) to define the ''Official Closing Price'' of a security listed on the Exchange as the price established in a closing transaction under paragraphs (7) and (8) of Rule 123C of one round lot or more. If there is no closing transaction in a security or if a closing transaction is less than one round lot, the Official Closing Price will be the most recent last-sale eligible trade in such security on the Exchange on that trading day.

The Exchange further amended Rule 123C(1)(e)(ii) to provide for how the Exchange would determine an Official Closing Price if the Exchange is unable to conduct a closing transaction in a security or securities due to a systems or technical issue. In such case, the Official Closing Price will be the last consolidated last-sale eligible trade for such security during regular trading hours on that trading day. The rule further provides that if there were no consolidated last-sale eligible trades in a security on a trading day when the Exchange is unable to conduct a closing transaction in a security or securities due to a systems or technical issue, the Official Closing Price of such security will be the prior day's Official Closing Price.

The Exchange also amended Rule 440B(b) to provide that Exchange systems will not execute or display a short sale order with respect to a covered security at a price that is less than or equal to the current national best bid if the price of that security decreases by 10% or more, as determined by the listing market for that security, from the security's Official Closing Price, as defined in Rule 123C as of the end of regular trading hours on the prior day (''Trigger Price'').

Proposed Amendments

The Exchange proposes to amend Rule 123C(1)(e)(ii) to provide for the proposed new contingency plan of how the Exchange would determine an Official Closing Price if the Exchange is unable to conduct a closing transaction in a security or securities due to a systems or technical issue. To reflect this change, the Exchange would replace the current rule text in Rule 123C(1)(e)(ii).

As proposed, Rule 123C(1)(e)(ii) would provide that if the Exchange determines at or before 3:00 p.m. Eastern Time that it is unable to conduct a closing transaction in one or more securities due to a systems or technical issue, the Exchange would designate an alternate exchange for such security or securities. The Exchange would publicly announce the exchange designated as the alternate exchange via Trader Update.[6] In such case, the Official Closing Price of each security would be determined on the following hierarchy:

- Proposed Rule 123C(1)(e)(ii)(A) would provide that the Official Closing Price would be the official closing price for such security under the rules of the designated alternate exchange. For example, if the Exchange designates NYSE Arca as the alternate exchange, the Official Closing Price would be based on NYSE Arca Equities Rule 1.1(ggP), which defines how NYSE Arca establishes an official closing price.[7] If Nasdaq were designated as the alternate exchange, the Official Closing Price would be the official closing price established in Nasdaq Rule 4754.
- The proposed 3:00 p.m. cut off time was selected in part based on discussions with market participants regarding their capability to re-direct closing-only interest in Exchange-listed securities in time to participate in the closing auction of an alternate venue. By designating an alternate exchange before 3:00 p.m. Eastern Time, the Exchange therefore believes that market participants would be more likely to have sufficient notice to direct any closing-only interest in Exchange-listed securities to the designated alternate exchange. By providing market participants sufficient time, when possible, to route closing-only interest to an alternate venue for participation in that exchange's closing auction process, that alternate exchange's closing auction would be more likely to result in a closing price that reflects market value for such security.
- If there were insufficient interest for a closing auction on the designated alternate exchange, the Exchange believes that the respective rules of NYSE Arca and Nasdaq provide for an appropriate hierarchy of which price to use to determine the Official Closing Price. For example, under NYSE Arca Rule 1.1(ggP)(1), if there is no closing auction of one round lot or more on a trading day, the official closing price under that rule is the most recent consolidated last sale eligible trade during Core Trading Hours on that trading day. That rule further provides that if there were no consolidated last sale eligible trades during Core Trading Hours on that trading day, NYSE Arca's

[4] *See* Exchange press release dated July 22, 2015, available here: *http://ir.theice.com/press-and-publications/press-releases/all-categories/2015/07-22-2015.aspx.*

[5] *See* Securities Exchange Act Release No. 76598 (Dec. 9, 2015), 80 FR 77688 (Dec. 15, 2015) (SR–NYSE–2015–62). For a description of all sale conditions that are reportable to the SIP, including the ''M'' value, see the Consolidated Tape System Participant Communications Interface Specification, dated November 16, 2015, at 86, available here: *https://www.ctaplan.com/publicdocs/ctaplan/notifications/trader-update/cts_input_spec.pdf.*

[6] The Exchange expects that it would designate one of its affiliated exchanges as the alternate exchange and would designate Nasdaq only if its affiliated exchanges were also impacted by the systems or technical issue.

[7] NYSE Arca Equities will be filing a rule proposal to amend Rule 1.1(ggP)(1) to provide that the manner by which NYSE Arca determines the Official Closing Price under that rule for securities listed on NYSE Arca would also be applicable to any securities for which NYSE Arca conducts a closing auction, including securities that trade on an unlisted trading privileges basis.

official closing price will be the prior day's Official Closing Price. This hierarchy is similar to how the Exchange determines the Official Closing Price pursuant to Rule 123C(1)(e)(i) when there is no closing transaction of a round lot or more, except that in lieu of a closing auction, NYSE Arca uses the last consolidated last sale eligible trade rather than the last Exchange last-sale eligible trade.

• Proposed Rule 123C(1)(e)(ii)(B) would provide if the designated alternate exchange does not have an official closing price in a security, the Official Closing price would be the volume-weighted average price (''VWAP'') of the consolidated last-sale eligible prices of the last five minutes of trading during regular trading hours up to the time that the VWAP is processed. The VWAP would include any closing transactions on an exchange and would take into account any trade breaks or corrections up to the time the VWAP is processed. Because the VWAP would include any last-sale eligible trades, busts, or corrections that were reported up to the time that the SIP calculates the VWAP, the Exchange believes that the VWAP price would reflect any pricing adjustments that may be reported after 4:00 p.m. ET.

• As discussed above, the manner by which exchanges calculate their respective official closing prices provide for an official closing price in the absence of a closing transaction. Accordingly, the Exchange believes that in circumstances when the Exchange designates an alternate exchange, the VWAP calculation would rarely be used to determine the Official Closing Price for an Exchange-listed security.

• Proposed Rule 123C(1)(e)(ii)(C) would provide that if the designated alternate exchange does not have an official closing price in a security and there were no consolidated last-sale eligible trades in the last five minutes of trading during regular trading hours in such security, the Official Closing Price would be the last consolidated last-sale eligible trade during regular trading hours on that trading day.

• Proposed Rule 123C(1)(e)(ii)(D) would provide that if the designated alternate exchange does not have an official closing price in a security and there were no consolidated last-sale eligible trades in a security on a trading day in such security, the Official Closing Price would be the prior day's Official Closing Price.

• Finally, proposed Rule 123C(1)(e)(ii)(E) would provide that if an Official Closing Price for a security cannot be determined under (A), (B), or (C) of proposed Rule 123C(1)(e)(ii) and there is no prior day's Official Closing Price, the Exchange would not publish an Official Closing Price for such security.

The Exchange would use the hierarchy set forth in proposed Rule 123C(e)(ii)(B)–(E) only if the designated alternate exchange did not disseminate an official closing price in a security. In such case, the proposed hierarchy is based on current Rule 123C(1)(e)(i), which provides that, if the Exchange is unable to conduct a closing transaction, the Official Closing Price will be the last consolidated last-sale eligible trade for such security during regular trading hours on that trading day, and if there were no consolidated last-sale eligible trades in a security, the Official Closing Price of such security will be the prior day's Official Closing Price. In addition, the Exchange proposes to add as paragraph (E) of Rule 123C(e)(ii) what would happen if there were no Official Closing Price published on the prior trading day (*i.e.,* the Exchange would not publish an Official Closing Price). The Exchange believes not publishing an Official Closing Price would be a rare occurrence, and is most likely to occur for a thinly-traded security, such as a when issued security, right, or warrant, that has been listed for trading but does not have any consolidated last-sale eligible trades.

If the Exchange determines that it is impaired before 3:00 p.m. and the Official Closing Price for an Exchange-listed security is determined pursuant to proposed Rule 123C(1)(e)(ii), the SIP would publish the Official Closing Price for such security no differently than how the SIP publishes the Official Closing Price for an Exchange-listed security pursuant to Rule 123C(1)(e)(i).[8] Accordingly, if the Official Closing Price is determined pursuant to proposed Rule 123C(1)(e)(ii), recipients of SIP data would not have to make any changes to their systems because the SIP would publish the ''M'' last sale condition as an Exchange Official Closing Price for any impacted Exchange-listed securities.

As further proposed, Rule 123C(1)(e)(iii) would describe how the Exchange would determine the Official Closing Price for a security if the Exchange determines after 3:00 p.m. Eastern Time that it is unable to conduct a closing transaction in one or more securities due to a systems or technical issue. Based on input from market participants, the Exchange believes that, if the Exchange were to announce after 3:00 p.m. Eastern Time that it is impaired and unable to conduct a closing transaction, market participants would not have sufficient time to re-direct closing-only orders to an alternate venue. The proposed hierarchy would be similar to proposed Rule 123C(1)(e)(ii), but would not contemplate a closing transaction on a designated alternate exchange. Accordingly, in such scenario, the Exchange proposes to use the following hierarchy for determining the Official Closing Price for a security:

• Proposed Rule 123C(1)(e)(iii)(A) would provide that the Official Closing Price would be the VWAP of the consolidated last-sale eligible prices of the last five minutes of trading during regular trading hours up to the time that the VWAP is processed, including any closing transactions on an exchange. The VWAP would take into account any trade breaks or corrections up to the time of the VWAP is processed. This VWAP would be calculated in the same manner as set forth in proposed in Rule 123C(1)(e)(ii)(B), described above. However, if the Exchange's determination that it is unable to conduct a closing transaction is after 3:00 p.m. ET, the proposed VWAP calculation would be the primary means for determining the Official Closing Price for a security. In such case, the Exchange believes that the VWAP would appropriately reflect the pricing of a security because it would include, in a volume-weighted manner, the price and volume of closing transactions on other exchanges if market participants are able to route closing interest in Exchange-listed securities to an alternate venue for participation in a closing auction.

• Proposed Rule 123C(1)(e)(iii)(B) would provide that if there were no consolidated last-sale eligible trades in the last five minutes of trading during regular trading hours in such security, the Official Closing Price would be the last consolidated last-sale eligible trades during regular trading hours on that trading day. This proposed rule text is the same as proposed Rule 123C(1)(e)(ii)(C).

• Proposed Rule 123C(1)(e)(iii)(C) would provide that if there were no consolidated last-sale eligible trades in such security on a trading day, the Official Closing Price would be the prior day's Official Closing Price. This

[8] The Operating Committees of the CTA Plan, CQ Plan, and the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis approved the Impaired Market Contingency Plan under which the SIPs would print an impaired primary listing exchange's contingency Official Closing Price as the Official Closing Price of that primary listing exchange as provided for in the rules of respective primary listing exchanges.

proposed rule text is the same as proposed Rule 123C(1)(e)(ii)(D).

• Finally, proposed Rule 123C(1)(e)(iii)(D) would provide that if an Official Closing Price for a security cannot be determined under (A), (B), or (C) of proposed Rule 123C(1)(e)(iii) and there is no prior day's Official Closing Price, the Exchange would not publish an Official Closing Price for such security. This proposed rule text is based on proposed Rule 123C(1)(e)(ii)(E).

Similar to how the Official Closing Price would be published under proposed Rule 123C(1)(e)(ii), if the Exchange determines that it is impaired after 3:00 p.m. and the Official Closing Price is determined pursuant to proposed Rule 123C(1)(e)(iii), the SIP would publish the Official Closing Price for such security no differently than how the SIP publishes the Official Closing Price for an Exchange-listed security pursuant to Rule 123C(1)(e)(i). Accordingly, if the Official Closing Price is determined pursuant to proposed Rule 123C(1)(e)(iii), recipients of SIP data would not have to make any changes to their systems because the SIP would publish the ''M'' last sale condition as an Exchange Official Closing Price for any impacted Exchange-listed securities.

For purposes of Rule 440B(b), the Official Closing Price would still be determined based on Rule 123C and if the market is impaired, the Official Closing Price as defined in proposed Rules 123C(1)(e)(ii) and (iii) would be used for purposes of determining whether a Short Sale Price Test is triggered in a security the next trading day.

Because of the technology changes associated with this proposed rule change, the Exchange will implement the proposed back-up procedures for determining an Official Closing Price no later than 120 days after approval of this proposed rule change and will announce the implementation date via Trader Update.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would provide transparency in how the Exchange would determine the Official Closing Price in Exchange-listed securities when the Exchange is unable to conduct a closing transaction due to a systems or technical issue. The Exchange believes that the proposed amendments would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed determination of an Official Closing Price was crafted in response to input from industry participants and would:

• Provide a pre-determined, consistent solution that would result in a closing print to the SIP within a reasonable time frame from the normal closing time;

• minimize the need for industry participants to modify their processing of data from the SIP; and

• provide advance notification of the applicable closing contingency plan to provide sufficient time for industry participants to route any closing interest to an alternate venue to participate in that venue's closing auction.

More specifically, the Exchange believes the proposed hierarchy for determining the Official Closing Price if the Exchange determines that it is impaired before 3:00 p.m. Eastern Time would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposal, which is based on input from market participants, would provide sufficient time for market participants to direct closing-only interest to a designated alternate exchange in time for such interest to participate in a closing auction on such alternate venue in a meaningful manner. The Exchange further believes that relying on the official closing price of a designated alternate exchange would provide for an established hierarchy for determining an Official Closing Price for an Exchange-listed security if there is insufficient interest to conduct a closing auction on the alternate exchange. In such case, the rules of NYSE Arca and Nasdaq already provide a mechanism for determining an official closing price for securities that trade on those markets.

The Exchange further believes that if the Exchange determines after 3:00 p.m. that it is impaired and unable the [sic] conduct a closing transaction, the proposed VWAP calculation would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would provide for a mechanism to determine the value of an affected security for purposes of determining an Official Closing Price. By using a volume-weighted calculation that would include the closing transactions on an affected security on alternate exchanges as well as any busts or corrections that were reported up to the time that the SIP calculates the value, the Exchange believes that the proposed calculation would reflect the correct price of a security. In addition, by using a VWAP calculation rather than the last consolidated last-sale eligible price as of the end of regular trading hours, the Exchange would reduce the potential for an anomalous trade that may not reflect the true price of a security from being set as the Official Closing Price for a security.

The Exchange further believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposal would have minimal impact on market participants. As proposed, from the perspective of market participants, even if the Exchange were impaired, the SIP would publish an Official Closing Price for Exchange-listed securities on behalf of the Exchange in a manner that would be no different than if the Exchange were not impaired. If the Exchange determines that it is impaired after 3:00 p.m., market participants would not have to make any system changes. If the Exchange determines that it is impaired before 3:00 p.m. Eastern Time and designates an alternate exchange, market participants may have to do systems work to re-direct closing-only orders to the alternate exchange. However, the Exchange understands, based on input from market participants, that such changes would be feasible based on the amount of advance notice. In addition, the Exchange believes that designating an alternate exchange when there is sufficient time to do so would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would allow for the price-discovery mechanism of a closing auction to be available for impacted Exchange-listed securities.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues, but rather to provide for how the Exchange would determine an Official Closing Price for Exchange-listed securities if it is impaired and cannot conduct a closing transaction due to a systems or technical issue. The proposal has been crafted with input from market participants, Nasdaq, and the SIPs, and is designed to reduce the burden on competition by having similar back-up procedures across all primary listing exchanges if such exchange is is [sic] impaired and cannot conduct a closing transaction.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2016–18 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2016–18. 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–NYSE–2016–18 and should be submitted on or before April 1, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Robert W. Errett,

Deputy Secretary.

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[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77304; File No. SR–NYSEMKT–2016–17]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Establishing Procedures for the Allocation of Cages to Its Co-Located Users, Including the Waiver of Certain Fees, and To Amend the Visitor Security Escort Requirements and Fee

March 7, 2016.

Pursuant to section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 23, 2016, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On March 1, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to establish procedures for the allocation of cages to its co-located Users, including the waiver of certain fees, and to amend the visitor security escort requirements and fee. The Exchange proposes to amend the NYSE MKT Equities Price List (''Price List'') and the NYSE Amex Options Fee Schedule (''Fee Schedule'') to reflect the changes. The proposed change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] In Amendment No. 1, the Exchange clarified the proposal to specify that the visitor escort fee is equitable because all Users of the Exchange's Data Center would be charged the same fee. The Exchange also clarified the proposal to specify that while an individual User is on the waitlist for a cabinet, it will be granted a fee waiver for 2 bundles of 24 cross connects to be used to connect that User's non-contiguous cabinets.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to establish procedures for the allocation of cages to Users, including the waiver of certain fees, and to amend the visitor security escort requirements.[5] The Exchange proposes to amend the Price List and Fee Schedule to reflect the changes.

Proposed Cage Allocation Procedure

A User is able to purchase a cage to house its cabinets within the Data Center.[6] A cage would typically be purchased by a User that has several cabinets within the Data Center and wishes to arrange its cabinets contiguously while also enhancing privacy around its cabinets. The Exchange offers three sizes of cages corresponding to the number of cabinets housed therein, and charges fees for the cages based on the size.[7] The physical footprint of each cage is greater than that of the cabinets that it houses, as each cage is constructed so as to include aisles around the purchasing User's cabinets, for accessibility and in compliance with safety regulations.[8] Accordingly, in order to provide a User with a cage, the Data Center must have sufficient contiguous open space available for the cage. The Exchange allocates cages on a first come/first serve basis.

The Data Center opened in 2010, and at that time, the Exchange represented that it offers co-location space based on availability and that it had sufficient space in the Data Center to accommodate demand on an equitable basis for the foreseeable future.[9] The Exchange continues to believe that there is sufficient space in the Data Center to accommodate demand.

However, much of the space currently available for co-location is in smaller segments, resulting from an increasing number of Users, multiple moves within the Data Center, and changes to Users' space requirements—both increases and decreases—since 2010. Accordingly, in 2015, the Exchange determined that, to continue to be able to meet its obligation to accommodate demand, and in particular to make available more contiguous, larger spaces for new and existing Users, it would exercise its right to move some Users' equipment within the Data Center (the ''Migration'').[10] The Exchange put procedures in place to manage the process for the Migration, and is implementing them.

While the Migration will make available more contiguous, larger spaces for new and existing Users, the Exchange believes that even after the Migration such contiguous open space will be limited, and may become more limited over time. Accordingly, the Exchange proposes to put procedures in place for the allocation of cages if the available open contiguous space in the Data Center is not sufficient to house a new cage or the open contiguous space available is sufficiently limited that the Exchange cannot both provide new cages and satisfy all User demand for other co-location services. The proposed procedures are as follows:

- The Exchange will place Users seeking new cages on a waitlist. The order of Users on the list will be based on the date the Exchange receives signed orders for the cages from each User.
- Once the list is established, Users, on a rolling basis, will be allocated a cage each time one becomes available.[11]
- If a cage becomes available and the User that is at the top of the waitlist turns it down because it requested a different size cage, the Exchange will offer the available cage to the next Users on the list, in order, until a User accepts it. A User that turns down a cage because it is not the correct size will remain on the waitlist. A User that turns down a cage that is the size that it requested will be removed from the waitlist.
- If a User requests two cages, after receiving the first cage it will move to the bottom of the waitlist.

In connection with the above procedure, the Exchange proposes to waive certain fees for Users that have requested a cage and have been added to the waitlist pursuant to the allocation procedure. The Exchange expects that, while on the waitlist for a cage or for a larger cage, a User may have to use non-contiguous cabinets and/or cages, in which case it would connect the cabinets with cross connects, which are fiber connections used to connect cabinets within the Data Center.[12] In such circumstances, the Exchange proposes to waive the initial and monthly fee for two bundles of 24 cross connects between the User's non-

[5] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (''Commission'') in 2010. *See* Securities Exchange Act Release No. 62961 (September 21, 2010), 75 FR 59299 (September 27, 2010) (SR–NYSEAmex-2010–80) (the ''Original Co-location Filing''). The Exchange operates a data center in Mahwah, New Jersey (the ''Data Center'') from which it provides co-location services to Users.

[6] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange, a ''Hosting User'' means a User that hosts a Hosted Customer in the User's co-location space, and a ''Hosted Customer'' means a customer of a Hosting User that is hosted in a Hosting User's co-location space. *See* Securities Exchange Act Release No. 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SR–NYSEMKT–2015–67). As specified in the Price List and the Fee Schedule, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates New York Stock Exchange LLC and NYSE Arca, Inc. *See* Securities Exchange Act Release No. 70176 (August 13, 2013), 78 FR 50471 (August 19, 2013) (SR–NYSEMKT–2013–67.

[7] *See* Securities Exchange Act Release No. 67665 (August 15, 2012), 77 FR 50734 (August 22, 2012) (SR–NYSEMKT–2012–11) (''2012 Release''). A User must have at least two cabinets in the Data Center to purchase a cage. *See* Securities Exchange Act Release No. 72719 (July 30, 2014), 79 FR 45502 (August 5, 2014) (SR–NYSEMKT–2014–61) (''2014 Release'').

[8] For example, a cage for 20 cabinets takes up as much floor space as 33 cabinets.

[9] *See* Original Co-Location Filing, at 59299.

[10] *See* Securities Exchange Act Release No. 76268 (October 26, 2015), 80 FR 66947 (October 30, 2015) SR–NYSEMKT–2015–70 (''Migration Release'').

[11] A cage may become available, for example, if a User terminates use of an existing cage or if contiguous cabinets become vacant, opening up contiguous space. The Exchange believes that the proposed procedures are consistent with the NASDAQ procedures for allocating cabinets if NASDAQ's inventory shrinks to zero. *See* Securities Exchange Act Release No. 62397 (June 28, 2010), 75 FR 38860 (July 6, 2010) (SR–NASDAQ–2010–019).

[12] A User is able to purchase cross connects individually or in bundles (*i.e.,* multiple cross connects within a single sheath) of six, 12, 18 or 24 cross connects. The Commission approved the fee for cross connects between a single User's cabinets within the data center in the Original Co-Location Filing. *See* Original Co-Location Filing, at 59299. The use of cross connects was subsequently revised to allow each User to purchase cross connects between its cabinet(s) and the cabinets of separate Users or a non-User's equipment within the Data Center. *See* 2012 Release, at 50735, and Securities Exchange Act Release No. 74220 (February 6, 2015), 80 FR 7894 (February 12, 2015) (SR–NYSEMKT–2015–08). The Exchange notes that a User with a cage may request a new cage, either to add a second cage or to change cages. In such a case, the cross connects would be between the cabinets within the cage and the non-contiguous cabinets outside the cage.

contiguous cabinets. Once the User is allocated a cage through the allocation procedure or is no longer on the waitlist, the Exchange would cease to waive the fee.

As noted above, a User that turns down a cage that is the size that it requested will be removed from the waitlist. If such User asks to be added back onto the waitlist, the Exchange will add the User to the bottom of the waitlist, but will not provide the proposed fee waiver a second time.

The Exchange proposes to amend the Price List and Fee Schedule to add a new General Note 3 to the fee to furnish and install a bundle of 24 cross connects, as follows:

The initial and monthly charge for 2 bundles of 24 cross connects will be waived for Users that are waitlisted for a cage for the duration of the waitlist period, provided that the cross connects may only be used to connect the Users' non-contiguous cabinets. The charge will no longer be waived once a User is removed from the waitlist.

- If a waitlist is created, a User seeking a new cage will be placed on the waitlist based on the date a signed order for the cage is received.
- A User that turns down a cage because it is not the correct size will remain on the waitlist. A User that requests to be removed or that turns down a cage that is the size that it requested will be removed from the waitlist.
- A User that is removed from the waitlist but subsequently requests a cage will be added back to the bottom of the waitlist, provided that, if the User was removed from the waitlist because it turned down a cage that is the size that it requested, it will not receive a second waiver of the charge.

Visitor Security Escorts

Currently, all User representatives are required to have a visitor security escort during visits to the Data Center, including User representatives who have a permanent Data Center site access badge.[13] The Exchange proposes to amend the description of the visitor security escort fee to provide that it would not apply to User representatives visiting the User's cage and to provide that the cost is $75 per visit.

The Exchange requires visitor security escorts for security purposes, primarily to ensure that a visitor does not interfere with the cabinets of other Users or Exchange equipment. The Exchange believes it is not necessary to have a User representative accompanied by a visitor security escort when the representative is visiting the User's cage, because the User representative would only have access to that User's cabinets, which would be in the confined area within the locked cage. The User representative would not have access to the cabinets of other Users or Exchange equipment, which are locked as well. By comparison, Users that do not have cages share colocation space with other Users. While such spaces are locked, more than one User may have cabinets within a given locked space, and so a visitor security escort is warranted.

The Exchange proposes to make several additional non-substantive changes to the description of the visitor security escort fee, to reduce redundancy and increase clarity. The current description is as follows:

> NYSE employee escort, which is required during User visits to the data center. (Note: all User representatives are required to have a visitor security escort during visits to the data center, including User representatives who have a permanent data center site access badge.)

The proposed description of the visitor escort fee would read as follows:

> All User representatives are required to be accompanied by a visitor security escort during visits to the data center unless visiting the User's cage. Requirement includes User representatives who have a permanent data center site access badge.

The Exchange proposes to remove the first clause, with its reference to the visitor security escort as an ''NYSE employee escort,'' because it is redundant with the parenthetical and because the reference to ''NYSE employees'' could be potentially confusing, given that not just the New York Stock Exchange LLC but also its affiliates, the Exchange and NYSE Arca, Inc., provide co-location services at the Data Center. In addition, the Exchange proposes to use ''accompanied by a visitor security escort'' rather than ''have a visitor security escort'' because it believes that ''accompanied'' makes it more clear that the escort will accompany the User representative.

The Price List and Fee Schedule include a Visitor Security Escort fee of $75 per hour. The Exchange proposes to amend the Price List and Fee Schedule to charge Users $75 per visit for such visitor security escorts. Based on the Exchange's experience, currently many of the escorted visits last an hour or less, and for Users that do not have a cage, escorted visits are typically about an hour.

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis;[14] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or both of its affiliates.[15]

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[16] in general, and furthers the objectives of sections 6(b)(5) of the Act,[17] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to

[13] *See* Securities Exchange Act Release No. 62731 (August 16, 2010), 75 FR 51515 (August 20, 2010) (SR–NYSEAmex–2010–80) (notice of proposed rule change amending price list to reflect fees charged for co-location services); *see also* Original Co-location Filing, at 59299. Fees for visitor security escorts for the move of a User's equipment within the Data Center are waived when incurred in connection with such a move required by the Exchange as part of the Migration. *See* Migration Release, at 66945.

[14] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of others with access to the Exchange's trading and execution systems. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the Data Center or not. In addition, co-located Users do not receive any market data or data service product that is not available to users that have access to the Exchange's trading and execution systems, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

[15] *See* SR–NYSEMKT–2013–67, *supra* note 5 at 50471. The Exchange's affiliates have also submitted substantially the same proposed rule change. *See* SR–NYSE–2016–13 and SR–NYSEArca-2016–21.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed procedure for allocating cages is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because the proposal would establish rational, objective procedures that would be applied uniformly by the Exchange to Users that requested cages and would not unfairly discriminate among similarly situated Users of co-location services. All Users seeking to purchase a cage would be subject to the same procedures. The Exchange believes that the proposed procedure would serve to reduce any potential for confusion on how cages would be allocated should it become necessary. In addition, the proposed allocation procedure would assist the Exchange to ensure that it has sufficient space in the Data Center to accommodate demand for co-location services on an equitable basis for the foreseeable future.

The Exchange believes that the proposal to waive fees for two bundles of 24 cross connects between a waitlisted User's non-contiguous cabinets is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because the waiver would be applied uniformly by the Exchange to all waitlisted Users and would not unfairly discriminate among similarly situated Users of co-location services. A waitlisted User would only require cross connects between its non-contiguous cabinets due to the waitlist. If, instead of being put on the waitlist, the User had received the cage it requested, the User would not require the cross connects. In addition, the Exchange proposes that the cross connects could only be used to connect the User's non-contiguous cabinets. The waiver would help to alleviate the inconvenience for the waitlisted User of having cabinets in non-contiguous space by directly addressing, for the time period during which the User is waitlisted, a cost directly related to being on the waitlist. Once the User was allocated a cage through the allocation procedure or was removed from the waitlist, the Exchange would cease to waive the fee.

The Exchange believes that the proposed amendment to the visitor security escort fee is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because the escort fee would be applied uniformly by the Exchange to all Users unless a User representative was visiting the User's cage, and would not unfairly discriminate among similarly situated Users of co-location services.

The Exchange also believes that the proposed rule change is consistent with section 6(b)(4),[18] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed procedure for allocating cages is equitable and not unfairly discriminatory because the cages are offered simply as a convenience to Users. A User does not require a cage to trade on the Exchange, and usage of a cage has no effect on a User's orders going to, or trade data coming from, the Exchange, or the User's ability to utilize other co-location services. The proposed allocation procedure would assist the Exchange to ensure that it has sufficient space in the Data Center to accommodate demand for co-location services on an equitable basis for the foreseeable future.

The Exchange believes that the proposal to waive fees for two bundles of 24 cross connects between a waitlisted User's non-contiguous cabinets is equitable and not unfairly discriminatory because a waitlisted User would only require the cross connects due to the waitlist. If, instead of being put on the waitlist, the User had received the cage it requested, the User would not require the cross connects. In addition, the Exchange proposes that the cross connects could only be used to connect the User's non-contiguous cabinets. The waiver would help to alleviate the inconvenience for the waitlisted User of having cabinets in non-contiguous space by directly addressing, for the time period during which the User is waitlisted, a cost directly related to being on the waitlist. Once the User was allocated a cage through the allocation procedure or was removed from the waitlist, the Exchange would cease to waive the fee.

The Exchange believes that the proposed amendment to the visitor security escort fee is equitable and not unfairly discriminatory because the escort fee would be applied uniformly by the Exchange to all Users unless a User representative was visiting the User's cage, and would not unfairly discriminate among similarly situated Users of co-location services. The same requirements and fees would be applied uniformly to all Users. The Exchange believes that the amendment is equitable because the security purposes that lead the Exchange to require visitor security escorts, namely to ensure that a visitor does not interfere with the cabinets of other Users or Exchange equipment, are not present when a User representative is visiting the User's cage, because the User representative would only have access to the Users' cabinets, which would be in the confined area within the locked cage. The User representative would not have access to the cabinets of other Users or Exchange equipment, which are locked as well.

The Exchange believes that the proposed allocation procedure for cages is reasonable because the proposal would establish rational, objective procedures that would be applied uniformly by the Exchange to Users. All Users seeking to purchase a cage would be subject to the same procedures. In addition, the Exchange believes that the proposed procedure would serve to reduce any potential for confusion on how cages would be allocated should it become necessary.

The Exchange believes that the proposal to waive fees for two bundles of 24 cross connects between a waitlisted User's non-contiguous cabinets is reasonable because the waitlisted User would only require the cross connects due to the waitlist. If, instead of being put on the waitlist, the User had received the cage it requested, the User would not require the cross connects. In addition, the Exchange proposes that the cross connects could only be used to connect the User's non-contiguous cabinets. The waiver would help to alleviate the inconvenience for the waitlisted User of having cabinets in non-contiguous space by directly addressing, for the time period during which the User is waitlisted, a cost directly related to being on the waitlist. In addition, the Exchange believes that the proposal is reasonable because once the User was allocated a cage through the allocation procedure or was removed from the waitlist, the Exchange would cease to waive the fee.

The Exchange also believes that, if a User is removed from the waitlist because it turned down a cage that is the size that it requested, it is reasonable not to provide the User a second waiver of the fee if the User subsequently requests a cage. To provide a second waiver would create an incentive for a User to use the waitlist to avoid paying the waived fees for cross connects despite being given an opportunity to get off the waitlist.

[18] 15 U.S.C. 78f(b)(4), (5).

The Exchange believes that the proposed amendments to the visitor security escort fee are reasonable, because the security purposes that lead the Exchange to visitor security escorts, namely to ensure that a visitor does not interfere with the cabinets of other Users or Exchange equipment, are not present when a User representative is visiting the User's cage, because the User representative would only have access to the Users' cabinets, which would be in the confined area within the locked cage. The User representative would not have access to the cabinets of other Users or Exchange equipment, which are locked as well. Finally, the Exchange believes that its non-substantive changes to the description of the visitor security escort fee are reasonable, because they would reduce redundancy and increase clarity in the description.

The Exchange believes that the proposed rate of $75 per visit for the Visitor Security Escort, as opposed to $75 per hour, is reasonable because all Users would be subject to the same fee. The Exchange believes that charging a flat fee per visit is consistent with fees for other services performed by data center staff, including Change Fees and Initial Install Services.[19] The proposed rate of $75 per visit for the Visitor Security Escort would be a fee reduction for any visit that lasted more than an hour, and so it would reduce the burden placed on Users that are still subject to the fee.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with section 6(b)(8) of the Act,[20] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed allocation procedures for cages would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed allocation procedure would assist the Exchange to ensure that it has sufficient space in the Data Center to accommodate demand for co-location services on an equitable basis for the foreseeable future. Similarly, the Exchange believes that the proposed fee waiver would facilitate the proposed allocation procedure, which would in turn facilitate use of the Data Center and provide access to the Data Center to current and additional market participants. In addition, because a User does not require a cage to trade on the Exchange, and usage of a cage has no effect on a User's orders going to, or trade data coming from, the Exchange, or the User's ability to utilize other co-location services, the Exchange believes that being waitlisted for a cage will not impose a burden on a User's ability to compete. The Exchange believes that the proposed allocation procedure would establish rational, objective procedures that would reduce any potential for User confusion on how cages would be allocated should it become necessary.

The Exchange believes that the proposed amendment to the visitor security escort fee would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because it would eliminate an unnecessary requirement, as the security purposes that lead the Exchange to visitor security escorts are not present when a User representative is visiting the User's cage, because the User representative would only have access to the Users' cabinets, which would be in the confined area within the locked cage. The User representative would not have access to the cabinets of other Users or Exchange equipment, which are locked as well. The proposed rate of $75 per visit for the Visitor Security Escort would be a fee reduction for any visit that lasted more than an hour, and so it would reduce the burden placed on Users that are still subject to the fee.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually review, and consider adjusting, its services and related fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–NYSEMKT–2016–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NYSEMKT–2016–17. 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

[19] *See* 2012 Release, *supra* note 6, at 50735, and 2014 Release, *supra* note 6, at 45503. Change Fees are charged per request and Initial Install Services fees are charged per cabinet or eight-rack unit in a partial cabinet.

[20] 15 U.S.C. 78f(b)(8).

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEMKT–2016–17, and should be submitted on or before April 1, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–05435 Filed 3–10–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77306; File No. SR–NYSEMKT–2016–31]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Amending Rule 123C—Equities To Provide for How the Exchange Would Determine an Official Closing Price if the Exchange Is Unable To Conduct a Closing Transaction

March 7, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on February 25, 2016, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 123C—Equities to provide for how the Exchange would determine an Official Closing Price if the Exchange is unable to conduct a closing transaction. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its rules to specify back-up procedures for determining an Official Closing Price for Exchange-listed securities if it is unable to conduct a closing transaction in one or more securities due to a systems or technical issue.[4] Specifically, the Exchange proposes to amend Rule 123C—Equities (''Rule 123C'') to provide for how the Exchange would determine an Official Closing Price if the Exchange is impaired.

The Exchange developed this proposal in consultation with its affiliated exchanges, NYSE Arca, Inc. (''NYSE Arca'') and New York Stock Exchange LLC (''NYSE''), and the NASDAQ Stock Market LLC (''Nasdaq''), and took into consideration feedback from discussions with industry participants, including meeting the following key goals important to market participants:

- Providing a pre-determined, consistent solution that would result in a closing print to the applicable securities information processor (''SIP'') within a reasonable time frame from the normal closing time;
- Minimizing the need for industry participants to modify their processing of data from the SIPs; and
- Providing advance notification of the applicable closing contingency plan to provide sufficient time for industry participants to route any closing interest to an alternate venue to participate in that venue's closing auction.

Background

The Exchange recently amended Rule 123C to add the definition of ''Official Closing Price'' for all Exchange-listed securities and, once implemented, will disseminate to the SIP the Official Closing Price as an ''M'' value.[5] In that filing, the Exchange amended Rule 123C(1)(e)(i) to define the ''Official Closing Price'' of a security listed on the Exchange as the price established in a closing transaction under paragraphs (7) and (8) of Rule 123C of one round lot or more. If there is no closing transaction in a security or if a closing transaction is less than one round lot, the Official Closing Price will be the most recent last-sale eligible trade in such security on the Exchange on that trading day.

The Exchange further amended Rule 123C(1)(e)(ii) to provide for how the Exchange would determine an Official Closing Price if the Exchange is unable to conduct a closing transaction in a security or securities due to a systems or technical issue. In such case, the Official Closing Price will be the last consolidated last-sale eligible trade for such security during regular trading hours on that trading day. The rule further provides that if there were no consolidated last-sale eligible trades in a security on a trading day when the Exchange is unable to conduct a closing transaction in a security or securities due to a systems or technical issue, the Official Closing Price of such security will be the prior day's Official Closing Price.

The Exchange also amended Rule 440B(b)—Equities to provide that Exchange systems will not execute or display a short sale order with respect to a covered security at a price that is less than or equal to the current national best bid if the price of that security decreases by 10% or more, as

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* NYSE press release dated July 22, 2015, available here: *http://ir.theice.com/press-and-publications/press-releases/all-categories/2015/07-22-2015.aspx.*

[5] *See* Securities Exchange Act Release No. 76601 (Dec. 9, 2015), 80 FR 77680 (Dec. 15, 2015) (SR–NYSEMKT–2015–98). For a description of all sale conditions that are reportable to the SIP, including the ''M'' value, see the Consolidated Tape System Participant Communications Interface Specification, dated November 16, 2015, at 86, available here: *https://www.ctaplan.com/publicdocs/ctaplan/notifications/trader-update/cts_input_spec.pdf.*

determined by the listing market for that security, from the security's Official Closing Price, as defined in Rule 123C as of the end of regular trading hours on the prior day (''Trigger Price'').

Proposed Amendments

The Exchange proposes to amend Rule 123C(1)(e)(ii) to provide for the proposed new contingency plan of how the Exchange would determine an Official Closing Price if the Exchange is unable to conduct a closing transaction in a security or securities due to a systems or technical issue. To reflect this change, the Exchange would replace the current rule text in Rule 123C(1)(e)(ii).

As proposed, Rule 123C(1)(e)(ii) would provide that if the Exchange determines at or before 3:00 p.m. Eastern Time that it is unable to conduct a closing transaction in one or more securities due to a systems or technical issue, the Exchange would designate an alternate exchange for such security or securities. The Exchange would publicly announce the exchange designated as the alternate exchange via Trader Update.[6] In such case, the Official Closing Price of each security would be determined on the following hierarchy:

• Proposed Rule 123C(1)(e)(ii)(A) would provide that the Official Closing Price would be the official closing price for such security under the rules of the designated alternate exchange. For example, if the Exchange designates NYSE Arca as the alternate exchange, the Official Closing Price would be based on NYSE Arca Equities Rule 1.1(ggP), which defines how NYSE Arca establishes an official closing price.[7] If Nasdaq were designated as the alternate exchange, the Official Closing Price would be the official closing price established in Nasdaq Rule 4754.

The proposed 3:00 p.m. cut off time was selected in part based on discussions with market participants regarding their capability to re-direct closing-only interest in Exchange-listed securities in time to participate in the closing auction of an alternate venue. By designating an alternate exchange before 3:00 p.m. Eastern Time, the Exchange therefore believes that market participants would be more likely to have sufficient notice to direct any closing-only interest in Exchange-listed securities to the designated alternate exchange. By providing market participants sufficient time, when possible, to route closing-only interest to an alternate venue for participation in that exchange's closing auction process, that alternate exchange's closing auction would be more likely to result in a closing price that reflects market value for such security.

If there were insufficient interest for a closing auction on the designated alternate exchange, the Exchange believes that the respective rules of NYSE Arca and Nasdaq provide for an appropriate hierarchy of which price to use to determine the Official Closing Price. For example, under NYSE Arca Rule 1.1(ggP)(1), if there is no closing auction of one round lot or more on a trading day, the official closing price under that rule is the most recent consolidated last sale eligible trade during Core Trading Hours on that trading day. That rule further provides that if there were no consolidated last sale eligible trades during Core Trading Hours on that trading day, NYSE Arca's official closing price will be the prior day's Official Closing Price. This hierarchy is similar to how the Exchange determines the Official Closing Price pursuant to Rule 123C(1)(e)(i) when there is no closing transaction of a round lot or more, except that in lieu of a closing auction, NYSE Arca uses the last consolidated last sale eligible trade rather than the last Exchange last-sale eligible trade.

• Proposed Rule 123C(1)(e)(ii)(B) would provide if the designated alternate exchange does not have an official closing price in a security, the Official Closing price would be the volume-weighted average price (''VWAP'') of the consolidated last-sale eligible prices of the last five minutes of trading during regular trading hours up to the time that the VWAP is processed. The VWAP would include any closing transactions on an exchange and would take into account any trade breaks or corrections up to the time the VWAP is processed. Because the VWAP would include any last-sale eligible trades, busts, or corrections that were reported up to the time that the SIP calculates the VWAP, the Exchange believes that the VWAP price would reflect any pricing adjustments that may be reported after 4:00 p.m. ET.

As discussed above, the manner by which exchanges calculate their respective official closing prices provide for an official closing price in the absence of a closing transaction. Accordingly, the Exchange believes that in circumstances when the Exchange designates an alternate exchange, the VWAP calculation would rarely be used to determine the Official Closing Price for an Exchange-listed security.

• Proposed Rule 123C(1)(e)(ii)(C) would provide that if the designated alternate exchange does not have an official closing price in a security and there were no consolidated last-sale eligible trades in the last five minutes of trading during regular trading hours in such security, the Official Closing Price would be the last consolidated last-sale eligible trade during regular trading hours on that trading day.

• Proposed Rule 123C(1)(e)(ii)(D) would provide that if the designated alternate exchange does not have an official closing price in a security and there were no consolidated last-sale eligible trades in a security on a trading day in such security, the Official Closing Price would be the prior day's Official Closing Price.

• Finally, proposed Rule 123C(1)(e)(ii)(E) would provide that if an Official Closing Price for a security cannot be determined under (A), (B), or (C) of proposed Rule 123C(1)(e)(ii) and there is no prior day's Official Closing Price, the Exchange would not publish an Official Closing Price for such security.

The Exchange would use the hierarchy set forth in proposed Rule 123C(e)(ii)(B)–(E) only if the designated alternate exchange did not disseminate an official closing price in a security. In such case, the proposed hierarchy is based on current Rule 123C(1)(e)(i), which provides that, if the Exchange is unable to conduct a closing transaction, the Official Closing Price will be the last consolidated last-sale eligible trade for such security during regular trading hours on that trading day, and if there were no consolidated last-sale eligible trades in a security, the Official Closing Price of such security will be the prior day's Official Closing Price. In addition, the Exchange proposes to add as paragraph (E) of Rule 123C(e)(ii) what would happen if there were no Official Closing Price published on the prior trading day (*i.e.,* the Exchange would not publish an Official Closing Price). The Exchange believes not publishing an Official Closing Price would be a rare occurrence, and is most likely to occur for a thinly-traded security, such as a when issued security, right, or warrant, that has been listed for trading but does not have any consolidated last-sale eligible trades.

If the Exchange determines that it is impaired before 3:00 p.m. and the

[6] The Exchange expects that it would designate one of its affiliated exchanges as the alternate exchange and would designate Nasdaq only if its affiliated exchanges were also impacted by the systems or technical issue.

[7] NYSE Arca Equities will be filing a rule proposal to amend Rule 1.1(ggP)(1) to provide that the manner by which NYSE Arca determines the Official Closing Price under that rule for securities listed on NYSE Arca would also be applicable to any securities for which NYSE Arca conducts a closing auction, including securities that trade on an unlisted trading privileges basis.

Official Closing Price for an Exchange-listed security is determined pursuant to proposed Rule 123C(1)(e)(ii), the SIP would publish the Official Closing Price for such security no differently than how the SIP publishes the Official Closing Price for an Exchange-listed security pursuant to Rule 123C(1)(e)(i).[8] Accordingly, if the Official Closing Price is determined pursuant to proposed Rule 123C(1)(e)(ii), recipients of SIP data would not have to make any changes to their systems because the SIP would publish the ''M'' last sale condition as an Exchange Official Closing Price for any impacted Exchange-listed securities.

As further proposed, Rule 123C(1)(e)(iii) would describe how the Exchange would determine the Official Closing Price for a security if the Exchange determines after 3:00 p.m. Eastern Time that it is unable to conduct a closing transaction in one or more securities due to a systems or technical issue. Based on input from market participants, the Exchange believes that, if the Exchange were to announce after 3:00 p.m. Eastern Time that it is impaired and unable to conduct a closing transaction, market participants would not have sufficient time to re-direct closing-only orders to an alternate venue. The proposed hierarchy would be similar to proposed Rule 123C(1)(e)(ii), but would not contemplate a closing transaction on a designated alternate exchange. Accordingly, in such scenario, the Exchange proposes to use the following hierarchy for determining the Official Closing Price for a security:

- Proposed Rule 123C(1)(e)(iii)(A) would provide that the Official Closing Price would be the VWAP of the consolidated last-sale eligible prices of the last five minutes of trading during regular trading hours up to the time that the VWAP is processed, including any closing transactions on an exchange. The VWAP would take into account any trade breaks or corrections up to the time of the VWAP is processed. This VWAP would be calculated in the same manner as set forth in proposed in Rule 123C(1)(e)(ii)(B), described above. However, if the Exchange's determination that it is unable to conduct a closing transaction is after 3:00 p.m. ET, the proposed VWAP calculation would be the primary means for determining the Official Closing Price for a security. In such case, the Exchange believes that the VWAP would appropriately reflect the pricing of a security because it would include, in a volume-weighted manner, the price and volume of closing transactions on other exchanges if market participants are able to route closing interest in Exchange-listed securities to an alternate venue for participation in a closing auction.
- Proposed Rule 123C(1)(e)(iii)(B) would provide that if there were no consolidated last-sale eligible trades in the last five minutes of trading during regular trading hours in such security, the Official Closing Price would be the last consolidated last-sale eligible trades during regular trading hours on that trading day. This proposed rule text is the same as proposed Rule 123C(1)(e)(ii)(C).
- Proposed Rule 123C(1)(e)(iii)(C) would provide that if there were no consolidated last-sale eligible trades in such security on a trading day, the Official Closing Price would be the prior day's Official Closing Price. This proposed rule text is the same as proposed Rule 123C(1)(e)(ii)(D).
- Finally, proposed Rule 123C(1)(e)(iii)(D) would provide that if an Official Closing Price for a security cannot be determined under (A), (B), or (C) of proposed Rule 123C(1)(e)(iii) and there is no prior day's Official Closing Price, the Exchange would not publish an Official Closing Price for such security. This proposed rule text is based on proposed Rule 123C(1)(e)(ii)(E).

Similar to how the Official Closing Price would be published under proposed Rule 123C(1)(e)(ii), if the Exchange determines that it is impaired after 3:00 p.m. and the Official Closing Price is determined pursuant to proposed Rule 123C(1)(e)(iii), the SIP would publish the Official Closing Price for such security no differently than how the SIP publishes the Official Closing Price for an Exchange-listed security pursuant to Rule 123C(1)(e)(i). Accordingly, if the Official Closing Price is determined pursuant to proposed Rule 123C(1)(e)(iii), recipients of SIP data would not have to make any changes to their systems because the SIP would publish the ''M'' last sale condition as an Exchange Official Closing Price for any impacted Exchange-listed securities.

For purposes of Rule 440B(b)—Equities, the Official Closing Price would still be determined based on Rule 123C and if the market is impaired, the Official Closing Price as defined in proposed Rules 123C(1)(e)(ii) and (iii) would be used for purposes of determining whether a Short Sale Price Test is triggered in a security the next trading day.

Because of the technology changes associated with this proposed rule change, the Exchange will implement the proposed back-up procedures for determining an Official Closing Price no later than 120 days after approval of this proposed rule change and will announce the implementation date via Trader Update.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would provide transparency in how the Exchange would determine the Official Closing Price in Exchange-listed securities when the Exchange is unable to conduct a closing transaction due to a systems or technical issue. The Exchange believes that the proposed amendments would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed determination of an Official Closing Price was crafted in response to input from industry participants and would:

- Provide a pre-determined, consistent solution that would result in a closing print to the SIP within a reasonable time frame from the normal closing time;
- minimize the need for industry participants to modify their processing of data from the SIP; and
- provide advance notification of the applicable closing contingency plan to provide sufficient time for industry participants to route any closing interest

[8] The Operating Committees of the CTA Plan, CQ Plan, and the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis approved the Impaired Market Contingency Plan under which the SIPs would print an impaired primary listing exchange's contingency Official Closing Price as the Official Closing Price of that primary listing exchange as provided for in the rules of respective primary listing exchanges.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

to an alternate venue to participate in that venue's closing auction

More specifically, the Exchange believes the proposed hierarchy for determining the Official Closing Price if the Exchange determines that it is impaired before 3:00 p.m. Eastern Time would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposal, which is based on input from market participants, would provide sufficient time for market participants to direct closing-only interest to a designated alternate exchange in time for such interest to participate in a closing auction on such alternate venue in a meaningful manner. The Exchange further believes that relying on the official closing price of a designated alternate exchange would provide for an established hierarchy for determining an Official Closing Price for an Exchange-listed security if there is insufficient interest to conduct a closing auction on the alternate exchange. In such case, the rules of NYSE Arca and Nasdaq already provide a mechanism for determining an official closing price for securities that trade on those markets.

The Exchange further believes that if the Exchange determines after 3:00 p.m. that it is impaired and unable the [sic] conduct a closing transaction, the proposed VWAP calculation would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would provide for a mechanism to determine the value of an affected security for purposes of determining an Official Closing Price. By using a volume-weighted calculation that would include the closing transactions on an affected security on alternate exchanges as well as any busts or corrections that were reported up to the time that the SIP calculates the value, the Exchange believes that the proposed calculation would reflect the correct price of a security. In addition, by using a VWAP calculation rather than the last consolidated last-sale eligible price as of the end of regular trading hours, the Exchange would reduce the potential for an anomalous trade that may not reflect the true price of a security from being set as the Official Closing Price for a security.

The Exchange further believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposal would have minimal impact on market participants. As proposed, from the perspective of market participants, even if the Exchange were impaired, the SIP would publish an Official Closing Price for Exchange-listed securities on behalf of the Exchange in a manner that would be no different than if the Exchange were not impaired. If the Exchange determines that it is impaired after 3:00 p.m., market participants would not have to make any system changes. If the Exchange determines that it is impaired before 3:00 p.m. Eastern Time and designates an alternate exchange, market participants may have to do systems work to re-direct closing-only orders to the alternate exchange. However, the Exchange understands, based on input from market participants, that such changes would be feasible based on the amount of advance notice. In addition, the Exchange believes that designating an alternate exchange when there is sufficient time to do so would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would allow for the price-discovery mechanism of a closing auction to be available for impacted Exchange-listed securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues, but rather to provide for how the Exchange would determine an Official Closing Price for Exchange-listed securities if it is impaired and cannot conduct a closing transaction due to a systems or technical issue. The proposal has been crafted with input from market participants, Nasdaq, and the SIPs, and is designed to reduce the burden on competition by having similar back-up procedures across all primary listing exchanges if such exchange is is [sic] impaired and cannot conduct a closing transaction.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2016–31 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2016–31. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only

information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2016–31 and should be submitted on or before April 1, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–05437 Filed 3–10–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77301; File No. SR–NASDAQ–2016–028]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of the Shares of the iSectors Post-MPT Growth ETF of ETFis Series Trust I

March 7, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 23, 2016, The NASDAQ Stock Market LLC (''Nasdaq'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in in Items I and II below, which Items have been prepared by Nasdaq. 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

Nasdaq proposes to list and trade the shares of the iSectors Post-MPT Growth ETF (the ''Fund''), a series of ETFis Series Trust I (the ''Trust''), under Nasdaq Rule 5735 (''Managed Fund Shares'').[3] The shares of the Fund are collectively referred to herein as the ''Shares.''

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the Shares of the Fund under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares[4] on the Exchange. The Fund will be an actively managed exchange-traded fund (''ETF''). The Shares will be offered by the Trust, which was established as a Delaware statutory trust on September 20, 2012.[5] The Trust is registered with the Commission as an investment company and has filed a registration statement on Form N–1A (''Registration Statement'') with the Commission.[6] The Fund is a series of the Trust.

Virtus ETF Advisers LLC will be the investment adviser (''Adviser'') to the Fund. iSectors, LLC will be the investment sub-adviser (''Sub-Adviser'') to the Fund. ETF Distributors LLC (the ''Distributor'') will be the principal underwriter and distributor of the Fund's Shares. The Bank of New York Mellon (''BNY Mellon'') will act as the administrator, accounting agent, custodian, and transfer agent to the Fund.

Paragraph (g) of Rule 5735 provides that if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[7] In addition, paragraph (g) further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the open-end fund's portfolio. Rule 5735(g) is similar to Nasdaq Rule 5705(b)(5)(A)(i); however, paragraph (g) in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser and Sub-Adviser are not registered as broker-dealers; however the Adviser (but not the Sub-Adviser) is affiliated with a broker-dealer and has implemented a fire wall with respect to such broker-dealer

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission approved Nasdaq Rule 5735 in Securities Exchange Act Release No. 57962 (June 13, 2008) 73 FR 35175 (June 20, 2008) (SR–NASDAQ–2008–039). There are already multiple actively-managed funds listed on the Exchange; *see e.g.,* Securities Exchange Act Release No. 72411 (June 17, 2014), 79 FR 35598 (June 23, 2014) (SR–NASDAQ–2014–40) (order approving listing and trading of Calamos Focus Growth ETF). The Exchange believes the proposed rule change raises no significant issues not previously addressed in those prior Commission orders. The Exchange believes the proposed rule change raises no significant issues not previously addressed in those prior Commission orders.

[4] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1)(the ''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Index Fund Shares, listed and traded on the Exchange under Nasdaq Rule 5705, seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[5] The Commission has issued an order, upon which the Trust may rely, granting certain exemptive relief under the 1940 Act. *See* Investment Company Act Release No. 30607 (July 23, 2013). In compliance with Nasdaq Rule 5735(b)(5), which applies to Managed Fund Shares based on an international or global portfolio, the Trust's application for exemptive relief under the 1940 Act states that the Fund will comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933 (15 U.S.C. 77a).

[6] *See* Registration Statement on Form N–1A for the Trust filed on December 2, 2015 (File Nos. 333–187668 and 811–22819). The descriptions of the Fund and the Shares contained herein are based, in part, on information in the Registration Statement.

[7] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser, the Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

regarding access to information concerning the composition and/or changes to the portfolio.

In addition, personnel who make decisions on the Fund's portfolio composition will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio. In the event (a) the Adviser or the Sub-Adviser registers as a broker dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with another broker-dealer, it will implement a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

iSectors Post MPT Growth ETF

Principal Investments

The Fund's investment objective will be to provide growth of capital, with a secondary emphasis on capital preservation, independent of individual market conditions. The Fund will be an actively managed ETF that seeks to achieve its investment objective by utilizing a long-only, tactically-managed exposure to sectors of the U.S. equity market and U.S. fixed income markets. To obtain such exposure, the Sub-Adviser will invest, under normal market conditions,[8] the Fund's assets in ETFs,[9] exchange-traded notes (''ETNs''),[10] exchange-traded trusts that hold commodities (''ETTs'') (collectively, ETFs, ETNs and ETTs are referred to hereinafter as ''exchange-traded products'' or ''ETPs''),[11] individually selected U.S. exchange-traded common stocks (when the Sub-Adviser determines that is more efficient or otherwise advantageous to do so), money market funds, U.S. treasuries [12] or money market instruments. To the extent that the Fund invests in ETPs or money market funds to gain domestic exposure, the Fund is considered, in part, a ''fund of funds.''

Other Investments

In order to seek its investment objective, the Fund will not employ other strategies outside of the above-described ''Principal Investments.''

Investment Restrictions

Under normal market conditions, the Fund will invest its total assets in shares of ETPs, individually selected U.S. exchange-traded common stocks (when the Sub-Adviser determines that is more efficient or otherwise advantageous to do so), money market funds, U.S. treasuries or money market instruments. The Fund will not purchase securities of open-end investment companies except in compliance with the 1940 Act. The Fund will not use derivative instruments, including options, swaps, forwards and futures contracts. The Fund will not invest in inverse or leveraged inverse ETPs.[13]

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities and other illiquid assets (calculated at the time of investment). The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities or other illiquid assets. Illiquid securities and other illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[14]

The Fund intends to qualify for and to elect to be treated as a separate regulated investment company under SubChapter M of the Internal Revenue Code.[15]

Under the 1940 Act, the Fund's investment in investment companies will be limited to, subject to certain exceptions: (i) 3% of the total outstanding voting stock of any one investment company, (ii) 5% of the Fund's total assets with respect to any one investment company, and (iii) 10% of the Fund's total assets with respect to investment companies in the aggregate.

The Fund's investments will be consistent with its investment objective. The Fund does not presently intend to engage in any form of borrowing for investment purposes, and will not be operated as a ''leveraged ETF'', *i.e.,* it

[8] The term ''under normal market conditions'' as used herein includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the equity and fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance. For temporary defensive purposes, during the initial invest-up period and during periods of high cash inflows or outflows, the Fund may depart from its principal investment strategies; for example, it may hold a higher than normal proportion of its assets in cash. During such periods, the Fund may not be able to achieve its investment objective. The Fund may adopt a defensive strategy when the Adviser believes securities in which the Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances.

[9] As described in the Registration Statement, an ETF is an investment company registered under the 1940 Act that holds a portfolio of securities. Many ETFs are designed to track the performance of a securities index, including industry, sector, country and region indexes. ETFs included in the Fund will be listed and traded in the U.S. on registered exchanges. The Fund may invest in the securities of ETFs in excess of the limits imposed under the 1940 Act pursuant to exemptive orders obtained by other ETFs and their sponsors from the Commission. The ETFs in which the Fund may invest include Index Fund Shares (as described in Nasdaq Rule 5705), Portfolio Depositary Receipts (as described in Nasdaq Rule 5705), and Managed Fund Shares (as described in Nasdaq Rule 5735). The Fund may invest in leveraged ETFs (*e.g.,* 2X or 3X), but will not invest in inverse or inverse leveraged ETFs (*e.g.,* -1X or -2X). No more than 25% of the Fund's holdings will be invested in leveraged ETFs. The shares of ETFs in which a Fund may invest will be limited to securities that trade in markets that are members of the ISG, which includes all U.S. national securities exchanges, or are parties to a comprehensive surveillance sharing agreement with the Exchange.

[10] The ETNs are limited to those described in Nasdaq Rule 5710.

[11] The Fund may invest in the following ETPs: trust certificates, commodity-based trust shares, currency trust shares, commodity index trust shares, commodity futures trust shares, partnership units, trust units, and managed trust securities (as described in Nasdaq Rule 5711); paired class shares (as described in Nasdaq Rule 5713); trust issued receipts (as described in Nasdaq Rule 5720); and exchange-traded managed fund shares (as described in Nasdaq Rule 5745).

[12] Such securities will include securities that are issued or guaranteed by the U.S. Treasury, by various agencies of the U.S. government, or by various instrumentalities, which have been established or sponsored by the U.S. government. U.S. Treasury obligations are backed by the ''full faith and credit'' of the U.S. government. Securities issued or guaranteed by federal agencies and U.S. government-sponsored instrumentalities may or may not be backed by the full faith and credit of the U.S. government.

[13] *See supra* note 9.

[14] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), FN 34. *See also* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); and Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); and Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

[15] 26 U.S.C. 851.

will not be operated in a manner designed to seek a multiple of the performance of an underlying reference index.

Net Asset Value

The Fund's net asset value (''NAV'') will be determined as of the close of trading (normally 4:00 p.m., Eastern time (''E.T.'')) on each day the New York Stock Exchange (''NYSE'') is open for business. NAV will be calculated for the Fund by taking the market price of the Fund's total assets, including interest or dividends accrued but not yet collected, less all liabilities, and dividing such amount by the total number of Shares outstanding. The result, rounded to the nearest cent, will be the NAV per Share. All valuations will be subject to review by the Trust's Board (''Board'') or its delegate.

The Fund's investments will be valued at market value *(i.e.,* the price at which a security is trading and could presumably be purchased or sold) or, in the absence of market value with respect to any investment, at fair value in accordance with valuation procedures adopted by the Board and in accordance with the 1940 Act. Common stocks and equity securities (including shares of ETPs) will be valued at the last sales price on that exchange. Portfolio securities traded on more than one securities exchange will be valued at the last sale price or, if so disseminated by an exchange, the official closing price, as applicable, at the close of the exchange representing the principal exchange or market for such securities on the business day as of which such value is being determined. U.S. treasuries are valued using quoted market prices, and money market funds are valued at the net asset value reported by the funds. Money market instruments will typically be valued using information provided by a third party pricing service. For all security types in which the Fund may invest, the Fund's primary pricing source is Interactive Data Corp.; its secondary source is Reuters; and its tertiary source is Bloomberg.

Certain securities may not be able to be priced by pre-established pricing methods. Such securities may be valued by the Board or its delegate at fair value. The use of fair value pricing by the Fund will be governed by valuation procedures adopted by the Board and in accordance with the provisions of the 1940 Act. As a general principle, the current ''fair value'' of a security would appear to be the amount which the owner might reasonably expect to receive for the security upon its current sale. The use of fair value prices by the Fund generally results in the prices used by the Fund that may differ from current market quotations or official closing prices on the applicable exchange. A variety of factors may be considered in determining the fair value of such securities.

Creation and Redemption of Shares

The Trust will issue and sell Shares of the Fund only in Creation Unit aggregations in exchange for an in-kind portfolio of securities and/or cash in lieu of such securities, and only in aggregations of 50,000 Shares, on a continuous basis through the Distributor, without a sales load, at the NAV next determined after receipt, on any business day, of an order in proper form.

The consideration for purchase of Creation Unit aggregations of the Fund will consist of (i) a designated portfolio of securities determined by the Adviser that generally will conform to the holdings of the Fund consistent with its investment objective (the ''Deposit Securities'') per each Creation Unit aggregation and generally an amount of cash (the ''Cash Component'') computed as described below, or (ii) cash in lieu of all or a portion of the Deposit Securities, as defined below. Together, the Deposit Securities and the Cash Component (including the cash in lieu amount) will constitute the ''Fund Deposit,'' which will represent the minimum initial and subsequent investment amount for a Creation Unit aggregation of the Fund.

The consideration for redemption of Creation Unit aggregations of the Fund will consist of (i) a designated portfolio of securities determined by the Adviser that generally will conform to the holdings of the Fund consistent with its investment objective per each Creation Unit aggregation (''Fund Securities'') and generally a Cash Component, as described below, or (ii) cash in lieu of all or a portion of the Fund Securities as defined below.

The Cash Component is sometimes also referred to as the Balancing Amount. The Cash Component will serve the function of compensating for any differences between the NAV per Creation Unit aggregation and the Deposit Amount (as defined below). For example, for a creation the Cash Component will be an amount equal to the difference between the NAV of Fund Shares (per Creation Unit aggregation) and the ''Deposit Amount''—an amount equal to the market value of the Deposit Securities and/or cash in lieu of all or a portion of the Deposit Securities. If the Cash Component is a positive number *(i.e.,* the NAV per Creation Unit aggregation exceeds the Deposit Amount), the Authorized Participant (defined below) will deliver the Cash Component. If the Cash Component is a negative number *(i.e.,* the NAV per Creation Unit aggregation is less than the Deposit Amount), the Authorized Participant will receive the Cash Component.

BNY Mellon, through the National Securities Clearing Corporation (''NSCC''), will make available on each business day, prior to the opening of business of the Exchange (currently 9:30 a.m., E.T.), the list of the names and the quantity of each Deposit Security to be included in the current Fund Deposit (based on information at the end of the previous business day). Such Fund Deposit will be applicable, subject to any adjustments as described below, in order to effect creations of Creation Unit aggregations of the Fund until such time as the next-announced composition of the Deposit Securities is made available. BNY Mellon, through the NSCC, will also make available on each business day, prior to the opening of business of the Exchange (currently 9:30 a.m., E.T.), the list of the names and the quantity of each security to be included (based on information at the end of the previous business day), subject to any adjustments as described below, in order to affect redemptions of Creation Unit aggregations of the Fund until such time as the next-announced composition of the Fund Securities is made available.

The Trust will reserve the right to permit or require the substitution of an amount of cash, *i.e.,* a ''cash in lieu'' amount, to be added to the Cash Component to replace any Deposit Security that may not be available in sufficient quantity for delivery or which might not be eligible for trading by an Authorized Participant or the investor for which it is acting or other relevant reason. To the extent the Trust effects the redemption of Shares in cash, such transactions will be effected in the same manner for all Authorized Participants.

In addition to the list of names and numbers of securities constituting the current Deposit Securities of a Fund Deposit, BNY Mellon, through the NSCC, will also make available on each business day, the estimated Cash Component, effective through and including the previous business day, per Creation Unit aggregation of the Fund.

To be eligible to place orders with respect to creations and redemptions of Creation Units, an entity must be (i) a ''Participating Party,'' *i.e.,* a broker-dealer or other participant in the clearing process through the continuous net settlement system of the NSCC or (ii)

a Depository Trust Company (''DTC'') Participant (a ''DTC Participant''). In addition, each Participating Party or DTC Participant (each, an ''Authorized Participant'') must execute an agreement that has been agreed to by the Distributor and BNY Mellon with respect to purchases and redemptions of Creation Units.

All orders to create Creation Unit aggregations must be received by the Distributor no later than 3:00 p.m., E.T., an hour earlier than the closing time of the regular trading session on the Exchange (ordinarily 4:00 p.m., E.T.), in each case on the date such order is placed in order for creations of Creation Unit aggregations to be effected based on the NAV of Shares of the Fund as next determined on such date after receipt of the order in proper form.

In order to redeem Creation Units of the Fund, an Authorized Participant must submit an order to redeem for one or more Creation Units. All such orders must be received by the Distributor in proper form no later than 3:00 p.m., E.T., an hour earlier than the close of regular trading on the Exchange (ordinarily 4:00 p.m., E.T.), in order to receive that day's closing NAV per Share.

Availability of Information

The Fund's Web site (*www.isectorsetfs.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Web site will include the Fund's ticker, CUSIP and exchange information along with additional quantitative information updated on a daily basis, including, for the Fund: (1) Daily trading volume, the prior business day's reported NAV and closing price, mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price'') [16] and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Regular Market Session [17] on the Exchange, the Fund will disclose on its Web site the identities and quantities of the portfolio of securities and other assets (the ''Disclosed Portfolio'' as defined in Nasdaq Rule 5735(c)(2)) held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the business day.[18]

On a daily basis, the Fund will disclose for each portfolio security and other asset of the Fund the following information on the Fund's Web site (if applicable): Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security, commodity, index, or other asset or instrument underlying the holding, if any; maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holdings in the Fund's portfolio. The Web site information will be publicly available at no charge.

In addition, for the Fund, an estimated value, defined in Rule 5735(c)(3) as the ''Intraday Indicative Value,'' that reflects an estimated intraday value of the Fund's portfolio, will be disseminated. Moreover, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service [19] will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session. The dissemination of the Intraday Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and will provide a close estimate of that value throughout the trading day.

Price information regarding the ETPs, equity securities, U.S. treasuries, money market instruments and money market funds held by the Fund will be available through the U.S. exchanges trading such assets, in the case of exchange-traded securities, as well as automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. For all security types in which the Fund may invest, the Fund's primary pricing source is Interactive Data Corp.; its secondary source is Reuters; and its tertiary source is Bloomberg.

Intra-day price information for all assets held by the Fund will also be available through subscription services, such as Bloomberg, Markit and Thomson Reuters, which can be accessed by Authorized Participants and other investors.

Investors will also be able to obtain the Fund's Statement of Additional Information (''SAI''), the Fund's Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Fund's SAI and Shareholder Reports will be available free upon request from the Fund, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov.* Information regarding market price and volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares and any underlying exchange-traded products will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans for the Shares.

Additional information regarding the Fund and the Shares, including investment strategies, risks, creation and redemption procedures, fees, Fund holdings disclosure policies, distributions and taxes will be included in the Registration Statement.

Initial and Continued Listing

The Shares will be subject to Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and/or continued listing, the Fund must be in compliance with Rule 10A–3 [20] under

[16] The Bid/Ask Price of the Fund will be determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[17] *See* Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 4 a.m. to 9:30 a.m. E.T.; (2) Regular Market Session from 9:30 a.m. to 4 p.m. or 4:15 p.m. E.T.; and (3) Post-Market Session from 4 p.m. or 4:15 p.m. to 8 p.m. E.T.).

[18] Under accounting procedures to be followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Notwithstanding the foregoing, portfolio trades that are executed prior to the opening of the Exchange on any business day may be booked and reflected in NAV on such business day. Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[19] Currently, the Nasdaq Global Index Data Service (''GIDS'') is the Nasdaq global index data feed service, offering real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for ETFs. GIDS provides investment professionals with the daily information needed to track or trade NASDAQ OMX indexes, listed ETFs, or third-party partner indexes and ETFs.

[20] *See* 17 CFR 240.10A–3.

the Act. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Nasdaq will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rules 4120(a)(11) and (12). Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and other assets constituting the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities. Nasdaq will allow trading in the Shares from 4:00 a.m. until 8:00 p.m. E.T. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in Nasdaq Rule 5735(b)(3), the minimum price variation for quoting and entry of orders in Managed Fund Shares traded on the Exchange is $0.01.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and also the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[21] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and other exchange-traded securities and instruments, including the common stock and shares held by the Fund with other markets and other entities that are members of the Intermarket Surveillance Group (''ISG'') [22] and FINRA may obtain trading information regarding trading in the Shares and such exchange-traded securities and instruments held by the Fund from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and such exchange-traded securities and instruments held by the Fund from markets and other entities that are members of ISG,[23] or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Fund's net assets that are invested in exchange-traded equities, including ETPs and common stock, will be invested in securities that trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange. Moreover, FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for certain fixed-income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine (''TRACE'').

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Intraday Indicative Value and Disclosed Portfolio is disseminated; (4) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Fund. Members purchasing Shares from the Fund for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

Additionally, the Information Circular will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Information Circular will also disclose the trading hours of the Shares of the Fund and the applicable NAV calculation time for the Shares. The Information Circular will disclose that information about the Shares of the Fund will be publicly available on the Fund's Web site.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act in general and Section 6(b)(5) of the Act in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange

[21] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[22] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[23] *Id.*

pursuant to the initial and continued listing criteria in Nasdaq Rule 5735. The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. In addition, paragraph (g) of Nasdaq Rule 5735 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the open-end fund's portfolio. The Fund's investments will be consistent with the Fund's investment objective. FINRA may obtain information via ISG from other exchanges that are members of ISG. In addition, the Exchange may obtain information regarding trading in the Shares and other exchange-traded securities and instruments held by the Fund from markets and other entities that are members of ISG, which includes all U.S. and some foreign securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for certain fixed-income securities held by the Fund reported to FINRA's TRACE.

The Fund may invest up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment). The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency. Moreover, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Regular Market Session. On each business day, before commencement of trading in Shares in the Regular Market Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio of the Fund that will form the basis for the Fund's calculation of NAV at the end of the business day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information for the Shares will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans for the Shares and any underlying exchange-traded securities. Intra-day price information will be available through subscription services, such as Bloomberg, Markit and Thomson Reuters, which can be accessed by Authorized Participants and other investors.

The Fund's Web site will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Fund will be halted under the conditions specified in Nasdaq Rules 4120 and 4121 or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and other exchange-traded securities and instruments held by the Fund with other markets and other entities that are members of the ISG and FINRA may obtain trading information regarding trading in the Shares and other exchange-traded securities and instruments held by the Fund from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and other exchange-traded securities and instruments held by the Fund from markets and other entities that are members of ISG, which includes all U.S. and some foreign securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. Furthermore, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

For the above reasons, Nasdaq believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded fund that will enhance competition among market participants, to the benefit of investors and the marketplace.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (a) By order approve or disapprove such proposed rule change; or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2016–028 on the subject line.

Paper Comments

• Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, Station Place, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–NASDAQ–2016–028. 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 Nasdaq. 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–NASDAQ–2016–028 and should be submitted on or before April 1, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–05432 Filed 3–10–16; 8:45 am]

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[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77307; File No. SR–BATS–2016–25]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Rules as Well as Certain Corporate Documents of the Exchange To Reflect a Legal Name Change by BATS Global Markets, Inc. and the Legal Names of Certain Subsidiaries

March 7, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 26, 2016, Bats BZX Exchange, Inc. f/k/a BATS Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as one being concerned solely with the administration of the Exchange pursuant to section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(3) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing a rule change to amend its rules as well as certain corporate documents of the Exchange to reflect a legal name change by the Exchange's ultimate parent entity, BATS Global Markets, Inc. (the ''Parent'') to Bats Global Markets, Inc., and the legal names of certain of the Parent's subsidiaries. As a result of this change, the Exchange also proposes to amend its rules to change its name from BATS Exchange, Inc. to Bats BZX Exchange, Inc.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(3).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange, on behalf of its Parent, recently filed to change the Parent's legal name from ''BATS Global Markets, Inc.'' to ''Bats Global Markets, Inc.'' [5] For the purposes of consistency, certain of the Parent's subsidiaries have also undertaken to change their legal names. As a result, the Exchange also proposes to change its name from BATS Exchange, Inc. to Bats BZX Exchange, Inc. throughout its rules and corporate documents (collectively, with the other legal name changes for the Parent and certain of its subsidiaries, the ''name changes'').[6] Therefore, the Exchange proposes to amend its: (i) Rulebook; (ii) fee schedules applicable to its equity and options platforms issued pursuant to Exchange Rules 15.1(a) and (c) (''Fee Schedules''); (iii) Certificate of Incorporation (''Certificate''); and (iv) Third Amended and Restated Bylaws of the Exchange (''Bylaws'') (collectively, the ''Operative Documents'') to reflect the name change and to replace all references to ''BATS'' with ''Bats''.

The Exchange proposes to replace all references to BATS with Bats throughout the Exchange's Rulebook and Fee Schedule. The Exchange understands that its affiliated Exchanges also intend to file similar proposed rule changes with the Commission to amend their exchange names.[7] Therefore, the

[5] *See* Securities Exchange Act Release No. 77155 (February 17, 2016) (SR–BATS–2016–10).

[6] The Exchange initially filed the proposed fee [sic] change on February 19, 2016 (SR–BATS–2016–21). On February 26, 2016, the Exchange withdrew that filing and submitted this filing.

[7] The Exchange's affiliates are EDGA Exchange, Inc., BATS Y-Exchange, Inc. and EDGX Exchange, Inc. The Exchange understands that proposed rule changes are to be filed by each of its affiliates to amend their names as follows: EDGA Exchange, Inc. would be changed to Bats EDGA Exchange, Inc., BATS Y-Exchange, Inc. would be amended to Bats

Exchange proposes to amend the following rules to reflect the name changes, including the expected filings by its affiliates to amend their names: Rule 1.5 (Definitions), Rule 2.3 (Member Eligibility), Rule 2.10 (Affiliation Between Exchange and a Member), Rule 2.11 (BATS Trading, Inc. as Outbound Router), Rule 2.12 (BATS Trading, Inc. as Inbound Router), Rule 8.15 (Imposition of Fines for Minor Violation(s) of Rules), Rule 11.1 (Hours of Trading and Trading Days), Rule 11.8 (Obligations of Market Makers), Rule 11.9 (Orders and Modifiers), Rule 11.12 (Priority of Orders), Rule 11.13 (Order Execution and Routing), Rule 11.14 (Trade Execution and Reporting), Rule 11.18 (Trading Halts Due to Extraordinary Market Volatility), Rule 11.22 (Data Products), Rule 11.23 (Auctions), Rule 11.24 (Opening Process for Non-BATS-Listed Securities), Rule 11.26 (Usage of Data Feeds), Rule 13.8 (BATS Connect), Rule 14.3 (General Procedures and Prerequisites for Initial and Continued Listing on the Exchange), Rule 14.11 (Other Securities), Rule 16.1 (Definitions), Rule 16.2 (Applicability), Rule 17.1 (Options Participation), Rule 17.2 (Requirements for Options Participation), Rule 17.4 (Good Standing For Options Members), Rule 18.2 (Conduct and Compliance with the Rules), Rule 18.4 (Prevention of the Misuse of Material Nonpublic Information), Rule 18.6 (Other Restrictions on Members), Rule 18.7 (Position Limits), Rule 18.8 (Exemptions from Position Limits), Rule 18.9 (Exercise Limits), Rule 18.11 (Liquidation Positions), Rule 18.12 (Other Restrictions on Options Transactions and Exercises), Rule 18.14 Limit on Outstanding Uncovered Short Positions), Rule 19.1 (Designation of Securities), Rule 19.3 (Criteria for Underlying Securities), Rule 19.4 (Withdrawal of Approval of Underlying Securities), Rule 19.6 (Series of Options Contracts Open for Trading), Rule 20.1 (Access to and Conduct on the BATS Options Market), Rule 20.2 (Surveillance), Rule 20.3 (Trading Halts), Rule 20.5 (Unusual Market Conditions), Rule 20.6 (Nullification and Adjustment of Options Transactions including Obvious Errors), Rule 20.7 (Audit Trail), Rule 20.8 (Failure to Pay Premium), Rule 21.1 (Definitions), Rule 21.2 (Days and Hours of Business), Rule 21.3 (Units of Trading), Rule 21.4 (Meaning of Premium Quotes and Orders), Rule 21.5 (Minimum Increments), Rule 21.7 (Market Opening Procedures), Rule 21.8 (Order Display and Booking Process), Rule 21.9 (Order Routing), Rule 21.12 (Clearing Member Give Up), Rule 21.13 (Submission for Clearance), Rule 21.14 (Message Traffic Mitigation), Rule 22.1 (Customer Orders and Order Entry Firms), Rule 22.2 (Options Market Maker Registration), Rule 22.5 (Obligations of Market Makers), Rule 22.6 (Market Maker Quotations), Rule 22.7 (Securities Accounts and Orders of Market Makers), Rule 22.8 (Letters of Guarantee), Rule 22.12 (Order Exposure Requirements), Rule 23.1 (Exercise of Options Contracts), Rule 24.2 (Reports of Uncovered Short Positions), Rule 25.1 (Suspensions), Rule 25.2 (Contracts of Suspended Members), Rule 25.3 (Penalty for Minor Rule Violations), Rule 26.5 (Discretionary Accounts), Rule 28.1 (General Rule), Rule 28.4 (Margin Required is Minimum), Rule 29.2 (Definitions), Rule 29.3 (Designation of a Broad-Based Index), Rule 29.4 (Dissemination of Information), Rule 29.5 (Position Limits for Broad-Based Index Options), Rule 29.6 (Designation of Narrow-Based and Micro-Narrow-Based Index Options), Rule 29.7 (Position Limits for Narrow-Based and Micro-Narrow-Based Index Options), Rule 29.8 (Exemptions from Position Limits), Rule 29.10 (Trading Sessions), Rule 29.11 (Terms of Index Options Contracts), and Rule 29.12 (Debit Put Spread Cash Account Transactions). Throughout these rules, the Exchange proposes the following changes:

- All references to ''BATS Exchange'', ''BATS EXCHANGE'' and ''BATS EXCHANGE, INC.'' are proposed to be changed to ''Bats BZX Exchange, Inc.'';
- All references to ''BATS'' are proposed to be changed to ''Bats'' or ''Exchange'';
- All references to ''BATS Y-Exchange, Inc.'' are proposed to be changed to ''Bats BYX Exchange, Inc.'';
- All references to ''EDGX Exchange, Inc.'' are proposed to be changed to ''Bats EDGX Exchange, Inc.'';
- All references to ''EDGA Exchange, Inc.'' are proposed to be changed to ''Bats EDGA Exchange, Inc.'';
- All references to ''BATS Options'' are proposed to be changed to ''BZX Options''.
- All references to ''BATS Book'', ''BATS market orders'', ''BATS Post Only Orders'', ''BATS Only Orders'', and ''BATS-listed securities'' are proposed to be changed to ''BZX Book'', ''BZX market orders'', ''BZX Post Only Orders'', ''BZX Only Orders'', and ''BZX-listed securities'', respectively.[8]

In addition to these changes, the Exchange proposes to modify its Fee Schedules to reflect the name change of the Exchange to Bats BZX Exchange [9] and to change all references to ''BATS'' to instead refer to ''Bats''. The Exchange also proposes on its Fee Schedule to refer to its affiliate, Bats BYX Exchange, Inc. (as proposed to be re-named), simply as ''BYX''. The Exchange believes that this is more consistent with other references on the Fee Schedule, such as the general references to ''EDGA'', which refer to the Exchange's affiliate, Bats EDGA Exchange, Inc. (as proposed to be re-named). Finally, the Exchange proposes to replace the term ''Non-BATS Market Maker'' with ''Away Market Maker'' (rather than changing the capitalization of ''Non-BATS'' to ''Non-Bats''), which is consistent with the terminology used on the fee schedule of EDGX Options, which is the options platform operated by Bats EDGX Exchange, Inc. (as proposed to be renamed).[10]

The Exchange also proposes to amend Article First of the Certificate to change the name of the Exchange to Bats BZX Exchange, Inc. and make conforming changes throughout, including the title of the Certificate. The Exchange proposes to amend the Bylaws to amend the title to reflect that the Bylaws will be titled the ''FOURTH AMENDED AND RESTATED BYLAWS OF BATS BZX EXCHANGE, INC.'' The Exchange also proposes to amend Article I, paragraph (f) and Article XI, section 2 to reflect the name changes.

The name change from BATS Exchange, Inc. to Bats BZX Exchange, Inc. is a non-substantive change. No changes to the ownership or structure of the Exchange or BATS Global Markets, Inc. have taken place.

2. Statutory Basis

BYX Exchange, Inc., and EDGX Exchange, Inc. would be amended to Bats EDGX Exchange, Inc.

[8] The Exchange notes that ''BATS'' is synonymous with ''BZX''. For example, Rule 11.22(k) is titled ''BZX Book Viewer'' and described a market data product offered by the Exchange. In addition, the Fee Schedule also includes BZX in the title of the Exchange's market data products. The Exchange does not propose to amend the names of these products.

[9] The Exchange notes that the Exchange will continue to be referred to as ''BZX'' in certain areas of the Fee Schedules. These areas of the Fee Schedules are: (i) The Fee Codes and Associated Fees table; (ii) footnote 6; (ii) footnote 7; (iii) the Bats Connect pricing table; and (iv) in the Unicast Access—Order Entry section of its Fee Schedule.

[10] See EDGX Options fee schedule, *available at: http://www.batsoptions.com/support/fee_schedule/edgx/.*

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[11] in general, and furthers the objectives of section 6(b)(5) of the Act,[12] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange also believes that the proposed rule change is consistent with section 6(b)(1) of the Act [13] in that it is designed to continue to ensure that the Exchange is so organized and has the capacity to carry out the purposes of Act and to comply, and enforce compliance by its members with the provisions of the Act and the rules and regulations thereunder, and rules of the Exchange. The Exchange is proposing amendments to the Operative Documents to effectuate its name change to Bats BZX Exchange, Inc. and to reflect the name changes of its affiliates. These changes are limited to capitalization and ministerial name changes and to reflect similar proposed rule changes to be submitted to the Commission by the Exchange's affiliates. The Exchange believes that the changes will protect investors and the public interest by eliminating confusion that may exist because of differences between its corporate name and the new naming conventions of the Parent and its subsidiaries, including the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

Because the rule change proposes ministerial changes related to the administration, and not the governance or operation, of the Exchange, 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because it is concerned solely with the administration of the Exchange, the foregoing proposed rule change has become effective pursuant to section 19(b)(3)(A)(iii) of the Ac [14] and Rule 19b–4(f)(3) thereunder.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (1) Necessary or appropriate in the public interest; (2) for the protection of investors; or (3) 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–BATS–2016–25 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2016–25. 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–BATS–2016–25, and should be submitted on or before April 1, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–05438 Filed 3–10–16; 8:45 am]

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[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(1).

[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 17 CFR 240.19b–4(f)(3).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77302; File No. SR–NYSE–2016–13]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Establishing Procedures for the Allocation of Cages to Its Co-Located Users, Including the Waiver of Certain Fees, and To Amend the Visitor Security Escort Requirements and Fee

March 7, 2016.

Pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 23, 2016, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On March 1, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] In Amendment No. 1, the Exchange clarified the proposal to specify that the visitor escort fee is equitable because all Users of the Exchange's Data Center would be charged the same fee. The Exchange also clarified the proposal to specify that while an individual User is on the waitlist for a cabinet, it will be granted a fee waiver for 2 bundles of 24 cross connects to be used to connect that User's non-contiguous cabinets.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to establish procedures for the allocation of cages to its co-located Users, including the waiver of certain fees, and to amend the visitor security escort requirements and fee. The Exchange proposes to amend the Exchange's Price List (''Price List'') to reflect the changes The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to establish procedures for the allocation of cages to Users, including the waiver of certain fees, and to amend the visitor security escort requirements.[5] The Exchange proposes to amend the Price List to reflect the changes.

Proposed Cage Allocation Procedure

A User is able to purchase a cage to house its cabinets within the Data Center.[6] A cage would typically be purchased by a User that has several cabinets within the Data Center and wishes to arrange its cabinets contiguously while also enhancing privacy around its cabinets. The Exchange offers three sizes of cages corresponding to the number of cabinets housed therein, and charges fees for the cages based on the size.[7] The physical footprint of each cage is greater than that of the cabinets that it houses, as each cage is constructed so as to include aisles around the purchasing User's cabinets, for accessibility and in compliance with safety regulations.[8] Accordingly, in order to provide a User with a cage, the Data Center must have sufficient contiguous open space available for the cage. The Exchange allocates cages on a first come/first serve basis.

The Data Center opened in 2010, and at that time, the Exchange represented that it offers co-location space based on availability and that it had sufficient space in the Data Center to accommodate demand on an equitable basis for the foreseeable future.[9] The Exchange continues to believe that there is sufficient space in the Data Center to accommodate demand.

However, much of the space currently available for co-location is in smaller segments, resulting from an increasing number of Users, multiple moves within the Data Center, and changes to Users' space requirements—both increases and decreases—since 2010. Accordingly, in 2015, the Exchange determined that, to continue to be able to meet its obligation to accommodate demand, and in particular to make available more contiguous, larger spaces for new and existing Users, it would exercise its right to move some Users' equipment within the Data Center (the ''Migration'').[10] The Exchange put procedures in place to manage the process for the Migration, and is implementing them.

While the Migration will make available more contiguous, larger spaces for new and existing Users, the Exchange believes that even after the Migration such contiguous open space will be limited, and may become more limited over time. Accordingly, the Exchange proposes to put procedures in place for the allocation of cages if the available open contiguous space in the Data Center is not sufficient to house a new cage or the open contiguous space available is sufficiently limited that the Exchange cannot both provide new cages and satisfy all User demand for other co-location services. The proposed procedures are as follows:

- The Exchange will place Users seeking new cages on a waitlist. The order of Users on the list will be based on the date the Exchange receives signed orders for the cages from each User.
- Once the list is established, Users, on a rolling basis, will be allocated a cage each time one becomes available.[11]
- If a cage becomes available and the User that is at the top of the waitlist turns it down because it requested a different size cage, the Exchange will offer the available cage to the next Users on the list, in order, until a User accepts it. A User that turns down a cage because it is not the correct size will remain on the waitlist. A User that turns down a cage that is the size that it requested will be removed from the waitlist.
- If a User requests two cages, after receiving the first cage it will move to the bottom of the waitlist.

In connection with the above procedure, the Exchange proposes to waive certain fees for Users that have requested a cage and have been added to the waitlist pursuant to the allocation procedure. The Exchange expects that, while on the waitlist for a cage or for a larger cage, a User may have to use non-contiguous cabinets and/or cages, in which case it would connect the cabinets with cross connects, which are fiber connections used to connect cabinets within the Data Center.[12] In

[5] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (''Commission'') in 2010. *See* Securities Exchange Act Release No. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR–NYSE–2010–56) (the ''Original Co-location Filing''). The Exchange operates a data center in Mahwah, New Jersey (the ''Data Center'') from which it provides co-location services to Users.

[6] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange, a ''Hosting User'' means a User that hosts a Hosted Customer in the User's co-location space, and a ''Hosted Customer'' means a customer of a Hosting User that is hosted in a Hosting User's co-location space. *See* Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR–NYSE–2015–40). As specified in the Price List, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates NYSE MKT and NYSE Arca, Inc. *See* Securities Exchange Act Release No. 70206 (August 15, 2013), 78 FR 51765 (August 21, 2013) (SR–NYSE–2013–59).

[7] *See* Securities Exchange Act Release No. 67666 (August 15, 2012), 77 FR 50742 (August 22, 2012) (SR–NYSE–2012–18) (''2012 Release''). A User must have at least two cabinets in the Data Center to purchase a cage. *See* Securities Exchange Act Release No. 72721 (July 30, 2014), 79 FR 45562 (August 5, 2014) (SR–NYSE–2014–37) (''2014 Release'').

[8] For example, a cage for 20 cabinets takes up as much floor space as 33 cabinets.

[9] *See* Original Co-Location Filing, at 59311.

[10] *See* Securities Exchange Act Release No. 76269 (October 26, 2015), 80 FR 66942 (October 30, 2015) SR–NYSE–2015–42 (''Migration Release'').

[11] A cage may become available, for example, if a User terminates use of an existing cage or if contiguous cabinets become vacant, opening up contiguous space. The Exchange believes that the proposed procedures are consistent with the NASDAQ procedures for allocating cabinets if NASDAQ's inventory shrinks to zero. *See* Securities Exchange Act Release No. 62397 (June 28, 2010), 75 FR 38860 (July 6, 2010) (SR–NASDAQ–2010–019).

[12] A User is able to purchase cross connects individually or in bundles (*i.e.,* multiple cross connects within a single sheath) of six, 12, 18 or 24 cross connects. The Commission approved the

Continued

such circumstances, the Exchange proposes to waive the initial and monthly fee for two bundles of 24 cross connects between the User's non-contiguous cabinets. Once the User is allocated a cage through the allocation procedure or is no longer on the waitlist, the Exchange would cease to waive the fee.

As noted above, a User that turns down a cage that is the size that it requested will be removed from the waitlist. If such User asks to be added back onto the waitlist, the Exchange will add the User to the bottom of the waitlist, but will not provide the proposed fee waiver a second time.

The Exchange proposes to amend the Price List to add a new General Note 3 to the fee to furnish and install a bundle of 24 cross connects, as follows:

The initial and monthly charge for 2 bundles of 24 cross connects will be waived for Users that are waitlisted for a cage for the duration of the waitlist period, provided that the cross connects may only be used to connect the Users' non-contiguous cabinets. The charge will no longer be waived once a User is removed from the waitlist.

- If a waitlist is created, a User seeking a new cage will be placed on the waitlist based on the date a signed order for the cage is received.
- A User that turns down a cage because it is not the correct size will remain on the waitlist. A User that requests to be removed or that turns down a cage that is the size that it requested will be removed from the waitlist.
- A User that is removed from the waitlist but subsequently requests a cage will be added back to the bottom of the waitlist, provided that, if the User was removed from the waitlist because it turned down a cage that is the size that it requested, it will not receive a second waiver of the charge.

Visitor Security Escorts

Currently, all User representatives are required to have a visitor security escort during visits to the Data Center, including User representatives who have a permanent Data Center site access badge.[13] The Exchange proposes to amend the description of the visitor security escort fee to provide that it would not apply to User representatives visiting the User's cage and to provide that the cost is $75 per visit.

The Exchange requires visitor security escorts for security purposes, primarily to ensure that a visitor does not interfere with the cabinets of other Users or Exchange equipment. The Exchange believes it is not necessary to have a User representative accompanied by a visitor security escort when the representative is visiting the User's cage, because the User representative would only have access to that User's cabinets, which would be in the confined area within the locked cage. The User representative would not have access to the cabinets of other Users or Exchange equipment, which are locked as well. By comparison, Users that do not have cages share colocation space with other Users. While such spaces are locked, more than one User may have cabinets within a given locked space, and so a visitor security escort is warranted.

The Exchange proposes to make several additional non-substantive changes to the description of the visitor security escort fee, to reduce redundancy and increase clarity. The current description is as follows:

NYSE employee escort, which is required during User visits to the data center. (**Note:** all User representatives are required to have a visitor security escort during visits to the data center, including User representatives who have a permanent data center site access badge.)

The proposed description of the visitor escort fee would read as follows:

All User representatives are required to be accompanied by a visitor security escort during visits to the data center unless visiting the User's cage. Requirement includes User representatives who have a permanent data center site access badge.

The Exchange proposes to remove the first clause, with its reference to the visitor security escort as an ''NYSE employee escort,'' because it is redundant with the parenthetical and because the reference to ''NYSE employees'' could be potentially confusing, given that not just the NYSE but also its affiliates, NYSE MKT LLC and NYSE Arca, Inc., provide co-location services at the Data Center. In addition, the Exchange proposes to use ''accompanied by a visitor security escort'' rather than ''have a visitor security escort'' because it believes that ''accompanied'' makes it more clear that the escort will accompany the User representative.

The Price List includes a Visitor Security Escort fee of $75 per hour. The Exchange proposes to amend the Price List to charge Users $75 per visit for such visitor security escorts. Based on the Exchange's experience, currently many of the escorted visits last an hour or less, and for Users that do not have a cage, escorted visits are typically about an hour.

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis;[14] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or both of its affiliates.[15]

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

fee for cross connects between a single User's cabinets within the data center in the Original Co-Location Filing. *See* Original Co-Location Filing, at 59311. The use of cross connects was subsequently revised to allow each User to purchase cross connects between its cabinet(s) and the cabinets of separate Users or a non-User's equipment within the Data Center. *See* 2012 Release, at 50742, and Securities Exchange Act Release No. 74222 (February 6, 2015), 80 FR 7888 (February 12, 2015) (SR–NYSE–2015–05). The Exchange notes that a User with a cage may request a new cage, either to add a second cage or to change cages. In such a case, the cross connects would be between the cabinets within the cage and the non-contiguous cabinets outside the cage.

[13] *See* Securities Exchange Act Release No. 62732 (August 16, 2010), 75 FR 51512 (August 20, 2010) (SR–NYSE–2010–56) (notice of proposed rule change amending price list to reflect fees charged for co-location services); *see also* Original Co-location Filing, at 59311. Fees for visitor security escorts for the move of a User's equipment within the Data Center are waived when incurred in connection with such a move required by the Exchange as part of the Migration. *See* Migration Release, at 66943.

[14] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of others with access to the Exchange's trading and execution systems. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the Data Center or not. In addition, co-located Users do not receive any market data or data service product that is not available to users that have access to the Exchange's trading and execution systems, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

[15] *See* SR–NYSE–2013–59, *supra* note 5 at 51766. The Exchange's affiliates have also submitted substantially the same proposed rule change. *See* SR–NYSEMKT–2016–17 and SR–NYSEArca–2016–21.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[16] in general, and furthers the objectives of sections 6(b)(5) of the Act,[17] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed procedure for allocating cages is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because the proposal would establish rational, objective procedures that would be applied uniformly by the Exchange to Users that requested cages and would not unfairly discriminate among similarly situated Users of co-location services. All Users seeking to purchase a cage would be subject to the same procedures. The Exchange believes that the proposed procedure would serve to reduce any potential for confusion on how cages would be allocated should it become necessary. In addition, the proposed allocation procedure would assist the Exchange to ensure that it has sufficient space in the Data Center to accommodate demand for co-location services on an equitable basis for the foreseeable future.

The Exchange believes that the proposal to waive fees for two bundles of 24 cross connects between a waitlisted User's non-contiguous cabinets is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because the waiver would be applied uniformly by the Exchange to all waitlisted Users and would not unfairly discriminate among similarly situated Users of co-location services. A waitlisted User would only require cross connects between its non-contiguous cabinets due to the waitlist. If, instead of being put on the waitlist, the User had received the cage it requested, the User would not require the cross connects. In addition, the Exchange proposes that the cross connects could only be used to connect the User's non-contiguous cabinets. The waiver would help to alleviate the inconvenience for the waitlisted User of having cabinets in non-contiguous space by directly addressing, for the time period during which the User is waitlisted, a cost directly related to being on the waitlist. Once the User was allocated a cage through the allocation procedure or was removed from the waitlist, the Exchange would cease to waive the fee.

The Exchange believes that the proposed amendment to the visitor security escort fee is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because the escort fee would be applied uniformly by the Exchange to all Users unless a User representative was visiting the User's cage, and would not unfairly discriminate among similarly situated Users of co-location services.

The Exchange also believes that the proposed rule change is consistent with section 6(b)(4),[18] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed procedure for allocating cages is equitable and not unfairly discriminatory because the cages are offered simply as a convenience to Users. A User does not require a cage to trade on the Exchange, and usage of a cage has no effect on a User's orders going to, or trade data coming from, the Exchange, or the User's ability to utilize other co-location services. The proposed allocation procedure would assist the Exchange to ensure that it has sufficient space in the Data Center to accommodate demand for co-location services on an equitable basis for the foreseeable future.

The Exchange believes that the proposal to waive fees for two bundles of 24 cross connects between a waitlisted User's non-contiguous cabinets is equitable and not unfairly discriminatory because a waitlisted User would only require the cross connects due to the waitlist. If, instead of being put on the waitlist, the User had received the cage it requested, the User would not require the cross connects. In addition, the Exchange proposes that the cross connects could only be used to connect the User's non-contiguous cabinets. The waiver would help to alleviate the inconvenience for the waitlisted User of having cabinets in non-contiguous space by directly addressing, for the time period during which the User is waitlisted, a cost directly related to being on the waitlist. Once the User was allocated a cage through the allocation procedure or was removed from the waitlist, the Exchange would cease to waive the fee.

The Exchange believes that the proposed amendment to the visitor security escort fee is equitable and not unfairly discriminatory because the escort fee would be applied uniformly by the Exchange to all Users unless a User representative was visiting the User's cage, and would not unfairly discriminate among similarly situated Users of co-location services. The same requirements and fees would be applied uniformly to all Users. The Exchange believes that the amendment is equitable because the security purposes that lead the Exchange to require visitor security escorts, namely to ensure that a visitor does not interfere with the cabinets of other Users or Exchange equipment, are not present when a User representative is visiting the User's cage, because the User representative would only have access to the Users' cabinets, which would be in the confined area within the locked cage. The User representative would not have access to the cabinets of other Users or Exchange equipment, which are locked as well.

The Exchange believes that the proposed allocation procedure for cages is reasonable because the proposal would establish rational, objective procedures that would be applied uniformly by the Exchange to Users. All Users seeking to purchase a cage would be subject to the same procedures. In addition, the Exchange believes that the proposed procedure would serve to reduce any potential for confusion on how cages would be allocated should it become necessary.

The Exchange believes that the proposal to waive fees for two bundles of 24 cross connects between a waitlisted User's non-contiguous cabinets is reasonable because the waitlisted User would only require the cross connects due to the waitlist. If, instead of being put on the waitlist, the User had received the cage it requested, the User would not require the cross connects. In addition, the Exchange proposes that the cross connects could only be used to connect the User's non-contiguous cabinets. The waiver would help to alleviate the inconvenience for the waitlisted User of having cabinets in non-contiguous space by directly addressing, for the time period during which the User is waitlisted, a cost directly related to being on the waitlist. Once the User was allocated a cage through the allocation procedure or was removed from the waitlist, the Exchange would cease to waive the fee. In addition, the Exchange believes that

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78f(b)(4), (5).

the proposal is reasonable because once the User was allocated a cage through the allocation procedure or was removed from the waitlist, the Exchange would cease to waive the fee.

The Exchange also believes that, if a User is removed from the waitlist because it turned down a cage that is the size that it requested, it is reasonable not to provide the User a second waiver of the fee if the User subsequently requests a cage. To provide a second waiver would create an incentive for a User to use the waitlist to avoid paying the waived fees for cross connects despite being given an opportunity to get off the waitlist.

The Exchange believes that the proposed amendments to the visitor security escort fee are reasonable, because the security purposes that lead the Exchange to visitor security escorts, namely to ensure that a visitor does not interfere with the cabinets of other Users or Exchange equipment, are not present when a User representative is visiting the User's cage, because the User representative would only have access to the Users' cabinets, which would be in the confined area within the locked cage. The User representative would not have access to the cabinets of other Users or Exchange equipment, which are locked as well. Finally, the Exchange believes that its non-substantive changes to the description of the visitor security escort fee are reasonable, because they would reduce redundancy and increase clarity in the description.

The Exchange believes that the proposed rate of $75 per visit for the Visitor Security Escort, as opposed to $75 per hour, is equitable because all Users would be subject to the same fee. The Exchange believes that charging a flat fee per visit is consistent with fees for other services performed by data center staff, including Change Fees and Initial Install Services.[19] The proposed rate of $75 per visit for the Visitor Security Escort would be a fee reduction for any visit that lasted more than an hour, and so it would reduce the burden placed on Users that are still subject to the fee.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with section 6(b)(8) of the Act,[20] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed allocation procedures for cages would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed allocation procedure would assist the Exchange to ensure that it has sufficient space in the Data Center to accommodate demand for co-location services on an equitable basis for the foreseeable future. Similarly, the Exchange believes that the proposed fee waiver would facilitate the proposed allocation procedure, which would in turn facilitate use of the Data Center and provide access to the Data Center to current and additional market participants. In addition, because a User does not require a cage to trade on the Exchange, and usage of a cage has no effect on a User's orders going to, or trade data coming from, the Exchange, or the User's ability to utilize other co-location services, the Exchange believes that being waitlisted for a cage will not impose a burden on a User's ability to compete. The Exchange believes that the proposed allocation procedure would establish rational, objective procedures that would reduce any potential for User confusion on how cages would be allocated should it become necessary.

The Exchange believes that the proposed amendment to the visitor security escort fee would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because it would eliminate an unnecessary requirement, as the security purposes that lead the Exchange to visitor security escorts are not present when a User representative is visiting the User's cage, because the User representative would only have access to the Users' cabinets, which would be in the confined area within the locked cage. The User representative would not have access to the cabinets of other Users or Exchange equipment, which are locked as well. The proposed rate of $75 per visit for the Visitor Security Escort would be a fee reduction for any visit that lasted more than an hour, and so it would reduce the burden placed on Users that are still subject to the fee.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually review, and consider adjusting, its services and related fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–NYSE–2016–13 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.

[19] *See* 2012 Release, *supra* note 6, at 50743, and 2014 Release, *supra* note 6, at 45562. Change Fees are charged per request and Initial Install Services fees are charged per cabinet or eight-rack unit in a partial cabinet.

[20] 15 U.S.C. 78f(b)(8).

All submissions should refer to File No. SR–NYSE–2016–13. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSE–2016–13, and should be submitted on or before April 1, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–05433 Filed 3–10–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77303; File No. SR–NYSEArca-2016–21]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Establishing Procedures for the Allocation of Cages to Its Co-Located Users, Including the Waiver of Certain Fees, and To Amend the Visitor Security Escort Requirements and Fee

March 7, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 23, 2016, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On March 1, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to establish procedures for the allocation of cages to its co-located Users, including the waiver of certain fees, and to amend the visitor security escort requirements and fee. The Exchange proposes to amend the Arca Options Fee Schedule (the ''Options Fee Schedule'') and, through its wholly owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities''), the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services (the ''Equities Fee Schedule'' and, together with the Options Fee Schedule, the ''Fee Schedules'') to reflect the changes. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to establish procedures for the allocation of cages to Users, including the waiver of certain fees, and to amend the visitor security escort requirements.[5] The Exchange proposes to amend the Fee Schedules to reflect the changes.

Proposed Cage Allocation Procedure

A User is able to purchase a cage to house its cabinets within the Data Center.[6] A cage would typically be purchased by a User that has several cabinets within the Data Center and wishes to arrange its cabinets contiguously while also enhancing privacy around its cabinets. The Exchange offers three sizes of cages corresponding to the number of cabinets housed therein, and charges fees for the cages based on the size.[7] The physical footprint of each cage is greater than that of the cabinets that it houses, as each cage is constructed so as to include aisles around the purchasing User's cabinets, for accessibility and in compliance with safety regulations.[8] Accordingly, in order to provide a User with a cage, the Data Center must have sufficient contiguous open space

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] In Amendment No. 1, the Exchange clarified the proposal to specify that the visitor escort fee is equitable because all Users of the Exchange's Data Center would be charged the same fee. The Exchange also clarified the proposal to specify that while an individual User is on the waitlist for a cabinet, it will be granted a fee waiver for 2 bundles of 24 cross connects to be used to connect that User's non-contiguous cabinets.

[5] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (''Commission'') in 2010. *See* Securities Exchange Act Release No. 63275 (November 8, 2010), 75 FR 70048 (November 16, 2010) (SR–NYSEArca–2010–100) (the ''Original Co-location Filing''). The Exchange operates a data center in Mahwah, New Jersey (the ''Data Center'') from which it provides co-location services to Users.

[6] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange, a ''Hosting User'' means a User that hosts a Hosted Customer in the User's co-location space, and a ''Hosted Customer'' means a customer of a Hosting User that is hosted in a Hosting User's co-location space. *See* Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR–NYSEArca–2015–82). As specified in the Fee Schedules, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates New York Stock Exchange LLC and NYSE MKT LLC. *See* Securities Exchange Act Release No. 70173 (August 13, 2013), 78 FR 50459 (August 19, 2013) (SR–NYSEArca–2013–80).

[7] *See* Securities Exchange Act Release No. 67667 (August 15, 2012), 77 FR 50743 (August 22, 2012) (SR–NYSEArca–2012–63) (''2012 Release''). A User must have at least two cabinets in the Data Center to purchase a cage. *See* Securities Exchange Act Release No. 72720 (July 30, 2014), 79 FR 45577 (August 5, 2014) (SR–NYSEArca–2014–81) (''2014 Release'').

[8] For example, a cage for 20 cabinets takes up as much floor space as 33 cabinets.

available for the cage. The Exchange allocates cages on a first come/first serve basis.

The Data Center opened in 2010, and at that time, the Exchange represented that it offers co-location space based on availability and that it had sufficient space in the Data Center to accommodate demand on an equitable basis for the foreseeable future.[9] The Exchange continues to believe that there is sufficient space in the Data Center to accommodate demand.

However, much of the space currently available for co-location is in smaller segments, resulting from an increasing number of Users, multiple moves within the Data Center, and changes to Users' space requirements—both increases and decreases—since 2010. Accordingly, in 2015, the Exchange determined that, to continue to be able to meet its obligation to accommodate demand, and in particular to make available more contiguous, larger spaces for new and existing Users, it would exercise its right to move some Users' equipment within the Data Center (the ''Migration'').[10] The Exchange put procedures in place to manage the process for the Migration, and is implementing them.

While the Migration will make available more contiguous, larger spaces for new and existing Users, the Exchange believes that even after the Migration such contiguous open space will be limited, and may become more limited over time. Accordingly, the Exchange proposes to put procedures in place for the allocation of cages if the available open contiguous space in the Data Center is not sufficient to house a new cage or the open contiguous space available is sufficiently limited that the Exchange cannot both provide new cages and satisfy all User demand for other co-location services. The proposed procedures are as follows:

- The Exchange will place Users seeking new cages on a waitlist. The order of Users on the list will be based on the date the Exchange receives signed orders for the cages from each User.
- Once the list is established, Users, on a rolling basis, will be allocated a cage each time one becomes available.[11]
- If a cage becomes available and the User that is at the top of the waitlist turns it down because it requested a different size cage, the Exchange will offer the available cage to the next Users on the list, in order, until a User accepts it. A User that turns down a cage because it is not the correct size will remain on the waitlist. A User that turns down a cage that is the size that it requested will be removed from the waitlist.
- If a User requests two cages, after receiving the first cage it will move to the bottom of the waitlist.

In connection with the above procedure, the Exchange proposes to waive certain fees for Users that have requested a cage and have been added to the waitlist pursuant to the allocation procedure. The Exchange expects that, while on the waitlist for a cage or for a larger cage, a User may have to use non-contiguous cabinets and/or cages, in which case it would connect the cabinets with cross connects, which are fiber connections used to connect cabinets within the Data Center.[12] In such circumstances, the Exchange proposes to waive the initial and monthly fee for two bundles of 24 cross connects between the User's non-contiguous cabinets. Once the User is allocated a cage through the allocation procedure or is no longer on the waitlist, the Exchange would cease to waive the fee.

As noted above, a User that turns down a cage that is the size that it requested will be removed from the waitlist. If such User asks to be added back onto the waitlist, the Exchange will add the User to the bottom of the waitlist, but will not provide the proposed fee waiver a second time.

The Exchange proposes to amend the Fee Schedules to add a new General Note 3 to the fee to furnish and install a bundle of 24 cross connects, as follows:

The initial and monthly charge for 2 bundles of 24 cross connects will be waived for Users that are waitlisted for a cage for the duration of the waitlist period, provided that the cross connects may only be used to connect the Users' non-contiguous cabinets. The charge will no longer be waived once a User is removed from the waitlist.

- If a waitlist is created, a User seeking a new cage will be placed on the waitlist based on the date a signed order for the cage is received.
- A User that turns down a cage because it is not the correct size will remain on the waitlist. A User that requests to be removed or that turns down a cage that is the size that it requested will be removed from the waitlist.
- A User that is removed from the waitlist but subsequently requests a cage will be added back to the bottom of the waitlist, provided that, if the User was removed from the waitlist because it turned down a cage that is the size that it requested, it will not receive a second waiver of the charge.

Visitor Security Escorts

Currently, all User representatives are required to have a visitor security escort during visits to the Data Center, including User representatives who have a permanent Data Center site access badge.[13] The Exchange proposes to amend the description of the visitor security escort fee to provide that it would not apply to User representatives visiting the User's cage and to provide that the cost is $75 per visit.

The Exchange requires visitor security escorts for security purposes, primarily to ensure that a visitor does not interfere with the cabinets of other Users or Exchange equipment. The Exchange believes it is not necessary to have a User representative accompanied by a visitor security escort when the representative is visiting the User's cage, because the User representative would only have access to that User's cabinets, which would be in the confined area within the locked cage. The User representative would not have access to the cabinets of other Users or Exchange equipment, which are locked as well. By comparison, Users that do not have cages share colocation space with other Users. While such spaces are locked, more than one User may have cabinets within a given locked space, and so a visitor security escort is warranted.

[9] *See* Original Co-Location Filing, at 70049.

[10] *See* Securities Exchange Act Release No. 76270 (October 26, 2015), 80 FR 66958 (October 30, 2015) SR–NYSEArca–2015–85 (''Migration Release'').

[11] A cage may become available, for example, if a User terminates use of an existing cage or if contiguous cabinets become vacant, opening up contiguous space. The Exchange believes that the proposed procedures are consistent with the NASDAQ procedures for allocating cabinets if NASDAQ's inventory shrinks to zero. *See* Securities Exchange Act Release No. 62397 (June 28, 2010), 75 FR 38860 (July 6, 2010) (SR–NASDAQ–2010–019).

[12] A User is able to purchase cross connects individually or in bundles (*i.e.,* multiple cross connects within a single sheath) of six, 12, 18 or 24 cross connects. The Commission approved the fee for cross connects between a single User's cabinets within the data center in the Original Co-Location Filing. *See* Original Co-Location Filing, at 70049. The use of cross connects was subsequently revised to allow each User to purchase cross connects between its cabinet(s) and the cabinets of separate Users or a non-User's equipment within the Data Center. *See* 2012 Release, at 50744, and Securities Exchange Act Release No. 74219 (February 6, 2015), 80 CFR 7899 (February 12, 2015) (SR–NYSEArca–2015–03). The Exchange notes that a User with a cage may request a new cage, either to add a second cage or to change cages. In such a case, the cross connects would be between the cabinets within the cage and the non-contiguous cabinets outside the cage.

[13] *See* Original Co-Location Filing, at 70050. Fees for visitor security escorts for the move of a User's equipment within the Data Center are waived when incurred in connection with such a move required by the Exchange as part of the Migration. *See* Migration Release, at 66958.

The Exchange proposes to make several additional non-substantive changes to the description of the visitor security escort fee, to reduce redundancy and increase clarity. The current description is as follows:

NYSE employee escort, which is required during User visits to the data center. (Note: all User representatives are required to have a visitor security escort during visits to the data center, including User representatives who have a permanent data center site access badge.)

The proposed description of the visitor escort fee would read as follows:

All User representatives are required to be accompanied by a visitor security escort during visits to the data center unless visiting the User's cage. Requirement includes User representatives who have a permanent data center site access badge.

The Exchange proposes to remove the first clause, with its reference to the visitor security escort as an ''NYSE employee escort,'' because it is redundant with the parenthetical and because the reference to ''NYSE employees'' could be potentially confusing, given that not just New York Stock Exchange LLC but also its affiliates, NYSE MKT LLC and the Exchange, provide co-location services at the Data Center. In addition, the Exchange proposes to use ''accompanied by a visitor security escort'' rather than ''have a visitor security escort'' because it believes that ''accompanied'' makes it more clear that the escort will accompany the User representative.

The Fee Schedules include a Visitor Security Escort fee of $75 per hour. The Exchange proposes to amend the Fee Schedules to charge Users $75 per visit for such visitor security escorts. Based on the Exchange's experience, currently many of the escorted visits last an hour or less, and for Users that do not have a cage, escorted visits are typically about an hour.

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis; [14] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or both of its affiliates.[15]

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[16] in general, and furthers the objectives of Sections 6(b)(5) of the Act,[17] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed procedure for allocating cages is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because the proposal would establish rational, objective procedures that would be applied uniformly by the Exchange to Users that requested cages and would not unfairly discriminate among similarly situated Users of co-location services. All Users seeking to purchase a cage would be subject to the same procedures. The Exchange believes that the proposed procedure would serve to reduce any potential for confusion on how cages would be allocated should it become necessary. In addition, the proposed allocation procedure would assist the Exchange to ensure that it has sufficient space in the Data Center to accommodate demand for co-location services on an equitable basis for the foreseeable future.

The Exchange believes that the proposal to waive fees for two bundles of 24 cross connects between a waitlisted User's non-contiguous cabinets is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because the waiver would be applied uniformly by the Exchange to all waitlisted Users and would not unfairly discriminate among similarly situated Users of co-location services. A waitlisted User would only require cross connects between its non-contiguous cabinets due to the waitlist. If, instead of being put on the waitlist, the User had received the cage it requested, the User would not require the cross connects. In addition, the Exchange proposes that the cross connects could only be used to connect the User's non-contiguous cabinets. The waiver would help to alleviate the inconvenience for the waitlisted User of having cabinets in non-contiguous space by directly addressing, for the time period during which the User is waitlisted, a cost directly related to being on the waitlist. Once the User was allocated a cage through the allocation procedure or was removed from the waitlist, the Exchange would cease to waive the fee.

The Exchange believes that the proposed amendment to the visitor security escort fee is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because the escort fee would be applied uniformly by the Exchange to all Users unless a User representative was visiting the User's cage, and would not unfairly discriminate among similarly situated Users of co-location services.

The Exchange also believes that the proposed rule change is consistent with Section 6(b)(4),[18] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed procedure for allocating cages is equitable and not unfairly

[14] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of others with access to the Exchange's trading and execution systems. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the Data Center or not. In addition, co-located Users do not receive any market data or data service product that is not available to users that have access to the Exchange's trading and execution systems, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

[15] *See* SR–NYSEArca–2013–80, *supra* note 5 at 50459. The Exchange's affiliates have also submitted substantially the same proposed rule change. *See* SR–NYSE–2016–13 and SR–NYSEMKT–2016–17.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78f(b)(4), (5).

discriminatory because the cages are offered simply as a convenience to Users. A User does not require a cage to trade on the Exchange, and usage of a cage has no effect on a User's orders going to, or trade data coming from, the Exchange, or the User's ability to utilize other co-location services. The proposed allocation procedure would assist the Exchange to ensure that it has sufficient space in the Data Center to accommodate demand for co-location services on an equitable basis for the foreseeable future.

The Exchange believes that the proposal to waive fees for two bundles of 24 cross connects between a waitlisted User's non-contiguous cabinets is equitable and not unfairly discriminatory because a waitlisted User would only require the cross connects due to the waitlist. If, instead of being put on the waitlist, the User had received the cage it requested, the User would not require the cross connects. In addition, the Exchange proposes that the cross connects could only be used to connect the User's non-contiguous cabinets. The waiver would help to alleviate the inconvenience for the waitlisted User of having cabinets in non-contiguous space by directly addressing, for the time period during which the User is waitlisted, a cost directly related to being on the waitlist. Once the User was allocated a cage through the allocation procedure or was removed from the waitlist, the Exchange would cease to waive the fee.

The Exchange believes that the proposed amendment to the visitor security escort fee is equitable and not unfairly discriminatory because the escort fee would be applied uniformly by the Exchange to all Users unless a User representative was visiting the User's cage, and would not unfairly discriminate among similarly situated Users of co-location services. The same requirements and fees would be applied uniformly to all Users. The Exchange believes that the amendment is equitable because the security purposes that lead the Exchange to require visitor security escorts, namely to ensure that a visitor does not interfere with the cabinets of other Users or Exchange equipment, are not present when a User representative is visiting the User's cage, because the User representative would only have access to the Users' cabinets, which would be in the confined area within the locked cage. The User representative would not have access to the cabinets of other Users or Exchange equipment, which are locked as well.

The Exchange believes that the proposed allocation procedure for cages is reasonable because the proposal would establish rational, objective procedures that would be applied uniformly by the Exchange to Users. All Users seeking to purchase a cage would be subject to the same procedures. In addition, the Exchange believes that the proposed procedure would serve to reduce any potential for confusion on how cages would be allocated should it become necessary.

The Exchange believes that the proposal to waive fees for two bundles of 24 cross connects between a waitlisted User's non-contiguous cabinets is reasonable because the waitlisted User would only require the cross connects due to the waitlist. If, instead of being put on the waitlist, the User had received the cage it requested, the User would not require the cross connects. In addition, the Exchange proposes that the cross connects could only be used to connect the User's non-contiguous cabinets. The waiver would help to alleviate the inconvenience for the waitlisted User of having cabinets in non-contiguous space by directly addressing, for the time period during which the User is waitlisted, a cost directly related to being on the waitlist. In addition, the Exchange believes that the proposal is reasonable because once the User was allocated a cage through the allocation procedure or was removed from the waitlist, the Exchange would cease to waive the fee.

The Exchange also believes that, if a User is removed from the waitlist because it turned down a cage that is the size that it requested, it is reasonable not to provide the User a second waiver of the fee if the User subsequently requests a cage. To provide a second waiver would create an incentive for a User to use the waitlist to avoid paying the waived fees for cross connects despite being given an opportunity to get off the waitlist.

The Exchange believes that the proposed amendments to the visitor security escort fee are reasonable, because the security purposes that lead the Exchange to visitor security escorts, namely to ensure that a visitor does not interfere with the cabinets of other Users or Exchange equipment, are not present when a User representative is visiting the User's cage, because the User representative would only have access to the Users' cabinets, which would be in the confined area within the locked cage. The User representative would not have access to the cabinets of other Users or Exchange equipment, which are locked as well. Finally, the Exchange believes that its non-substantive changes to the description of the visitor security escort fee are reasonable, because they would reduce redundancy and increase clarity in the description.

The Exchange believes that the proposed rate of $75 per visit for the Visitor Security Escort, as opposed to $75 per hour, is reasonable because all Users would be subject to the same fee. The Exchange believes that charging a flat fee per visit is consistent with fees for other services performed by data center staff, including Change Fees and Initial Install Services.[19] The proposed rate of $75 per visit for the Visitor Security Escort would be a fee reduction for any visit that lasted more than an hour, and so it would reduce the burden placed on Users that are still subject to the fee.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[20] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed allocation procedures for cages would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed allocation procedure would assist the Exchange to ensure that it has sufficient space in the Data Center to accommodate demand for co-location services on an equitable basis for the foreseeable future. Similarly, the Exchange believes that the proposed fee waiver would facilitate the proposed allocation procedure, which would in turn facilitate use of the Data Center and provide access to the Data Center to current and additional market participants. In addition, because a User does not require a cage to trade on the Exchange, and usage of

[19] *See* 2012 Release, *supra* note 6, at 50744, and 2014 Release, *supra* note 6, at 45578. Change Fees are charged per request and Initial Install Services fees are charged per cabinet or eight-rack unit in a partial cabinet.

[20] 15 U.S.C. 78f(b)(8).

a cage has no effect on a User's orders going to, or trade data coming from, the Exchange, or the User's ability to utilize other co-location services, the Exchange believes that being waitlisted for a cage will not impose a burden on a User's ability to compete. The Exchange believes that the proposed allocation procedure would establish rational, objective procedures that would reduce any potential for User confusion on how cages would be allocated should it become necessary.

The Exchange believes that the proposed amendment to the visitor security escort fee would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because it would eliminate an unnecessary requirement, as the security purposes that lead the Exchange to visitor security escorts are not present when a User representative is visiting the User's cage, because the User representative would only have access to the Users' cabinets, which would be in the confined area within the locked cage. The User representative would not have access to the cabinets of other Users or Exchange equipment, which are locked as well. The proposed rate of $75 per visit for the Visitor Security Escort would be a fee reduction for any visit that lasted more than an hour, and so it would reduce the burden placed on Users that are still subject to the fee.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually review, and consider adjusting, its services and related fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–NYSEArca–2016–21 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NYSEArca–2016–21. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEArca–2016–21, and should be submitted on or before April 1, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–05434 Filed 3–10–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77309; File No. SR–NASDAQ–2016–035]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Establish a Secondary Contingency Procedure To Enable the Exchange To Report an Official Closing Price on Behalf of an Impaired Primary Listing Exchange

March 7, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 2, 2016, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish a Secondary Contingency Procedure that would enable the Exchange to report an Official Closing Price on behalf of an impaired primary listing exchange.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.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

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

Nasdaq has robust and resilient systems that are designed to ensure fair and orderly markets, including multiple redundancies and back-up systems. For the critical Nasdaq Official Closing Price (''NOCP''), Nasdaq currently has three systems that are designed to ensure the orderly execution and dissemination of the NOCP: (1) The Nasdaq Closing Cross set forth in Rule 4754(b)(1); Auxiliary Procedures described in Rule 4754(b)(5); and Contingency Procedures contained in Rule 4754(b)(7).

Here, Nasdaq is proposing to establish Secondary Contingency Procedures in proposed new Rule 4754(b)(8). This proposal is made in conjunction with the New York Stock Exchange LLC (''NYSE''), NYSE Arca, Inc., and the exclusive securities information processors for the Nasdaq UTP Plan and the Consolidated Quote/Consolidated Tape Plan (''SIPs'').

Overview of Secondary Contingency Procedures

Procedurally, Nasdaq, as a primary listing market, will designate a back-up exchange to provide an official closing price in the event that Nasdaq's market is impaired and unable to execute a closing auction for all or a subset of listed securities. Nasdaq would invoke the Secondary Contingency Procedures by announcing publicly that its market is impaired and unable to execute a closing auction. If Nasdaq makes that announcement prior to 3:00 p.m., Eastern Standard Time (''EST''), the official closing price from Nasdaq's designated back-up exchange would serve as the NOCP. If Nasdaq makes that announcement after 3:00 p.m., EST, the SIP would calculate a Volume Weighted Average Price (''VWAP''), described in more detail below. Whether the announcement is made before or after 3:00 p.m., EST, the SIP would publish the NOCP on Nasdaq's behalf either: (1) Based on a message from Nasdaq's back-up exchange or (2) based on the VWAP calculation.

Designation of Back-Up Exchange

Nasdaq proposes to designate NYSE Arca as its official back-up exchange. Nasdaq believes that NYSE Arca is best positioned to serve as Nasdaq's back-up for two primary reasons: (1) NYSE Arca and Nasdaq membership substantially overlaps; (2) NYSE Arca already operates an effective closing cross that it can use to execute a closing cross in Nasdaq-listed securities. In the event Nasdaq is unable to execute a closing cross, Nasdaq members that are also NYSE Arca members should be technically prepared to transfer liquidity to NYSE Arca to ensure a deeply liquid closing cross.

Nasdaq expects NYSE Arca will designate Nasdaq as its back-up exchange for the same reasons. Again, the two exchanges' memberships substantially overlap, meaning that liquidity can and already does flow smoothly from one exchange to the other. Also, Nasdaq already operates a closing cross for securities listed on NYSE Arca, as well as all other securities for which consolidated information is disseminated via Tapes A and B.

The Role of the SIPs

The Operating Committees for the Nasdaq and CQ/CT Plans have already voted to modify the SIPs to support this proposal. Specifically, each exchange that is designated as a back-up exchange (Nasdaq and NYSE Arca), will disseminate via the SIPs an official closing price in every listed security marked with the .M sale condition code.

The SIPs will apply the following procedures:

1. Each primary listing exchange would print a standardized Official Closing Price (''OCP''), with a sale condition 'M,' in each security it trades, whether as primary or on a UTP basis.

2. Each primary listing exchange would include in its rules that, in the event that it is impaired and cannot conduct a closing auction, the exchange's contingency OCP would be the OCP of a specified ''back-up exchange'' or, if the impairment is announced after 3:00 p.m., EST, a VWAP calculation.

3. In the event that a primary listing exchange publicly announces that it is impaired and unable to conduct a closing auction for all or a subset of its primary symbols, the SIP would print the primary listing exchange's contingency OCP as the OCP of the primary listing exchange, including calculation of the VWAP. The advantages of the SIP reprinting the contingency OCP as the OCP of the primary listing exchange, rather than the back-up exchange separately sending to the SIP its OCP as the OCP of the primary exchange are that:

a. The SIP provides a centralized service of which each primary listing exchange can take advantage

b. Participant—line validations are retained

c. There is assurance of full symbol coverage

d. The SIP provides a single location for future updates or configuration changes or new primary listing exchanges

e. A single source and method for VWAP calculations

** this is so with either proposal

4. The primary listing exchange's contingency OCP would differ depending on what time the impaired primary market announces that it will be using the closing contingency plan.

a. If announced *prior* to 3:00 p.m., EST, the primary listing exchange's contingency OCP would be based on the following hierarchy:

i. Official Closing Price (sale condition 'M') of a pre-designated back-up exchange(s). An exchange that has more than 1 back-up exchange as part of its hierarchy of contingency OCPs, will announce publicly the exchange(s) that will be relied on for the contingency OCP.

ii. If no such contingency OCP exists, then a VWAP calculated by the SIP of the final 5 minute regular trading session. The VWAP calculations would include all last sale eligible trades in the last 5 minutes of the normal trading day, including the closing auctions prints of all markets.

iii. If no last sale eligible trades printed in the last 5 minutes, then the consolidated last sale during regular trading hours.

iv. If no such same day consolidated last sale eligible trades exist, then the primary listing exchange's prior trading day's Official Closing Price.

b. If announced *after* 3:00 p.m., EST, the primary listing exchange's contingency OCP would be determined by the following hierarchy:

i. Final 5 minute VWAP of regular trading session (same calculation as described above).

ii. If no last sale eligible trades printed in the last 5 minutes, then the consolidated last sale during regular trading hours.

iii. If no such same day consolidated last sale eligible trades exist, then the primary listing exchange's prior trading day's Official Closing Price.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [3] in general, and furthers the

[3] 15 U.S.C. 78f(b).

objectives of Section 6(b)(5) of the Act [4] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would provide transparency in how the Exchange would determine the Nasdaq Official Closing Price in Exchange-listed securities when the Exchange is unable to conduct a closing transaction due to a systems or technical issue. The Exchange believes that the proposed amendments would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed determination of a Nasdaq Official Closing Price was crafted in response to input from industry participants and would:

- Provide a pre-determined, consistent solution that would result in a closing print to the SIP within a reasonable time frame from the normal closing time;
- minimize the need for industry participants to modify their processing of data from the SIP; and
- provide advance notification of the applicable closing contingency plan to provide sufficient time for industry participants to route any closing interest to an alternate venue to participate in that venue's closing auction.

More specifically, the Exchange believes the proposed hierarchy for determining the Nasdaq Official Closing Price if the Exchange determines that it is impaired before 3:00 p.m., EST, would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposal, which is based on input from market participants, would provide sufficient time for market participants to direct closing-only interest to a designated alternate exchange in time for such interest to participate in a closing auction on such alternate venue in a meaningful manner.

The Exchange further believes that relying on the official closing price of a designated alternate exchange would provide for an established hierarchy for determining an Official Closing Price for an Exchange-listed security if there is insufficient interest to conduct a closing auction on the alternate exchange. In such case, the rules of NYSE Arca and Nasdaq already provide a mechanism for determining an official closing price for securities that trade on those markets.

The Exchange further believes that if the Exchange determines after 3:00 p.m., EST, that it is impaired and unable the conduct a closing transaction, the proposed VWAP calculation would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would provide for a mechanism to determine the value of an affected security for purposes of determining a Nasdaq Official Closing Price. By using a volume-weighted calculation that would include the closing transactions on an affected security on alternate exchanges as well as any busts or corrections that were reported up to the time that the SIP calculates the value, the Exchange believes that the proposed calculation would reflect the correct price of a security. In addition, by using a VWAP calculation rather than the last consolidated last-sale eligible price as of the end of regular trading hours, the Exchange would reduce the potential for an anomalous trade that may not reflect the true price of a security from being set as the Nasdaq Official Closing Price for a security.

The Exchange further believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposal would have minimal impact on market participants. As proposed, from the perspective of market participants, even if the Exchange were impaired, the SIP would publish a Nasdaq Official Closing Price for Exchange-listed securities on behalf of the Exchange in a manner that would be no different than if the Exchange were not impaired. If the Exchange determines that it is impaired after 3:00 p.m., market participants would not have to make any system changes. If the Exchange determines that it is impaired before 3:00 p.m., EST, and designates an alternate exchange, market participants may have to do systems work to re-direct closing-only orders to the alternate exchange. However, the Exchange understands, based on input from market participants, that such changes would be feasible based on the amount of advance notice.

In addition, the Exchange believes that designating an alternate exchange when there is sufficient time to do so would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would allow for the price-discovery mechanism of a closing auction to be available for impacted Exchange-listed securities

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues, but rather to provide for how the Exchange would determine an Official Closing Price for Exchange-listed securities if it is impaired and cannot conduct a closing transaction due to a systems or technical issue. The proposal has been crafted with input from market participants, Nasdaq, and the SIPs, and is designed to reduce the burden on competition by having similar back-up procedures across all primary listing exchanges if such exchange is impaired and cannot conduct a closing transaction.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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–NASDAQ–2016–035 *on the subject line.*

[4] 15 U.S.C. 78f(b)(5).

Paper Comments

• Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2016–035. 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–NASDAQ–2016–035 and should be submitted on or before April 1, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–05440 Filed 3–10–16; 8:45 am]

BILLING CODE 8011–01–P

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77311; File No. SR–ICEEU–2016–002]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Delegation of Authority To Approve Certain Rule and Procedure Amendments

March 7, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 29, 2016, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by ICE Clear Europe. ICE Clear Europe filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(4)(i)[4] thereunder, so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

ICE Clear Europe is proposing certain rule changes relating to the delegation by the ICE Clear Europe Board of Directors to its President and Managing Director (acting together with the Head of Regulation) of authority to approve certain rule and procedure amendments.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICE Clear Europe has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4)(i).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the changes is to authorize the President and Managing Director of ICE Clear Europe, acting together with the Head of Regulation, to approve certain amendments to the ICE Clear Europe Clearing Rules and Procedures, without the need for specific Board approval. Under existing practice, consistent with the ICE Clear Europe Articles, all Rule and Procedure amendments, regardless of significance, require Board approval. In light of its experience with this practice, the ICE Clear Europe Board has determined that certain categories of Rule and Procedure changes do not necessarily need Board approval, as discussed herein.

Accordingly, the ICE Clear Europe Board proposes to delegate to the President and Managing Director, acting together with the Head of Regulation, authority to approve Rule and Procedure amendments relating to business-as-usual product launches and operational processes. These categories of amendments would include, for example, amendments relating to launches of new cleared products of the same types as currently cleared, amendments that reflect changes in operational practices and processes, and drafting clarifications, updates and corrections to errors. Such amendments would not be required to be submitted for approval to the Board. The delegation will not otherwise affect other aspects of the Rule and Procedure amendment process, including the role of the relevant Risk Committees, consultation with Clearing Members and others as appropriate, internal regulatory, business and operational reviews and internal or external legal review, as appropriate. The delegation, of course, will also not affect regulatory submission, filing and approval requirements, as applicable. ICE Clear Europe management will report to the Board any Rule and Procedure amendments approved under this delegated authority.

The delegation does not apply to Rule and Procedure changes amendments [sic] that are required to ensure compliance with relevant legislation directed at ICE Clear Europe as a clearing organization. Accordingly, such amendments will continue to require Board approval. In addition, even for amendments that may be approved by the President and Managing Director (acting together with the Head of Regulation), the delegation would not

preclude submission of amendments to and approval by the Board if ICE Clear Europe determined that was appropriate in the particular circumstances.

In ICE Clear Europe's view, the proposed delegation will provide an efficient means of approving minor Rule and Procedure changes, consistent with the governance requirements of the clearing house. In light of its experience with the current approval practice, ICE Clear Europe believes that the categories of rule and procedure amendments being delegated do not typically rise to the level of significance that warrants Board approval, and that requiring the Board to review and approve such amendments is not necessarily a good use of the Board's time and resources. In approving the delegation of authority, the Board concluded that the internal review, consultation and regulatory processes around the rule amendment process will ensure appropriate review and consideration of any proposed amendments.

2. Statutory Basis

ICE Clear Europe believes that the changes described herein are consistent with the requirements of section 17A of the Act [5] and the regulations thereunder applicable to it, and are consistent with the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts and transactions, the safeguarding of securities and funds in the custody or control of ICE Clear Europe or for which it is responsible and the protection of investors and the public interest, within the meaning of section 17A(b)(3)(F) of the Act.[6] As discussed above, the changes are intended to create a more efficient procedure for review and approval of certain business-as-usual and operational Rule and Procedure amendments. Under the revised practice, such amendments could be approved by the President and Managing Director acting together with the Head of Regulation, without the need for Board approval. In ICE Clear Europe's view, such amendments do not generally warrant the Board's detailed review, and the delegation will accordingly permit the Board to devote its time and resources to other Clearing House matters. The Board will be notified of all amendments approved pursuant to delegated authority and will retain oversight of the process. As a result, ICE Clear Europe believes the changes will promote the prompt and accurate clearance and settlement of securities and derivatives transactions, and further the public interest in the safe and effective clearing of such transactions. The changes are thus consistent with the requirements of section 17A of the Act.[7]

B. Self-Regulatory Organization's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed changes to the rules would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purpose of the Act. The amendments relate to ICE Clear Europe's internal approval processes, and ICE Clear Europe does not believe that these changes will impose any additional costs on Clearing Members or other market participants. ICE Clear Europe further does not believe that the amendments will adversely affect access to clearing by Clearing Members or their customers or otherwise adversely affect Clearing Members or market participants or the market for clearing services generally.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed changes to the rules have not been solicited or received. ICE Clear Europe will notify the Commission of any written comments received by ICE Clear Europe.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A) [8] of the Act and Rule 19b–4(f)(1) [9] thereunder. The amendments constitute a stated policy, practice or interpretation with respect to the meaning, administration or enforcement of an existing rule. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule changes are 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–ICEEU–2016–002 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–ICEEU–2016–002. 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 filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's Web site at *https://www.theice.com/clear-europe/regulation#rule-filings.*

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–ICEEU–2016–002 and should be submitted on or before April 1, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–05442 Filed 3–10–16; 8:45 am]

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[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78q–1.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(1).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77310; File No. SR–BATS–2016–27]

Self-Regulatory Organizations; Bats BZX Exchange, Inc. f/k/a BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 11.27(b), Compliance With Data Collection Requirements, Relating to the Regulation NMS Plan To Implement a Tick Size Pilot Program

March 7, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on March 2, 2016, Bats BZX Exchange, Inc. f/k/a BATS Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Exchange Rule 11.27(b) regarding the requirements for the collection and transmission of data pursuant to Appendices B and C of the Regulation NMS Plan to Implement a Tick Size Pilot Program (''Plan'').

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 25, 2014, NYSE Group, Inc., on behalf of BZX, BATS Y-Exchange, Inc., Chicago Stock Exchange, Inc. (''CHX''), EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc. (''FINRA''), NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, New York Stock Exchange LLC (''NYSE''), NYSE MKT LLC, and NYSE Arca, Inc. (collectively ''Participants''), filed with the Commission, pursuant to section 11A of the Act[5] and Rule 608 of Regulation NMS thereunder,[6] the Plan to Implement a Tick Size Pilot Program (''Pilot'').[7] The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.[8] The Plan[9] was published for comment in the **Federal Register** on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.[10]

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small-capitalization companies. Each Participant is required to comply, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan. As is described more fully below, the proposed rules would require Members[11] to comply with the applicable data collection requirements of the Plan.[12]

The Pilot will include stocks of companies with $3 billion or less in market capitalization, an average daily trading volume of one million shares or less, and a volume weighted average price of at least $2.00 for every trading day. The Pilot will consist of a control group of approximately 1400 Pilot Securities and three test groups with 400 Pilot Securities in each (selected by a stratified random sampling process).[13] During the pilot, Pilot Securities in the control group will be quoted at the current tick size increment of $0.01 per share and will trade at the currently permitted increments. Pilot Securities in the first test group (''Test Group One'') will be quoted in $0.05 minimum increments but will continue to trade at any price increment that is currently permitted.[14] Pilot Securities in the second test group (''Test Group Two'') will be quoted in $0.05 minimum increments and will trade at $0.05 minimum increments subject to a midpoint exception, a retail investor order exception, and a negotiated trade exception.[15] Pilot Securities in the third test group (''Test Group Three'') will be subject to the same quoting and trading increments as Test Group Two and also will be subject to the ''Trade-at'' requirement to prevent price matching by a market participant that is not displaying at a Trading Center's ''Best Protected Bid'' or ''Best Protected Offer,'' unless an enumerated exception applies.[16] In addition to the exceptions provided under Test Group Two, an exception for Block Size orders and exceptions that mirror those under Rule 611 of Regulation NMS[17] will apply to the Trade-at requirement.

In approving the Plan, the Commission noted that the Trading Center data reporting requirements would facilitate an analysis of the effects of the Pilot on liquidity (*e.g.,* transaction costs by order size), execution quality (*e.g.,* speed of order executions), market maker activity, competition between trading venues (*e.g.,* routing frequency of market orders), transparency (*e.g.,* choice between displayed and hidden orders), and market dynamics (*e.g.,* rates and speed of order cancellations).[18] The Commission noted that Market Maker

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] 15 U.S.C. 78k–1.

[6] 17 CFR 242.608.

[7] *See* Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

[8] *See* Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

[9] Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

[10] *See* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (''Approval Order'').

[11] The term ''Member'' is defined as ''any registered broker or dealer that has been admitted to membership in the Exchange. *See* Exchange Rule 1.5(n).

[12] The Exchange proposes to add Information and Policy .11 to Rule 11.27 to provide that the Rule shall be in effect during a pilot period to coincide with the pilot period for the Plan (including any extensions to the pilot period for the Plan).

[13] *See* Section V of the Plan for identification of Pilot Securities, including criteria for selection and grouping.

[14] *See* Section VI(B) of the Plan.

[15] *See* Section VI(C) of the Plan.

[16] *See* Section VI(D) of the Plan.

[17] 17 CFR 242.611.

[18] *See* Approval Order, 80 FR at 27543.

profitability data would assist the Commission in evaluating the effect, if any, of a widened tick increment on market marker profits and any corresponding changes in the liquidity of small-capitalization securities.[19]

Compliance With the Data Collection Requirements of the Plan

The Plan contains requirements for collecting and transmitting data to the Commission and to the public.[20] Specifically, Appendix B.I of the Plan (Market Quality Statistics) requires Trading Centers [21] to submit variety of market quality statistics, including information about an order's original size, whether the order was displayable or not, the cumulative number of orders, the cumulative number of shares of orders, and the cumulative number of shares executed within specific time increments, *e.g.,* from 30 seconds to less than 60 seconds after the time of order receipt. This information shall be categorized by security, order type, original order size, hidden status, and coverage under Rule 605.[22] Appendix B.I of the Plan also contains additional requirements for market orders and marketable limit orders, including the share-weighted average effective spread for executions of orders; the cumulative number of shares of orders executed with price improvement; and, for shares executed with price improvement, the share-weighted average amount per share that prices were improved.

Appendix B.II of the Plan (Market and Marketable Limit Order Data) requires Trading Centers to submit information relating to market orders and marketable limit orders, including the time of order receipt, order type, the order size, the National Best Bid and National Best Offer (''NBBO'') quoted price, the NBBO quoted depth, the average execution price-share-weighted average, and the average execution time-share-weighted average.

The Plan requires Appendix B.I and B.II data to be submitted by Participants that operate a Trading Center, and by members of the Participants that operate Trading Centers. The Plan provides that each Participant that is the Designated Examining Authority (''DEA'') for a member of the Participant that operates a Trading Center shall collect such data in a pipe delimited format, beginning six months prior to the Pilot Period and ending six months after the end of the Pilot Period. The Plan also requires the Participant, operating as DEA, to transmit this information to the SEC within 30 calendar days following month end.

On February 10, 2016, the Commission approved a proposed rule change by the Exchange to adopt Rule 11.27(b) which sets forth Member's requirements for the collection and transmission of data pursuant to Appendices B and C of the Plan.[23]

Description of Proposed Changes to Rule 11.27(b)

Appendix B.IV (Daily Market Maker Participation Statistics) requires a Participant to collect data related to Market Maker participation from each Market Maker [24] engaging in trading activity on a Trading Center operated by the Participant. Exchange Rule 11.27(b)(3)(A) provides that a Member that is a Market Maker shall collect and transmit to their DEA data relating to Item IV of Appendix B of the Plan with respect to activity conducted on any Trading Center in Pilot Securities and Pre-Pilot Data Collection Securities in furtherance of its status as a registered Market Maker, including a Trading Center that executes trades otherwise than on a national securities exchange, for transactions that have settled or reached settlement date. The rule requires Market Makers to transmit such data in a format required by their DEA, by 12:00 p.m. EST on T+4 for: (i) Transactions in each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and (ii) for transactions in each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

Appendix C.I (Market Maker Profitability) requires a Participant to collect data related to Market Maker profitability from each Market Maker for which it is the DEA. Specifically, the Participant is required to collect the total number of shares of orders executed by the Market Maker; the raw Market Maker realized trading profits, and the raw Market Maker unrealized trading profits. Data is to be collected for dates starting six months prior to the Pilot Period through six months after the end of the Pilot Period. This data is to be collected on a monthly basis, to be provided in a pipe delimited format to the Participant, as DEA, within 30 calendar days following month end. Appendix C.II (Aggregated Market Maker Profitability) requires the Participant, as DEA, to aggregate the Appendix C.I data, and to categorize this data by security as well as by the control group and each Test Group. That aggregated data will contain information relating to total raw Market Maker realized trading profits, volume-weighted average of raw Market Maker realized trading profits, the total raw Market Maker unrealized trading profits, and the volume-weighted average of Market Maker unrealized trading profits.

Exchange Rule 11.27(b)(4) sets forth the requirements for the collection and transmission of data pursuant to Appendix C.I of the Plan. Rule 11.27(b)(4)(A) requires that a Member that is a Market Maker shall collect and transmit to their DEA the data described in Item I of Appendix C of the Plan with respect to executions in Pilot Securities that have settled or reached settlement date that were executed on any Trading Center. The rule also requires Members to provide such data in a format required by their DEA by 12 p.m. EST on T+4 for executions during and outside of Regular Trading Hours in each: (i) Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and (ii) Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

FINRA and CHX are Participants of the Plan and are to collect data relating to Item IV of Appendix B of the Plan and Item I of Appendix C of the Plan on behalf of the Participants. For Trading Centers for which it is the DEA, FINRA issued a Market Maker Transaction Data Technical Specification to collect data on Pre-Pilot Data Collection Securities and Pilot Securities from Trading Centers to comply with the Plan's data

[19] *Id.*

[20] The Exchange is also required by the Plan to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. The Exchange separately proposes rules that would require compliance by its Members with the applicable quoting and trading requirements specified in the Plan, and has reserved Paragraph (a) for such rules. *See* Securities Exchange Act Release No. 76552 (December 3, 2015), 80 FR 76591 (December 9, 2015) (SR–BATS–2015–108).

[21] The Plan incorporates the definition of a ''Trading Center'' from Rule 600(b)(78) of Regulation NMS. Regulation NMS defines a ''Trading Center'' as ''a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent.'' *See* 17 CFR 242.600(b).

[22] 17 CFR 242.605.

[23] *See* Securities Exchange Act Release No. 77105 (February 10, 2016), 81 FR 8112 (February 17, 2016) (SR–BATS–2015–102).

[24] The Plan defines a Market Maker as ''a dealer registered with any self-regulatory organization, in accordance with the rules thereof, as (i) a market maker or (ii) a liquidity provider with an obligation to maintain continuous, two-sided trading interest.''

collection requirements.[25] CHX also adopted procedures to comply with the Plan's data collection requirements for Market Makers that CHX serves as DEA.[26]

FINRA and CHX serve as DEA for a large majority of Members. However, the Exchange understands that some Members that are Market Makers do not utilize FINRA or CHX as their DEA and have a DEA that is not a Participant to the Plan and, therefore, not subject to the Plan's data collection requirements. For example, the Chicago Board Options Exchange, Inc, (''CBOE'') is not a Participant to the Plan and acts as DEA for a small portion of the Exchange's Members. In such case, a DEA that is not a Participant of the Plan would not be required to collect the required data and may not establish procedures for which Members it acts a DEA for to report the data required under subparagraphs (b)(3)(A) and (b)(4)(A) of Rule 11.27 and in accordance with Item IV of Appendix B and Item I of Appendix C of the Plan. Therefore, the Exchange proposes to adopt subparagraph (b)(3)(B) to Rule 11.27 to require a Member that is a Market Maker whose DEA is not a Participant to the Plan to transmit the data collected pursuant to paragraph (3)(A) of Rule 11.27(b) to FINRA. The Exchange also proposes to adopt paragraph (b)(4)(B) of Rule 11.27 to require a Member that is a Market Maker whose DEA is not a Participant to the Plan to transmit the data collected pursuant to paragraph (4)(A) of Rule 11.27(b) to FINRA.

The Exchange believes the proposed rule change is necessary to ensure that all of its Members are able to report the data required by subparagraphs (b)(3)(A) and (b)(4)(A) of Rule 11.27 in compliance with the Plan. As noted above, FINRA has established a process by which they are to collect data relating to Item IV of Appendix B and Item I of Appendix C of the Plan on behalf of the Participants for those Members that it serves as DEA.[27] The Exchange believes requiring Members who utilize a DEA that is not a Participant to the Plan to report data required by subparagraphs (b)(3)(A) and (b)(4)(A) of Rule 11.27 to FINRA would provide such Members a viable option to report such data required by the Plan.

Like data collected by a DEA that is a Participant, Market Makers would be required to transmit the data required by subparagraphs (b)(3)(A) and (b)(4)(A) of the Rule 11.27 in a format required by FINRA by 12:00 p.m. EST on T+4 for: (i) Transactions in each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and (ii) for transactions in each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

Lastly, the Exchange proposes to amend current Exchange Rule 11.27(b)(3)(B). Current Exchange Rule 11.27(b)(3)(B) provides that the Exchange shall transmit the data collected by the DEA pursuant to Rule 11.27(b)(3)(A) above relating to Market Maker activity on a Trading Center operated by the Exchange to the SEC in a pipe delimited format within 30 calendar days following month end. This subparagraph would be renumbered as Rule 11.27(b)(3)(C) and amended to include the data collected by FINRA pursuant to subparagraph (b)(3)(B) as part of the Exchange's submission to the SEC. The Exchange shall also make such data publicly available on the Exchange Web site on a monthly basis at no charge and shall not identify the Trading Center that generated the data.

Implementation Date

The proposed rule change will be effective on April 4, 2016.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act[28] in general, and furthers the objectives of section 6(b)(5) of the Act[29] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the Act because it ensures all Members are able to report the data required by subparagraphs (b)(3)(A) and (b)(4)(A) of Rule 11.27 in compliance with the Plan. The Exchange believes requiring Members who utilize a DEA that is not a Participant to the Plan to report data required by subparagraphs (b)(3)(A) and (b)(4)(A) of Rule 11.27 to FINRA would provide such Members a viable option to report such data required by the Plan. In approving the Plan, the SEC noted that the Pilot was an appropriate, data-driven test that was designed to evaluate the impact of a wider tick size on trading, liquidity, and the market quality of securities of smaller capitalization companies, and was therefore in furtherance of the purposes of the Act. In addition, ensuring that this data is properly reported by Trading Centers who's [sic] DEA is not a Participant of the Plan will facilitate the analysis of the effects of the Pilot on liquidity, execution quality, market maker activity, competition between trading venues, transparency, and market dynamics. The Exchange believes that this proposal is in furtherance of the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act because it is designed to assist the Exchange in meeting its regulatory obligations pursuant of the Plan as well as ensure Members are able to submit the required data in furtherance of compliance with the Plan.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change ensures all Members are able to report the data required by subparagraphs (b)(3)(A) and (b)(4)(A) of Rule 11.27 in compliance with the Plan and is designed to assist the Exchange in meeting its regulatory obligations pursuant of the Plan. The Exchange also notes that the data collection requirements for Members that operate Trading Centers will apply equally to all such Members, as will the data collection requirements for Market Makers.

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: (A) Significantly affect the protection of investors or the public interest; (B) impose any significant

[25] FINRA members for which FINRA is their DEA should refer to the Tick Size OATS Data Specifications on the FINRA OATS Web site at *http://www.finra.org/industry/oats/* for detailed information and FAQs about the proposed specific OATS Tick Size reporting requirements.

[26] *See Tick Size Pilot Program—CHX MM Transaction Data Technical Specifications, available at http://www.chx.com/_literature_143998/Tick_Size_Pilot_Program_-_CHX_MM_Transaction_Data_Technical_Specification.*

[27] *See supra* note 25.

[28] 15 U.S.C. 78f(b).

[29] 15 U.S.C. 78f(b)(5).

burden on competition; and (C) by its terms, become operative for 30 days from the date on which it was filed or such shorter time as the Commission may designate it has become effective pursuant to section 19(b)(3)(A) of the Act[30] and paragraph (f)(6) of Rule 19b–4 thereunder,[31] the Exchange has designated this rule filing as non-controversial. The Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

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: (1) Necessary or appropriate in the public interest; (2) for the protection of investors; or (3) 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–BATS–2016–27 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2016–27. 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–BATS–2016–27, and should be submitted on or before April 1, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–05441 Filed 3–10–16; 8:45 am]

BILLING CODE 8011–01–P

[30] 15 U.S.C. 78s(b)(3)(A).

[31] 17 CFR 240.19b–4.

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32023; 812–14577]

Pointbreak Advisers LLC, et al.; Notice of Application

March 7, 2016.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

APPLICANTS: Pointbreak Advisers LLC (''Pointbreak Advisers''), Pointbreak ETF Trust (the ''Trust''), and ALPS Distributors, Inc. (the ''Distributor'').

SUMMARY: *Summary of Application:* Applicants request an order that permits: (a) Actively-managed series of certain open-end management investment companies to issue shares (''Shares'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days from the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.

DATES: *Filing Dates:* The application was filed on November 10, 2015 and amended on December 23, 2015 and February 3, 2016.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 1, 2016, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: Pointbreak Advisers and Trust, P.O. Box 347312, San Francisco, CA 94134; Distributor, 1290 Broadway, Suite 1100, Denver, CO 80203.

FOR FURTHER INFORMATION CONTACT: Hae-Sung Lee, Attorney-Adviser, at (202) 551–7345; Bruce MacNeil, Senior Counsel, at (202) 551–6817 or Daniele Marchesani, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://*

www.sec.gov/search/search.htm or by calling (202) 551–8090.

Applicants' Representations

1. The Trust, a Delaware statutory trust, is registered with the Commission as an open-end management investment company. Applicants are seeking an order (''Order'') to permit the Trust, which is organized as a series fund, to operate a series with an actively managed investment portfolio (the ''Initial Fund''). Applicants currently expect the Initial Fund to be the Pointbreak Diversified Commodity Fund. The Initial Fund is an actively managed ETF (defined below) that seeks long-term capital appreciation.

2. Pointbreak Advisers, a Delaware limited liability company, is registered with the Commission as an investment adviser under the Investment Adviser Act of 1940 (''Advisers Act''), and will be the investment adviser to the Initial Fund. The Adviser (as defined below) may enter into sub-advisory agreements with investment advisers to act as sub-advisers with respect to the Funds (as defined below) (each, a ''Sub-Adviser''). Applicants state that any Sub-Adviser will be registered, or not subject to registration, under the Advisers Act. The Distributor is a registered broker-dealer (''Broker'') under the Securities Exchange Act of 1934 (''Exchange Act'') and will act as the distributor and principal underwriter of the Funds (the ''Distributor'').

3. Applicants request that the Order apply to the Initial Fund and any future series of the Trust or of any other open-end management companies that may utilize active management investment strategies (collectively, ''Future Funds''). Any Future Fund will (a) be advised by Pointbreak Advisers or an entity controlling, controlled by, or under common control with Pointbreak Advisers (Pointbreak Advisers and each such other entity and any successor thereto included in the term ''Adviser''),[1] and (b) comply with the terms and conditions of the application.[2] The Initial Fund and Future Funds together are the ''Funds.'' [3] Each Fund will consist of a portfolio of securities (including fixed income securities and/or equity securities) and/or currencies traded in the U.S. and/or non-U.S. markets, and derivatives, other assets, and other investment positions (''Portfolio Instruments'').[4] The Funds may invest in ''Depositary Receipts.'' [5] Each Fund will operate as an actively managed exchange-traded fund (''ETF'').

4. Applicants request that any exemption under section 12(d)(1)(J) of the Act from sections 12(d)(1)(A) and (B) apply to: (i) Any Fund that is currently or subsequently part of the same ''group of investment companies'' as the Initial Fund within the meaning of section 12(d)(1)(G)(ii) of the Act; (ii) any principal underwriter for the Fund; (iii) any Brokers selling Shares of a Fund to an Investing Fund (as defined below); and (iv) each management investment company or unit investment trust registered under the Act that is not part of the same ''group of investment companies'' as the Funds, and that enters into a FOF Participation Agreement (as defined below) with a Fund (such management investment companies, ''Investing Management Companies,'' such unit investment trusts, ''Investing Trusts,'' and Investing Management Companies and Investing Trusts together, ''Investing Funds''). Investing Funds do not include the Funds.[6]

5. Applicants anticipate that a Creation Unit will consist of at least 20,000 Shares. Applicants anticipate that the trading price of a Share will range from $10 to $100. All orders to purchase Creation Units must be placed with the Distributor by or through a party that has entered into a participant agreement with the Distributor and the transfer agent of the Fund (''Authorized Participant'') with respect to the creation and redemption of Creation Units. An Authorized Participant is either: (a) A Broker or other participant in the Continuous Net Settlement System of the National Securities Clearing Corporation (''NSCC''), a clearing agency registered with the Commission and affiliated with the Depository Trust Company (''DTC''), or (b) a participant in the DTC (''DTC Participant'').

6. In order to keep costs low and permit each Fund to be as fully invested as possible, Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Instruments''), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (''Redemption Instruments'').[7] On any given Business Day,[8] the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, and these instruments may be referred to, in the case of either a purchase or redemption, as the ''Creation Basket.'' In addition, the Creation Basket will correspond pro rata to the positions in a Fund's portfolio (including cash positions),[9] except: (a) In the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots; [10] or (c) TBA

[1] For the purposes of the requested Order, a ''successor'' is limited to an entity or entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

[2] Any Adviser to a Future Fund will be registered as an investment adviser under the Advisers Act. All entities that currently intend to rely on the Order are named as applicants. Any other entity that relies on the Order in the future will comply with the terms and conditions of the application.

[3] Applicants further request that the Order apply to any future Distributor of the Funds, which would be a Broker and would comply with the terms and conditions of the application. The Distributor of any Fund may be an affiliated person of the Adviser and/or Sub-Advisers.

[4] If a Fund invests in derivatives, then (a) the board of trustees (''Board'') of the Fund will periodically review and approve the Fund's use of derivatives and how the Adviser assesses and manages risk with respect to the Fund's use of derivatives and (b) the Fund's disclosure of its use of derivatives in its offering documents and periodic reports will be consistent with relevant Commission and staff guidance.

[5] Depositary Receipts are typically issued by a financial institution, a ''depositary,'' and evidence ownership in a security or pool of securities that have been deposited with the depositary. A Fund will not invest in any Depositary Receipts that the Adviser or Sub-Adviser deems to be illiquid or for which pricing information is not readily available. No affiliated persons of the applicants, any Future Fund, any Adviser or any Sub-Adviser will serve as the depositary bank for any Depositary Receipts held by a Fund.

[6] An Investing Fund may rely on the Order only to invest in Funds and not in any other registered investment company.

[7] The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act of 1933 (''Securities Act''). In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to Rule 144A under the Securities Act, the Funds will comply with the conditions of Rule 144A.

[8] The Trust will sell and redeem Creation Units of each Fund only on a Business Day. ''Business Day'' is defined to include any day that the Trust is open for business as required by section 22(e) of the Act.

[9] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's net asset value (''NAV'') for that Business Day.

[10] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

Transactions,[11] short positions and other positions that cannot be transferred in-kind [12] will be excluded from the Creation Basket.[13] If there is a difference between NAV attributable to a Creation Unit and the aggregate market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the ''Cash Amount'').

7. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in-kind, solely under the following circumstances: (a) To the extent there is a Cash Amount, as described above; (b) if, on a given Business Day, a Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an Authorized Participant, a Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash; (d) if, on a given Business Day, a Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are not eligible for transfer through either the NSCC or DTC; or (ii) in the case of Funds holding non-U.S. investments (''Global Funds''), such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if a Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Global Fund would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in-kind.[14]

8. Each Business Day, before the open of trading on a national securities exchange, as defined in section 2(a)(26) of the Act (''Stock Exchange''), on which Shares are listed, each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Cash Amount (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following Business Day, and there will be no intra-day changes to the Creation Basket except to correct errors in the published Creation Basket. The Stock Exchange will disseminate every 15 seconds throughout the trading day through the facilities of the Consolidated Tape Association an amount representing, on a per Share basis, the sum of the current value of the Portfolio Instruments that were publicly disclosed prior to the commencement of trading in Shares on the Stock Exchange.

9. A Fund may recoup the settlement costs charged by NSCC and DTC by imposing a transaction fee on investors purchasing or redeeming Creation Units (the ''Transaction Fee''). The Transaction Fee will be borne only by purchasers and redeemers of Creation Units and will be limited to amounts that have been determined appropriate by the Adviser to defray the transaction expenses that will be incurred by a Fund when an investor purchases or redeems Creation Units.[15] All orders to purchase Creation Units must be placed with the Distributor by or through an Authorized Participant and the Distributor will transmit all purchase orders to the relevant Fund. The Distributor will be responsible for delivering a prospectus (''Prospectus'') to those persons purchasing Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it.

10. Shares will be listed and traded at negotiated prices on a Stock Exchange and traded in the secondary market. Applicants expect that the Stock Exchange will select, or appoint one or more specialists or market makers (collectively, ''Exchange Market Makers'') for the Shares of each Fund.[16] The price of Shares trading on the Stock Exchange will be based on a current bid/offer in the secondary market. Transactions involving the purchases and sales of Shares on the Stock Exchange will be subject to customary brokerage commissions and charges.

11. Applicants expect that purchasers of Creation Units will include arbitrageurs, and that Exchange Market Makers, acting in their unique role to provide a fair and orderly secondary market for Shares, also may purchase Creation Units for use in their own market making activities. Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[17] Applicants expect that arbitrage opportunities created by the ability to continually purchase or redeem Creation Units at their NAV per Share should ensure that the Shares will not trade at a material discount or premium in relation to their NAV.

12. Shares will not be individually redeemable and owners of Shares may acquire those Shares from a Fund, or tender such Shares for redemption to the Fund, in Creation Units only. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption requests must be placed by or through an Authorized Participant.

13. Neither the Trust nor any Fund will be marketed or otherwise held out as a ''mutual fund.'' Instead, each Fund will be marketed as an ''actively managed exchange-traded fund.'' In all advertising material where the features or method of obtaining, buying or selling Shares traded on the Stock Exchange are described, there will be an

[11] A TBA Transaction is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree on general trade parameters such as agency, settlement date, par amount and price.

[12] This includes instruments that can be transferred in-kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

[13] Because these instruments will be excluded from the Creation Basket, their value will be reflected in the determination of the Cash Amount (defined below).

[14] A ''custom order'' is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

[15] Where a Fund permits an in-kind purchaser to deposit cash in lieu of depositing one or more Deposit Instruments, the purchaser may be assessed a higher Transaction Fee to offset the cost to the Fund of buying those particular Deposit Instruments. In all cases, the Transaction Fee will be limited in accordance with the requirements of the Commission applicable to open-end management investment companies offering redeemable securities.

[16] If Shares are listed on The NASDAQ Stock Market LLC (''Nasdaq'') or a similar electronic Stock Exchange (including NYSE Arca), one or more member firms of that Stock Exchange will act as Exchange Market Maker and maintain a market for Shares trading on that Stock Exchange. On Nasdaq, no particular Exchange Market Maker would be contractually obligated to make a market in Shares. However, the listing requirements on Nasdaq, for example, stipulate that at least two Exchange Market Makers must be registered in Shares to maintain a listing. In addition, on Nasdaq and NYSE Arca, registered Exchange Market Makers are required to make a continuous two-sided market or subject themselves to regulatory sanctions. No Exchange Market Maker will be an affiliated person or an affiliated person of an affiliated person, of the Funds, except within the meaning of section 2(a)(3)(A) or (C) of the Act due solely to ownership of Shares as discussed below.

[17] Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or DTC Participants.

appropriate statement to the effect that Shares are not individually redeemable.

14. The Funds' Web site, which will be publicly available prior to the public offering of Shares, will include a Prospectus and additional quantitative information updated on a daily basis, including, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or mid-point of the bid/ask spread at the time of the calculation of such NAV (''Bid/Ask Price''), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV. On each Business Day, before commencement of trading in Shares on the Stock Exchange, the Fund will disclose on its Web site the identities and quantities of the Portfolio Instruments held by the Fund (including any short positions held in securities) that will form the basis for the Fund's calculation of NAV at the end of the Business Day.[18] This disclosure will look through any Wholly-Owned Subsidiary (defined below) and identify the specific Portfolio Instruments held by that entity.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 2(a)(32) and 5(a)(1) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Trust to redeem Shares in Creation Units only. Applicants state that investors may purchase Shares in Creation Units from each Fund and redeem Creation Units from each Fund. Applicants further state that because the market price of Creation Units will be disciplined by arbitrage opportunities, investors should be able to sell Shares in the secondary market at prices that do not vary materially from their NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in the Prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices, and (c) assure an orderly distribution system of investment company shares by eliminating price competition from brokers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that secondary market trading in Shares does not involve the Funds as parties and cannot result in dilution of an investment in Shares, and to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity should ensure that the difference between the market price of Shares and their NAV remains narrow.

Section 22(e) of the Act

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants observe that settlement of redemptions of Creation Units of Global Funds is contingent not only on the settlement cycle of the U.S. securities markets but also on the delivery cycles present in foreign markets in which those Funds invest. Applicants have been advised that, under certain circumstances, the delivery cycles for transferring Portfolio Instruments to redeeming investors, coupled with local market holiday schedules, will require a delivery process of up to fourteen (14) calendar days. Applicants therefore request relief from section 22(e) in order to provide payment or satisfaction of redemptions within the maximum number of calendar days required for such payment or satisfaction in the principal

[18] Applicants note that under accounting procedures followed by the Funds, trades made on the prior Business Day (''T'') will be booked and reflected in NAV on the current Business Day (''T+1''). Accordingly, each Fund will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for its NAV calculation at the end of such Business Day.

local markets where transactions in the Portfolio Instruments of each Global Fund customarily clear and settle, but in all cases no later than fourteen (14) calendar days following the tender of a Creation Unit.[19]

8. Applicants state that section 22(e) was designed to prevent unreasonable, undisclosed and unforeseen delays in the actual payment of redemption proceeds. Applicants assert that the requested relief will not lead to the problems that section 22(e) was designed to prevent. Applicants state that allowing redemption payments for Creation Units of a Fund to be made within a maximum of fourteen (14) calendar days would not be inconsistent with the spirit and intent of section 22(e). Applicants state each Global Fund's statement of additional information (''SAI'') will disclose those local holidays (over the period of at least one year following the date of the SAI), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days and the maximum number of days needed to deliver the proceeds for each affected Global Fund. Applicants are not seeking relief from section 22(e) with respect to Global Funds that do not affect redemptions in-kind.

Section 12(d)(1) of the Act

9. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, or any other broker or dealer from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

10. Applicants request relief to permit Investing Funds to acquire Shares in excess of the limits in section 12(d)(1)(A) of the Act and to permit the Funds, their principal underwriters and any Broker to sell Shares to Investing Funds in excess of the limits in section 12(d)(l)(B) of the Act. Applicants submit that the proposed conditions to the requested relief address the concerns underlying the limits in section 12(d)(1), which include concerns about undue influence, excessive layering of fees and overly complex structures.

11. Applicants submit that their proposed conditions address any concerns regarding the potential for undue influence. To limit the control that an Investing Fund may have over a Fund, applicants propose a condition prohibiting the adviser of an Investing Management Company (''Investing Fund Adviser''), sponsor of an Investing Trust (''Sponsor''), any person controlling, controlled by, or under common control with the Investing Fund Adviser or Sponsor, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Investing Fund Adviser, the Sponsor, or any person controlling, controlled by, or under common control with the Investing Fund Adviser or Sponsor (''Investing Fund's Advisory Group'') from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any sub-adviser to an Investing Management Company (''Investing Fund Sub-Adviser''), any person controlling, controlled by or under common control with the Investing Fund Sub-Adviser, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Investing Fund Sub-Adviser or any person controlling, controlled by or under common control with the Investing Fund Sub-Adviser (''Investing Fund's Sub-Advisory Group'').

12. Applicants propose a condition to ensure that no Investing Fund or Investing Fund Affiliate [20] (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Investing Fund Adviser, Investing Fund Sub-Adviser, employee or Sponsor of the Investing Fund, or a person of which any such officer, director, member of an advisory board, Investing Fund Adviser, Investing Fund Sub-Adviser, employee or Sponsor is an affiliated person (except any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

13. Applicants propose several conditions to address the potential for layering of fees. Applicants note that the board of directors or trustees of any Investing Management Company, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''independent directors or trustees''), will be required to find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Fund in which the Investing Management Company may invest. Applicants also state that any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.[21]

14. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that a Fund will be prohibited from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, other than a Wholly-Owned Subsidiary,[22] except to the extent permitted by

[19] Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations that it may otherwise have under rule 15c6–1 under the Exchange Act. Rule 15c6–1 requires that most securities transactions be settled within three business days of the trade date.

[20] An ''Investing Fund Affiliate'' is any Investing Fund Adviser, Investing Fund Sub-Adviser, Sponsor, promoter and principal underwriter of an Investing Fund, and any person controlling, controlled by or under common control with any of these entities. ''Fund Affiliate'' is an investment adviser, promoter, or principal underwriter of a Fund or any person controlling, controlled by or under common control with any of these entities.

[21] Any reference to NASD Conduct Rule 2830 includes any successor or replacement rule that may be adopted by the Financial Industry Regulatory Authority.

[22] A Fund may invest in a wholly-owned subsidiary, organized under the laws of the Cayman Islands as an exempted company or under the laws of another non-U.S. jurisdiction (each, a ''Wholly-Owned Subsidiary''), in order to pursue its investment objectives and/or ensure that the Fund remains qualified as a registered investment company for U.S. federal income tax purposes. Certain Wholly-Owned Subsidiaries may be investment companies or excluded from the definition of investment company by section 3(c)(1) or 3(c)(7) of the Act. For a Fund that invests in a Wholly-Owned Subsidiary, the Adviser will serve as investment adviser to both the Fund and the Wholly-Owned Subsidiary.

exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

15. To ensure that an Investing Fund is aware of the terms and conditions of the requested Order, the Investing Funds must enter into an agreement with the respective Funds (''FOF Participation Agreement''). The FOF Participation Agreement will include an acknowledgement from the Investing Fund that it may rely on the Order only to invest in a Fund and not in any other investment company.

Sections 17(a)(1) and (2) of the Act

16. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person (''second-tier affiliate''), from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' to include any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act defines ''control'' as the power to exercise a controlling influence over the management or policies of a company and provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities. Each Fund may be deemed to be controlled by an Adviser and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by an Adviser (an ''Affiliated Fund'').

17. Applicants request an exemption under sections 6(c) and 17(b) of the Act from sections 17(a)(1) and 17(a)(2) of the Act to permit in-kind purchases and redemptions of Creation Units by persons that are affiliated persons or second-tier affiliates of the Funds solely by virtue of one or more of the following: (a) Holding 5% or more, or in excess of 25% of the outstanding Shares of one or more Funds; (b) having an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25% of the Shares of one or more Affiliated Funds.[23] Applicants also request an exemption in order to permit a Fund to sell its Shares to and redeem its Shares from, and engage in the in-kind transactions that would accompany such sales and redemptions with, certain Investing Funds of which the Funds are affiliated persons or second-tier affiliates.[24]

18. Applicants assert that no useful purpose would be served by prohibiting such affiliated persons from making in-kind purchases or in-kind redemptions of Shares of a Fund in Creation Units. Absent the unusual circumstances discussed in the application, the Deposit Instruments and Redemption Instruments available for a Fund will be the same for all purchasers and redeemers, respectively, and will correspond *pro rata* to the Fund's Portfolio Instruments. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions will be the same for all purchases and redemptions. Deposit Instruments and Redemption Instruments will be valued in the same manner as those Portfolio Instruments currently held by the relevant Funds, and the valuation of the Deposit Instruments and Redemption Instruments will be made in the same manner and on the same terms for all, regardless of the identity of the purchaser or redeemer. Applicants do not believe that in-kind purchases and redemptions will result in abusive self-dealing or overreaching of the Fund.

19. Applicants also submit that the sale of Shares to and redemption of Shares from an Investing Fund meets the standards for relief under sections 17(b) and 6(c) of the Act. Applicants note that any consideration paid for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Fund in accordance with policies and procedures set forth in the Fund's registration statement.[25] The FOF Participation Agreement will require any Investing Fund that purchases Creation Units directly from a Fund to represent that the purchase of Creation Units from a Fund by an Investing Fund will be accomplished in compliance with the investment restrictions of the Investing Fund and will be consistent with the investment policies set forth in the Investing Fund's registration statement. Applicants also state that the proposed transactions are consistent with the general purposes of the Act and appropriate in the public interest.

Applicants' Conditions

Applicants agree that any Order of the Commission granting the requested relief will be subject to the following conditions:

A. ETF Relief

1. As long as a Fund operates in reliance on the requested Order, the Shares of the Fund will be listed on a Stock Exchange.

2. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that the Shares are not individually redeemable and that owners of the Shares may acquire those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only.

3. The Web site for the Funds, which is and will be publicly accessible at no charge, will contain, on a per Share basis, for each Fund the prior Business Day's NAV and the market closing price or Bid/Ask Price, and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

4. On each Business Day, before commencement of trading in Shares on the Stock Exchange, the Fund will disclose on its Web site the identities and quantities of the Portfolio Instruments held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.

5. The Adviser or any Sub-Adviser, directly or indirectly, will not cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Fund) to acquire any Deposit Instrument for the Fund through a transaction in which the Fund could not engage directly.

6. The requested relief to permit ETF operations will expire on the effective

[23] Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person, or an affiliated person of an affiliated person, of an Investing Fund because an investment adviser to the Funds is also an investment adviser to an Investing Fund.

[24] Applicants expect most Investing Funds will purchase Shares in the secondary market and will not purchase Creation Units directly from a Fund. To the extent that purchases and sales of Shares occur in the secondary market and not through principal transactions directly between an Investing Fund and a Fund, relief from section 17(a) would not be necessary. However, the requested relief would apply to direct sales of Shares in Creation Units by a Fund to an Investing Fund and redemptions of those Shares. The requested relief is intended to also cover the in-kind transactions that may accompany such sales and redemptions.

[25] Applicants acknowledge that the receipt of compensation by (a) an affiliated person of an Investing Fund, or an affiliated person of such person, for the purchase by the Investing Fund of Shares of the Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to an Investing Fund, may be prohibited by section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgment.

date of any Commission rule under the Act that provides relief permitting the operation of actively-managed exchange-traded funds.

B. Section 12(d)(1) Relief

1. The members of the Investing Fund's Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of the Investing Fund's Sub-Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Investing Fund's Advisory Group or the Investing Fund's Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote its Shares of the Fund in the same proportion as the vote of all other holders of the Fund's Shares. This condition does not apply to the Investing Fund's Sub-Advisory Group with respect to a Fund for which the Investing Fund Sub-Adviser or a person controlling, controlled by or under common control with the Investing Fund Sub-Adviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Investing Fund or Investing Fund Affiliate will cause any existing or potential investment by the Investing Fund in a Fund to influence the terms of any services or transactions between the Investing Fund or an Investing Fund Affiliate and the Fund or a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the independent directors or trustees, will adopt procedures reasonably designed to ensure that the Investing Fund Adviser and any Investing Fund Sub-Adviser are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or an Investing Fund Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

4. Once an investment by an Investing Fund in the Shares of a Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, the Board of a Fund, including a majority of the independent directors or trustees, will determine that any consideration paid by the Fund to the Investing Fund or an Investing Fund Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (ii) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Investing Fund Adviser, or trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Investing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–1 under the Act) received from a Fund by the Investing Fund Adviser, or trustee or Sponsor, or an affiliated person of the Investing Fund Adviser, or trustee or Sponsor, other than any advisory fees paid to the Investing Fund Adviser, or trustee, or Sponsor, or its affiliated person by the Fund, in connection with the investment by the Investing Fund in the Fund. Any Investing Fund Sub-Adviser will waive fees otherwise payable to the Investing Fund Sub-Adviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund by the Investing Fund Sub-Adviser, or an affiliated person of the Investing Fund Sub-Adviser, other than any advisory fees paid to the Investing Fund Sub-Adviser or its affiliated person by the Fund, in connection with the investment by the Investing Management Company in the Fund made at the direction of the Investing Fund Sub-Adviser. In the event that the Investing Fund Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an Affiliated Underwriting.

7. The Board of a Fund, including a majority of the independent directors or trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund in an Affiliated Underwriting, once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Investing Fund in the Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Fund.

8. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Fund in excess of the limits in section 12(d)(1)(A), an Investing Fund will execute a FOF Participation Agreement with the Fund stating that their respective boards of directors or trustees and their investment advisers, or trustee and Sponsor, as applicable, understand the terms and conditions of the Order, and agree to fulfill their responsibilities under the Order. At the time of its investment in Shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), an Investing Fund will notify the Fund of the investment. At such time, the Investing Fund will also transmit to the Fund a list of the names of each Investing Fund Affiliate and

Underwriting Affiliate. The Investing Fund will notify the Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Fund and the Investing Fund will maintain and preserve a copy of the Order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of the independent directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund relying on the section 12(d)(1) relief will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent (i) permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes or (ii) the Fund invests in a Wholly-Owned Subsidiary that is a wholly-owned and controlled subsidiary of the Fund as described in the Application. Further, no Wholly-Owned Subsidiary will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act other than money market funds that comply with rule 2a–7 for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–05480 Filed 3–10–16; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Regulatory Fairness Hearing; Region VIII—Sioux Falls, South Dakota

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice of open Hearing of Region VIII Small Business Owners to be held in Sioux Falls, South Dakota.

SUMMARY: The SBA, Office of the National Ombudsman is issuing this notice to announce the location, date and time of the Sioux Falls, South Dakota Regulatory Fairness Hearing. This hearing is open to the public.

DATES: The hearing will be held on Thursday, March 24, 2016, from 10:30 a.m. to 1:00 p.m. (CST).

ADDRESSES: The hearing will be at the Siouxland Libraries—Oak View Branch, 3700 E. 3rd Street, Sioux Falls, SD 57103.

SUPPLEMENTARY INFORMATION: Pursuant to the Small Business Regulatory Enforcement Fairness Act (Pub. L. 104–121), Sec. 222, SBA announces the hearing for Small Business Owners, Business Organizations, Trade Associations, Chambers of Commerce and related organizations serving small business concerns to report experiences regarding unfair or excessive Federal regulatory enforcement issues affecting their members.

FOR FURTHER INFORMATION CONTACT: The hearing is open to the public; however, advance notice of attendance is requested. Anyone wishing to attend and/or make a presentation at the Sioux Falls, South Dakota hearing must contact Elahe Zahirieh by March 17, 2016, in writing, by fax at (202) 481–5719 or email at *ombudsman@sba.gov* in order to be placed on the agenda. For further information, please contact Elahe Zahirieh, Case Management Specialist, Office of the National Ombudsman, 409 3rd Street SW., Suite 330, Washington, DC 20416, by phone (202) 205–6499 and fax (202) 481–6062. Additionally, if you need accommodations because of a disability, translation services, or require additional information, please contact Elahe Zahirieh as well.

For more information on the Office of the National Ombudsman, see our Web site at *www.sba.gov/ombudsman.*

Dated: March 3, 2016.

Miguel J. L'Heureux,

SBA Committee Management Officer.

[FR Doc. 2016–05565 Filed 3–10–16; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 9467]

60-Day Notice of Proposed Information Collection: Supplemental Questionnaire To Determine Entitlement for a U.S. Passport

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. 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 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to May 10, 2016.

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

- *Web:* Persons with access to the Internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2016–0001'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: PPTFormsOfficer@state.gov.*

You must include the DS form number, information collection title, and the OMB control number in any correspondence.

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 PPT Forms Officer, U.S. Department of State, CA/PPT/S/L 44132 Mercure Cir, P.O. Box 1227, Sterling, VA 20166–1227, or at *PPTFormsOfficer@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Supplemental Questionnaire to Determine Entitlement for a U.S. Passport.
- *OMB Control Number:* 1405–0214.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Passport Services, Office of Legal Affairs and Law Enforcement Liaison (CA/PPT/S/L).
- *Form Number:* DS–5513.
- *Respondents:* Individuals applying for a U.S. passport.
- *Estimated Number of Respondents:* 3,257.

• *Estimated Number of Responses:* 3,257.

• *Average Time per Response:* 85 Minutes.

• *Total Estimated Burden Time:* 4,614 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 primary purpose for soliciting this information is to establish entitlement for a U.S. Passport Book or Passport Card. The information may also be used in connection with issuing other travel documents or evidence of citizenship, and in furtherance of the Secretary's responsibility for the protection of U.S. nationals abroad and to administer the passport program.

Methodology: The Supplemental Questionnaire to Determine Entitlement for a U.S. Passport is used to supplement an existing passport application and solicits information relating to the respondent's family and birth circumstances that is needed prior to passport issuance.

Additional information: The Privacy Act statement has been amended to clarify that an applicant's failure to provide his or her Social Security number may result in the denial of an application, consistent with Section 32101 of the Fixing America's Surface Transportation Act (Public Law 114–94) which authorizes the Department to deny U.S. passport applications when the applicant failed to include his or her Social Security number.

Dated: March 4, 2016.

Barry J. Conway,

Acting Deputy Assistant Secretary for Passport Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 2016–05568 Filed 3–10–16; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice: 9471]

Texas-New Mexico Regional Meeting of the Binational Bridges and Border Crossings Group in Chihuahua, Mexico, March 16, 2016

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Delegates from the United States and Mexican governments, the states of Texas and New Mexico, and the Mexican states of Chihuahua, Coahuila, Nuevo Leon, and Tamaulipas, will participate in the Texas-New Mexico Regional Meeting of the U.S.-Mexico Binational Bridges and Border Crossings Group on Wednesday, March 16, 2016 in Chihuahua, Chihuahua, Mexico. The purpose of this meeting is to discuss operational matters involving existing and proposed international bridges and border crossings and their related infrastructure, and to exchange views on policy as well as technical information. This meeting will include a public session on Wednesday, March 16, 2016, from 8:45 a.m. until 10:45 a.m. This session will allow proponents of proposed bridges and border crossings and related projects to make presentations to the delegations and members of the public.

FOR FURTHER INFORMATION CONTACT: For further information on the meeting and to attend the public session, please contact the Mexico Desk's Border Affairs Unit, via email at *WHABorderAffairs@state.gov,* by phone at 202–647–9895, or by mail at Office of Mexican Affairs—Room 3924, Department of State, 2201 C St. NW., Washington, DC 20520.

Dated: March 7, 2016.

Brian Harris,

Acting Director, Office of Mexican Affairs, Department of State.

[FR Doc. 2016–05571 Filed 3–10–16; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF STATE

[Public Notice: 9469]

60-Day Notice of Proposed Information Collection: Supplemental Questionnaire To Determine Identity for a U.S. Passport

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. 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 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to May 10, 2016.

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

• *Web:* Persons with access to the Internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number DOS–2016–0003'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.

• *Email: PPTFormsOfficer@state.gov*

You must include the DS form number, information collection title, and the OMB control number in any correspondence.

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 PPT Forms Officer, U.S. Department of State, CA/PPT/S/L 44132 Mercure Cir, P.O. Box 1227 Sterling, VA 20166–1227, or at *PPTFormsOfficer@state.gov.*

SUPPLEMENTARY INFORMATION:

• *Title of Information Collection:* Supplemental Questionnaire to Determine Identity for a U.S. Passport.

• *OMB Control Number:* 1405–0215.

• *Type of Request:* Revision of a Currently Approved Collection.

• *Originating Office:* Bureau of Consular Affairs, Passport Services, Office of Legal Affairs and Law Enforcement Liaison (CA/PPT/S/L).

• *Form Number:* DS–5520.

• *Respondents:* Individuals applying for a U.S. passport.

• *Estimated Number of Respondents:* 82,347.

• *Estimated Number of Responses:* 82,347.

• *Average Time per Response:* 45 Minutes.

• *Total Estimated Burden Time:* 61,760 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 primary purpose for soliciting this information is to validate an identity claim for a U.S. Passport Book or Passport Card in the narrow category of cases in which the evidence presented by an applicant is insufficient to establish identity. The information may also be used in adjudicating applications for other travel documents and services, and in connection with law enforcement, fraud prevention, border security, counterterrorism, litigation activities, and administrative purposes.

Methodology: The Supplemental Questionnaire to Determine Identity for a U.S. Passport is intended to verify the respondent's identity for purposes of determining eligibility for a U.S. passport. This form is used to supplement an existing passport application and solicits information relating to the respondent's employment and residences that is needed to corroborate an applicant's identity claim prior to passport issuance.

Additional information: The Privacy Act statement has been amended to clarify that an applicant's failure to provide his or her Social Security number may result in the denial of an application, consistent with Section 32101 of the Fixing America's Surface Transportation Act (Pub. L. 114–94) which authorizes the Department to deny U.S. passport applications when the applicant failed to include his or her Social Security number.

Dated: March 4, 2016.

Barry J. Conway,

Acting Deputy Assistant Secretary for Passport Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 2016–05563 Filed 3–10–16; 8:45 am]

BILLING CODE 4710–06–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 35961]

Chicago Central & Pacific Railroad Company, Grand Trunk Western Railroad Company, Illinois Central Railroad Company, and Wisconsin Central Ltd.—Trackage Rights Exemption—Norfolk Southern Railway Company

Norfolk Southern Railway Company (NSR), pursuant to a trackage rights agreement dated February 11, 2016, has agreed to grant Chicago Central & Pacific Railroad Company, Grand Trunk Western Railroad Company, Illinois Central Railroad Company, and Wisconsin Central Ltd. (collectively, CN Roads) overhead trackage rights in Chicago, Cook County, Ill., as follows: (1) Over NSR's portion of rail line known as the CREATE Western Avenue Corridor, between milepost UW 0.0 (CP 518) and milepost UW 5.3 (Ogden Junction), a distance of approximately 5.3 miles; and (2) over a portion of NSR's CREATE project WA7 track (when constructed), between Brighton Park and 21st Street, including that portion of track that connects to BNSF Railway Company's Chillicothe Subdivision.[1]

CN Roads may consummate the transaction on or after March 25, 2016, the effective date of the exemption (30 days after the verified notice of exemption was filed).

According to CN Roads, the proposed trackage rights are intended to facilitate CREATE-related track projects (and transfers), and CN Roads will be granted the subject trackage rights as part of a series of transactions designed to promote railroad traffic fluidity in Chicago.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed by March 18, 2016 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35961, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Robert A. Wimbish, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: March 8, 2016.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Brendetta S. Jones,

Clearance Clerk.

[FR Doc. 2016–05539 Filed 3–10–16; 8:45 am]

BILLING CODE 4915–01–P

[1] CN Roads are indirect subsidiaries of Canadian National Railway Company (CNR). CNR's U.S. rail subsidiaries, including CN Roads, are held directly or indirectly by Grand Trunk Corporation, a wholly-owned, indirect subsidiary of CNR.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. ANM–03–117–09]

Policy Statement on Guidance for Determination of System, Hardware, and Software Development Assurance Levels on Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of cancellation of policy statement.

SUMMARY: The Federal Aviation Administration (FAA) announces the cancellation of Policy Statement Number ANM–03–117–09. The policy statement is cancelled because it was superseded by an advisory circular (AC) and is no longer necessary.

DATES: This policy statement is cancelled on March 11, 2016.

FOR FURTHER INFORMATION CONTACT: Linh Le, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Safety Management Branch, 1601 Lind Avenue SW., Renton, WA 98057–3356;

telephone (425) 227–1105; fax (425) 227–1320; email: *linh.le@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

On January 15, 2004, the Transport Airplane Directorate, Aircraft Certification Service, issued Policy Statement Number ANM–03–117–09, *Policy Statement on Guidance for Determination of System, Hardware, and Software Development Assurance Levels on Transport Category Airplanes.* This policy statement standardized the methodology for assigning development assurance levels (DAL) to systems, software, and complex electronic hardware.

In December 2010, the Society of Automotive Engineers (SAE) issued the document, Aerospace Recommended Practice (ARP) 4754A, *Guidelines for Development of Civil Aircraft and Systems,* as an acceptable method for establishing a development assurance process. This document contains an updated methodology for DAL assignment. In developing ARP 4754A, SAE considered the subject policy statement, with inputs and guidance from the FAA. In September 2011, the FAA issued AC 20–174, *Development of Civil Aircraft and Systems,* to formally recognize ARP 4754A and the DAL assignment methodology contained therein. The Transport Airplane Directorate determined that AC 20–174 and ARP 4754A provide an acceptable DAL assignment methodology for part 25 airplanes. To ensure correct understanding of the Transport Airplane Directorate's current policy for DAL assignments, the FAA is cancelling the subject policy, in favor of AC 20–174.

Cancellation of Policy Statement

As a result of the issuance of AC 20–174, Policy Statement Number ANM–03–117–09 is no longer in effect and is herewith cancelled.

Issued in Renton, Washington, on March 1, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 2016–05529 Filed 3–10–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. PS–ANM100–1986–00051]

Policy Regarding Use of H–11 Bolts in Primary Structure on Transport Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of cancellation of policy statement.

SUMMARY: The Federal Aviation Administration (FAA) announces the cancellation of Policy Statement Number PS–ANM100–1986–00051. The policy statement is cancelled because it was superseded by an advisory circular (AC) and is no longer necessary.

DATES: This policy statement is cancelled on March 11, 2016.

FOR FURTHER INFORMATION CONTACT: Ian Won, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Airframe and Cabin Safety Branch, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–2145; fax (425) 227–1320; email: *Ian.Y.Won@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On May 16, 1986, the Manager, Transport Airplane Directorate, Aircraft Certification Service, issued Policy Statement Number PS–ANM100–1986–00051, *Policy Regarding Use of H–11 Bolts in Primary Structure on Transport Airplanes.* This policy statement addressed the adverse service history on H–11 bolts used in primary structure.

The FAA issued AC 20–127, *Use of Society of Automotive Engineers (SAE) Class H11 Bolts,* on July 8, 1987. The AC incorporates the same guidance as the older policy statement. The FAA should have cancelled the policy when they issued the AC but overlooked it.

Cancellation of Policy Statement

As a result of the issuance of AC 20–127, Policy Statement Number PS–ANM100–1986–00051 is no longer in effect and is herewith cancelled.

Issued in Renton, Washington, on March 1, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 2016–05532 Filed 3–10–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. PS–ANM100–1982–00038]

FAR 25.723 Energy Absorption Tests

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of cancellation of policy statement.

SUMMARY: The Federal Aviation Administration (FAA) announces the cancellation of Policy Statement Number PS–ANM100–1982–00038. The policy statement is cancelled because it was superseded by an advisory circular (AC) and is no longer necessary.

DATES: This policy statement is cancelled on March 11, 2016.

FOR FURTHER INFORMATION CONTACT: Ian Won, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Airframe and Cabin Safety Branch, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–2145; fax (425) 227–1320; email: *Ian.Y.Won@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On April 13, 1982, the Manager, Transport Airplane Directorate, Aircraft Certification Service, issued Policy Statement Number PS–ANM100–1982–00038, *FAR 25.723 Energy Absorption Tests.* This policy statement addressed limits of extrapolation of landing gear drop test data.

The FAA issued AC 25.723–1, *Shock Absorption Tests,* on May 25, 2001, concurrently with Amendment 25–103, which changed the rule, 14 CFR 25.723. The AC addresses the same issue as the older policy statement but reflects the latest rule and is more specific. The FAA intended to cancel the policy when they released AC 25.723–1 but overlooked it.

Cancellation of Policy Statement

As a result of the issuance of AC 25.723–1 and Amendment 25–103, Policy Statement Number PS–ANM100–1982–00038 is no longer in effect and is herewith cancelled.

Issued in Renton, Washington, on March 1, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 2016–05531 Filed 3–10–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORATION

Federal Transit Administration

Notice of Meeting of the Transit Advisory Committee for Safety (TRACS)

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of meeting.

SUMMARY: This notice announces a public meeting of the Transit Advisory Committee for Safety (TRACS). TRACS is a Federal Advisory Committee established to provide information, advice and recommendations to the Secretary of the U.S. Department of Transportation and the Federal Transit Administrator on matters relating to the safety of public transportation systems.

DATES: The TRACS meeting will be held on March 29, 2016, from 8:30 a.m. to 5 p.m., and March 30, 2016, from 8:30 a.m. to 1 p.m. Contact Bridget Zamperini (see contact information below) by March 18, 2016, if you wish to be added to the visitor's list to gain access to the meeting.

ADDRESSES: The meeting will be held at the National Association of Home Builders, 1201 15th Street NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Bridget Zamperini, Office of Transit Safety and Oversight (TSO), Federal Transit Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001 (telephone: 202–366–0306; or email: *TRACS@dot.gov*).

SUPPLEMENTARY INFORMATION: This notice is provided in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2). TRACS is composed of 29 members representing a broad base of expertise necessary to discharge its responsibilities. The tentative agenda for the March 29–30, 2016 meeting of TRACS is set forth below:

Agenda

(1) Introductory Remarks
(2) Facility Use/Safety Briefing
(3) Welcome New Members
(4) Updates from the FTA Office of Transit Safety and Oversight
(5) Issuance of New Tasks
(6) Work Group Discussions
(7) Public Comments
(8) Summary of Deliverables/ Concluding Remarks

Members of the public wishing to attend and/or make an oral statement and participants seeking special accommodations at the meeting must contact Bridget Zamperini by March 18, 2016.

Members of the public may submit written comments or suggestions concerning the activities of TRACS at any time before or after the meeting at *TRACS@dot.gov,* or to the U.S. Department of Transportation, Federal Transit Administration, Office of Transit Safety and Oversight, Room E45–310, 1200 New Jersey Avenue SE., Washington, DC 20590. Attention: Bridget Zamperini.

Information from the meeting will be posted on FTA's public Web site at *http://www.fta.dot.gov,* on the TRACS Meeting Minutes page. Written comments submitted to TRACS will also be posted at the above web address.

Issued under the authority delegated at 49 CFR 1.91.

Therese W. McMillan,

Acting Administrator.

[FR Doc. 2016–05416 Filed 3–10–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2015–0095; Notice 2]

NHTSA Enforcement Guidance Bulletin 2015–01: Recommended Best Practices for Protective Orders and Settlement Agreements in Civil Litigation

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final notice.

SUMMARY: NHTSA's ability to identify and define safety-related motor vehicle defects relies in large part on manufacturers' self-reporting. However, although federal regulations may require them to report certain information to NHTSA, manufacturers do not always do so, or do not do so in a timely manner. Additionally, the information a manufacturer is required to report varies greatly depending on the product and company size and purpose. Given these constraints, safety-related information developed or discovered in private litigation is an important resource for NHTSA.

This Enforcement Guidance Bulletin sets forth NHTSA's recommended guiding principles and best practices to be utilized in the context of private litigation. To the extent protective orders, settlement agreements, or other confidentiality provisions prohibit information obtained in private litigation from being transmitted to NHTSA, such limitations are contrary to Rule 26 of the Federal Rules of Civil Procedure, its state corollaries, and sound principles of public policy. Although such restrictions are generally prohibited by applicable rules and law, the Agency recommends that litigants include a specific provision in any protective order or settlement agreement that provides for disclosure of relevant motor vehicle safety information to NHTSA, regardless of any other restrictions on the disclosure or dissemination of such information.

FOR FURTHER INFORMATION CONTACT: Kara Fischer, Office of the Chief Counsel, NCC–100, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone: 202–366–8726).

SUPPLEMENTARY INFORMATION: On September 21, 2015, NHTSA published a proposed Enforcement Guidance Bulletin setting forth what the Agency had identified as best practices for private litigants utilizing protective orders and settlement agreements with confidentiality provisions. Recognizing the public interest in this topic, the Agency solicited public comment before issuing a final Enforcement Guidance Bulletin. In response to this request for comment, the Agency received 124 public submissions. Although several comments were submitted after the stated closing date of October 19, 2015, all comments submitted to the **Federal Register** were considered in formulating this final Enforcement Guidance Bulletin regarding the use of confidentiality provisions in private litigation.

While the majority of comments fully supported the Enforcement Guidance as drafted, some opined that the guidance was unnecessary as manufacturers are already required to report certain information to the Agency, and noted that NHTSA possesses the power to request additional information from manufacturers through its investigative authority. However, in order to fully exercise its regulatory authorities and powers, the Agency must be made aware of the need to do so in the first instance. Both Agency experience and that of several other commenters provide several examples of a manufacturer failing to accurately and timely report relevant safety-related information to NHTSA. The Agency cannot request such information from the manufacturer if it is not first made aware of potential underlying safety-related issues.

Several comments also suggested that NHTSA adopt specific language that could be utilized in protective orders and settlement agreements. Because the facts and circumstances leading to

protective orders and settlement agreements vary, the Agency realizes that best practices may likewise vary depending on circumstance. Therefore, to the extent this Guidance contains any ''suggested'' or exemplar language, it is just that—suggested. The Agency is not endorsing any specific format or language that could be utilized. Such a determination is best made by the parties based on the particular facts and circumstances of a case. In addition, it also falls squarely within the ambit of judicial discretion to determine whether a confidentiality provision meets the requirements embodied by applicable law and policy.

A number of comments also discussed a legitimate concern regarding the dissemination of proprietary information. Preliminarily, it should be noted that protective orders and settlement agreements are not used solely to prevent the dissemination of alleged proprietary information. Although certain commenters disclaimed knowledge of such situations, a number of commenters provided the Agency with specific statements and examples from individuals who have been precluded from sharing any information at all with NHTSA due to overbroad confidentiality restrictions. Indeed, settlement agreements often require that the parties not discuss the underlying facts or allegations of the case. Therefore, the Agency respectfully disagrees with any notion that NHTSA could request the information from the manufacturer after a plaintiff or other party informs NHTSA of potential safety defects or concerns.

In issuing this guidance, the Agency is not requesting or advocating for the submission or provision of any particular information or documentation in every case. However, in matters that concern the safety of the American driving public and pedestrians, entities and individuals must be permitted to disclose relevant information to the Agency commanded by Congress to ensure that safety. Private litigants should tailor the use of confidentiality provisions in a way that protects legitimate proprietary interests while still allowing for the provision of relevant information to NHTSA; the parties themselves are in the best position to determine how that can be accomplished. Should the parties reach an impasse, they can of course make application to the court for appropriate relief. Given the global interest in protecting and promoting public safety, the Agency is confident that private litigants can and will agree on appropriate processes or procedures that may be implemented to address any concerns regarding the dissemination of proprietary information.

Several commenters also proposed expanding this guidance to allow for broader sharing of information and documents discovered through litigation. While it is true that entities and individuals other than NHTSA may have an interest in safety-related information generated in litigation, the focus of this guidance is solely the disclosure of safety information to NHTSA pursuant to its authority and responsibility. This Enforcement Guidance does that and, hence, is appropriately tailored.

The Agency reiterates that in issuing this Enforcement Guidance, NHTSA is not imposing new or additional reporting requirements. As previously explained, this Enforcement Guidance Bulletin is fully supported by existing law and policy. This Guidance communicates the Agency's position that confidentiality provisions should not be used to prevent safety-related information from reaching NHTSA. The Agency is not endorsing or condoning any particular approach—judicial, legislative, regulatory, or otherwise.

In light of the foregoing, and after giving full consideration to the concerns and views expressed in the submitted comments, and as informed by the Agency's judgment and expertise, NHTSA provides the following Enforcement Guidance for private litigants pertaining to the use of confidentiality provisions in protective orders and settlement agreements:

Enforcement Guidance

The National Highway Traffic Safety Administration (''NHTSA'' or ''the Agency'') is tasked with, among other things, setting Federal Motor Vehicle Safety Standards (''FMVSS''), identifying and ensuring the remedy of safety-related defects, and monitoring and enforcing compliance with these standards to safeguard the well-being of the American public. The only way the Agency can fully achieve these objectives is if it has access to all necessary information, including information discovered or identified in private litigation.

NHTSA's ability to identify and define safety-related motor vehicle defects relies in large part on timely and accurate reporting by manufacturers, suppliers, and various parties throughout the industry, whether by statutory or regulatory requirement or pursuant to compulsory process. Although federal law may require industry participants to report certain information to NHTSA, they do not always do so, or do not do so in a timely manner. Additionally, the type of information an industry participant is required to report varies greatly depending on the product and company size and purpose. While certain entities are required to report both deaths and injuries resulting from the use of their products, others only must report deaths. In those cases, in the absence of a fatal incident a potentially defective product may not come to NHTSA's attention until numerous people have sustained serious injury—if it ever reaches NHTSA at all.

Given these constraints, safety-related information developed or discovered in private litigation is an important resource for NHTSA. Yet confidentiality restrictions imposed as part of a protective order or settlement agreement in private litigation—whether court-sanctioned or privately negotiated—often prevent parties from providing information about potentially dangerous products to the Agency. As many scholarly articles have noted, and as history has borne out, such restrictions have kept critical safety information out of the hands of both regulators and the public. As a matter of law and sound public policy, NHTSA cannot countenance this situation.

It is well-established that confidentiality provisions, protective orders, and the sealing of cases are appropriate litigation tools in some circumstances. In most instances, however, the interests of public health and safety will trump any confidentiality interests that might be implicated. In matters that concern the safety of the American driving public and pedestrians, it is important that entities and individuals are not prevented from providing relevant information to the very Agency tasked with ensuring that safety.

To the extent protective orders, settlement agreements, or other confidentiality provisions prohibit motor vehicle safety-related information from being transmitted to NHTSA, such limitations are contrary to established principles of public policy and law, including Rule 26 of the Federal Rules of Civil Procedure and its state corollaries which require a showing of good cause to impose confidentiality. The recent General Motors ignition switch and Takata airbag recalls are but two examples of how vital early identification of motor vehicle risks or defects is for the safety and welfare of the American public.

To further the important public policies discussed above, the Agency encourages and recommends that parties and courts seek to include a

provision in any protective order or settlement agreement that—despite other restrictions on confidentiality—specifically allows for disclosure of relevant motor vehicle safety information to NHTSA and other appropriate government authorities.

I. Legal and Policy Background

''Once a matter is brought before a court for resolution, it is no longer solely the parties' case, but also the public's case.'' *Brown* v. *Advantage Eng'g, Inc.,* 960 F.2d 1013, 1016 (11th Cir. 1992). As a general rule, the public is permitted ''access to litigation documents and information produced during discovery.'' *Phillips* v. *Gen. Motors Corp.,* 307 F.3d 1206, 1210 (9th Cir. 2002). Where there is a presumptive right of public access under the federal rules, courts have discretion upon a showing of ''good cause'' to restrict access to documents or information ''to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.'' Fed. R. Civ. P. 26(c)(1). As the Seventh Circuit has stated, Rule 26(c)'s good cause requirement means that, ''[a]s a general proposition, pretrial discovery must take place in the public unless compelling reasons exist for denying the public access to the proceedings.'' *Am. Telephone and Telegraph Co.* v. *Grady,* 594 F.2d 594, 596 (7th Cir. 1978); *see also, Public Citizen* v. *Liggett Group, Inc.,* 858 F.2d 775, 790 (1st Cir. 1988). Trial courts enjoy broad discretion in determining when to issue a protective order and the degree and scope of protection required. *Seattle Times Co.* v. *Rhinehart,* 467 U.S. 20, 36 (1984).

General allegations of harm, unsubstantiated by specific examples or articulated reasoning, however, are insufficient to warrant such an order. *Beckman Indus., Inc.* v. *Int'l Ins. Co.,* 966 F.2d 470, 476 (9th Cir. 1992); *Cipollone* v. *Liggett Group, Inc.,* 785 F.2d 1108, 1121 (3d Cir. 1986). Rather, the burden is on the party seeking protection from disclosure to ''allege specific prejudice or harm'' that will result if the protective order is not granted. *In re Roman Catholic Archbishop of Portland in Oregon,* 661 F.3d 417, 424 (9th Cir. 2011), *cert. denied,* 132 S. Ct. 1867 (2012); *In re Terra Intern., Inc.,* 134 F.3d 302 (5th Cir. 1998) (good cause requirement contemplates a particular and specific demonstration of fact as distinguished from conclusory statements); *Glenmeade Trust Co.* v. *Thompson,* 56 F.3d 476 (3d Cir. 1995) (generalized allegations of injury insufficient to satisfy the good cause requirement for issuance of protective order); *Iowa Beef Processors, Inc.* v. *Bagley,* 601 F.2d 949, 954 n. 5 (8th Cir. 1979) (party seeking protective order bears burden of making ''good cause'' showing that the information being sought falls within scope of Rule 26(c) and that moving party will be harmed by its disclosure).

Even if a court concludes that such harm will result from disclosure, it still must proceed to balance ''the public and private interests to decide whether a protective order is necessary.'' *Phillips,* 307 F.3d at 1211. *See Shingara* v. *Skiles,* 420 F.3d 301, 308 (3d Cir. 2005) (''[A] court always must consider the public interest when deciding whether to impose a protective order.''); *Glenmede Trust Co.* v. *Thompson,* 56 F.3d 476, 483 (3d Cir. 1995) (''[T]he analysis [of good cause] should always reflect a balancing of private versus public interests.''). In doing so, courts consider a number of factors, including:

> (1) whether disclosure will violate any privacy interests; (2) whether the information is being sought for a legitimate purpose or for an improper purpose; (3) whether disclosure of the information will cause a party embarrassment; (4) whether confidentiality is being sought over information important to public health and safety; (5) whether the sharing of information among litigants will promote fairness and efficiency; (6) whether a party benefitting from the order of confidentiality is a public entity or official; and (7) whether the case involves issues important to the public.

Glenmede Trust Co., 56 F.3d at 483. *See also In re Roman Catholic Archbishop of Portland in Oregon,* 661 F.3d at 424.

The public's interest in access to court records is strongest when the records concern public health or safety. *See, e.g., Brown & Williamson Tobacco Corp.* v. *F.T.C,* 710 F.2d 1165, 1180–81 (6th Cir. 1983) (vacating district court's sealing of court records involving the content of tar and nicotine in cigarettes and emphasizing that the public had particularly strong interest in the court records at issue because the ''litigation potentially involves the health of citizens who have an interest in knowing the accurate 'tar' and nicotine content of the various brands of cigarettes on the market''); *see also United States* v. *General Motors,* 99 FRD. 610, 612 (D.D.C. 1983) (the ''greater the public's interest in the case the less acceptable are restraints on the public's access to the proceedings''); *In re Air Crash at Lexington, Ky., August 27, 2006,* No. 5:06–CV–316–KSF, 2009 WL 16836289, at *8 (E.D. Ky. June 16, 2009) (noting the ''public has an interest in ascertaining what evidence and records the . . . Court [has] relied upon in reaching [its] decisions,'' and that ''the public interest in a plane crash that resulted in the deaths of forty-nine people is quite strong, as is the public interest in air safety''). In balancing the privacy interests of the party seeking protection, a court ''must consider the need for public dissemination, in order to alert other consumers to potential dangers posed by the product.'' *Koval* v. *Gen. Motors Corp.,* 62 Ohio Misc. 2d 694, 699, 610 NE.2d 1199, 1202 (Com. Pl. 1990) (citing *Hendricks* v. *Jeep Corp.* (D. Mont. June 3, 1986), case No. CV–82–092–M–PGH (unreported) and *United States* v. *Hooker Chemicals & Plastics Corp.,* 90 FRD. 421 (W.D.N.Y. 1981)).

A number of states have enacted ''Sunshine in Litigation'' acts, which thrust the interests of public health and safety into the forefront by preventing parties from concealing safety hazards through settlement agreements or protective orders. Some, such as Florida, broadly forbid courts from entering protective orders that may have the ''purpose or effect of concealing a public hazard or any information concerning a public hazard'' or that ''may be useful to members of the public in protecting themselves from injury.'' Fla. Stat. Ann. § 69.081 (West 2015). Others, such as Texas, establish a presumption that court records—including all documents filed with the court, unfiled settlement agreements, and unfiled discovery documents ''concerning matters that have a probable adverse effect upon the general public health or safety''—are open to the general public; records may be sealed only upon a showing that there is a specific, serious, and substantial interest in nondisclosure which clearly outweighs the presumption of public access and any probable effect on public health or safety. Tex. R. Civ. P. 76a.

A federal corollary introduced on May 14, 2015, currently pending before the House of Representatives, H.R. 2336 (114th Congress, 2015–2017), would create a presumption against protective orders and the sealing of settlements and cases ''in which the pleadings state facts that are relevant to the protection of public health or safety.'' The presumption would control unless a party asks a judge to find that a specific and substantial interest in maintaining secrecy outweighs the public health and safety interest and that the order is no broader than necessary to protect the privacy interest asserted. *Id.* It would also prohibit a court from approving or enforcing a provision that restricts a party from disclosing public health or safety information to any federal or state agency with authority to enforce laws regulating an activity related to such information. *Id.*

Several states have taken a broader approach, enacting statutes and court rules to address the question of whether or not courts should enforce confidentiality agreements, regardless of the subject matter. The common theme of these statutes is a balancing of interests. For example, drawing upon federal precedent requiring consideration of the public interest at stake, Idaho Court Administrative Rule 32 directs courts considering shielding requests to first determine whether the interest in privacy or public disclosure predominates and to ''fashion the least restrictive exception from disclosure consistent with privacy interests.'' Idaho R. Admin. 32(f). *See also* Mich. Ct. R. 8.119(F) (records may be sealed upon showing of good cause and that no less restrictive means are available to protect the interest asserted); D.S.C. LCivR 5.03 (party must state why sealing is necessary and explain why less restrictive alternatives will not afford adequate protection). Indiana's legislature went a step further, requiring an affirmative showing that a public interest will be protected by sealing a record, and mandating that records shall be unsealed as soon as possible after the reason for sealing them no longer exists. Ind. Code § 5–14–3–5.5 (2011). *See also,* Richard Rosen, *Settlement Agreements in Com. Disputes,* n. 103 § 10.04 (2015) (citing to statutory provisions in California, Colorado, Michigan, Montana, New Hampshire, New York, Ohio, Oregon, South Carolina, and Utah). Although the specifics of each provision vary, all are consistent with the notion that the safety of the public should be given considerable weight in determining whether to restrict access to information.

Basic contract principles also dictate that the public health and safety concern should be of paramount significance in drafting and approving protective orders and settlement agreements. While parties are generally free to contract as they see fit, ''courts will not hesitate to declare void as against public policy contractual provisions which clearly tend to the injury of the public in some way.'' 17A C.J.S. Contracts § 281 (2015) (internal citations omitted); *see Thomas James Associates, Inc.* v. *Jameson,* 102 F.3d 60, 66 (2d Cir. 1996) (''[C]ourts must not be timid in voiding agreements which tend to injure the public good or contravene some established interest of society.'') (internal quotations and citations omitted); *see also Vasquez* v. *Glassboro Service Ass'n, Inc.,* 83 N.J. 86, 415 A.2d 1156 (1980) (citing text for general proposition that courts have broad power to declare agreements violative of public policy).

''While the term 'public policy' lacks precise definition, . . . it may be stated generally as a legal principle which holds that no one may lawfully do that which has a tendency to injure the public welfare. . . .'' *O'Hara* v. *Ahlgren, Blumenfeld and Kempster,* 537 NE.2d 730 (Ill. 1989). ''An agreement is against public policy if it is injurious to the interests of the public, contravenes some established interest of society, violates some public statute, is against good morals, tends to interfere with the public welfare or safety, or is at war with the interests of society or is in conflict with the morals of the time.'' *E & B Mktg. Enterprises, Inc.* v. *Ryan,* 568 NE.2d 339, 209 Ill. App. 3d 626 (1st Dist. 1991). *See also Johnson* v. *Peterbilt of Fargo, Inc.,* 438 NW.2d 162 (N.D. 1989) (''Public policy, with respect to contract provisions, is a principle of law whereby a contract provision will not be enforced if it has a tendency to be injurious to the public or against the public good.''). An agreement is unenforceable if the interest in its enforcement is outweighed by the public policy harmed by enforcement of the agreement. 17A C.J.S. Contracts § 281 (citation omitted).

In fact, the Florida Sunshine in Litigation Act specifically codifies this concept: ''Any portion of an agreement or contract which has the purpose or effect of concealing a public hazard, any information concerning a public hazard, or any information which may be useful to members of the public in protecting themselves from injury which may result from the public hazard, is void, contrary to public policy, and may not be enforced.'' Fla. Stat. Ann. § 69.081(4). *See also* Ark. Code Ann. § 16–55–122 (2011) (rendering void any settlement provision purporting to restrict disclosure of an environmental hazard). Although the Florida provision broadly addresses any contract, this notion is particularly applicable in the context of protective orders or settlement agreement terms that prevent litigants from disclosing information to NHTSA.

The good cause requirements found in Rule 26 and related state provisions, and the doctrines underlying NHTSA's own regulations all advance the important public policy of maintaining and preserving the health and welfare of the public. This strong policy has been realized and enforced by the refusal of many courts and litigants to engage in protective orders or settlement agreements that keep regulators and the public in the dark about potential safety hazards. *See Culinary Foods, Inc.* v. *Raychem Corp.,* 151 F.R.D. 297 (N.D. Ill.), *clarified* 153 F.R.D. 614 (1993) (any information as to whether products liability defendant's products were dangerous, and whether defendant knew of dangers and either failed to take action or attempted to conceal information, would not be encompassed by protective order under discovery rule); *Cipollone* v. *Liggett Group, Inc.,* 113 F.R.D. 86, 87 (D.N.J. 1986) (''Discovery may well reveal that a product is defective and its continued use dangerous to the consuming public. . . . It is inconceivable to this court that under such circumstances the public interest is not a vital factor to be considered in determining whether to further conceal that information and whether a court should be a party to that concealment.''); *Toe* v. *Cooper Tire & Rubber Co.* (Iowa District Court, Polk County, No. CL 106914) (Order on Defendant's Motion to Continue Protective Order, Jan. 18, 2012) (unsealing transcript where confidential documents related to tire defect were discussed). *See also, Ohio Valley Envtl. Coal.* v. *Elk Run Coal Co., Inc.,* 291 F.R.D. 114 (S.D.W.Va. 2013) (good cause did not exist for issuance of protective order in environmental group's suit against company because there was no specific showing of identifiable harm company would suffer and case involved issues of importance to public health and safety); *In re Roman Catholic Archbishop of Portland in Oregon,* 661 F.3d 417 (9th Cir.), *cert. denied,* 132 S. Ct. 1867 (2011) (private interest in nondisclosure was not outweighed by public interests in protecting public safety).

II. Recommended Best Practices

Consistent with the foregoing legal and policy background, it is NHTSA's position that protective orders and settlement agreements should not be used to withhold critical safety information from the Agency, either intentionally or unintentionally. This is not to say that parties should not enter into these agreements. To the contrary, these tools are often necessary to promote full and complete disclosure, to prevent abuses of the discovery process, and to protect legitimate privacy and proprietary interests. However, as explained above, they cannot be used to preclude the disclosure of relevant safety-related information to regulatory agencies and other government authorities. To do so is contrary to the underlying law and policies inherent in Rule 26 and state corollaries, and against sound public policy.

NHTSA recommends that all parties seek to include a provision in any protective order or settlement agreement

that—despite whatever other restrictions on confidentiality are imposed, and whether entered into by consent or judicial fiat—specifically allows for disclosure of relevant motor vehicle safety information to NHTSA and other applicable governmental authorities. Such a provision could be stated generically, providing that nothing in the order or agreement shall be construed to prohibit either party from disclosing information to a regulatory agency or governmental entity who has an interest in the subject matter of the underlying suit. For example, the provision could state that ''discovery material may only be disclosed to . . . governmental entities with an interest in the public safety hazards involving [description of product/vehicle].'' Or, it could specifically address NHTSA's interest, as contemplated by the recent NHTSA Consent Order requiring Chrysler to ''develop and implement a plan ensuring that, in safety-related litigation, FCA US uses its best efforts to include in any protective order, settlement agreement, or equivalent, a provision that explicitly allows FCA US to provide information and documents to NHTSA.'' *See* In re: FCA US LLC, AQ14–003, July 24, 2015 Consent Order, Attachment A, p. 27 at ¶ (B)(12), available at *www.safercar.gov/rs/chrysler/pddfs/FCA_Consent_Order.pdf*. Private litigants should tailor the use of confidentiality provisions in a way that protects legitimate proprietary interests while still allowing for the provision of relevant information to NHTSA. The Agency is not endorsing any particular language that should be utilized; the parties themselves are in the best position to determine how that can be accomplished. Given the global interest in protecting and promoting public safety, the Agency is confident that in employing the use of confidentiality provisions, private litigants can and will agree on appropriate processes or procedures that may be implemented to address any concerns regarding the dissemination of proprietary information.

Whatever the language, confidentiality agreements and protective orders should not be utilized to prevent the parties from providing information that implicates public safety to the very entity charged with ensuring and protecting that safety. Instead, such orders and agreements should clearly authorize and facilitate the disclosure of safety-related information to NHTSA. Such a provision is consistent with, and in some cases mandated by, federal and state statutory schemes and regulations and applicable case law, and is wholly in line with principles of sound public policy.

Applicability/Legal Statement: This Enforcement Guidance Bulletin sets forth NHTSA's current interpretation and thinking on this topic and guiding principles and best practices to be utilized in the context of private litigation. This Bulletin is not a final agency action and is intended as guidance only. This Bulletin is not intended, nor can it be relied upon, to create any rights enforceable by any party against NHTSA, the Department of Transportation, or the United States. Moreover, these recommended practices do not establish any defense to any violations of the statutes and regulations that NHTSA administers. This Bulletin may be revised in writing without notice to reflect changes in NHTSA's evaluation and analysis, or to clarify and update text.

Authority: 49 U.S.C. 30101, *et seq.;* delegations of authority at 49 CFR 1.95(a), 501.2(a)(1), 501.5.

Issued: February 29, 2016.

Mark R. Rosekind,

Administrator.

[FR Doc. 2016–05522 Filed 3–10–16; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Intelligent Transportation Systems Program Advisory Committee; Notice of Meeting

AGENCY: ITS Joint Program Office, Office of the Assistant Secretary for Research and Technology, U.S. Department of Transportation.

ACTION: Notice.

The Intelligent Transportation Systems (ITS) Program Advisory Committee (ITSPAC) will hold a meeting on March 31, 2016, from 8:00 a.m. to 4:00 p.m. (EDT) in the Crystal Gateway Marriott Hotel, 1700 Jefferson Davis Highway, Arlington, VA 22202.

The ITSPAC, established under Section 5305 of Public Law 109–59, Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, August 10, 2005, and re-established under Section 6007 of Public Law 114–94, Fixing America's Surface Transportation (FAST) Act, December 4, 2015, was created to advise the Secretary of Transportation on all matters relating to the study, development, and implementation of intelligent transportation systems. Through its sponsor, the ITS Joint Program Office (JPO), the ITSPAC makes recommendations to the Secretary regarding ITS Program needs, objectives, plans, approaches, content, and progress.

The following is a summary of the meeting tentative agenda: (1) Welcome, (2) Discussion of the FAST Act, (3) Discussion of Potential Advice Memorandum Topics, (4) Summary and Adjourn.

The meeting will be open to the public, but limited space will be available on a first-come, first-served basis. Members of the public who wish to present oral statements at the meeting must submit a request to *ITSPAC@dot.gov,* not later than March 24, 2016.

Questions about the agenda or written comments may be submitted by U.S. Mail to: U.S. Department of Transportation, Office of the Assistant Secretary for Research and Technology, ITS Joint Program Office, Attention: Stephen Glasscock, 1200 New Jersey Avenue SE., HOIT, Washington, DC 20590 or faxed to (202) 493–2027. The ITS JPO requests that written comments be submitted not later than March 24, 2016.

Notice of this conference is provided in accordance with the Federal Advisory Committee Act and the General Services Administration regulations (41 CFR part 102–3) covering management of Federal advisory committees.

Issued in Washington, DC, on the 7th day of March, 2016.

Stephen Glasscock,

Designated Federal Officer, ITS Joint Program Office.

[FR Doc. 2016–05413 Filed 3–10–16; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

Letters of Interest for Credit Assistance Under the Transportation Infrastructure Finance and Innovation Act (TIFIA) Program

AGENCY: Office of the Secretary of Transportation (OST), U.S. Department of Transportation (the DOT), Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA), Maritime Administration (MARAD).

ACTION: Notice of funding availability and request for comments.

SUMMARY: Pursuant to the recently enacted Fixing America's Surface Transportation Act (the FAST Act), the DOT announces the availability of

funding authorized in the amount of $1.435 billion ($275 million in Fiscal Year (FY) 2016 funds, $275 million in FY 2017 funds, $285 million in FY 2018 funds, $300 million in FY 2019 funds, and $300 million in FY 2020 funds (and any funds that may be available from prior fiscal years)) to provide TIFIA credit assistance for eligible projects. The FY 2016–2020 authorized funds are subject to an annual obligation limitation that may be established in appropriations law. The amount of TIFIA funding authority available in a given year may be less than the amount authorized for that fiscal year. Under TIFIA, the DOT provides secured (direct) loans, lines of credit, and loan guarantees to public and private applicants for eligible surface transportation projects. Projects must meet statutorily specified eligibility criteria to receive credit assistance.

This notice outlines the process that project sponsors must follow in seeking TIFIA credit assistance. The DOT is publishing this notice to give project sponsors an opportunity to submit Letters of Interest for the newly authorized funding as soon as possible. However, in addition to authorizing funding for TIFIA credit assistance, the FAST Act made a number of changes to the TIFIA program's structure, including the terms and conditions pursuant to which the DOT can provide TIFIA credit assistance. This notice outlines certain changes made by the FAST Act and invites interested parties to submit comments about the DOT's implementation of the FAST Act and the DOT's guidance for awarding TIFIA credit assistance. Unless otherwise noted, statutory section references in this notice are to sections of title 23 of the U.S. Code, as amended by the FAST Act, which took effect as of October 1, 2015.

Letter of Interest Submission: All project sponsors wishing to apply for TIFIA credit assistance must first submit a Letter of Interest, as more fully described in this notice of funding availability. Only after a project sponsor has submitted a Letter of Interest and demonstrated the satisfaction of all statutory eligibility requirements will the project sponsor be invited to submit an application. Letters of Interest will be received on a rolling basis using the form on the TIFIA Web site: *https://www.transportation.gov/tifia/applications.*

ADDRESSES: *Addresses for Letters of Interest:* Submit all Letters of Interest to the DOT via email at: *TIFIACredit@dot.gov.* Submitters should receive a confirmation email, but are advised to request a return receipt to confirm transmission. Only Letters of Interest received via email, as provided above, shall be deemed properly filed.

Addresses for Comments: You must include the agency name (Office of the Secretary of Transportation) and the docket number DOT–OST–2016–0032 with your comments. To ensure your comments are not entered into the docket more than once, please submit comments, identified by the docket number DOT–OST–2016–0032, by only one of the following methods:

Web site: The U.S. Government electronic docket site is *www.regulations.gov.* Go to this Web site and follow the instructions for submitting comments into docket number DOT–OST–2016–0032;

Fax: Telefax comments to DOT–OST–2016–0032;

Mail: Mail your comments to U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, Room W12–140, Washington, DC 20590; or

Hand Delivery: Bring your comments to the U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions for Submitting Comments: You must include the agency name (Office of the Secretary of Transportation) and Docket number DOT–OST–2016–0032 for this notice at the beginning of your comments. You should submit two copies of your comments if you submit them by mail or courier. For confirmation that the Office of the Secretary of Transportation has received your comments you must include a self-addressed stamped postcard. Note that all comments received will be posted without change to *www.regulations.gov,* including any personal information provided, and will be available to Internet users. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000 (65 FR 19477), or you may visit *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For further information regarding this notice please contact Duane Callender via email at *TIFIACredit@dot.gov* or via telephone at (202) 366–1059. A TDD is available at (202) 366–7687. Substantial information, including the TIFIA Program Guide and application materials, can be obtained from the TIFIA Web site: *https://www.transportation.gov/tifia.* The TIFIA Program Guide is being updated to reflect changes to the program under the FAST Act.

SUPPLEMENTARY INFORMATION:

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I. Background

The Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107, 241 established the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA), authorizing the DOT to provide credit assistance in the form of secured (direct) loans, lines of credit, and loan guarantees to public and private applicants for eligible surface transportation projects. In 2005, Congress enacted the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, 119 Stat. 1144), which made a number of amendments to TIFIA including lowering the estimated project cost thresholds and expanding eligibility for TIFIA credit assistance. In 2012, Congress enacted the Moving Ahead for Progress in the 21st Century Act (MAP–21) (Pub. L. 112–141). MAP–21 provided for substantial changes in the TIFIA credit program, including expanding eligibility and authorized uses of TIFIA credit assistance and modifying the selection process. On December 4, 2015, the President signed the FAST Act into law (Pub. L. 114–94), which provided for substantial changes in the TIFIA credit program under Section 2001 of the FAST Act. This notice of funding availability addresses certain changes to the TIFIA credit program made by the FAST Act and solicits Letters of Interest for the funding made available under that law.

The TIFIA program is a departmental program and final approval of credit assistance is reserved for the Secretary. In addition, the FAST Act mandates the creation of a National Surface

Transportation and Innovative Finance Bureau (Bureau), which will be responsible for administering the TIFIA application process. The Bureau will also provide assistance and communicate best practices for financing and funding opportunities to sponsors of projects eligible for TIFIA credit assistance, as well as other forms of DOT credit assistance.

II. Program Funding

The FAST Act authorizes $1.435 billion in TIFIA funding authority over five fiscal years ($275 million in FY 2016 funds, $275 million in FY 2017 funds, $285 million in FY 2018 funds, $300 million in FY 2019 funds, and $300 million in FY 2020 funds) from the Highway Trust Fund to pay the subsidy cost of credit assistance. Additional funds may also be available from funding authority carried over from previous fiscal years. Any funding authority not obligated in the fiscal year for which it is authorized remains available for obligation in subsequent years. The TIFIA funding authority is subject to an annual obligation limitation that may be established in appropriations law. Like all funds subject to the annual Federal-aid obligation ceiling, the amount of TIFIA funding authority available in a given year may be less than the amount authorized for that fiscal year. Historically, each dollar of TIFIA funding authority has allowed the DOT to provide approximately $10 in credit assistance. In recent years, the DOT has been able to leverage TIFIA funds to support closer to $14 in credit assistance. Given statutory changes in the TIFIA credit program under the FAST Act, and the need to calculate credit subsidies on a project-by-project basis, actual lending capacity will vary. In addition to direct funding for the TIFIA program, the FAST Act permits the use of certain Federal-aid funds to cover the subsidy and administrative costs associated with TIFIA credit assistance. Under the FAST Act, Surface Transportation Block Grant Program funds (23 U.S.C. 133), National Highway Performance Program funds (23 U.S.C. 119), and Nationally Significant Freight and Highway Projects Program grant funds (23 U.S.C. 117) may be used by eligible recipients to cover the subsidy and administrative costs of TIFIA credit assistance (including the fees and expenses of the DOT's outside advisors hired in connection with the evaluation and negotiation of terms of TIFIA credit assistance for a project). As in previous years, Transportation Investment Generating Economic Recovery (TIGER) grant funds may also be used to cover these costs. (See Part VI below for more information regarding TIFIA administrative costs).

To ensure maximum leverage of TIFIA program funds and efficient allocation of TIFIA resources, the DOT encourages eligible recipients to consider use of the three sources of Federal-aid funds listed above to cover the subsidy and administrative costs of TIFIA credit assistance, as authorized in the FAST Act. Project sponsors will be asked to indicate in their Letters of Interest whether other Federal-aid funds are available to cover the subsidy and administrative costs of their requested TIFIA credit assistance, and provide an explanation therefor (for example, that the sponsor is not a State recipient of Federal-aid funds).

III. Eligible Projects

The DOT has provided TIFIA credit assistance across a variety of transportation modes and the surface transportation components of multifaceted development and redevelopment projects. Generally, eligible projects include highway projects, passenger rail projects, transit and intermodal projects, private rail facilities providing public benefit to highway users, surface transportation infrastructure modifications within a port terminal, intelligent transportation systems, surface transportation projects eligible for Federal assistance under title 23 or title 49 of the U.S. Code, international bridges and tunnels, intercity passenger bus or rail facilities and vehicles, and related improvement projects grouped together, so long as the individual components are eligible and the related projects are secured by a common pledge.

The FAST Act expands eligibility to include transit-oriented development and the capitalization of a rural projects fund within a State infrastructure bank (SIB). In addition, the FAST Act refines the scope of eligibility for project refinancing.

A. Transit-Oriented Development

Under the FAST Act, a project to improve or construct public infrastructure that is located within walking distance of, and accessible to, a fixed guideway transit facility, passenger rail station, intercity bus station, or intermodal facility, including a transportation, public utility, or capital project described in 49 U.S.C. 5302(3)(G)(v), and related infrastructure, is now eligible to receive TIFIA credit assistance (see 23 U.S.C. 601(a)(12)(E)). Activities to improve or construct such infrastructure are commonly known as ''transit-oriented development'' (or TOD). See Part V below for more information regarding general TIFIA eligibility requirements (such as minimum project costs).

B. State Infrastructure Banks and TIFIA

In addition to certain accommodations for rural infrastructure projects, such as a reduced interest rate on TIFIA credit assistance and lower minimum eligible project cost thresholds (see Part IV below for more on rural infrastructure projects and interest rate calculation; see Part V below for more information on TIFIA eligibility requirements), the FAST Act enables SIBs to receive TIFIA secured loans to be used to capitalize a rural projects fund within the SIB (see 23 U.S.C. 601(a)(12)(F)).

A TIFIA loan to capitalize a rural projects fund must be secured by a dedicated revenue source(s) available to the SIB (see 23 U.S.C. 602(a)(6) and 603(b)(3)(A)(V) for a description of the requirements for a dedicated revenue source for a TIFIA loan to a SIB). The TIFIA loan to the SIB may not be less than $10 million or more than $100 million. SIBs will be eligible to receive the reduced interest rate (equal to one-half of the Treasury Rate) to the extent of available funds for such reduced-rate loans. (See Part IV below for additional discussion regarding the set-aside for rural infrastructure projects and rural projects fund capitalizations). Notably, the SIB, rather than specific subsidiary projects, would be responsible for all stages and requirements of the standard TIFIA application process, beginning with submission of a Letter of Interest that will be reviewed for factors including eligibility and creditworthiness, including review from an independent financial advisor. (See Part VI below for additional discussion regarding the application process; additional information regarding the application process can also be found in the TIFIA Program Guide.) The SIB would then use the TIFIA loan proceeds to make direct loans for rural infrastructure projects out of its rural projects fund. (See Part IV below for more discussion regarding, and the definition of, rural infrastructure projects.) The SIB, rather than the DOT, would review the specific projects. The FAST Act also requires that the SIB use all of its loan commitment within two years after obligation of the loan unless extended by the DOT.

Prior to the FAST Act, SIBs were permitted to use Federal-aid funds to capitalize a highway, a transit, and a rail account within the SIB. The funds in those accounts could then be used to make loans to eligible highway, transit,

and rail projects, respectively. As discussed above, the FAST Act permits SIBs to establish a fourth account (a rural projects fund) that can be capitalized by a TIFIA loan to a SIB. The SIB must use the funds in its rural projects fund to make loans for projects meeting the rural infrastructure project definition. (See Part IV below for the definition of rural infrastructure project.) A SIB loan for a rural infrastructure project must comply with certain specific requirements, including: (i) the SIB loan cannot exceed 80 percent of the cost of carrying out the project; (ii) the SIB loan must bear interest at or below the interest rate on the TIFIA loan used to capitalize the rural projects fund; (iii) repayment of the SIB loan must commence not later than 5 years after completion of the project; and (iv) the term of the SIB loan cannot exceed 30 years after the date of the first payment on the loan.[1] For more information regarding SIBs, including the specific requirements for SIB loans to rural infrastructure projects, see 23 U.S.C. 610.

The DOT recognizes that this is a new category of activity and will provide further guidance on the formal application and credit evaluation processes, informed by feedback from stakeholders through this NOFA. The DOT intends for such guidance to be included in the forthcoming TIFIA Program Guide update which will be published in the near future to inform the preparation of formal SIB applications and credit evaluations. In the interim, the DOT will conduct targeted outreach and provide technical assistance to potential applicants in preparing SIB Letters of Interest.

C. Refinancing

TIFIA loan proceeds can be used to refinance existing obligations in three scenarios: (i) to refinance Federal credit instruments for rural infrastructure projects, (ii) to refinance long-term project obligations of Federal credit instruments if the refinancing provides additional funding capacity for the completion, enhancement, or expansion of any project that would otherwise be eligible, and (iii) to refinance interim construction financing for eligible projects. The FAST Act clarified the parameters of interim construction financing: the maturity of such existing interim financing must not be later than one year after substantial completion of the project and the refinancing must occur prior to one year after substantial completion of the project (see 23 U.S.C. 603(a)(2)).

D. Availability Payments

The FAST Act codifies the DOT practice of allowing payments made by a State pursuant to a long-term concession agreement, such as availability payments, for a highway project being delivered as a public-private partnership to be eligible for Federal-aid reimbursement where the State has advance construction authorization (see Pub. L. 114–94, section 2002). It is important to note, however, that TIFIA credit assistance cannot be repaid using Federal-aid funds. As such, where TIFIA credit assistance is provided directly to a concessionaire receiving availability payments and the State sponsor intends to seek Federal-aid reimbursement for such payments, the DOT will require the State sponsor to demonstrate the availability of non-Federal funds sufficient to cover TIFIA debt service.

IV. Types of Credit Assistance

The DOT may provide credit assistance in the form of secured (direct) loans, lines of credit, and loan guarantees (see 23 U.S.C. 603(a)(1), 603(e)(1), and 604(a)(1)). These types of credit assistance are defined in Section 601. The TIFIA credit facility, which must have a senior or senior-parity lien in the event of bankruptcy, liquidation or insolvency, can be subordinate as to cash flows absent such an event. The TIFIA loan may be fully subordinated, even in the event of a bankruptcy, liquidation or insolvency, if the borrower is a public agency that is financing ongoing capital programs and has outstanding senior bonds under a preexisting indenture so long as (i) the TIFIA loan is rated A-category or higher, (ii) the revenue pledge is not affected by project performance, such as a tax-backed revenue or system pledge, and (iii) TIFIA is financing 33 percent or less of the eligible project costs. However, in such cases, the maximum credit subsidy to be paid by the Government may not be more than 10 percent of the principal amount of the loan; the obligor is responsible for paying any remaining subsidy cost.

The maximum amount for a TIFIA secured loan for a project is 49 percent[2] of the project's eligible project costs. For a TIFIA line of credit, the maximum amount remains at 33 percent of the project's eligible project costs. Project sponsors may not include any costs associated with reimbursing TIFIA for the fees of its outside advisors, or costs related to the application process (such as charges associated with obtaining the required preliminary rating opinion letter referenced in Part VI), among eligible project costs for the purpose of calculating the maximum 49 or 33 percent credit amount. Project sponsors should identify in each Letter of Interest the level of funding (including the percentage of eligible project costs) being requested, as specified in Part VI.

Section 603(b)(4) provides that the interest rate on a secured loan may not be less than the yield on U.S. Treasury securities of a similar maturity to the maturity of the secured loan on the date of execution of the loan agreement (for lines of credit, Section 604(b)(4) provides that the interest rate may not be lower than the 30-year rate for U.S. Treasury securities, as of the date of execution of the line of credit agreement) (the Treasury Rate). In general, TIFIA currently charges interest rates equal to the Treasury Rate on the date of execution of the TIFIA credit instrument.

As with MAP–21, the FAST Act allows for up to 10 percent of the TIFIA program's annual funding authority to be provided to rural infrastructure projects or to capitalize rural projects funds within SIBs at a reduced interest rate of one-half of the Treasury Rate. However, the FAST Act modified the definition of rural infrastructure projects set forth in MAP–21; under the FAST Act, rural infrastructure projects are defined as surface transportation infrastructure projects located in an area that is outside of an urbanized area with a population greater than 150,000 individuals, as determined by the Bureau of the Census (see 23 U.S.C. 601(a)(15)). The reduced interest rate applies only to rural projects and SIB capitalizations funded with the up-to 10 percent of funding authority set-aside. Once the set-aside has been fully committed, any loans for rural projects or SIB capitalization would accrue interest at the Treasury Rate.

The FAST Act also clarified the requirements for a master credit agreement. Under MAP–21, the DOT was able to provide a contingent commitment of future TIFIA credit assistance in the form of a master credit agreement, subject to the availability of future funding and the satisfaction of all the conditions for the provision of credit assistance under the TIFIA program. The FAST Act clarified that a master credit agreement can be used either for a program of projects secured by a common revenue pledge or for a single

[1] Note that certain of these requirements differ for loans made from the SIB's other accounts (*i.e.,* the highway, transit, or rail account). For a list of the specific requirements applicable to SIB loans, see 23 U.S.C. 610.

[2] Limited to 33 percent where the nonsubordination requirement is waived, as described above.

project where adequate funding is not available to fund TIFIA credit assistance in the fiscal year in which the project sponsor's application for credit assistance is approved (see 23 U.S.C. 602(b)(2)). In addition, the FAST Act clarified that the common revenue source pledged in support of the master credit agreement must receive an investment grade rating at the time the TIFIA credit assistance is obligated (see 23 U.S.C. 601(a)(10)).

V. Eligibility Requirements

A project must meet all of the eligibility criteria set forth in Section 602(a) to receive TIFIA credit assistance.

A. Reduced Minimum Cost Threshold for Small Projects

For instance, projects seeking TIFIA assistance must meet certain statutory threshold requirements for project costs (see 23 U.S.C. 602(a)(5)). Generally, the minimum size for TIFIA projects is at least $50 million in total eligible project costs (23 U.S.C. 602(a)(5)(A)(i)); however, the minimum size is lower for certain types of projects. The FAST Act established a threshold of $10 million in eligible project costs for both TOD projects (23 U.S.C. 602(a)(5)(B)(ii)) and for local projects (eligible projects the sponsor of which is a local government or instrumentality, which are located on a facility owned by a local government or the development of which a local government is substantially involved (23 U.S.C. 602(a)(5)(B)(iv))). The minimum size for TIFIA projects principally involving the installation of an intelligent transportation system is $15 million (23 U.S.C. 602(a)(5)(B)(i)). The FAST Act lowered the minimum cost threshold for rural infrastructure projects from $25 million to $10 million in eligible project costs (23 U.S.C. 602(a)(5)(B)(iii)); however, the FAST Act added a maximum size for rural infrastructure projects of $100 million in eligible project costs (23 U.S.C. 602(a)(5)(B)(iii)). As applied to the capitalization of a rural projects fund in a SIB, the FAST Act limits the size of a TIFIA loan to a SIB to between $10 and $100 million (23 U.S.C. 602(a)(5)(B)(iii)).

B. Ratings Requirements

Prior to execution of a TIFIA credit instrument, the senior debt obligations for each project receiving TIFIA credit assistance must obtain investment grade ratings from at least two nationally recognized rating agencies, and the TIFIA debt obligations must obtain ratings from at least two nationally recognized rating agencies, unless the total amount of the debt is less than $75 million, in which case only one investment grade rating is required for the senior debt obligations and one rating for the TIFIA debt obligations. The term rating agency is defined in Section 601(a)(14) and 49 CFR 80.3. If the TIFIA credit instrument is proposed as the senior debt, then it must receive the investment grade ratings.

To demonstrate the potential to achieve the above credit rating requirements, each project sponsor must provide a preliminary rating opinion letter from a rating agency that addresses the creditworthiness of the senior debt obligations funding the project and concludes that there is a reasonable probability for the senior debt obligations to receive an investment grade rating. The preliminary rating opinion letter should also provide an opinion on the default risk for the TIFIA instrument and must provide indicative ratings for both the senior debt obligations and the TIFIA credit instrument. A project that does not demonstrate the potential for its senior obligations to receive an investment grade rating will not be considered for TIFIA credit assistance. More detailed information about these TIFIA credit opinions and ratings may be found in the Program Guide on the TIFIA Web site at: *https://www.transportation.gov/tifia/program-guide.* As noted elsewhere in this notice of funding availability, the Program Guide is being updated in light of the FAST Act.

C. Other Requirements

Each project seeking TIFIA assistance must submit an application acceptable to the Secretary pursuant to the process set forth in this notice, and must satisfy applicable State and local transportation planning requirements. Each private applicant must receive public approval for its project as demonstrated by satisfaction of the applicable planning and programming requirements. Each project must have a dedicated revenue source to repay the TIFIA loan. Projects receiving TIFIA credit assistance have been supported by a variety of revenue sources, including tolls, user fees, payments owing to the obligor under a public-private partnership (*e.g.,* availability payments), and other dedicated revenue sources that also secure or fund the project obligations (including real estate tax increments, interjurisdictional funding agreements, and room and sales taxes).

The eligibility criteria also require a determination by the DOT that the project is creditworthy, which must be based on, at a minimum: (i) A rate covenant, if applicable, (ii) adequate coverage requirements to ensure repayment, and (iii) meeting the credit rating requirements set forth in Part VI below. The DOT will also utilize a report and recommendation from an independent financial advisor and any other information it needs to determine a project's creditworthiness.

Section 602(a) further requires that, for each project, TIFIA credit assistance must: (i) Foster (if appropriate) partnerships that attract public and private investment for the project, (ii) enable the project to proceed at an earlier date than the project would otherwise be able to proceed or reduce lifecycle costs (including debt service costs) of the project, and (iii) reduce the contribution of Federal grant assistance for the project.

Each project must also demonstrate that the construction contracting process for the project can commence no more than 90 days after execution of a TIFIA credit instrument. In addition, TIFIA credit assistance cannot be obligated for a project until it receives a categorical exclusion, finding of no significant impact or record of decision, pursuant to the National Environmental Policy Act.

With respect to SIB applicants requesting a TIFIA loan to capitalize a rural projects fund, the DOT will conduct a creditworthiness and readiness evaluation that will assess the institutional capacity and ability of the SIB to administer and disburse the requested TIFIA loan proceeds within the requisite time frame, as well as a creditworthiness review of the proposed repayment source for the TIFIA loan. The Program Guide on the TIFIA Web site will be updated to provide further guidance to SIB applicants.

VI. Application Process

The TIFIA application process begins with the submission of a Letter of Interest and determination of eligibility. Only after a project sponsor has submitted a Letter of Interest and met all statutory eligibility requirements will the project sponsor be invited to submit an application.

The DOT will conduct a rolling application process where project sponsors may submit Letters of Interest at any time. The DOT will permit project sponsors to apply once a favorable eligibility determination is made. An invitation to submit an application for credit assistance does not guarantee the DOT's approval, which will remain subject to evaluation, based on all of the TIFIA statutory evaluation criteria, and the successful negotiation of terms and conditions acceptable to the Secretary.

A. Letter of Interest

The Letter of Interest must (i) describe the project and the location, purpose, and cost of the project, (ii) outline the proposed financial plan, including the requested credit assistance and the proposed obligor, (iii) provide a status of environmental review, and (iv) provide information regarding satisfaction of other eligibility requirements of the TIFIA credit program. Letters of Interest must be submitted using the form on the TIFIA Web site: *https://www.transportation.gov/tifia/applications.* The DOT will be updating this form to reflect changes made to the TIFIA program by the FAST Act. Pending publication of the updated form, project sponsors should continue to use the form posted on the TIFIA Web site.

The Letter of Interest form requires project sponsors to provide information demonstrating satisfaction (or expected satisfaction if permitted by TIFIA) of each of the eligibility requirements included in TIFIA. These eligibility requirements are outlined above in Part V and elsewhere in this notice.

As described in Part IV, the DOT may provide secured loans to finance up to 49 percent of reasonably anticipated eligible project costs, which is substantially more than the maximum of 33 percent that the DOT could provide prior to MAP–21. The Letter of Interest form requires a project sponsor requesting TIFIA credit assistance to provide a rationale for the amount of TIFIA credit assistance it is requesting, as a percentage of its reasonably anticipated eligible project costs. Similarly, the form requires a project sponsor to specify whether it has flexibility in its financial plan to finance the project with a reduced percentage of TIFIA credit assistance. In providing a rationale for the amount of credit assistance requested, a project sponsor can demonstrate that traditional sources of financing are not available at feasible rates without the TIFIA assistance, or that the costs of traditional financing options would constrain the sponsor's ability to deliver the project, or that delivery of the project through traditional financing approaches would constrain the sponsor's ability to deliver a group of related projects, or a full capital program. This information will help the DOT ensure that it allocates TIFIA's funding authority effectively.

A project sponsor must also describe the purpose of its project in the Letter of Interest form, including the public purpose of the project. A project sponsor should provide quantitative or qualitative information about the public benefits that its project will achieve. Examples of public benefits include objectives specified in Section 101 and 49 U.S.C. 101(a) and 5301, other DOT grant or credit assistance programs, relevant Federal, State, or local transportation laws or plans, and other public benefits that can be achieved through transportation investments.

In the context of a public-private partnership, where multiple bidders may be competing for a concession such that the obligor has not yet been identified, the procuring agency may submit the project's Letter of Interest on behalf of the eventual obligor. The DOT will not consider Letters of Interest from entities that have not obtained rights to develop the project.

The DOT will review each Letter of Interest submitted in accordance with this NOFA. The DOT may contact a project sponsor for clarification of specific information included in the Letter of Interest. The DOT will notify a project sponsor if the DOT determines that its project is not eligible or that the DOT will not be able to continue reviewing its Letter of Interest until certain eligibility concerns are addressed. If the DOT does not determine a project to be ineligible based on its initial review, the DOT will request additional information to supplement the Letter of Interest and complete its eligibility determination. This information may include, among other things, more detailed descriptions of the project, the project's readiness to proceed, the project's financial plan, including financial commitments to the project from sources other than TIFIA, and/or the applicant and its organizational structure.

B. Creditworthiness Review

Before completing its review of a Letter of Interest and rendering a determination of eligibility, the DOT will request that the project sponsor provide a preliminary rating opinion letter, as further described below, and the DOT will engage an independent financial advisor to prepare a report and recommendation acceptable in form and substance to the DOT. The DOT typically engages an independent legal advisor as part of the evaluation and negotiation of terms of TIFIA credit assistance for the project. There is no fee to submit a Letter of Interest; however, project sponsors will be required to reimburse the DOT for the costs of its outside financial and legal advisors. In order to enable the DOT to initially procure financial and legal advisors as part of the Letter of Interest review process, a project sponsor must submit $250,000 to the DOT. This amount is due upon request by the DOT and must be submitted before the DOT hires outside advisors. These funds will be used, dollar for dollar, to cover the first $250,000 in costs of the DOT's financial and legal advisors. In the event the DOT's advisors' fees are less than $250,000, the excess will be returned to the project sponsor. If, due to the duration and complexity of the project, the DOT's advisors' fees exceed $250,000, the DOT will invoice the project sponsor for fees in excess of $250,000. Payment of such invoices will be required within 30 days after receipt.

1. Relief From Fees for Small Projects

For projects having eligible project costs that are reasonably anticipated to be $75 million or less, the FAST Act provides for the reservation of not less than $2 million of the TIFIA program's annual funding authority to be used in lieu of the third-party costs charged by the DOT. Project sponsors wishing to be considered for this available funding should indicate such in their Letters of Interest. For more details on this set-aside, please see the Program Guide on the TIFIA Web site: *https://www.transportation.gov/tifia/program-guide.*

C. Invitation To Apply

After concluding its review of the Letter of Interest and making a determination of eligibility, the DOT will inform the project sponsor of its determination. If a project is determined to be eligible, the DOT will inform the project sponsor that it may submit an application. If the DOT determines that a project is ineligible, it will notify the project sponsor of this determination and/or that the DOT will not be able to continue reviewing the Letter of Interest until certain eligibility concerns are addressed. The DOT will review Letters of Interest on a rolling basis and invite a project sponsor to apply once a favorable eligibility determination is made.

An invitation to apply for credit assistance does not guarantee the DOT's approval, which will remain subject to a project's continued eligibility, including creditworthiness, the successful negotiation of terms acceptable to the Secretary, and the availability of funds. In determining the availability of funds, the DOT may consider other projects seeking credit assistance through TIFIA.

By statute, the DOT works on a timeline for assessing applications for credit assistance. No later than 30 days after receipt of an application, the DOT will inform each applicant whether its

application is complete or, if not complete, identify additional materials needed to complete the application. No later than 60 days after issuing such notice, the applicant will be notified whether the application is approved or disapproved.

D. Streamlined Application Process

The FAST Act requires that the DOT develop a streamlined application process for certain projects within 180 days after enactment. The DOT is in the process of developing such a process. Once that process has been developed, it will be included in the Program Guide on the TIFIA Web site: *https://www.transportation.gov/tifia/program-guide.* The statutory criteria for the streamlined application process are set forth in Section 603(f). A key component of the streamlined application process will likely be a requirement that TIFIA credit assistance is provided on the DOT's standard terms as set forth in the loan agreement templates on the TIFIA Web site: *https://www.transportation.gov/tifia/tifia-loan-term-sheet-and-agreement.* Project sponsors should indicate in their Letters of Interest whether they are requesting the streamlined process and, if so, demonstrate how they meet the criteria.

As noted above, the project sponsor must submit $250,000 to the DOT before the DOT hires financial and/or legal advisors as part of the Letter of Interest review process (subject to availability of the set-aside for small projects, as discussed above). This amount is due upon request by the DOT. Project sponsors will be invoiced for any costs in excess of $250,000 incurred by the DOT from its outside financial and legal advisors (subject to availability of the $2 million set-aside for small projects, as discussed above). More detailed information about these costs can be found in the TIFIA Program Guide, which is in the process of being updated to reflect the changes made by the FAST Act: *https://www.transportation.gov/tifia/program-guide.*

TIFIA borrowers should expect to track and report certain information with respect to each project's performance. The information may be used to assist the DOT in determining whether TIFIA is meeting the program's goals of leveraging Federal funds and encouraging private co-investment. The DOT may also use the information for purposes of identifying and measuring performance with respect to goals, strategies, time frames, resources, and stakeholder involvement.

VII. Additional Guidance and Request for Comments

As noted in the Summary section, the DOT is publishing this notice to give project sponsors the opportunity to submit Letters of Interest for the newly authorized funding as soon as is practicable. However, in addition to authorizing funding for TIFIA credit assistance, the FAST Act made some significant changes to the TIFIA program's structure, including the terms and conditions pursuant to which the DOT can provide TIFIA credit assistance. This notice provides guidance about the TIFIA application process and how the DOT will implement some of the changes made by the FAST Act, but it does not provide comprehensive guidance about how the DOT will implement all of the changes made by the FAST Act.

This notice also does not include an exhaustive list of statutory and program requirements, such as the requirement that Federal funding recipients must comply with Title VI of the Civil Rights Act of 1964 and other nondiscrimination requirements. The Background section of this notice identifies the relevant laws that govern the TIFIA program. The FAST Act provides that the Secretary may promulgate such regulations as the Secretary determines to be appropriate to carry out the TIFIA program. The TIFIA regulations (49 CFR part 80), which provide specific guidance on the program requirements, were last updated in 2000. The DOT will continue to evaluate, based on stakeholder feedback and experience with implementation of new provisions contained in the FAST Act, whether future regulatory updates would be beneficial, and if so, what subject areas they would cover. The primary document that the TIFIA program uses to provide ongoing program guidance is a ''Program Guide'' published on the TIFIA Web site. The DOT is updating the TIFIA Program Guide to reflect changes to the program under the FAST Act and will endeavor to address comments received in response to this request for comments. For additional guidance, applicants are encouraged to check the TIFIA program Web site regularly to obtain updated programmatic and application information. DOT staff are also available to provide technical assistance on a real-time basis.

Because of the significance of the changes made by the FAST Act to the TIFIA program, this notice invites interested parties to submit comments about that program's implementation of the FAST Act and the DOT's guidance for awarding TIFIA credit assistance. Interested parties can provide comments on any aspect of the DOT's implementation of the TIFIA changes made by the FAST Act, including identifying specific topic areas where additional clarification or guidance would be beneficial to potential applicants. The DOT is particularly interested in comments from interested parties regarding the provisions in the FAST Act relating to rural projects fund capitalizations and SIBs. The DOT will consider these comments as it continues to implement the program and develop supplemental program guidance. The instructions for submitting comments are included below.

Comments should be sent to the DOT by April 11, 2016. Late-filed comments will be considered to the extent practicable.

Authority: 23 U.S.C. 601–610 (as set forth in the FAST Act); 49 CFR 1.48(b)(6); 23 CFR part 180; 49 CFR part 80; 49 CFR part 261; 49 CFR part 640.

Issued on: March 7, 2016.

Anthony R. Foxx,

Secretary.

[FR Doc. 2016–05640 Filed 3–10–16; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Sanctions Actions Pursuant to Executive Order 13667

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (OFAC) is publishing the names of one individual and one entity whose property and interests in property are blocked pursuant to Executive Order (E.O.) 13667 and whose names have been added to OFAC's list of Specially Designated Nationals and Blocked Persons (SDN List).

DATES: OFAC's actions described in this notice were effective March 8, 2016.

FOR FURTHER INFORMATION CONTACT: The Department of the Treasury's Office of Foreign Assets Control: Assistant Director for Licensing, tel.: 202–622–2480, Assistant Director for Regulatory Affairs, tel.: 202–622–4855, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; or the Department of the Treasury's Office of the Chief Counsel (Foreign Assets Control), Office of the General Counsel, tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

The SDN List and additional information concerning OFAC sanctions programs are available from OFAC's Web site (*www.treasury.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs is also available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Notice of OFAC Actions

On March 8, 2016, OFAC blocked the property and interests in property of the following individual and entity pursuant to E.O. 13667, ''Blocking Property of Certain Persons Contributing to the Conflict in the Central African Republic'':

Individual

KONY, Joseph, Haute-Kotto, Central African Republic; Vakaga, Central African Republic; Kafia Kingi; Southern Darfur, Sudan; Congo, Democratic Republic of the; DOB 1961; alt. DOB 1963; alt. DOB 1965; alt. DOB 1959; alt. DOB 1960; alt. DOB 18 Sep 1964; POB Odek, Omoro, Gulu, Uganda; alt. POB Palaro Village, Palaro Parish, Omoro County, Gulu District, Uganda; alt. POB Atyak, Uganda; nationality Uganda; Gender Male; Commander of the Lord's Resistance Army (individual) [SDGT] [CAR] (Linked To: LORD'S RESISTANCE ARMY).

Entity

LORD'S RESISTANCE ARMY (a.k.a. LORD'S RESISTANCE MOVEMENT; a.k.a. LORD'S RESISTANCE MOVEMENT/ARMY; a.k.a. ''LRA''; a.k.a. ''LRM''; a.k.a. ''LRM/A''), Vakaga, Central African Republic; Haute-Kotto, Central African Republic; Basse-Kotto, Central African Republic; Haut-Mbomou, Central African Republic; Mbomou, Central African Republic; Haut-Uolo, Congo, Democratic Republic of the; Bas-Uolo, Congo, Democratic Republic of the; Kafia Kingi [CAR].

Dated: March 8, 2016.

John E. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2016–05525 Filed 3–10–16; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Sanctions Actions Pursuant to the Zimbabwe Sanctions Regulations

SUB–AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (OFAC) is publishing the names of two entities whose property and interests in property are blocked pursuant to the Zimbabwe Sanctions Regulations.

DATES: OFAC's actions described in this notice were effective on March 8, 2016, as further specified below.

FOR FURTHER INFORMATION CONTACT: The Department of the Treasury's Office of Foreign Assets Control: Assistant Director for Licensing, tel.: 202–622–2480, Assistant Director for Regulatory Affairs, tel.: 202/622–4855, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202/622–2490, or the Department of the Treasury's Office of the Chief Counsel (Foreign Assets Control), Office of the General Counsel, tel.: 202/622–2410.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's Web site (*www.treasury.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs is also available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Notice of OFAC Actions

On March 8, 2016, OFAC added the following two entities to the list of Specially Designated Nationals and Blocked Persons, pursuant to the Zimbabwe Sanctions Regulations.

Entities

1. CHEMPLEX CORPORATION LIMITED (a.k.a. CHEMPLEX CORPORATION LTD), 93 Park Lane, P.O. Box 989, Harare, Zimbabwe; 10 Bilston Street, Bulawayo, Zimbabwe; 35 Coventry Road, Harare, Zimbabwe [ZIMBABWE] (Linked To: INDUSTRIAL DEVELOPMENT CORPORATION OF ZIMBABWE LTD).

2. ZIMBABWE FERTILISER COMPANY (a.k.a. ZFC LIMITED), 35 Coventry Road, Workington, Harare, Zimbabwe; Ambleside Road, Aspindale Park, Harare, Zimbabwe; Sable Chemicals Complex, Lot1/7, Sherwood Block, Kwekwe, Zimbabwe [ZIMBABWE] (Linked To: CHEMPLEX CORPORATION LIMITED).

Dated: March 8, 2016.

John E. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2016–05523 Filed 3–10–16; 8:45 am]

BILLING CODE 4810–AL–P

FEDERAL REGISTER

Vol. 81 Friday,
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Part II

Department of Homeland Security

8 CFR Parts 214 and 274a
Improving and Expanding Training Opportunities for F–1 Nonimmigrant Students With STEM Degrees and Cap-Gap Relief for All Eligible F–1 Students; Final Rule

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 214 and 274a

[DHS Docket No. ICEB–2015–0002]

RIN 1653–AA72

Improving and Expanding Training Opportunities for F–1 Nonimmigrant Students With STEM Degrees and Cap-Gap Relief for All Eligible F–1 Students

AGENCY: Department of Homeland Security.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security (DHS) is amending its F–1 nonimmigrant student visa regulations on optional practical training (OPT) for certain students with degrees in science, technology, engineering, or mathematics (STEM) from U.S. institutions of higher education. Specifically, the final rule allows such F–1 STEM students who have elected to pursue 12 months of OPT in the United States to extend the OPT period by 24 months (STEM OPT extension). This 24-month extension effectively replaces the 17-month STEM OPT extension previously available to certain STEM students. The rule also improves and increases oversight over STEM OPT extensions by, among other things, requiring the implementation of formal training plans by employers, adding wage and other protections for STEM OPT students and U.S. workers, and allowing extensions only to students with degrees from accredited schools. As with the prior 17-month STEM OPT extension, the rule authorizes STEM OPT extensions only for students employed by employers who participate in E-Verify. The rule also includes the ''Cap-Gap'' relief first introduced in a 2008 DHS regulation for any F–1 student with a timely filed H–1B petition and request for change of status.

DATES: This rule is effective May 10, 2016, except the addition of 8 CFR 214.16, which is effective from May 10, 2016, through May 10, 2019.

FOR FURTHER INFORMATION CONTACT: Katherine Westerlund, Policy Chief (Acting), Student and Exchange Visitor Program, U.S. Immigration and Customs Enforcement, 500 12th Street SW., Washington, DC 20536; telephone (703) 603–3400; email *SEVP@ice.dhs.gov*.

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I. Abbreviations

CBP U.S. Customs and Border Protection
CFR Code of Federal Regulations
CIP Classification of Instructional Program
DHS Department of Homeland Security
DSO Designated School Official
EAD Employment Authorization Document
FOIA Freedom of Information Act
FR Federal Register
ICE U.S. Immigration and Customs Enforcement
ID Identification
IFR Interim Final Rule
INA Immigration and Nationality Act
NCES National Center for Education Statistics
NPRM Notice of Proposed Rulemaking
OPT Optional Practical Training
RIA Regulatory Impact Analysis
SEVP Student and Exchange Visitor Program
SEVIS Student and Exchange Visitor Information System
STEM Science, Technology, Engineering, or Mathematics
U.S.C. United States Code
USCIS U.S. Citizenship and Immigration Services

II. Executive Summary

A. Purpose of the Regulatory Action

This final rule affects certain F–1 nonimmigrant students who seek to obtain an extension of optional practical training (OPT) based on study at a U.S. institution of higher education in a science, technology, engineering or mathematics (STEM) field, as well as certain F–1 nonimmigrant students who seek so-called Cap-Gap relief. The F–1 nonimmigrant classification is available to individuals seeking temporary admission to the United States as students at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in an accredited language training program.[1] To obtain F–1 nonimmigrant classification, the student must be enrolled in a full course of study at a qualifying institution and have sufficient funds for self-support during the entire proposed course of study. Such course of study must occur at a school authorized by the U.S. government to accept international students.

OPT is a form of temporary employment available to F–1 students (except those in English language training programs) that directly relates to a student's major area of study in the United States. A student can apply to engage in OPT during his or her academic program (''pre-completion OPT'') or after completing the academic program (''post-completion OPT''). A student can apply for 12 months of OPT at each education level (*e.g.,* one 12-month OPT period at the bachelor's level and another 12-month period at the master's level). While school is in session, the student may work up to 20 hours per week pursuant to OPT.

This final rule provides for an extension of the OPT period for certain F–1 students who have earned certain STEM degrees and participate in practical training opportunities with employers that meet certain requirements. The Department of Homeland Security (DHS) first introduced an extension of OPT for STEM graduates in a 2008 interim final rule (2008 IFR). *See* 73 FR 18944 (Apr. 8, 2008). Under the 2008 IFR, an F–1 student with a STEM degree from a U.S. institution of higher education could apply for an additional 17 months of

[1] For purposes of 8 CFR 214.2(f), a ''college or university'' is an institution of higher learning that awards recognized bachelor's, master's, doctoral or professional degrees. *See* 8 CFR 214.3(a)(2)(A). A career or technical institution may therefore be categorized as a ''college or university'' if it awards such degrees.

OPT (17-Month STEM OPT extension), provided that the employer from which the student sought employment was enrolled in and remained in good standing in the E-Verify electronic employment eligibility verification program (E-Verify), as determined by U.S. Citizenship and Immigration Services (USCIS). As discussed in further detail below, on August 12, 2015, the U.S. District Court for the District of Columbia ordered the *vacatur* of the 2008 IFR on procedural grounds and remanded the issue to DHS. The court stayed the vacatur until February 12, 2016 to give DHS the opportunity to issue a new rule related to STEM OPT extensions through notice-and-comment rulemaking.

On October 19, 2015, DHS published a notice of proposed rulemaking (NPRM) in the **Federal Register** to reinstate the STEM OPT extension, with changes intended to enhance the educational benefit afforded by the extension and to increase program oversight, including safeguards to protect U.S. workers. *See* 80 FR 63376. On January 23, 2016, the Court further stayed its vacatur until May 10, 2016, to provide DHS additional time to complete the rulemaking following review of public comments received during the comment period and to allow the Department to publish the rule with a 60-day delayed effective date to provide sufficient time for efficient transition to the new rule's requirements.

B. Summary of the Major Provisions of the Final Rule

1. Summary of Final Rule

This rule finalizes the NPRM, with certain changes made following review and consideration of the public comments received by DHS. Under this rule, a qualifying F–1 student with a STEM degree who has been granted 12 months of practical training pursuant to the general OPT program may apply to DHS for a 24-month extension of his or her period of practical training (STEM OPT extension).

The core purpose of the STEM OPT extension is to allow participating students to supplement their academic knowledge with valuable practical STEM experience. Accordingly, as is the case with practical training generally, a student's practical training pursuant to the STEM OPT extension must be directly related to the student's major area of study. The student's STEM degree must be awarded by an accredited U.S. college or university and be in a field recognized as a STEM field by DHS. The student may base the extension on the student's most recent academic degree, or may (subject to a number of requirements described in more detail below) base the extension on a STEM degree that the student earned earlier in his or her academic career in the United States. Under this rule, a student may be eligible for up to two, separate STEM OPT extensions over the course of his or her academic career, upon completing two qualifying STEM degrees at different educational levels.

This rule includes a number of measures intended to better ensure the educational benefit, integrity, and security of the STEM OPT extension. For instance, the rule requires each STEM OPT student to prepare and execute with their prospective employer a formal training plan that identifies learning objectives and a plan for achieving those objectives. The STEM OPT student and his or her employer must work together to finalize that plan. The rule also prohibits students from basing a STEM OPT extension on a degree from an unaccredited educational institution. Moreover, to ensure compliance with program requirements, the rule provides for DHS site visits to employer locations in which STEM OPT students are employed. Although DHS will generally give notice of such site visits, DHS may conduct an unannounced site visit if it is triggered by a complaint or other evidence of noncompliance with the regulations.

The rule also includes a number of requirements intended to help DHS track STEM OPT students and further enhance the integrity of the STEM OPT extension. Most prominent among these are reporting requirements, which the rule imposes primarily upon students and designated school officials (DSOs). The rule includes four main reporting requirements, as follows. First, the rule imposes a six-month validation requirement, under which a STEM OPT student and his or her school must work together to confirm the validity of certain biographical, residential, and employment information concerning the student, including the student's legal name, the student's address, the employer's name and address, and current employment status. Second, the rule imposes an annual self-evaluation requirement, under which the student must report to the DSO on his or her progress with the practical training. The student's employer must sign the self-evaluation prior to its submission to the DSO. Third, the rule requires that the student and employer report changes in employment status, including the student's termination or departure from the employer. Fourth, both the student and the employer are obligated to report to the DSO material changes to, or material deviations from, the student's formal training plan.

Finally, this rule includes a number of specific obligations for STEM OPT employers. These obligations are intended to ensure the integrity of the program and provide safeguards for U.S. workers in STEM fields. Among other things, the employer must be enrolled in and remain in good standing with E-Verify; assist with the aforementioned reporting and training plan requirements; and attest that (1) it has sufficient resources and trained personnel available to provide appropriate training in connection with the specified opportunity; (2) the student on a STEM OPT extension will not replace a full- or part-time, temporary or permanent U.S. worker; and (3) the opportunity helps the student attain his or her training objectives.

We describe each of these provisions in more detail below.

2. Comparison to the 2008 IFR

As noted above, this rule contains a number of changes in comparison to the 2008 IFR, while retaining other provisions of the 2008 IFR. Changes made by this rule in comparison to the 2008 IFR include:

- *Lengthened STEM OPT Extension Period.* The rule increases the OPT extension period for STEM OPT students from the 2008 IFR's 17 months to 24 months. The final rule also makes F–1 students who subsequently enroll in a new academic program and earn another qualifying STEM degree at a higher educational level eligible for one additional 24-month STEM OPT extension.
- *STEM Definition and CIP Categories for STEM OPT Extension.* The rule defines which fields of study (more specifically, which Department of Education Classification of Instructional Program (CIP) categories) may serve as the basis for a STEM OPT extension. The rule also sets forth a process for public notification in the **Federal Register** when DHS updates the list of eligible STEM fields on the Student and Exchange Visitor Program's (SEVP's) Web site.
- *Training Plan for STEM OPT Students.* To improve the educational benefit of the STEM OPT extension, the rule requires employers to implement formal training programs to augment students' academic learning through practical experience. This requirement is intended to equip students with a more comprehensive understanding of

their selected area of study and broader functionality within that field.

• *Previously Obtained STEM Degrees.* The rule permits an F–1 student participating in a 12-month period of post-completion OPT based on a non-STEM degree to use a prior eligible STEM degree from a U.S. institution of higher education as a basis to apply for a STEM OPT extension, as long as both degrees were received from currently accredited educational institutions. The practical training opportunity must be directly related to the previously obtained STEM degree.

• *Safeguards for U.S. Workers in Related Fields.* To guard against adverse impacts on U.S. workers, the rule requires terms and conditions of a STEM practical training opportunity (including duties, hours, and compensation) to be commensurate with those applicable to similarly situated U.S. workers. As part of completing the Form I–983, Training Plan for STEM OPT Students, an employer must attest that: (1) It has sufficient resources and trained personnel available to provide appropriate training in connection with the specified opportunity; (2) the student will not replace a full- or part-time, temporary or permanent U.S. worker; and (3) the opportunity will help the student attain his or her training objectives.

• *School Accreditation, Employer Site Visits, and Employer Reporting.* To improve the integrity of the STEM OPT extension, the rule: (1) Generally limits eligibility for such extensions to students with degrees from schools accredited by an accrediting agency recognized by the Department of Education; (2) clarifies DHS discretion to conduct employer site visits at worksites to verify whether employers are meeting program requirements, including that they possess and maintain the ability and resources to provide structured and guided work-based learning experiences; and (3) institutes new employer reporting requirements.

• *Compliance Requirements and Unemployment Limitation.* In addition to reinstating the 2008 IFR's reporting and compliance requirements, the rule revises the number of days an F–1 student may remain unemployed during the practical training period. The program in effect before this final rule allowed a student to be unemployed up to 90 days during his or her initial period of post-completion OPT, and up to an additional 30 days (for a total of 120 days) for a student who received a 17-month STEM OPT extension. This rule retains the 90-day maximum period of unemployment during the initial period of post-completion OPT but allows an additional 60 days (for a total of 150 days) for a student who obtains a 24-month STEM OPT extension.

The rule retains other provisions of the 2008 IFR, as follows:

• *E-Verify and Reporting Requirements for STEM OPT Employers.* The rule requires STEM OPT employers to be enrolled in and remain in good standing with E-Verify, as determined by USCIS, and to report changes in the STEM OPT student's employment to the DSO within five business days.

• *Reporting Requirements for STEM OPT Students.* The rule requires STEM OPT students to report to their DSOs any name or address changes, as well as any changes to their employers' names or addresses. Students also must verify the accuracy of this reporting information periodically.

• *Cap-Gap Extension for F–1 Students with Timely Filed H–1B Petitions and Requests for Change of Status.* With a minor revision to improve readability, the rule includes the 2008 IFR's Cap-Gap extension provision, under which DHS temporarily extends an F–1 student's duration of status and any current employment authorization if the student is the beneficiary of a timely filed H–1B petition and change-of-status request pending with or approved by USCIS. The Cap-Gap extension extends the OPT period until the beginning of the new fiscal year (*i.e.,* October 1 of the fiscal year for which the H–1B status is being requested).

3. Summary of Changes From the Notice of Proposed Rulemaking

Following careful consideration of public comments received, DHS also has made several modifications to the regulatory text proposed in the NPRM. Those changes include the following:

• *Time of Accreditation.* For a STEM OPT extension based on a previously obtained STEM degree, the student must have obtained that degree from an educational institution that is accredited at the time of the student's application for the extension.

• *SEVP Certification Required for Prior Degrees.* For a STEM OPT extension based on a previously obtained STEM degree, the degree also must have been issued by an educational institution that is SEVP-certified at the time of application for the extension. Overseas campuses of U.S. educational institutions are not eligible for SEVP certification.

• *Site Visit Notifications.* DHS will provide notice to the employer 48 hours before any site visit unless a complaint or other evidence of noncompliance with the STEM OPT extension regulations triggers the visit, in which case DHS may conduct the visit without notice.

• *Focus on Training.* DHS has modified the proposed rule's Mentoring and Training Plan to increase the focus on training. The information collection instrument for this plan is now titled Form I–983, Training Plan for STEM OPT Students.

• *Existing Employer Training Programs.* This rule streamlines and clarifies the regulatory text and Training Plan for STEM OPT Students to clarify that employers may use existing training programs to satisfy certain regulatory requirements for evaluating the progress of STEM OPT students.

• *Employer Attestation.* The rule revises the employer attestation to require that the employer attest that the student will not replace a full- or part-time, temporary or permanent U.S. worker.

• *Evaluation of Student Progress.* The rule revises the evaluation requirement to require that the student and an appropriate individual in the employer's organization sign the evaluation on an annual basis, with a mid-point evaluation during the first 12-month interval and a final evaluation completed prior to the conclusion of the STEM OPT extension.

DHS also has clarified its interpretation of the rule in a number of ways, as explained more fully below.

C. Costs and Benefits

The anticipated costs of compliance with the rule, as well as the benefits, are discussed at length in the section below, entitled ''Statutory and Regulatory Requirements—Executive Orders 12866 and 13563.'' A combined Regulatory Impact Analysis and a Final Regulatory Flexibility Analysis are available in the docket for this rulemaking. A summary of the analysis follows.

DHS estimates that the costs imposed by the implementation of this rule will be approximately $737.6 million over the 10-year analysis time period, discounted at 3 percent, or $588.5 million, discounted at 7 percent. This amounts to $86.5 million per year when annualized at a 3 percent discount rate, or $83.8 million per year when annualized at a 7 percent discount rate. The Summary Table at the end of this section presents the cost estimates in more detail.

With respect to benefits, making the STEM OPT extension available to additional students and lengthening the 17-month extension to 24 months will enhance certain students' ability to achieve the objectives of their courses of

study by allowing them to gain valuable knowledge and skills through on-the-job training that may be unavailable in their home countries. The changes will also benefit the U.S. educational system, U.S. employers, and the broader U.S. economy. The rule will benefit the U.S. educational system by helping to ensure that the nation's colleges and universities remain globally competitive in attracting international students in STEM fields. U.S. employers will benefit from the increased ability to rely on skilled U.S.-educated STEM OPT students, as well as their knowledge of markets in their home countries. The nation also will benefit from the increased retention of such students in the United States, including through increased research, innovation, and other forms of productivity that enhance the nation's economic, scientific, and technological competitiveness.

Furthermore, strengthening the STEM OPT extension by implementing requirements for training, tracking objectives, reporting on program compliance, and accreditation of participating schools will further prevent abuse of the limited on-the-job training opportunities provided by OPT in STEM fields. These and other elements of the rule also will improve program oversight, strengthen the requirements for program participation, and better ensure that U.S. workers are protected.

The Summary Table below presents a summary of the benefits and costs of the rule. The costs are discounted at 7 percent. Students will incur costs for completing application forms and paying application fees; reporting to DSOs; preparing (with their employers) the Training Plan for STEM OPT Students required by this rule; and periodically submitting updates to employers and DSOs. DSOs will incur costs for reviewing information and forms submitted by students, inputting required information into the Student and Exchange Visitor Information System (SEVIS), and complying with other oversight requirements related to prospective and participating STEM OPT students. Employers of STEM OPT students will incur burdens for preparing the Training Plan with students, confirming students' evaluations, enrolling in (if not previously enrolled) and using E-Verify to verify employment eligibility for all new hires, and complying with additional requirements related to E-Verify.

SUMMARY TABLE—ESTIMATED COSTS AND BENEFITS OF FINAL RULE

[in millions of 2014 dollars]

	STEM OPT	E-Verify	Total
10-Year Cost Annualized at 7 Percent Discount Rate ...	$79.8	$4.0	$83.8
10-Year Cost Annualized at 3 Percent Discount Rate ...	$82.3	$4.2	$86.5
Qualitative Costs	• Cost to students and schools resulting from accreditation requirement; • Cost to employers from the requirement to provide STEM OPT students commensurate compensation to similarly situated U.S. workers; and • Decreased practical training opportunities for students no longer eligible for the program due to improvements to the STEM OPT extension.		
Monetized Benefits	N/A	N/A	N/A
Non-monetized Benefits	• Increased ability of students to gain valuable knowledge and skills through on-the-job training in their field; • Increased global attractiveness of U.S. colleges and universities; and • Increased program oversight, strengthened requirements for program participation, and new protections for U.S. workers.		
Net Benefits	N/A	N/A	N/A

Finally, in response to public comments, DHS revised the regulatory impact analysis (RIA) published with the NPRM to reflect the changes made in the final rule and include new data that has become available since the publication of the NPRM, such as updated compensation rates. DHS's major changes to the RIA from the NPRM are summarized in the table below.

TABLE 1—CHANGES FROM INITIAL RIA TO FINAL RIA

Variables	NPRM and final rule comparison			Description of changes
	NPRM	Final rule	Difference	
Population of Affected Parties				
Number of Students due to Increased CIP List Eligibility as a percent of New STEM OPT Extension Students.	10%	5%	−5%	• The final rule's changes to the CIP list are not expected to result in the same expansion of eligibility as DHS anticipated in the proposed rule.
Number of Transitional Students	18,210	17,610	−600	• Revised the estimate of transitional students based on the effective date of final rule.

TABLE 1—CHANGES FROM INITIAL RIA TO FINAL RIA—Continued

Variables	NPRM and final rule comparison			Description of changes
	NPRM	Final rule	Difference	
Wages				
STEM Students' Weighted Average Wage Rate (unloaded).	$23.81	$26.06	$2.25	• New FLC Data Center Online Wage Library data for 2014–2015 was published. • Revised STEM occupations list to more closely reflect the STEM OPT extension degrees.
Training Plan Form for STEM OPT Students—Initially Completing Training Plan Form				
Student Burden	$58.05	$82.44	$24.39	• Time burden increased from 1.67 hours to 2.17 hours in response to public comments.
Employer Burden	$123.47	$280.81	$157.34	• Training Plan form revisions require up to two employer officials contributing to the initial completion of the Training Plan form. • Time burden increased from 2 hours to 4 hours in response to public comments.
DSO Burden	$13.09	$52.31	$39.22	• Time burden revised from 0.33 hours to 1.33 hours to reflect public comments.
Training Plan Form for STEM OPT Students—12-Month Evaluations				
Student Burden	[2] $139.04	$114.15	−$24.89	• Frequency of evaluations changed from six to 12 months. • Updated STEM student wage rate. • Time burden increased from 1.17 hours to 1.5 hours in response to public comments.
Employer Burden	$78.96	$118.44	$39.48	• Frequency of evaluations changed from six to 12 months. • Time burden increased from 0.25 to 0.75 hours in response to public comments.
DSO Burden	[3] $26.74	$78.66	$51.92	• Frequency of evaluations changed from six to 12 months. • Time burden increased from 0.33 hours to 1 hour in response to public comments.
Additional Implementation Costs				
Evaluations	[4] $10.57	$5.29	−$5.28	• Frequency of evaluations changed from six to 12 months.
Reporting Requirements				
Student Opportunity Cost for Updating Information Reports.	$12.94	$0	$12.94	• The student Reporting Requirements in the Final Rule do not represent a change from the baseline.
E-Verify Requirements for STEM OPT Extension Employers				
Total Enrolled Employers Who Would Discontinue E-Verify without Final Rule over 10 years.	70,025	8,753	−61,272	• Updated based on further research.
Total 10-year Cost (Undiscounted)	$759.3M	$886.1M	$126.8M	

III. Background

A. Statutory and Regulatory Authority and History

The Secretary of Homeland Security (Secretary) has broad authority to administer and enforce the nation's immigration laws. *See generally* 6 U.S.C. 202; Immigration and Nationality

[2] In the NPRM, DHS presented a combined total student burden for six-month evaluations and validation check-ins (1.17 hours). Note that the NPRM cost estimate only included 1 hour for the student to complete the evaluation. The NPRM cost estimate did not include a separate estimate of 0.17 hours for associated with the six-month validation report requirement from the IFR. Hence, this value, $139.04 (= 2 evaluations × 1 hour × $34.76/hour), differs from that presented in the NPRM, $162.68 (= 4 evaluations × 1.17 hours × $34.76/hour).

[3] In the NPRM, DHS presented the combined total DSO burden for six-month evaluations and validation check-ins. Note that the NPRM estimate only included the 0.17 hours for the DSO to file each evaluation and did not include the 0.17 hours for the DSO to make a six-month validation report to SEVIS. Hence, this value, $26.74 (= 2 evaluations × 0.17 hours × $39.33/hour), differs from that presented in the NPRM, $52.39 (= 4 evaluations and validation check-ins × 0.333 hours × $39.33/hour).

[4] In the NPRM, DHS presented the combined total implementation cost for six-month evaluations and validation check-ins. Note that the NPRM estimate only included the costs associated with the six-month evaluations. Hence, this value, $10.57 ((= $78.96 + 26.74) × 10%), differs from that presented in the NPRM, $13.09 ((= $78.96 + $52.39) × 10%).

Act of 1952, as amended (INA), Sec. 103, 8 U.S.C. 1103. Section 101(a)(15)(F)(i) of the INA establishes the F–1 nonimmigrant classification for individuals who wish to come to the United States temporarily to enroll in a full course of study at an academic or language training school certified by U.S. Immigration and Customs Enforcement's (ICE's) SEVP. 8 U.S.C. 1101(a)(15)(F)(i). The INA provides the Secretary with broad authority to determine the time and conditions under which nonimmigrants, including F–1 students, may be admitted to the United States. *See* INA Sec. 214(a)(1), 8 U.S.C. 1184(a)(1). The Secretary also has broad authority to determine which individuals are authorized for employment in the United States. *See, e.g.,* INA Sec. 274A(h)(3), 8 U.S.C. 1324a(h)(3).

Federal agencies dealing with immigration have long interpreted Sec. 101(a)(15)(F)(i) of the INA and related authorities to encompass on-the-job training that supplements classroom training. *See, e.g.,* 12 FR 5355, 5357 (Aug. 7, 1947) (authorizing employment for practical training under certain conditions, pursuant to statutory authority substantially similar to current INA Sec. 101(a)(15)(F)(i)); 38 FR 35425, 35426 (Dec. 28, 1973) (also authorizing, pursuant to the INA, employment for practical training under certain conditions).[5]

ICE manages and oversees significant elements of the F–1 student process, including the certification of schools and institutions in the United States that enroll F–1 students. In overseeing these institutions, ICE uses SEVIS to track and monitor international students and communicate with the schools that enroll them while they are in the United States and participating in educational opportunities. Additional statutory and other authority requires and supports this tracking and monitoring.[6]

1. OPT Background

A student in F–1 status may remain in the United States for the duration of his or her education if otherwise meeting the requirements for the maintenance of status. 8 CFR 214.2(f)(5)(i). Once an F–1 student has completed his or her academic program and any subsequent period of OPT, the student must generally leave the United States unless he or she enrolls in another academic program, either at the same school or at another SEVP-certified school; changes to a different nonimmigrant status; or otherwise legally extends his or her period of authorized stay in the United States. As noted, DHS regulations have long defined an F–1 student's duration of status to include the student's practical training. *See, e.g.,* 48 FR 14575, 14583 (Apr. 5, 1983).[7] Additionally, an F–1 student is allowed a 60-day ''grace period'' after the completion of the academic program or OPT to prepare for departure from the United States. 8 CFR 214.2(f)(5)(iv).

Unless an F–1 student meets certain limited exceptions, he or she may not be employed in the United States during the term of his or her F–1 status. DHS permits an F–1 student who has been enrolled on a full-time basis for at least one full academic year in a college, university, conservatory, or seminary certified by SEVP, and who has otherwise maintained his or her status, to apply for practical training to work for a U.S. employer in a job directly related to his or her major area of study. 8 CFR 214.2(f)(10).

An F–1 student may seek employment through OPT either during his or her academic program (pre-completion OPT) or immediately after graduation (post-completion OPT). The student remains in F–1 nonimmigrant status throughout the OPT period. Thus, an F–1 student in post-completion OPT does not have to leave the United States within 60 days after graduation, but instead has authorization to remain for the entire post-completion OPT period. 8 CFR 214.2(f)(5)(i). This initial post-completion OPT period (*i.e.,* a period of practical training immediately following completion of an academic program) can be up to 12 months, except in certain circumstances involving students who engaged in either pre-completion OPT or curricular practical training (CPT).[8]

2. Regulatory History

On April 8, 2008, DHS published an interim final rule in the **Federal Register** (73 FR 18944) that, in part, extended the maximum period of OPT from 12 to 29 months (through a 17-month ''STEM OPT extension'') for an F–1 student who obtained a degree in a designated STEM field from a U.S. institution of higher education and who was engaged in practical training with an employer that enrolled in and remained in good standing with E-Verify, as determined by USCIS. As a result of that rule, F–1 students granted STEM OPT extensions were required to report to their DSOs any changes in their names or addresses, as well as any changes in their employer's information (including name or address), and periodically validate the accuracy of this information. The rule further required employers of such students to report to the relevant DSO within two

[5] During a brief period following the Immigration Act of 1990, Congress expanded employment authorization for foreign students (referred to throughout this preamble as ''international students'') by allowing for a three-year pilot program in which students could be employed off-campus in positions *unrelated* to the student's field of study. Pub. L. 101–649, Sec. 221(a), 104 Stat. 4978, 5027 (Nov. 29, 1990). In general, however, practical training has historically been limited to the student's field of study.

[6] DHS derives its authority to manage these programs from several sources, including, in addition to the authorities cited above, section 641 of Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104–208, 110 Stat. 3009–546, 3009–704 (Sep. 30, 1996) (codified as amended at 8 U.S.C. 1372), which authorizes the creation of a program to collect current and ongoing information provided by schools and exchange visitor programs regarding F and other nonimmigrants during the course of their stays in the United States, using electronic reporting technology where practicable. Consistent with this statutory authority, DHS manages these programs pursuant to Homeland Security Presidential Directive—2 (HSPD—2), Combating Terrorism Through Immigration Policies (Oct. 29, 2001), as amended, *http://www.gpo.gov/fdsys/pkg/CPRT-110HPRT39618/pdf/CPRT-110HPRT39618.pdf*); and Section 502 of the Enhanced Border Security and Visa Entry Reform Act of 2002, Pub. L. 107–173, 116 Stat. 543, 563 (May 14, 2002). HSPD–2 requires the Secretary of Homeland Security to conduct periodic, ongoing reviews of institutions certified to accept F nonimmigrants, and to include checks for compliance with recordkeeping and reporting requirements. *See* Weekly Comp. Pres. Docs., 37 WCPD 1570, *http://www.gpo.gov/fdsys/granule/WCPD-2001-11-05/WCPD-2001-11-05-Pg1570/content-detail.html.* Section 502 of the Enhanced Border Security and Visa Entry Reform Act of 2002 directs the Secretary to review the compliance with recordkeeping and reporting requirements under 8 U.S.C. 1101(a)(15)(F) and 1372 of all schools approved for attendance by F students within two years of enactment, and every two years thereafter. Moreover, the programs discussed in this rule, as is the case with all DHS programs, are carried out in keeping with DHS's primary mission, which includes the responsibility to ''ensure that the overall economic security of the United States is not diminished by the efforts, activities, and programs aimed at securing the homeland.'' 6 U.S.C. 111(b)(1)(F).

[7] See *Washington Alliance of Tech. Workers* v. *U.S. Dep't of Homeland Security,* No. 1:14-cv-00529, slip op. at 25–26 (D.D.C. Aug. 12, 2015) (finding that DHS's interpretation permitting ''employment for training purposes without requiring school enrollment'' is '''longstanding' and entitled to [judicial] deference'').

[8] CPT provides a specially-designed program through which students can participate in an internship, alternative study, cooperative education, or similar programs. 52 FR 13223 (Apr. 22, 1987). Defined to also include practicums, CPT allows sponsoring employers to train F–1 students as part of the students' established curriculum within their schools. 8 CFR 214.2(f)(10)(i). CPT must relate to and be integral to a student's program of study. Unlike OPT and other training or employment, however, CPT can be full-time even while a student is attending school that is in session. Schools have oversight of CPT through their DSOs, who are responsible for authorizing CPT that is directly related to the student's major area of study and reporting certain information, including the employer and location, the start and end dates, and whether the training is full-time or part time. 8 CFR 214.2(f)(10)(i)(B).

business days if a student was terminated from or otherwise left employment prior to the end of the authorized period of OPT. The rule allowed an F–1 student to apply for post-completion OPT within the 60-day grace period at the conclusion of his or her academic program. The rule also limited the total period in which students on initial post-completion OPT could be unemployed to 90 days. Students granted 17-month STEM OPT extensions were provided an additional 30 days in which they could be unemployed, for an aggregate period of 120 days.

The 2008 IFR also addressed the so-called Cap-Gap problem, which results when an F–1 student's F–1 status and OPT-based employment authorization expires before the start date of an approved H–1B petition and change-of-status request filed on his or her behalf (''H–1B change-of-status petition''). Specifically, F–1 students on initial post-completion OPT frequently complete their period of authorized practical training in June or July of the year following graduation. Before the 2008 IFR, if such a student was a beneficiary of an H–1B petition that was pending with or approved by USCIS and requested a change of status to H–1B classification commencing in the following fiscal year (*i.e.,* beginning on October 1), the student would be unable to obtain H–1B status before his or her OPT period expired. Such students were often required to leave the United States for a few months until they were able to obtain their H–1B status on October 1. The 2008 IFR addressed this problem through a Cap-Gap provision that briefly extended the F–1 student's duration of status and employment authorization to enable the student to remain in the United States until he or she could change to H–1B status.

DHS received over 900 comments in response to the 2008 IFR. Public comments received on the 2008 IFR and other records may be reviewed at the docket for that rulemaking, No. ICEB–2008–0002, available at *www.regulations.gov*.

Washington Alliance Litigation Regarding the 2008 IFR

On August 12, 2015, the U.S. District Court for the District of Columbia issued an order in the case of *Washington Alliance of Tech. Workers* v. *U.S. Dep't of Homeland Security,* — F. Supp. 3d —, 2015 WL 9810109, (D.D.C. Aug. 12, 2015) (slip op.). Although the court held that the 2008 IFR rested upon a reasonable interpretation of the INA,[9] the court also held that DHS violated the notice and comment provisions of the Administrative Procedure Act (APA), 5 U.S.C. 553, by promulgating the 2008 IFR without advance notice and opportunity for public comment. In its order, the court invalidated the 2008 IFR as procedurally deficient, and remanded the issue to DHS.

Although the court vacated the 2008 IFR, the court stayed the *vacatur* until February 12, 2016, to provide time for DHS to correct the procedural deficiency through notice-and-comment rulemaking. *Id.* at *37.[10] The court specifically explained that the stay was necessary to avoid ''substantial hardship for foreign students and a major labor disruption for the technology sector'' and that immediate *vacatur* of the STEM OPT extension would be ''seriously disruptive.'' *Id.* at *36. On January 23, 2016, the Court further stayed its vacatur by 90 days until May 10, 2016. *Washington Alliance of Tech. Workers* v. *U.S. Dep't of Homeland Security,* No. 1:14-cv-00529, (D.D.C. Jan. 23, 2016) (slip op.). The court further stayed the vacatur to provide DHS an additional 30 days to complete the rulemaking and to allow the Department to publish the rule with a 60-day delayed effective date. *Id.*

Litigation in this matter is ongoing, as the plaintiff has appealed a portion of the court's August 12, 2015, decision. Thus the final disposition of the case remains to be determined. Nevertheless, it is clear that DHS must issue a final rule that will take effect before the court's stay expires on May 10, 2016, or a significant number of students will be unable to pursue valuable training opportunities that would otherwise be available to them.

B. The 2015 NPRM

After the court's ruling, DHS acted quickly to address the imminent *vacatur* of the 2008 IFR and the significant uncertainty surrounding the status of thousands of students in the United States. As of September 16, 2015, over 34,000 students were in the United States on a STEM OPT extension. In addition, hundreds of thousands of international students, most of whom are in F–1 status, already have chosen to enroll in U.S. educational institutions and are currently pursuing courses of study in fields that may provide eligibility for this program. Some of those students may have considered the opportunities offered by the STEM OPT extension when deciding whether to pursue their degree in the United States. DHS therefore acted swiftly to mitigate the uncertainty surrounding the 2008 IFR. Prompt action is particularly appropriate with respect to those students who have already committed to study in the United States, in part based on the possibility of furthering their education through an extended period of practical training in the world's leading STEM economy.[11]

Accordingly, on October 19, 2015, DHS published an NPRM in the **Federal Register**, proposing to reinstate the STEM OPT extension along with changes intended to improve the integrity and academic benefit of the extension and to better protect U.S. workers.[12] 80 FR 63376.[13] During the public comment period, approximately 50,500 comments were submitted on the

[9] With respect to DHS's interpretation of the F–1 student visa provisions in the INA, the court found ample support for DHS's longstanding practice of ''permit[ting F–1 student] employment for training purposes without requiring ongoing school enrollment.'' *Washington Alliance*, No. 1:14-cv-00529, slip op. at 26–27. The court recognized the Secretary's broad authority under the INA ''to regulate the terms and conditions of a nonimmigrant's stay, including its duration.'' *Id.* at *29 (citing 8 U.S.C. 1103(a), 1184(a)(1)). The court also recognized the Secretary's authority to consider the potential economic contributions and labor market impacts that may result from particular regulatory decisions. *Id.* (citing 6 U.S.C. 111(b)(1)(F)).

[10] In an earlier preliminary ruling in the case regarding plaintiff's challenge to DHS's general OPT and STEM OPT extension programs, the court held that plaintiff did not have standing to challenge the general OPT program on behalf of its members because it had not identified a member of its association who suffered any harm from the general OPT program. *See Washington Alliance of Tech. Workers* v. *U.S. Dep't of Homeland Security,* 74 F. Supp. 3d 247, 252 & n.3 (D.D.C. 2014). The court held in the alternative that the challenge to the general OPT program was barred by the applicable statute of limitations.

[11] The National Science Foundation reports that the United States performs more science and engineering Research and Development (R&D) than any other nation, accounting for just under 30% of the global total. *See* Science and Engineering Indicators 2014 (NSF) at Chapter 4 (International Comparisons), at 4–17, available at *http://www.nsf.gov/statistics/seind14/index.cfm/chapter-4.* According to NSF, the United States expends $429 billion of the estimated $1.435 trillion in global science and engineering R&D (p. 4–17), and business, government, higher education, and non-profits in the United States expend more than double that of any other country (Table 4–5).

[12] These proposed changes were consistent with the direction provided in the Secretary of Homeland Security's November 20, 2014 memorandum entitled, ''Policies Supporting U.S. High Skilled Businesses and Workers.'' DHS recognized the nation's need to evaluate, strengthen, and improve practical training as part of an overall strategy to enhance our nation's economic, scientific, and technological competitiveness. Highly skilled persons educated in the United States contribute significantly to the U.S. economy, including through advances in entrepreneurial and research and development endeavors, which correlate highly with overall economic growth and job creation.

[13] DHS hereby incorporates all background material included in the NPRM in this final rule.

NPRM and related forms.[14] Comments were submitted by a range of entities and individuals, including U.S. and international students, U.S. workers, schools and universities, professional associations, labor organizations, advocacy groups, businesses, two members of Congress, and other interested persons. DHS thanks the public for its helpful input and engagement during the public comment period.[15]

This final rule builds upon the NPRM and the public comments received. DHS intends for this rule to further strengthen the integrity and educational benefit of STEM OPT extensions, as well as better protect U.S. workers.

C. Basis and Purpose of Regulatory Action

In finalizing this rule, DHS recognizes the substantial economic, scientific, technological, and cultural benefits provided by the F–1 nonimmigrant program generally, and STEM OPT extensions in particular.

1. Benefits of International Students in the United States

International students have historically made significant contributions to the United States, both through the payment of tuition and other expenditures in the U.S. economy, as well as by significantly enhancing academic discourse and cultural exchange on campuses throughout the United States. In addition to these general benefits, STEM students further contribute through research, innovation, and the provision of knowledge and skills that help maintain and grow increasingly important sectors of the U.S. economy.

International students, for example, regularly contribute a significant amount of money into the U.S. economy. According to statistics compiled by NAFSA: Association of International Educators (NAFSA), international students made a net contribution of $26.8 billion to the U.S. economy in the 2013–2014 academic year.[16] This contribution included tuition ($19.8 billion) and living expenses for self and family ($16.7 billion), after adjusting for U.S. financial support ($9.7 billion).[17] Public colleges and universities particularly benefit from the payment of tuition by international students, especially in comparison to the tuition paid by in-state students.[18]

International students also increase the benefits of academic exchange, while reinforcing ties with other countries and fostering increased understanding of American society.[19] International students, for example, ''enrich U.S. universities and communities with unique perspectives and experiences that expand the horizons of American students and [make] U.S. institutions more competitive in the global economy.'' [20] At the same time, ''the international community in American colleges and universities has implications regarding global relationships, whether [those are] between nation-states, or global business and economic communities.'' [21] International education and exchange at the post-secondary level in the United States builds relationships that ''promote cultural understanding and dialogue'' and bring a global dimension to higher education through the ''diversity in culture, politics, religions, ethnicity, and worldview'' brought by international students.[22]

Accordingly, international students provide substantial benefits to their U.S. colleges and universities, including beneficial economic and cultural impacts. A study by Duke University in 2013 analyzing 5,676 alumni surveys showed that ''substantial international interaction was positively correlated with U.S. students' perceived skill development in a wide range of areas across three cohorts.''[23] Current research also suggests that international students contribute to the overall economy by building global connections between their hometowns and U.S. host cities.[24] Evidence links skilled migration to transnational business creation, trade, and direct investment between the United States and a migrant's country of origin.[25]

International STEM students contribute to the United States in all the ways mentioned above. They also contribute more specifically to a number of advanced and innovative fields that are critical to national prosperity and security. By conducting scientific research, developing new technologies, advancing existing technologies, and creating new products and industries, for example, STEM workers diversify our nation's economy and drive economic growth while also producing increased employment opportunities and higher wages for all U.S. workers.[26]

[14] Comments can be viewed in the online docket for this rulemaking at *http://www.regulations.gov*. Enter ''ICEB–2015–0002'' into the search bar to find the docket.

[15] One commenter requested a public meeting on the NPRM, ''[g]iven the major impact that the rules will have on the educational and labor markets, and the lack of attention in the rule to the adverse impacts the program's insufficient regulations and worker protections can have on U.S. workers and students.'' DHS has determined that a public meeting would not be in the public interest, in light of the impending *vacatur* date and the extensive discussion of these issues in the NPRM, the public comments, and this final rule.

[16] NAFSA: Association of International Educators, ''The Economic Benefits of International Students: Economic Analysis for Academic Year 2013–2014,'' available at *http://www.nafsa.org/_/File/_/eis2014/USA.pdf; see also NAFSA, International Student Economic Value Tool, available at http://www.nafsa.org/economicvalue.*

[17] *Id.*

[18] Washington Post, ''College Group Targets Incentive Payments for International Student Recruiters'' (June 2, 2011), available at *http://www.washingtonpost.com/local/education/college-group-targets-incentive-payments-for-international-student-recruiters/2011/05/31/AGvl5aHH_story.html.*

[19] *See* The White House, National Security Strategy 29 (May 2010), available at *https://www.whitehouse.gov/sites/default/files/rss_viewer/national_security_strategy.pdf.*

[20] U.S. Department of State, ''Why Internationalize,'' available at *https://educationusa.state.gov/us-higher-education-professionals/why-internationalize.*

[21] Pamela Leong, ''Coming to America: Assessing the Patterns of Acculturation, Friendship Formation, and the Academic Experiences of International Students at a U.S. College,'' *Journal of International Students* Vol. 5 (4): 459–474 (2015) at p. 459.

[22] Hugo Garcia and Maria de Lourdes Villareal, ''The ''Redirecting'' of International Students: American Higher Education Policy Hindrances and Implications,'' *Journal of International Students* Vol. 4 (2): 126–136 (2014) at p. 132.

[23] Jiali Luo and David Jamieson-Drake, ''Examining the Educational Benefits of Interacting with International Students'' at 96 (June 2013), *available at https://jistudents.files.wordpress.com/2013/05/2013-volume-3-number-3-journal-of-international-students-published-in-june-1–2013.pdf.* The authors noted that U.S. educational institutions play an important role in ensuring U.S. students benefit as much as possible from this interaction.

[24] Brookings Institution, ''The Geography of Foreign Students in U.S. Higher Education: Origins and Destinations'' (August 29, 2014), available at *http://www.brookings.edu/research/interactives/2014/geography-of-foreign-students#/M10420.*

[25] Sonia Plaza, ''Diaspora resources and policies,'' in International Handbook on the Economics of Migration, 505–529 (Amelie F. Constant and Klaus F. Zimmermann, eds., 2013).

[26] *See* Michael Greenstone and Adam Looney, ''A Dozen Economic Facts About Innovation'' 2–3, available at *http://www.brookings.edu/~/media/research/files/papers/2011/8/innovation-greenstone-looney/08_innovation_greenstone_looney.pdf [hereinafter Greenstone and Looney];* Bureau of Labor Statistics 2014 data show that employment in occupations related to STEM has been projected to grow more than nine million, or 13 percent, during the period between 2012 and 2022, 2 percent faster than the rate of growth projected for all occupations. Bureau of Labor Statistics, Occupational Outlook Quarterly, Spring 2014, ''STEM 101: Intro to Tomorrow's Jobs'' 6, available at *http://www.stemedcoalition.org/wp-content/uploads/2010/05/BLS-STEM-Jobs-report-spring-2014.pdf. See also* Australian Government, Strategic Review of the Student Visa Program 2011 Report, ix, 1 (June 30, 2011), available at *http://www.border.gov.au/ReportsandPublications/Documents/reviews-and-inquiries/2011-knight-review.pdf#search=knight%20review (concluding that the economic benefit of international master's*

Continued

Economic research supports the premise that scientists, technology professionals, engineers, and mathematicians (STEM workers) are fundamental components in scientific innovation and technological adoption, and critical drivers of productivity growth in the United States.[27] For example, research has shown that international students who earn a degree and remain in the United States are more likely than native-born workers to engage in activities, such as patenting and the commercialization of patents, that increase U.S. labor productivity.[28] Similarly, other research has found that a 1 percentage point increase in immigrant college graduates' population share increases patents per capita by 9 to 18 percent.[29] Research also has shown that foreign-born workers are particularly innovative, especially in research and development, and that they have positive spillover effects on native-born workers.[30] One paper, for example, shows that foreign-born workers patent at twice the rate of U.S.-born workers, and that U.S.-born workers patent at greater rates in areas with more immigration.[31] The quality of the nation's STEM workforce in particular has played a central role in ensuring national prosperity over the last century and helps bolster the nation's economic future.[32] This, in turn, has helped to enhance national security, which is dependent on the nation's ability to maintain a growing and innovative economy.[33] Innovation is crucial for economic growth, which is vital to continued funding for defense and security.[34]

2. Increased Competition for International Students

DHS recognizes that the United States has long been a global leader in international education. The number of international students affiliated with U.S. colleges and universities grew by 72 percent between 1999 and 2013 to a total of 886,052.[35] However, although the overall number of international students increased over that period, the nation's share of such students decreased. In 2001, the United States received 28 percent of international students; by 2011 that share had decreased to 19 percent.[36] Countries such as Canada, the United Kingdom, New Zealand, Australia, Malaysia, Taiwan, and China are actively instituting new strategies to attract international students.[37]

For example, Canada also recognizes that educational institutions need international students to compete in the ''global race for research talent.'' [38] In April, 2008, Canada modified its Post-Graduation Work Permit Program to allow international students who have graduated from a recognized Canadian post-secondary institution to stay and gain valuable post-graduate work experience for a period equal to the length of the student's study program, up to a maximum of three years, with no restrictions on type of employment.[39] This change resulted in a steady increase between 2003 and 2007 in the number of post-graduation work permits issued to international students, followed by a sharp increase of 64 percent from 2007 to 2008.[40] By 2014, the number of international students in the program was more than double its 2008 total.[41] In addition, Canada aims to double the number of international students in the country from 211,949 in 2014 to 450,000 by 2022.[42]

In light of the United States' decreasing share of international students, and increased global efforts to attract them, DHS concludes that the United States must take additional steps to improve these students' educational experience (both academic and practical) to ensure that we do not continue to lose ground. This is particularly true for international STEM students, who have comprised a

and doctoral research students includes third-party job creation).

[27] *See, e.g.,* Economics and Statistics Administration, Department of Commerce, ''STEM: Good Jobs Now and For the Future'' 5 (July 2011), available at *http://www.esa.doc.gov/Reports/stem-good-jobs-now-and-future* (''Science, technology, engineering and mathematics (STEM) workers drive our nation's innovation and competitiveness by generating new ideas, new companies and new industries.''); Giovanni Peri, Kevin Shih, Chad Sparber, ''Foreign STEM Workers and Native Wages and Employment in U.S. Cities'' 1 (National Bureau of Economic Research, May 2014) Available at *http://www.nber.org/papers/w20093* (observing that ''Scientists, Technology professionals, Engineers, and Mathematicians (STEM workers) are fundamental inputs in scientific innovation and technological adoption, the main drivers of productivity growth in the U.S.'').

[28] Jennifer Hunt, ''Which Immigrants are Most Innovative and Entrepreneurial? Distinctions by Entry Visa,'' *Journal of Labor Economics* Vol 29 (3): 417–457 (2011).

[29] Jennifer Hunt and Marjolaine Gauthier-Loiselle, ''How Much Does Immigration Boost Innovation?'' *American Economic Journal: Macroeconomics* 2: 31–56 (2010).

[30] *Id.*

[31] *Id.*

[32] Greenstone and Looney, *supra* note 26, at 2–3.

[33] *See* Congressional Research Service, Economics and National Security: Issues and Implications for U.S. Policy 28, available at *https://www.fas.org/sgp/crs/natsec/R41589.pdf* [hereinafter Economics and National Security]; *see also* The White House, National Security Strategy 16 (Feb. 2015), available at *https://www.whitehouse.gov/sites/default/files/docs/2015_national_security_strategy.pdf* (''Scientific discovery and technological innovation empower American leadership with a competitive edge that secures our military advantage, propels our economy, and improves the human condition.'') [hereinafter 2015 National Security Strategy]; The White House, National Security Strategy 29 (May 2010), available at *https://www.whitehouse.gov/sites/default/files/rss_viewer/national_security_strategy.pdf* (''America's long-term leadership depends on educating and producing future scientists and innovators.'').

[34] The 2015 National Security Strategy concludes that ''the American economy is an engine for global growth and a source of stability for the international system. In addition to being a key measure of power and influence in its own right, it underwrites our military strength and diplomatic influence. A strong economy, combined with a prominent U.S. presence in the global financial system, creates opportunities to advance our security.'' 2015 National Security Strategy, *supra* note 33, at 15.

[35] Pew Research Center, ''Growth from Asia Drives Surge in U.S. Foreign Students'' (June 18, 2015), available at *http://www.pewresearch.org/fact-tank/2015/06/18/growth-from-asia-drives-surge-in-u-s-foreign-students/ (citing Institute for International Education, Open Doors Data: International Students: Enrollment Trends, available at http://www.iie.org/Research-and-Publications/Open-Doors/Data/International-Students/Enrollment-Trends/1948-2014.*

[36] Organization for Economic Co-operation and Development (OECD) 2014, ''Education at a Glance 2014: OECD Indicators,'' OECD Publishing at *http://dx.doi.org/10.1787/eag-2014-en* or *http://www.oecd.org/edu/eag.htm.*

[37] University World News Global Edition Issue 376, ''Schools are the New Battleground for Foreign Students'' (July 15, 2015), available at *http://www.universityworldnews.com/article.php?story=201507150915156.*

[38] Citizenship and Immigration Canada, ''Evaluation of the International Student Program'' 14 (July 2010) available at *http://www.cic.gc.ca/english/pdf/research-stats/2010-eval-isp-e.pdf* (citing Association of Universities and Colleges of Canada, Momentum: The 2008 report on university research and knowledge mobilization: A Primer: Driver 2: Global race for research talent, 3 (2008) [hereinafter Evaluation of the Int'l Student Program].

[39] Citizenship and Immigration Canada, Study permits: Post Graduation Work Permit Program, available at *http://www.cic.gc.ca/english/resources/tools/temp/students/post-grad.asp* [hereinafter Canadian Study permits]. Similarly, Australia, now offers international students who graduate with a higher education degree from an Australian education provider, regardless of their field of study, a post-study work visa for up to four years, depending on the student's qualification. Students who complete a bachelor's degree may receive a two-year post study work visa, research graduates with a master's degree are eligible for a three-year work visa, and doctoral graduates are eligible for a four-year work visa. *See* Australian Department of Immigration and Border Protection, Application for a Temporary Graduate visa, available at *http://www.border.gov.au/FormsAndDocuments/Documents/1409.pdf* [hereinafter Australian Temporary Grad. visa].

[40] Evaluation of the Int'l Student Program, *supra* note 38, at 9.

[41] Citizenship and Immigration Canada, Quarterly Administrative Data Release, available at *http://www.cic.gc.ca/english/resources/statistics/data-release/2014-Q4/index.asp.*

[42] *See* Government of Canada, Quarterly Administrative Data Release (July 20, 2015), available at *http://www.cic.gc.ca/english/resources/statistics/data-release/2014-Q4/index.asp*; University World News Global Edition, *Schools are the New Battleground for Foreign Students,* July 15, 2015, Issue 376, available at *http://www.universityworldnews.com/article.php?story=201507150915156.*

significant portion of students in STEM degree programs in the United States, particularly at the graduate degree level.

The difference is particularly notable at the doctoral level, where international students earned 56.9 percent of all doctoral degrees in engineering; 52.5 percent of doctoral degrees in computer and information sciences; and approximately half the doctoral degrees in mathematics and statistics in the 2012–2013 academic year.[43] Recognizing that the international education programs for these students are increasingly competitive, DHS is committed to helping U.S. educational institutions contend with the expanded and diverse global opportunities for international study.

3. The Need To Improve the Existing STEM OPT Extension

With this rule, DHS also recognizes the need to strengthen the existing STEM OPT extension to enhance the integrity and educational benefit of the program in order to help maintain the nation's economic, scientific, and technological competitiveness. DHS is working to find new and innovative ways to encourage international STEM students to choose the United States as the destination for their studies. This rule, in addition to including a modified version of the STEM OPT extension from the 2008 IFR, increases the maximum training time period for STEM students, requires a formal training plan for each STEM OPT extension, and strengthens protections for U.S. workers. Providing an on-the-job educational experience through a U.S. employer qualified to develop and enhance skills through practical application has been DHS's primary guiding objective in crafting this rule.

Many of the elements of the 2015 NPRM were based on public comments on the 2008 IFR, which contained input from a range of stakeholders, including students and the broader academic community. The NPRM also incorporated recommendations from the Homeland Security Academic Advisory Committee.[44] DHS continues to find that the changes proposed by this rule to the existing STEM OPT extension would benefit both F–1 students and international study programs in the United States, while adding important protections.

The changes will allow F–1 STEM students to gain valuable on-the-job training from qualified employers. Maintaining and enhancing practical training for STEM students improves their ability to absorb a full range of project-based skills and knowledge directly related to their study. The changes will also help the nation's colleges and universities remain globally competitive, including by improving their ability to attract international STEM students to study in the United States. As noted above, these students enrich the academic and cultural life of college and university campuses throughout the United States and make important contributions to the U.S. economy and academic sector. The changes will help strengthen the overall F–1 program in the face of growing international competition for the world's most promising international students.

Additionally, safeguards such as employer attestations, requiring employers to enroll in and remain in good standing with E-Verify, providing for DHS site visits, and requiring that STEM training opportunities provide commensurate terms and conditions to those provided to U.S. workers will help protect both such workers and STEM OPT students. Implementing the changes in this rule thus will more effectively help STEM OPT students achieve the objectives of their courses of study while also benefiting U.S. academic institutions and guarding against adverse impacts on U.S. workers.

IV. Discussion of Comments and Final Rule

As noted above, during the public comment period, 50,500 comments were submitted on the NPRM and related forms. Comments were submitted by a range of entities and individuals, including U.S. and international students, U.S. workers, schools and universities, professional associations, labor organizations, advocacy groups, businesses, and other interested persons. Many commenters provided concrete suggestions that DHS has evaluated and responded to in order to build upon the proposed rule and to better explain its provisions. Overall,[45] comments were primarily positive, but there were many criticisms as well.

A number of commenters expressed general opposition to the NPRM. For instance, some stated that the proposed rule would not serve the national interest because it would harm U.S. workers, especially recent graduates with STEM degrees. Commenters also suggested that there was insufficient demand for STEM workers in the U.S. labor market to accommodate STEM OPT students. Other commenters were concerned that STEM OPT students would send their wages back to their home countries. Based on these and other concerns, various commenters requested that DHS place a moratorium on practical training and related programs until, for instance, every qualified U.S. citizen has a job. Another commenter requested that STEM OPT be phased out entirely after the current participants finish their training.

On the whole, however, commenters largely expressed support for the proposed rule. Commenters stated that the NPRM would ''make[] a number of important, thoughtful changes to improve and enhance the opportunities available to F–1 students with STEM degrees''; that the proposed rule struck a reasonable balance by distributing requirements among all who participate in STEM OPT, including international students, institutions of higher education, and employers; and that the proposed Mentoring and Training Plan requirement would improve the STEM OPT extension by clearly identifying the students' learning objectives and the employer's commitments.

DHS thanks the public for its extensive input during this process. In the discussion below, DHS summarizes and responds to all comments that were timely submitted on the NPRM.

[43] Pew Research Center, ''Growth from Asia Drives Surge in U.S. Foreign Students'' (June 18, 2015), available at *http://www.pewresearch.org/fact-tank/2015/06/18/growth-from-asia-drives-surge-in-u-s-foreign-students/*.

[44] The Homeland Security Academic Advisory Council provides advice and recommendations to the Secretary and senior leadership on matters related to homeland security and the academic community, including: student and recent graduate recruitment, international students, academic research and faculty exchanges, campus resilience, homeland security academic programs, and cybersecurity. *See* U.S. Department of Homeland Security, Homeland Security Academic Advisory Council Charter, available at *http://www.dhs.gov/publication/hsaac-charter*.

[45] In addition, DHS also received a number of comments that were outside the scope of the rulemaking. For instance, some commenters stated that DHS should not allow any foreign nationals to work in the United States. Other commenters recommended that DHS make changes to the H–1B visa classification. Another commenter stated that the United States should ''send green cards to [STEM] Ph.D.s right away.'' Other commenters recommended that DHS apply the proposed rule's requirements to F–1 nonimmigrant students engaged in pre-completion OPT or the initial 12-month period of post-completion OPT. Additionally, one commenter requested that DHS extend the period during which students may apply for post-completion OPT and related employment authorization. DHS did not propose any of these changes in the NPRM, and readers of the NPRM could not reasonably have anticipated that DHS would make such changes in this final rule. Accordingly, DHS has deemed these and similar comments outside the scope of this rulemaking, and has not discussed them further in this preamble.

A. Including a STEM OPT Extension Within the OPT Program

1. Description of Final Rule and Changes From NPRM

Consistent with the NPRM, this final rule provides for STEM OPT extensions as part of the OPT program under the F–1 nonimmigrant classification. This action will better ensure, among other important national interests, that the U.S. academic sector can remain globally competitive. Enabling extended practical training for qualifying students with experience in STEM fields is consistent with DHS's ''Study in the States'' initiative, announced after the 2008 IFR in September 2011, to encourage international students to study in the United States. That initiative particularly has focused on enhancing our nation's economic, scientific and technological competitiveness by finding new ways to encourage talented international students to become involved in expanded post-graduate opportunities in the United States. The initiative has taken various steps to improve the Nation's nonimmigrant student programs.[46]

The final rule enhances the ability of F–1 students to achieve the objectives of their courses of study while also benefiting the U.S. economy. More students will return home confident in their training and ready to begin a career in their field of study; others may seek to change status to other nonimmigrant classifications consistent with section 248 of the INA, 8 U.S.C. 1258, following a STEM OPT extension, thus furthering economic growth and cultural exchange in the United States.

Before discussing and responding to public input on the substantive terms of the STEM OPT extension program proposed in the 2015 NPRM, DHS first addresses comments providing input on whether STEM OPT extensions should be authorized at all. As discussed below, the STEM OPT extension rule is grounded in the long-standing recognition by DHS and its predecessor agency that (1) experiential learning and practical training are valuable parts of any post-secondary educational experience and (2) attracting and retaining international students is in the short- and long-term economic, cultural, and security interests of the United States. Thousands of comments expressed an opinion on one or both of these two points, either challenging or supporting the proposal to include a STEM OPT extension within the OPT program. A significant number of commenters discussed the taxation rules applicable to F–1 students; some asserted that no STEM OPT extension was appropriate as long as certain F–1 students remained exempt from certain payroll or employment taxes. Lastly, some commenters questioned the Department's legal authority to include a STEM OPT extension within the OPT program, while others maintained that a solid legal basis exists for such extensions. The final rule retains STEM OPT extensions as part of the OPT program and explains in detail the underpinnings of this policy by responding in full to the many policy-related comments received from the public.

2. Public Comments and Responses

i. Experiential Learning as Part of Completing a Full Course of Study

Numerous commenters submitted views regarding the proposition that experiential learning opportunities such as practical training can significantly enhance the knowledge and skills obtained by students during academic study, thus furthering their courses of study in the United States.

Comment. DHS received hundreds of comments, mostly from students and universities, stating that experiential learning and practical training are key parts of university education. DHS also received comments challenging this premise. One commenter, for example, strongly disagreed ''that the objective of the students' course of study includes the acquisition of knowledge through on-the-job 'training.' '' Instead, this commenter stated that ''the sole objective of the F–1 student's course of study is to obtain the desired degree and nothing more.'' According to the commenter, ''[o]nce that objective has been achieved, the purpose of the F–1 status has been fulfilled and the status should terminate.''

Many universities and higher education associations, however, made statements to the contrary. Twelve higher education associations—representing land-grant universities, research universities, human resource professionals at colleges and universities, registrars, graduate schools, international student advisors, and religious colleges and universities, among others—jointly filed a comment stating that ''experiential learning is a key component of the educational experience.'' These higher education associations stated that:

> OPT allows students to take what they have learned in the classroom and apply ''real world'' experience to enhance learning and creativity while helping fuel the innovation that occurs both on and off campus. . . . Learning through experience is distinct from learning that takes place in the classroom. Experiential learning opportunities have become an integral part of U.S. higher education.

Universities individually made similar points, emphasizing the value of experiential learning. DHS received comments on this point from a range of public and private institutions of higher education. For example, one university stated that experiential learning opportunities are particularly critical in ''STEM fields where hands on work supplements classroom education.'' Another university stated that ''experiential learning fosters the capacity for critical thinking and application of knowledge in complex or ambiguous situations.'' Other university commenters stated that experiential learning ''is a necessary component of a 21st century education, especially in the STEM fields.''

A national organization of graduate and professional students stated that offering a STEM OPT extension after bachelor's level studies allowed individuals to ''identify research interests and develop skills'' that they later can expand upon in their graduate studies when they focus on solving concrete problems. An organization representing international educators stated that the OPT program appropriately focuses on the critical part of an education that occurs in partnership with employers.

An organization that serves U.S. institutions engaged in international educational and cultural exchange stated that ''extended OPT eligibility creates space for more meaningful interactions between international OPT participants and their U.S. host employers.'' Other comments stated that a recent membership survey found that 89 percent of responding employers found that OPT participants ''work in conjunction with U.S. workers in a way that promotes career development for everyone involved.'' A business association stated that ''practical training allows foreign students in technical fields to maximize the return on their investment in education.''

Response. The Department agrees with the many U.S. universities and educational- and international-exchange organizations that provided comments stating that STEM OPT extensions would enhance the educational benefit provided to eligible students through practical training. DHS agrees that practical training is an accepted and important part of international post-secondary education.

[46] *See* DHS, ''Study in the States,'' *http://studyinthestates.dhs.gov.*

Comment. One commenter asserted that OPT had ''limited (if any) education[al] value'' while noting that he ''was unable to find any comment where someone described how the OPT program is related to a course of study or is a means to achieve specific educational goals.'' Many comments, however, described how practical training is related to a course of study and serves as a means to achieve educational goals. In addition to the comments described above from academic associations and educational institutions, the Department received many comments from F–1 students describing the educational benefits that the OPT program provides both to students and to academic programs. Examples of such comments include the following:

- ''OPT allows international students the opportunity to engage in practical application of skills learned in academic programs.''
- ''[A]s an extension of college education, OPT extension is a great way to apply what's learnt in class to our real industry.''
- ''This experiential learning will allow me to integrate knowledge and theory learned in the classroom with practical application and skills development in a professional setting.''
- ''The proposal to reinstitute the STEM extension will provide valuable hands-on, educational experience in which STEM graduates gain real-world immersion into a chosen industry.''
- ''The new rule will allow me to meet my planned learning goals and allow for active reflection on [what] I am accomplishing throughout the experience.''

Response. Consistent with many of the comments received from academic associations, educational institutions, and F–1 students, DHS agrees that the OPT program enriches and augments a student's educational experience by providing the ability for students to apply in professional settings the theoretical principles they learned in academic settings. By promoting the ability of students to experience first-hand the connection between theory in a course of study and practical application, including by applying abstract concepts in attempts to solve real-world problems, the OPT program enhances their educational experiences. A well-developed capacity to work with such conceptualizations in the use of advanced technology, for example, is critical in science-based professions. Practical training programs related to STEM fields also build competence in active problem solving and experimentation, critical complements to academic learning in STEM fields. As many commenters attested, practical training is an important avenue for enhancing one's educational experience, particularly for STEM students.

Comment. A research organization contested the educational basis for providing two-year STEM OPT extensions in part by noting that the ACT testing organization (previously known as American College Testing) has published a ''world of work map'' stating that ''a bachelor's degree is sufficient for electrical engineering jobs'' without discussing any extended period of practical training. The commenter also pointed out that the Department of Labor's Occupational Outlook Handbook states that in order to become an electrical engineer one ''must have a bachelor's degree'' and that ''[e]mployers also value practical experience, so participation in cooperative engineering programs, in which students earn academic credit for structured work experience, is valuable as well.'' According to the commenter, the standard OPT duration of 12 months is more than sufficient to become a fully trained engineer, as that is the duration of typical cooperative engineering programs.

Response. DHS rejects the notion that ACT's ''world of work map,'' a career planning tool for high school students, attempts to describe anything other than the educational degree level typically required for entry into an occupation. The ACT's career planning map takes no position on whether and to what extent on-the-job training and experiences help launch a career, enhance an educational program, or help facilitate mastery of material learned in the classroom. The Occupational Outlook Handbook of the Department of Labor similarly does not assess the relevancy of experiential learning theory or the extent to which on-the-job training complements classroom learning as part of post-secondary education. Instead, the Occupational Outlook Handbook identifies the typical level of degree or education that most workers need to enter the electrical engineering occupation and the extent to which additional training is needed (post-employment) to attain competency in the skills needed in the occupation.[47] The fact that cooperative education programs in engineering may typically focus on the equivalent of one year of employment experience for academic credit is not determinative with regard to the type or length of experiential learning that can be considered part of a full course of study. Cooperative education is one type of experiential learning, but not the only type used by the nation's higher education community.[48]

Comment. A commenter stated that DHS had not ''provided any evidence . . . indicating that'' nonimmigrant students lack access to similar opportunities in their home countries.

Response. The United States hosts F–1 students from all over the world. Although DHS acknowledges that some students will have access to similar training opportunities in their home countries, DHS believes it is self-evident that many will not. In any case, the purpose of the rule is not simply to address a gap in training opportunities for F–1 students in their home countries but to help students develop their knowledge and skills through practical application, and to ensure that our nation's colleges and universities remain globally competitive in attracting international STEM students to study and lawfully remain in the United States.

Comment. Some commenters asked DHS to reconsider the requirement that students be engaged in STEM OPT solely related to their fields of study.

Response. The Department has historically required the OPT experience to be directly related to the student's major fields of study because, at its core, such work-based learning is a continuation of the student's program of study. Indeed, the purpose of OPT is to better position students to begin careers in their fields of study by providing ways for them to supplement and enhance the knowledge they gained in their academic studies through application of that knowledge in work settings. Allowing such students to engage in OPT in areas unrelated to their fields of study would be inconsistent with the purpose of OPT.

OPT's required nexus to the field of study also minimizes potential abuse or exploitation of international students by those seeking to impermissibly employ them in unskilled labor or other unauthorized work in the United States. Moreover, this requirement is consistent

[47] BLS, Occupational Outlook Handbook, at ''Occupation Finder'' (Dec. 17, 2015), available at *http://www.bls.gov/ooh/occupation-finder.htm?pay=&education=&training=&newjobs=&growth=&submit=GO* (see information defining ''entry-level education'' and ''on-the-job training'' for the Occupation Finder).

[48] The commenter questioning the educational basis of the STEM OPT extension referred to the co-op program at the Rochester Institute of Technology (RIT) as a useful example, since it is one of the nation's largest. RIT itself, though, recognizes that co-ops are just one type of experiential learning. *See generally* RIT, Cooperative Education and Experiential Learning, *https://www.rit.edu/overview/cooperative-education-and-experiential-learning.*

with current regulations applicable to OPT more broadly; under these regulations, OPT must be directly related to the student's major area of study. *See* 8 CFR 214.2(f)(10)(ii)(A). For these reasons, DHS has determined that it will not permit a student to engage in STEM OPT in an area not related to his or her field of study.

ii. International Students and the National Interest

A variety of comments addressed whether the STEM OPT extension benefited STEM OPT students, U.S. institutions of higher education, and the overall national interest. Some commenters stated that the STEM OPT extension would provide such benefits and supported the proposed rule for these or related reasons; others stated that the proposed rule would negatively impact the employment options of U.S. STEM graduates and workers. The Department had carefully considered these issues in developing the NPRM, and has further evaluated these issues as raised in the public comments. The Department's consideration of these issues is reflected in the discussion that immediately follows and throughout this preamble.

Comment. One commenter stated that a recent study ''shows that American students who actively interact with their international classmates are more likely to enhance their own self-confidence, leadership and quantitative skills.'' [49] Another commenter, however, stated that in explaining the STEM OPT extension DHS had cited ''no evidence of a measurable 'academic benefit' other than increased income for U.S. institutions of higher education.'' This commenter stated that any such increased income would be ''irrelevant to the OPT program, where F–1 students do NOT pay tuition, at premium or standard rates, to the academic institution from which they received a STEM degree.'' The commenter also stated that STEM OPT employment does not and cannot provide ''enhance[ed] academic discourse and cultural exchange on campuses,'' and that there is an internal conflict in the dual goal of bringing ''knowledge and skills'' to the U.S. economy through the STEM OPT extension, and helping STEM OPT students acquire knowledge and skills.

A university commenter, however, suggested that DHS should consider it a priority to finalize the STEM OPT extension rule in a way that ensures universities remain internationally competitive. Representative of many comments from higher education, another university commenter strongly supported the STEM OPT extension within the OPT program. The commenter stated that ''if the United States is to maintain our economic, educational, and scientific competitiveness then it must continue to make itself attractive to the best talent worldwide.'' Another commenter, who identified as an F–1 student, noted that many people from his home country have degrees earned abroad, and that a ''U.S.-university degree alone is not valued as [highly] as it was 10 or 20 years ago.'' This commenter stated that ''experience on a complete project'' will provide him an advantage over students who studied in countries that don't provide similar kinds of training opportunities.

Response. The STEM OPT extension program is designed to address the very point raised by the final commenter, *i.e.,* that the program will improve and expand the educational and training opportunities available to international students and maintain and improve the competitiveness of American institutions of higher education. As explained in the NPRM, *see* 80 FR 63383–84, there is increasing international competition for attracting top international students, and other countries, including Canada and Australia, currently have programs similar to the STEM OPT extension. The STEM OPT extension serves to maintain the United States' global competitiveness in these rapidly evolving fields. As discussed in the NPRM, *see, e.g.,* 80 FR 63382–84, this provides benefits to the U.S. economy that are independent of any need (or lack thereof) of STEM workers in the United States.

As noted in the NPRM, in light of increased global efforts to recruit international students, DHS believes that the United States must take additional steps to improve available educational experiences (both academic and practical) to ensure that the United States remains competitive for such students. Such steps benefit the U.S. academic sector by contributing to its economic support and increasing academic diversity. This is particularly true with regard to international STEM students, who have comprised a significant portion of students in STEM degree programs in the United States, particularly at the graduate degree level. While it is of course true that, as a commenter noted, OPT students do not pay tuition during their practical training, it is reasonable to assume the increased attractiveness of U.S. colleges and universities due to the availability of OPT will benefit the U.S. academic sector. DHS's conclusions about the benefit of the STEM OPT extension to the F–1 student program and U.S. educational institutions found broad support in the comments submitted by educational institutions themselves.

Comment. A significant number of commenters discussed whether STEM OPT participants positively or negatively impacted U.S. workers and U.S. students, with differing views on whether nonimmigrant STEM professionals complemented or replaced U.S. STEM professionals. Some commenters cited their personal experience as STEM workers, or the experience of others they know, to demonstrate the existence of either a labor surplus or a labor shortage. Many others cited and attached reports and studies to show there was either a labor surplus or a labor shortage.

A number of commenters stated that allowing employers to hire F–1 students on a STEM OPT extension would disadvantage U.S. citizens and lawful permanent residents. Some of these commenters, as well as other commenters, provided facts and figures suggesting there was not a labor shortage of STEM workers. For example, some commenters stated that wages have not increased, as would be expected during a shortage, and some of these commenters cited to a report from the Economic Policy Institute that found that wages in the information technology sector ''have remained flat, with real wages hovering around their late 1990s levels.'' [50] Some commenters provided data that contradicted these claims. For example, one commenter stated that STEM workers receive a persistent wage premium and that wages for engineers are rising relative to other occupations.

Commenters cited data and reports on both sides of the question of whether there were sufficient numbers of qualified U.S. workers available to fill open STEM jobs in the U.S. economy. One commenter stated that there were over 102,000 unemployed engineers. Another commenter stated that there were two million unemployed Americans with STEM degrees. A number of commenters, however, stated that even with millions of unemployed

[49] *See generally* Jiali Luo and David Jamieson-Drake, ''Examining the Educational Benefits of Interacting with International Students'' at 96 (June 2013), *available at https://jistudents.files.wordpress.com/2013/05/2013-volume-3-number-3-journal-of-international-students-published-in-june-1-2013.pdf.*

[50] Hal Salzman, Daniel Kuehn, Lindsay Lowell, Guestworkers in the High-Skill U.S. Labor Market: An Analysis of Supply, Employment, and Wages 2 (Economic Policy Institute, Apr. 2013) available at *http://www.epi.org/publication/bp359-guestworkers-high-skill-labor-market-analysis/.*

Americans, ''the manufacturing sector cannot find people with the skills to take nearly 600,000 unfilled jobs, according to a study last fall by the Manufacturing Institute and Deloitte.'' [51] One commenter stated that ''unemployment rates in key STEM occupations are dramatically lower'' than the overall unemployment rate in the United States, citing to 2.8 percent unemployment in ''computer and mathematical occupations'' and 2.2 percent unemployment in ''architecture and engineering occupations,'' among others.

Response. DHS recognizes, as explained by the National Science Foundation (NSF), that close study reveals that there is no straightforward answer on whether the United States has a surplus or shortage of STEM workers.[52] As the NSF summarizes:

> Some analysts contend that the United States has or will soon face a shortage of STEM workers. Some point to labor market signals such as high wages and the fact that STEM vacancies are advertised for more than twice the median number of days compared to non-STEM jobs. Other analysts note that the shortage of STEM workers is a byproduct of the ability of STEM-capable workers to ''divert'' into other high-skill occupations that offer better working conditions or pay. Relatedly, some say even if the supply were to increase, the United States might still have a STEM worker shortage because an abundance of high-skill workers helps drive innovation and competitiveness and this might create its own demand.
>
> Those analysts who contend the United States does not have a shortage of STEM workers see a different picture. They suggest that the total number of STEM degree holders in the United States exceeds the number of STEM jobs, and that market signals that would indicate a shortage, such as wage increases, have not systematically materialized. Analysts also raise concerns about labor market dynamics in academia—where a decreasing share of doctoral degree holders employed in the academic sector are tenured—and in industry—where there are reports that newly-minted degree holders and foreign ''guestworkers'' on temporary visas (*e.g.,* H–1B, L–1) are displacing incumbent workers. A few of these analysts go as far as to argue that firms claim shortages and mismatches in the hope of lowering compensation and training costs.
>
> Close study of the surplus-shortage question reveals that there is no straightforward ''yes'' or ''no'' answer to whether the United States has a surplus or shortage of STEM workers. The answer is always ''it depends.'' It depends on which segment of the workforce is being discussed (*e.g.,* sub-baccalaureates, Ph.D.s, biomedical scientists, computer programmers, petroleum engineers) and where (*e.g.,* rural, metropolitan, ''high-technology corridors''). It also depends on whether ''enough'' or ''not enough STEM workers'' is being understood in terms of the quantity of workers; the quality of workers in terms of education or job training; racial, ethnic or gender diversity, or some combination of these considerations.[53]

DHS credits NSF's views on this matter. Although DHS acknowledges that commenters submitted a range of data related to the current state of the overall U.S. STEM labor market (and DHS discusses much of this data in more detail below), DHS does not rely on this data to finalize the rule. Instead, this rule is based on the widely accepted proposition that educational and cultural exchange, a strong post-secondary education system, and a focus on STEM innovation are, on the whole, positive contributors to the U.S. economy and U.S. workers and in the overall national interest. As noted above, these principles, combined with the labor market protections and other measures included in this rule, generally provide the basis for the Department's action.

Comment. Many commenters stated that data released by the U.S. Census Bureau in 2014 showed that three-quarters of American STEM graduates were not working in STEM fields. The implication was that such data indicated no need for the STEM OPT extension program and that such a program would not benefit the national interest.

Response. The 2014 Census Bureau data cited by commenters did identify that only about one-quarter of bachelor's level graduates with STEM degrees are employed in STEM fields.[54] The Census Bureau, however, made no accounting of STEM graduates that use the technical skills developed in their STEM courses in high-skilled jobs in medicine, law, business, academia, or management. For example, for purposes of the Census Bureau study, an individual with a chemistry degree who becomes a physician is considered a STEM graduate not employed in a STEM field.[55] The cited 2014 Census Bureau figures are skewed in this regard. A 2013 analysis from the Census Bureau found that more than one out of five U.S. STEM graduates who were not employed in a core STEM field were working in a managerial or business position utilizing quantitative skills developed through their STEM studies and often directly related to their degree; that more than one in eight STEM graduates were working in healthcare (including 594,000 who were working as physicians); and that another 522,000 were considered outside of STEM, but working in U.S. colleges and universities, where they were teaching in the field of their STEM major and educating the next generation of STEM workers.[56] In short, as pointed out by the U.S. Congress Joint Economic Committee, ''differences in definitions across sources can complicate comparisons or analyses of trends in STEM.'' [57]

DHS disagrees that the U.S. Census data point to an across-the-board shortage of degree-related employment opportunities for U.S. STEM graduates as the disparate definitions make that conclusion unlikely. DHS believes that many of the concerns identified about the proposed rule are overstated or incomplete because of the nature of available data and reporting.

Comment. A few commenters stated that DHS failed to consider the full range of research related to the proposed rule's underlying policies. One such commenter directed the Department's attention to two bibliographies publicly available on the Internet, and which were attached to the comment, because the commenter believed the sources

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[51] See generally Manufacturing Institute et al, ''The Skills Gap in Manufacturing: 2015 and Beyond'' (Mar. 2015), available at *http://www.themanufacturinginstitute.org/Research/Skills-Gap-in-Manufacturing/Skills-Gap-in-Manufacturing.aspx.*

[52] NSF, Revisiting the STEM Workforce: A Companion to Science and Engineering Indicators 2014, 9 (Feb. 4, 2015), available at *http://www.nsf.gov/pubs/2015/nsb201510/nsb201510.pdf.*

[53] *Id.*

[54] U.S. Census Bureau, ''Where do College Graduates Work: A Special Focus on Science, Technology, Engineering and Math'' (July 2014), available at *http://www.census.gov/dataviz/visualizations/stem/stem-html/.*

[55] The practice of medicine commonly is not considered to be a STEM field. NSF, for example, considers as its mission the support of all fields of science and engineering except for the medical sciences. See NSF Mission Statement, available at *http://www.nsf.gov/about/what.jsp. See also, e.g.,* U.S. Congress Joint Economic Committee, STEM Education: Preparing for the Jobs of the Future 1 (April 2012) (explaining that the medical sciences are not a STEM field), available at *http://www.jec.senate.gov/public/index.cfm/democrats/2012/4/stem-education-preparing-jobs-of-the-future.*

[56] Liana Christin Landivar, U.S. Census Bureau, The Relationship between Science and Engineering Education and Employment in STEM Occupations (Sept. 2013), available at *http://www.census.gov/prod/2013pubs/acs-23.pdf?cssp=SERP.*

[57] *See* U.S. Congress Joint Economic Committee, STEM Education: Preparing for the Jobs of the Future 1 (April 2012) (explaining that the medical sciences are not a STEM field), available at *http://www.jec.senate.gov/public/index.cfm/democrats/2012/4/stem-education-preparing-jobs-of-the-future*; *see also* David A. Koonce, Jie Zhou, Cynthia D. Anderson, American Society for Engineering Education, ''What is STEM?'' (2011) available at *http://www.asee.org/public/conferences/1/papers/289/download* (explaining that ''research institutes, government organizations and occupational groups, as well as different groups involved in STEM, use different definitions of STEM, based on their perspectives'').

cited in the NPRM were ''funded by employers of cheap alien workers to justify the rule.'' One of these bibliographies identified 19 books, articles, and reports, most of which discuss the H–1B and L–1 visa programs. The second was an annotated bibliography assembled by a professor providing an assessment and criticism of four of the professor's articles and 23 other sources, principally related to H–1B work visas and employer-sponsored green cards.

Response. DHS did not rely on sources of information funded by employers of ''cheap'' foreign labor to develop or justify the proposed rule. Among other sources, DHS cited the following sources: the National Bureau of Economic Research, NSF, the Journal of Labor Economics, the Congressional Research Service, the Brookings Institution, the American Economic Journal, the Pew Research Center, the Journal of International Students, the Organization for Economic Co-operation and Development, University World News, Citizenship and Immigration Canada (a Canadian government agency), the Department of Immigration and Border Protection of Australia (an Australian government agency), and the Homeland Security Academic Advisory Committee (a discretionary committee of the U.S. government established under the Federal Advisory Committee Act).

Moreover, the commenter did not identify any specific findings in the sources cited in the bibliographies that would support a change to the Department's proposal. Many of the sources cited in the bibliography involved the H–1B and L–1 nonimmigrant visa programs, as well as employment-sponsored immigrant visa programs, rather than OPT. Significantly, although the organization that prepared the H–1B and L–1 bibliography cited by the commenter also submitted a separate, detailed comment on the NPRM, the organization did not cite its bibliography or most of the sources contained therein as part of its submission. And in the course of reviewing the extensive bibliographies presented, the Department noted that at least one of the sources, which addressed permanent immigration and not OPT, concluded that ''international students studying in host country postsecondary institutions are particularly valued because they improve higher education, subsidize domestic students, contribute to national economies and, if they qualify, make valuable permanent residents because of their youth, occupational qualifications, language skills, and familiarity with host country customs and institutions.'' [58]

Comment. One commenter stated that the NPRM's references to U.S. patent rates for foreign-born individuals could not support the proposed rule because ''no nationality data for inventors is associated with patents, so studies linking rates of patenting to immigration policy are inherently bogus.'' Another commenter stated that although the NPRM cites publications by economist Dr. Jennifer Hunt for several assertions about higher rates of patenting and innovation by foreign-born researchers in the United States, the NPRM did not mention a report published by the Economic Policy Institute (EPI) (a research organization) ''directly challenging [those] findings.'' The commenter questioned sources cited in the NPRM regarding patent rates for foreign-born workers in the United States.

Response. DHS disagrees with the statement that ''no nationality data on inventors is associated with patents.'' One data source for citizenship and nationality data for U.S. patents is the Patent Application Information Retrieval Web site maintained by the U.S. Patent and Trademark Office.[59] When applying for a patent, each listed inventor submits an oath or power of attorney form on which they must indicate citizenship. Other researchers have analyzed data from the Census Bureau, including the National Survey of College Graduates and the Integrated Public Use Microdata Series for the United States, in concert with patent information from the U.S. Patent and Trademark Office, to source citizenship and nationality figures for U.S. patents.[60]

With respect to the studies by Dr. Hunt, DHS notes that the NPRM cited those studies in support of the general proposition that STEM workers ''are fundamental inputs in scientific innovation and technological adoption, critical drivers of productivity growth in the United States.'' 80 FR 63383. The EPI study did not question this proposition. Rather, the EPI study examined a narrow band of STEM fields to show that ''immigrant workers, especially those who first came to the United States as international students, are in general of no higher talent than the Americans, as measured by salary, patent filings, dissertation awards, and quality of academic program.'' [61] Specifically, the EPI finding is focused on whether foreign-born students who earned computer science and electrical engineering degrees in the United States file patent applications at higher levels than U.S.-born students earning the same degrees. For electrical engineering, the analysis showed that patenting activity of U.S. and foreign-born students was about the same, while for computer science the analysis showed that foreign-born computer science students apply for somewhat fewer patents than do their American peers.

The EPI paper, however, acknowledges that the Hunt studies cited in the NPRM cast a much broader net, encompassing a myriad of science and engineering fields. The Hunt papers considered the impact of foreign-born workers employed in the United States in myriad visa classifications and fields of study, and was not focused solely on F–1 students or STEM OPT students (nor to just Computer Science and Electrical Engineering research activity). As explained in the Hunt papers, there is support for the proposition that foreign-born scientists and engineers achieve higher rates of U.S. patent filings. The Department continues to believe such patent rates support the conclusion that the STEM OPT extension is in the national interest.

Comment. Some commenters stated that the best interests of U.S. workers and students were not being considered by DHS. Some of these commenters, as well as others, also stated that the STEM OPT extension should exist only if there was a documented STEM labor shortage. Some commenters stated that the proposed STEM OPT extension would be harmful to U.S. workers and students.

A commenting employer stated that while it prioritized U.S. worker hiring, it also hired foreign-born students that it recruited on U.S. campuses ''given the talent pool graduating from U.S. Ph.D. and M.S. STEM programs.'' The employer also stated: ''we spend millions of dollars annually above and beyond what we have to pay to hire U.S. workers, merely to employ the talent required to successfully run our business.'' Another commenter stated that ''it makes no sense for the United States to educate and train foreign

[58] Ray Marshall, Value-Added Immigration 187 (Economic Policy Institute, 2011).

[59] U.S. Patent and Trademark Office, Patent Application Information Retrieval *http://portal.uspto.gov/pair/PublicPair. See also, e.g.,* Partnership for a New American Economy ''Patent Pending: How Immigrants are Reinventing the American Economy'' at 23 n. 2 (June 2012).

[60] *See, e.g.,* Jennifer Hunt et al, *supra* notes 28–29, in the appendices of the cited articles.

[61] Norman Matloff, ''Are Foreign Students the 'Best and Brightest'?'' 17 (Economic Policy Institute, Feb 2013), available at *http://epi.org/publication/bp356-foreign-students-best-brightest-immigration-policy/.*

students in the STEM fields and then drive them away with obsolete immigration policies.''

Response. The number of international STEM graduates in the United States on STEM OPT extensions, as of September 16, 2015, was approximately 34,000, which, according to estimates of the overall U.S. STEM labor market from the U.S. Department of Commerce and the U.S. Bureau of Labor Statistics (BLS), represents a possible range of 0.19 percent [62] to 0.45 percent of the overall U.S. STEM job market.[63] For that reason, and in light of the worker protections included in this rule, the Department sees no reason to eliminate the STEM OPT extension altogether in response to concerns about impacts on U.S. workers. DHS instead seeks to balance the interests of stakeholders by both ensuring the availability of a STEM OPT extension program while strengthening program oversight and worker protections. The rule strengthens the integrity of the STEM OPT extension by requiring participants in the extension to carefully consider and document the relationship between the STEM OPT opportunity and the academic degree. The rule also adds requirements relating to supervision and direction of STEM OPT students in such jobs to better ensure the goals of the program are met. The rule also adds wage and other protections for STEM OPT students and U.S. workers.

Comment. Numerous commenters repeated certain selected statements or figures on job creation or job loss related to international students in the United States. Hundreds of comments stated that 340,000 U.S. jobs are created or supported each year by international students studying in the United States, citing figures from an international student economic value tool developed by NAFSA. A few hundred comments instead posited that 430,000 U.S. workers lost jobs over a recent five-year period because of international students, as suggested by an analysis by one group. More than a dozen comments repeated the finding from an economist's study published by the American Enterprise Institute, in conjunction with the Partnership for New American Economy, that about 2.6 jobs for Americans are created for each foreign-born student who earns an advanced degree in the United States and then works in a STEM field.

Response. This rule neither asserts nor relies on a quantified, direct relationship between job creation and the STEM OPT extension. At what rate such job creation occurs is unsettled in the peer-reviewed literature. To the Department's awareness, job loss rates tied solely to STEM OPT students have not been documented in peer-reviewed literature. The figures cited in the comments summarized above also do not relate solely to STEM OPT students.

Comment. A commenter stated that although the proposed rule discussed the economic benefits of international students at length, DHS had not cited any estimate of the number of U.S. workers who were unable to obtain employment because a position was filled by a STEM OPT student or the number of U.S. workers otherwise adversely affected by the proposed rule.

Response. DHS acknowledges that this rule includes neither a quantified estimate of potential negative impacts to individual U.S. workers nor a quantified estimate of specific benefits to U.S. educational institutions or the overall economy. Instead, the rule is based on the widely accepted proposition that educational and cultural exchange, a strong and competitive post-secondary education system, and a focus on STEM innovation are on the whole positive contributors to the U.S. economy and U.S. workers, and are in the national interest. A significant number of comments agreed; many observed that STEM students have contributed significantly to the U.S. economy. As noted above, these principles, combined with the labor market protections and other measures included in this rule, generally provide the basis for the Department's action.

Comment. Some commenters stated that DHS had only considered studies supporting its conclusions and did not sufficiently review information that contradicted the sources cited by DHS. One commenter suggested that DHS ''go back to the drawing board and review the full range of related information,'' including the book ''Falling Behind,'' which questions whether the United States is falling behind in the global race for scientific and engineering talent.

By contrast, one commenter stated that ''any change in quality of living is dependent on highly skilled STEM workers who are fundamental inputs in scientific innovation and technological adoption.'' Other commenters stated that ''STEM students have contributed immensely to the U.S. economy with their skills and innovation'' and that because ''the U.S. STEM industry is at the forefront of technology in the world, international students come here to get the exposure and learn.''

Some commenters flagged disagreement among economists with some of the findings included in a study published by the National Bureau of Economic Research (NBER) that extrapolates from the fundamental point for which it was cited by DHS.[64] With respect to that study, some commenters criticized its conclusions, and some criticized the fact that it had not been peer-reviewed. Because the study had received some criticism, commenters asked DHS to defend its citation to it.

Response. DHS has carefully examined all of the commenters' views regarding the reasons provided for the proposed rule and the sources relied upon by DHS, and the Department believes adequate data and information has been provided in support of the rule. As noted throughout this preamble, DHS has reviewed studies submitted by commenters and finds that the basic approach in this rule appropriately balances the goals of protecting American workers and promoting American academic and economic competitiveness by attracting top quality international STEM students.

With regard to the citation to the NBER study, the reference in the 2015 NPRM was for the general proposition that STEM workers are fundamental inputs in scientific innovation and technological adoption, and therefore critical drivers of productivity growth in the United States.[65] The NSF, among many others, has reached the same conclusion. Created by Congress in 1950, the NSF began publishing an annual report in 1955 regarding the condition of the science and engineering workforce, long before the term ''STEM''

[62] U.S. Bureau of Labor Statistics Detailed 2010 Standard Occupation Classification (SOC) occupations in STEM from an August 2012 SOC Policy Committee recommendation to OMB, *http://www.bls.gov/soc/Attachment_C_STEM.pdf.* There are 184 occupations in STEM included in this list. When matched to the corresponding employment data in the BLS Occupational Employment and Wages, May 2014, the total employment of STEM occupations is approximately 17 million.

[63] U.S. Department of Commerce, Economic and Statistics Administration, David Langdon et al., ''STEM: Good Jobs Now and for the Future'' (1), July 2011, available at *http://www.esa.doc.gov/sites/default/files/stemfinalyjuly14_1.pdf* (''In 2010, there were 7.6 million STEM workers in the United States.''). This STEM employment estimate is based on a narrower range of occupations.

[64] Giovanni Peri, Kevin Shih, Chad Sparber, National Bureau of Economic Research, Foreign STEM Workers and Native Wages and Employment in U.S. Cities (May 2014), available at *http://www.nber.org/papers/w20093.*

[65] *Id.* The article starts by observing that ''Scientists, Technology professionals, Engineers, and Mathematicians (STEM workers) are fundamental inputs in scientific innovation and technological adoption, the main drivers of productivity growth in the U.S.'' and was cited as a recent example of this premise in footnote 24 in the NPRM. 80 FR at 63383.

was coined. According to the 2015 annual report, ''[t]his workforce is of particular interest to the Nation because of its central role in fostering innovation, economic competitiveness, and national security.'' [66]

Comment. A commenter requested that DHS annually publish data showing trends related to the impact of F–1 nonimmigrant students on labor markets in the United States. Another commenter stated that in order to improve oversight and understanding of our legal immigration system, relevant agencies should publish timely online information for each nonimmigrant visa category and subcategory, including for F–1 nonimmigrant students with OPT. This commenter stated that the public disclosure should include the underlying raw data gathered from the proposed Mentoring and Training Plan and other relevant forms as to the gender, age, country of origin, level of training, field of training, institution(s) of higher education, job title, wages, employer, and work location for ''all OPT visa holders.'' According to the commenter, this disclosure would be a ''critical tool to empower advocates to ensure fair treatment and high standards within these visa programs.'' Multiple commenters stated that although they lacked full information, the collection and release of data on all nonimmigrant visa categories was needed as a tool to help curtail fraud and abuse in employment visa categories.

Response. To the extent permissible under existing law (including under the Privacy Act and related authority), relevant information related to the STEM OPT extension program may be available through the Freedom of Information Act (FOIA) process. A DHS effort to provide data and a program evaluation of all nonimmigrant visa categories is not within the scope of the proposed rule and is not required by any current statute or regulation.

Comment. One commenter stated that ''[t]he NPRM is procedurally and substantively arbitrary and capricious'' because ''DHS has entirely failed to provide a reasoned explanation of why its published policy rationale for the proposed rule has so fundamentally changed from that provided for the 2008 [IFR] that it now replaces.'' The commenter stated that DHS justified the 2008 IFR by asserting the need to provide labor to U.S. employers to remedy a critical labor shortage, but has justified the proposed rule by the need to continue and further enhance the educational benefit of the STEM OPT extension, while protecting STEM OPT students and U.S. workers. 80 FR 63381.

Response. DHS does not agree with the proposition that an agency's decision to state new or revised reasons for its policy renders the agency's policy arbitrary and capricious. This rule is grounded in DHS's seven years of experience with the STEM OPT extension. In the 2015 NPRM, DHS proposed that, independent of the labor market concerns that DHS expressed in the 2008 IFR, the STEM OPT extension offers significant educational benefits to students and educational institutions, as well as important economic and cultural benefits. It is not arbitrary or capricious for DHS to consider its experience with this program or to account for present-day realities when determining whether and how to retain and improve the program in a new rulemaking.

The commenter further requested that DHS explain ''why its published policy rationale has changed'' since 2008. In short, the policy rationale and, importantly, the substance of the rules governing the program, have changed based on a range of factors. As discussed at length in the NPRM, these factors include the public comments received on the 2008 IFR and DHS's assessment of the benefits provided by the 17-month STEM OPT extension. *See, e.g.,* 80 FR 63379–63384. This assessment is informed by enduring national priorities, such as strengthening the U.S. educational system by helping to ensure that the nation's colleges and universities remain globally competitive in attracting international students in STEM fields and enhancing the United States' economic, scientific, and technological sectors. DHS believes that it has appropriately considered the evidence in determining whether and how to retain and improve the STEM OPT extension.

iii. Relationship Between Taxation Rules and the Authority of the Secretary of Homeland Security Regarding Employment of F–1 Nonimmigrants

Comment. DHS received a significant number of comments that discussed whether existing Federal tax law creates an incentive for employers to hire F–1 nonimmigrants for practical training, rather than U.S. workers, and whether DHS should make changes to Federal tax law before or as part of finalizing a rule allowing a STEM OPT extension with the OPT program. The tax law provision primarily at issue in these comments is 26 U.S.C. 3121(b)(19), which exempts certain services from Federal Insurance Contributions Act (FICA) taxation when they are performed by F–1 nonimmigrants (among other nonimmigrant classifications) who are nonresidents for Federal tax purposes.[67] Many comments suggested that this exemption creates an incentive for employers to hire F–1 nonimmigrants instead of U.S. workers, and that this rule would therefore disadvantage U.S. workers. Other comments suggested that employers are not influenced by tax exemptions when making hiring decisions.

A number of commenters, for example, stated that employers save money by not incurring FICA payroll taxes when they hire F–1 nonimmigrants instead of U.S. workers and that these savings induce employers to prefer F–1 nonimmigrants over U.S. workers. A few hundred comments labeled the Department's proposed rulemaking as ''corporate welfare.'' One commenter stated that it is ''unethical'' for F–1 nonimmigrants to be exempt from ''paying taxes'' since those nonimmigrants who are working under H–1B visas are not exempt. One commenter suggested that the tax treatment of F–1 nonimmigrants has the effect of discouraging Americans from pursuing study in STEM fields.

Another commenter stated that excusing OPT participants from payroll taxes was not the result of congressionally created tax policy but instead a decision by ''the administration'' to ''simply defin[e] recent alumni as foreign 'students' '' and thus ''allow[] employers to avoid payroll taxes.'' One commenter criticized DHS because the Department ''offered nothing in the proposed rule to deal with the wage savings enjoyed by the employers of OPT workers from not having to pay FICA payroll taxes for OPT workers.'' This commenter stated that ''the Department clearly believes it has the authority to impose wage-related conditions on OPT employers, but it's unclear why the Department wouldn't also address the FICA issue which some suggest is one of the biggest sources of unfairness to U.S. workers competing with OPT workers.''

Several comments that referenced tax issues cited analysis by a research organization stating that ''OPT removed $4 billion from the Social Security and Medicare trust funds'' over five years. Others cited the same analysis to state that the OPT program ''costs Social Security about $1 billion dollars a year'' or ''about $10,000 annually for each OPT'' participant.

However, many other commenters who discussed taxation stated that

[66] NSF, Revisiting the STEM Workforce: A Companion to Science and Engineering Indicators 2014, 5 (Feb. 4, 2015), available at *http://www.nsf.gov/pubs/2015/nsb201510/nsb201510.pdf.*

[67] *See generally* 26 CFR 31.3121(b)(19)–1.

because individuals in F–1 nonimmigrant status are ineligible to collect Social Security or Medicare benefits and may never qualify in the future for such benefits, contributions to those programs should not be required for services rendered by F–1 nonimmigrants. Also, some commenters who identified as F–1 students stated that payroll taxes may be affected by tax treaties between the United States and other nations. A number of F–1 students noted that they pay city, state, and federal income taxes, as well as sales tax.

A few commenters submitted ideas on how DHS could revise or address the payroll tax provisions. One commenter suggested that the Department's proposed regulation could be changed to remove any financial incentive to hire non-U.S. citizens by exempting employers ''from FICA for two years when they hire a new grad STEM U.S. worker, and [charging] a 10% penalty for displacing an American STEM graduate when an OPT is hired.'' A labor union proposed that ''DHS should require employers of STEM workers to pay an amount equal to payroll taxes into a fund to encourage employment of U.S. STEM workers.'' A research organization proposed in the alternative that the amount of such payroll taxes could be paid to the U.S. Treasury.

One commenter stated that ''Congress delegated authority to define periods of employment for F–1 nonimmigrants to the Treasury Department, not DHS.'' This commenter criticized the proposed rulemaking on the grounds that it ''never mentions or references the detailed applicable laws governing the FICA, Federal Unemployment Tax Act (FUTA), or Social Security withholding.'' The commenter also stated that ''the proposed agency policy authorizing graduates on F–1 visas to work full-time while exempt for FICA withholding directly conflicts with the Internal Revenue Code (IRC), the Social Security Act (SSA), and Supreme Court precedent.''

Response. Matters related to Federal taxation are controlled by Congress through the IRC, and by the Department of the Treasury (Treasury) through regulations promulgated thereunder, not DHS. Although Congress may revise, eliminate, or create new obligations or conditions based on the payroll tax exemptions in the IRC for F–1 nonimmigrants, DHS may not do so. Similarly, although Treasury may issue regulations interpreting and implementing federal tax laws, DHS may not. DHS is thus unable to amend the rule to accommodate reforms related to payroll taxation or to take other measures affecting federal tax policy or rules.

Under current tax laws, when F–1 nonimmigrants are exempt from payroll taxes, the employer saves an amount equal to 6.2 percent of the F–1 nonimmigrant's salary up to the taxable wage base ($118,500 in 2016) and an additional 1.45 percent of the total salary that, in the aggregate, would have been the employer contribution to the Social Security and Medicare trust funds. The F–1 nonimmigrant similarly saves a deduction from his or her salary in the same amount that would have been the employee contribution. The FICA chapter of the IRC, which governs the payroll tax owed by employers and employees to fund the Social Security and Medicare programs,[68] provides that no payroll taxes are to be withheld for services performed by a nonresident alien who is an F–1 nonimmigrant [69] as long as the services are ''performed to carry out a purpose for which the individual was admitted.'' [70]

The IRC provides that aliens temporarily in the United States are resident aliens, rather than nonresident aliens, for Federal tax purposes, when they satisfy a substantial presence test based on physical presence in the United States.[71] However, an individual temporarily present in the United States as an F–1 nonimmigrant who substantially complies with the requirements of the visa classification is an ''exempt individual'' [72] who does not count days physically present in the United States as an F–1 nonimmigrant for five calendar years toward the substantial presence test.[73] Thus, an F–1 nonimmigrant who is an ''exempt individual'' (for any part of five calendar years) is not a resident alien for taxation under the IRC, and as a nonresident alien is not subject to payroll taxes for Social Security and Medicare contributions (for those five calendar years). Similarly, the FUTA chapter of the IRC, which governs payroll taxes for unemployment compensation,[74] exempts from unemployment taxes those services performed by a nonresident alien who is an F–1 nonimmigrant.[75] In short, an individual who is an F–1 nonimmigrant generally is exempt from FICA and FUTA payroll taxes during the first five calendar years in which the individual holds F–1 nonimmigrant status.

These provisions, although of course relevant to F–1 students and employers for purposes of determining FICA and FUTA tax liability, neither displace, nor authorize Treasury to displace, the Secretary's broad authority to administer and enforce the nation's immigration laws. *See, e.g.,* 6 U.S.C. 202; INA Sec. 103, 8 U.S.C. 1103. Whether with respect to F–1 students or any other category of nonimmigrants, the IRC does not dictate the terms and conditions relating to nonimmigrant status. As Treasury explains in its U.S. Tax Guide for Aliens (IRS Publication 519): ''[An alien is] considered to have substantially complied with the visa requirements if [he or she has] not engaged in activities that are prohibited by U.S. immigration laws and could result in the loss of [his or her] visa status.'' In sum, DHS, not Treasury, is charged with determining whether an individual is maintaining F–1 nonimmigrant status, and Treasury, not DHS, must determine when and how payroll tax obligations accrue and are calculated. *See, e.g., id;* INA Sec. 101(a)(15), 8 U.S.C. 1101(a)(15); INA Sec. 214, 8 U.S.C. 214.

Accordingly, the assertion by a commenter that Treasury controls when F–1 nonimmigrants are authorized for employment is incorrect. This mistaken theory seems to be grounded in a misreading of select provisions of the IRC referenced by the comment concerning work performed as an employee of a school, college, or university. Such work is exempt from both FICA and FUTA under the IRC when Treasury determines that the worker is both taking classes at and working for a qualifying institution and should be considered an exempt student.[76] Although Treasury has further defined these provisions administratively, neither the IRC nor Treasury's regulations relate to when F–1 nonimmigrants are authorized to work. Rather, they relate to when certain employed students (whether F–1 nonimmigrants or U.S. citizens) who are enrolled in and regularly attending classes are exempt from payroll taxes. In other words, these provisions do not limit when an F–1 nonimmigrant can work, but instead control whether FICA and FUTA taxes apply to services provided by certain individuals to

[68] 26 U.S.C. 3101, *et seq.*

[69] 26 U.S.C. 3121(b)(19).

[70] 26 CFR 31.3121(b)(19)–1(a)(1).

[71] 26 U.S.C. 7701(b).

[72] 26 U.S.C. 7701(b)(5)(D)(i)(I).

[73] An individual present in the United States for any part of a calendar year as an F–1 nonimmigrant must count that year toward the five year cap on being considered an ''exempt individual.'' 26 CFR 301.7701(b)-3(b)(4), (7)(iii).

[74] 26 U.S.C. 3301, *et seq.*

[75] 26 U.S.C. 3306(c)(19); *see also* 26 CFR 31.3306(c)(18)–1(a)(1).

[76] 26 U.S.C. 3121(b)(10) (FICA) and 3306(c)(10)(B) (FUTA); *see also* 26 CFR 31.3121(b)(10)–2 (FICA) and 31.3306(c)(10)–2 (FUTA).

certain institutions.[77] DHS thus rejects the suggestion that Treasury controls when F–1 nonimmigrants are authorized for employment.

Additionally, following consultation with Treasury, DHS has determined that it would be incorrect to conclude that the payroll tax exemption for F–1 nonimmigrants ''removes'' any monies from the Social Security or Medicare program trust funds, despite many comments to this effect. At most, the statutory tax exemption has the (intended) effect of not generating FICA and FUTA payroll tax revenue when certain F–1 nonimmigrant students are employed.

Moreover, the amount of revenue affected by these payroll tax exemptions does not approach the $4 billion over five years (*i.e.,* just under $1 billion annually, or approximately $10,000 annually per STEM OPT participant) cited by certain commenters. Other commenters noted that the research organization that calculated these figures did not take into account that (1) employers incur other costs if they choose to hire an individual who is an F–1 nonimmigrant, and (2) many F–1 nonimmigrants are not tax exempt.

With respect to the first point, some commenters noted that any employer savings related to tax laws are at least in part offset by administrative costs, legal fees, and staff time related to securing the authority under U.S. immigration law to employ the foreign-born worker.[78] With respect to the second point, other commenters emphasized that not all F–1 nonimmigrants are exempt from payroll taxes under these specific FICA and FUTA rules. Instead, some may be exempt because of tax treaty provisions, while many others, including F–1 nonimmigrants eligible for STEM OPT extensions, may not be exempt because they have already been in the United States for parts of five calendar years. In regards to the tax treaty provisions, it should be noted that U.S. citizens would receive tax treatment while working abroad that is commensurate with the treatment received by nationals of our treaty partners while they work in the United States. In addition, it is not clear to DHS that compliant employers would typically perceive an incentive to hire F–1 nonimmigrants due to a payroll tax exemption, as it is not clear how employers would definitively know a particular nonimmigrant's tax treatment prior to hiring.[79] Based on these factors, other provisions in this rule that safeguard the interests in U.S. workers, and DHS's long experience administering and enforcing the nation's immigration laws, DHS concludes that commenters' concerns about the incentives created by the statutory tax exemptions are overstated.

DHS also observes that there are a number of other deficiencies in the figures suggested for the fiscal impact of the payroll tax exemptions for F–1 nonimmigrants. For instance, the figures assume incorrectly that every F–1 nonimmigrant on a STEM OPT extension has displaced a U.S. worker who would otherwise be subject to payroll taxes, and that every STEM OPT student ultimately draws down on the funds generated by payroll taxes. The figures also appear to be based on calculations related to the total number of students engaged in OPT, not just those on STEM OPT extensions. In addition to the reasons discussed above, DHS declines to make changes to a successful international student program based on speculative assertions about the impact of certain statutory tax exemptions on the programs funded by the FICA and FUTA taxes. Furthermore, if those tax exemptions are in fact problematic, they must be addressed by Congress.

iv. Legal Authority

Comment. DHS received many comments concerning the legal authority underpinning the OPT program. Some commenters challenged the Department's authority to maintain an OPT program at all, in part because there is no express statutory authority establishing such a program. A commenter with this view cited a 1977 regulation from the legacy Immigration and Naturalization Service (INS) in which the INS had stated that there was no express authority in the INA establishing OPT employment for F–1 students. Other commenters objected to the STEM OPT extension on the grounds that it is inconsistent with other provisions of the INA regulating visa classifications that expressly provide employment authorization. These commenters took the position that the only permissible objective of an F–1 student's course of study is to obtain a degree. According to those commenters, once that objective has been achieved, the purpose of the F–1 status has been fulfilled and the student's status should terminate. Other commenters contested the Department's authority to provide STEM OPT extensions because such extensions were inconsistent with one of the ''INA's primary purpose[s],'' which they characterized as restricting immigration ''to preserve jobs for [U.S.] workers.''

One commenter specifically argued that the statutory authority for OPT was undermined by certain congressional action in 1990 to create an OPT-related pilot program, followed by the failure in 1994 to extend that program:

> The only clear statutory authority that has ever existed for an OPT-like program was a three-year pilot program created by section 221 of the 1990 Immigration and Nationality Act [sic] that allowed foreign graduates to work in fields unrelated to their degree. . . . However Congress did not allow the program to exist for more than a few years after its creation, in part because an INS and DOL evaluation found that it ''may have adverse consequences for some U.S. workers.''

The implication is that because Congress had authorized that specific OPT program by statute and then allowed it to expire, other forms of OPT that are not specifically authorized in statute are not legally justifiable.

Other commenters, however, submitted comments recognizing the legal justifications for the OPT program. A number of commenters, for example, recounted the history of post-completion OPT in support of the proposed rule. Those commenters noted that OPT employment had been provided by INS and DHS since at least 1947, and they concluded that DHS was on sound legal footing in including a STEM OPT extension within the OPT program. Some commenters stated that

[77] Among other workers, these provisions are inapplicable to medical students in their capacity as hospital residents. *Mayo Found. For Med. Educ. & Research* v. *U.S.,* 562 U.S. 44 (2011). The *Mayo* case, cited by a commenter, is not controlling as to whether STEM OPT extensions are permitted for F–1 nonimmigrants. Although the Supreme Court concluded that the FICA and FUTA exemptions for students are not available to medical residents working at hospitals, *id.,* that decision (and Treasury's position on the circumstances in which employed students working for the institution where they take classes are exempt from payroll taxes) does not address the availability of work authorization to F–1 nonimmigrants more broadly.

[78] Below, DHS estimates some of the direct costs that this rule imposes upon employers of F–1 nonimmigrant students on STEM OPT extensions. In addition to this rule's direct costs, the incentive cited by the commenters is offset by the fact that STEM OPT students are in the United States temporarily, and are therefore, to many employers, inherently less valuable than U.S. workers. For instance, a commenter noted that there are significant costs and uncertainty associated with retaining an F–1 nonimmigrant beyond the STEM OPT extension period.

[79] Employers, for example, may not know whether an individual is in F–1 nonimmigrant status or whether he or she has been in such status in the United States for less than five years. DHS notes that employers do not necessarily have access during the recruitment process to specific documentation confirming such information. And DOJ cautions against requesting such information as it may cause the perception of discriminatory conduct. *See* Office of Special Counsel, *Technical Assistance Letter on Pre-employment Inquiries Related to Immigration Status,* at *http://www.justice.gov/sites/default/files/crt/legacy/2013/09/11/171.pdf.*

DHS was utilizing broad authority granted by Congress to enforce and administer the immigration laws. Those commenters generally considered persuasive the fact that Congress had amended the INA numerous times in ways that indicated its knowledge of, and acquiescence to, the existence of a significant period of post-graduation OPT.

One commenter that recognized the Department's legal authority in issuing this rule addressed the significance of Congress' actions in 1990 to create a pilot program in which F–1 students could receive employment authorization for practical training *unrelated* to the their fields of study. Although Congress later allowed the pilot program to expire in 1994, the commenter explained that the program's creation supported the Department's authority to permit OPT employment *related* to students' fields of study:

> In the Immigration Act of 1990, Congress authorized the creation of a pilot program which allowed F–1 student employment in positions that were unrelated to the alien's field of study. The creation of this program bolsters the argument that DHS's interpretation is reasonable. . . . The logical conclusion to draw here is that Congress only acted explicitly to authorize F–1 students to receive post-completion training in fields unrelated to their studies because the law already allowed post-completion training in fields related to the student's studies.

This commenter, along with many others, expressed support for the proposed rule as a reasonable construction of the authorities provided to the Department by the immigration laws.

Response. The Homeland Security Act and the INA provide DHS with broad authority to administer the INA and regulate conditions for admission under nonimmigrant categories, including the F–1 student classification. *See, e.g.,* 6 U.S.C. 202; 8 U.S.C. 1103(a)(1) and (3); 8 U.S.C. 1184(a)(1). As the U.S. District Court for the District of Columbia recently observed:

> Congress has delegated substantial authority to DHS to issue immigration regulations. This delegation includes broad powers to enforce the INA and a narrower directive to issue rules governing nonimmigrants. *See* 8 U.S.C. 1103(a)(1) . . .; *id.* § 1103(a)(3) (''The Secretary of Homeland Security shall establish such regulations [inter alia,] as he deems necessary for carrying out his authority under the provisions of the INA.''); *id.* § 1184(a)(1) (''The admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as the [Secretary] may by regulations prescribe. . . .'').

Washington Alliance, No. 1:14–cv–00529, slip op. at 18–19. In addition to explicitly authorizing the Secretary to admit international students to the United States temporarily to pursue a course of study, *see* 8 U.S.C. 1101(a)(15)(F)(i), the INA endows the Secretary with broad discretion to promulgate regulations establishing the time and conditions under which such aliens may be admitted, *see* 8 U.S.C. 1103(a)(3), 1184(a)(1), 8 U.S.C. 1101(a)(15)(F)(i), 1103(a) and 1184(a)(1). The Secretary also has broad authority to determine which individuals are ''authorized'' for employment in the United States. *See* 8 U.S.C. 1324a, 8 CFR part 274a.

To the extent that comments challenging DHS's legal authority concerned the OPT program generally, such comments are outside the scope of this rulemaking, which relates specifically to the availability of STEM OPT extensions. DHS did not propose to modify the general post-completion OPT program in the proposed rule. Moreover, to the extent that such comments can be construed as challenging DHS's authority to implement a STEM OPT extension in particular, DHS finds the comments unpersuasive.

Federal agencies charged with administration of the immigration laws have long interpreted the statutory authorities cited above to encompass on-the-job training that supplements classroom training for international students. *See Washington Alliance,* No. 1:14–cv–00529, slip op. at 24; *Programmers Guild, Inc.* v. *Chertoff,* 338 F. App'x 239, 244 (3d Cir. 2009) (unpublished). For example, in 1947, legacy INS promulgated a rule authorizing international students to work after graduation based upon statutory authority that is similar in relevant respects to current statutory authority governing the admission of international students. The 1947 rule provided that ''in cases where employment for practical training is required or recommended by the school, the district director may permit the student to engage in such employment for a six-month period subject to extension for not over two additional six-month periods.'' *See* 12 FR 5355, 5357 (Aug. 7, 1947). Again in 1973, legacy INS promulgated regulations authorizing, pursuant to the INA, employment for international students for practical training under certain conditions. *See* 38 FR 35425, 35426 (Dec. 28, 1973). For decades, INS and DHS regulations have defined an international student's duration of status, in pertinent part, as ''the period during which the student is pursuing a full course of study in one educational program . . . *and any period or periods of authorized practical training,* plus [a grace period] *following completion of the course of study or authorized practical training* within which to depart from the United States.'' 48 FR 14575, 14583–14584 (Apr. 5, 1983) (emphases added). *See also* 8 CFR 214.2(f)(5)(i).

Moreover, during this period, Congress has had occasion to amend the INA in general, and F–1 nonimmigrant provisions in particular, on numerous occasions. Despite these numerous amendments, Congress has left completely undisturbed the longstanding interpretation that international students are authorized to work in practical training. *See e.g.,* Pub. L. 87–256, § 109(a), 75 Stat. 527, 534 (Sept. 21, 1961) (allowing an F–1 nonimmigrant's alien spouse and minor children to accompany the F–1 nonimmigrant to the United States); Immigration Act of 1990 § 221(a) (permitting F–1 nonimmigrants to engage in limited employment unrelated to their field of study); Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104–208, § 625, 110 Stat. 3009–546, 3009–699 (adding limitations related to F–1 nonimmigrants at public schools); Enhanced Border Security and Visa Entry Reform Act of 2002, Pub. L. 107–173, §§ 501–502, 116 Stat. 543, 560–63 (implementing monitoring requirements for international students); Pub. L. 111–306, § 1, 124 Stat. 3280, 3280 (Dec. 14, 2010) (amending F–1 with respect to language training programs). ''[W]hen Congress revisits a statute giving rise to a longstanding administrative interpretation without pertinent change, the congressional failure to revise or repeal the agency's interpretation is persuasive evidence that the interpretation is the one intended by Congress.'' *Commodities Futures Trading Comm'n* v. *Schor,* 478 U.S. 833, 846 (1986) (quoting *NLRB* v. *Bell Aerospace Co.,* 416 U.S. 267, 275 (1974)).

In light of the long regulatory history for the OPT program, including the Department's longstanding interpretation of the INA and the longstanding congressional recognition of that interpretation, DHS is confident that this rulemaking is consistent with statutory authority. As explained by the recent decision in the *Washington Alliance* litigation:

> DHS's interpretation of F–1—inasmuch as it permits employment for training purposes without requiring ongoing school enrollment—is ''longstanding'' and entitled

to deference. *See Barnhart [*v. *Walton],* 535 U.S. [212,] 220 [(2002)]. Second, Congress has repeatedly and substantially amended the relevant statutes without disturbing this interpretation. These amendments have not been ''isolated.'' *Public Citizen [v. U.S. Dep't of Health and Human Services],* 332 F.3d [654,] 668 [(D.C. Cir. 2003)]. The Immigration and Nationality Act of 1952, in particular, radically changed the country's immigration system. And, the Immigration Act of 1990 imposed a host of new protections for domestic workers and explicitly authorized F–1 students to engage in certain forms of employment. By leaving the agency's interpretation of F–1 undisturbed for almost 70 years, notwithstanding these significant overhauls, Congress has strongly signaled that it finds DHS's interpretation to be reasonable.

Washington Alliance, No. 1:14–cv–00529, slip op. at 26–27.

With respect to one commenter's reliance on the 1977 INS rulemaking, DHS recognizes that legacy INS previously noted the lack of specific statutory provisions expressly authorizing OPT. DHS agrees that the INA contains no direct and explicit provision creating a post-completion training program for F–1 students. But this does not mean that the Department lacks the authority to implement such a program. Indeed, as the 1977 Rule recognized, ''section 103 of the Immigration and Nationality Act (8 U.S.C. 1103) . . . provides the Attorney General and the Commissioner of the Immigration and Naturalization Service certain powers and duties, including the establishment of regulations.'' 42 FR at 26411. And it was pursuant to that authority that in the very 1977 rulemaking in which the INS made the statement cited by the commenter, the INS amended the regulations that authorized ''a nonimmigrant alien student to engage in practical training'' and continued to authorize OPT. *Id.* As noted above, Congress's actions over several decades make clear that Congress understood the F–1 statutory provisions to permit ''at least some period of employment'' and that ''the clause in F–1—'solely for the purpose of pursuing such a course of study'—does not foreclose employment.'' *Washington Alliance,* No. 1:14–cv–00529, slip op. at 21.

Further, the fact that Congress has recognized and approved of OPT is further supported, rather than undermined, by its creation of an OPT-related pilot program in 1990. First, the legislative history indicates that Congress understood the new pilot program, which authorized temporary employment unrelated to a student's field of study, as an expansion of off-campus employment authorization for F–1 nonimmigrants. *See* H.R. Rep. No. 101–723, pt. 1, 1990 WL 200418, *6746 (recognizing that the legislation ''expands the current authority of students to work off-campus''). Second, as recognized by other commenters, the fact that Congress chose to create a pilot program specifically authorizing employment *unrelated* to a student's field of study is itself proof that Congress understood that employment *related* to such a field of study already had been appropriately authorized by the INS. The fact that Congress, acting against the backdrop of the longstanding OPT program, sought to expand students' employment opportunities, without curtailing the existing OPT program, indicates that Congress did not perceive OPT to be in contravention of Department authority. Indeed, the fact that Congress understood that F–1 nonimmigrants were regularly employed is reflected in the fact that, as early as 1961, Congress acted to exempt such students from certain payroll taxes. If F–1 nonimmigrants could not be employed, there would be no reason for Congress to recognize in the tax code that employment could be related to the purpose specified in 8 U.S.C. 1101(a)(15)(F) or to exempt such employment from payroll taxes.[80]

Finally, DHS disagrees with the suggestion that the rule's objectives conflict with one of the ''INA's primary purpose[s]'' of restricting immigration ''to preserve jobs for [U.S.] workers.'' The final rule, as with the proposed rule, contains important safeguards specifically designed to guard against such effects, while also furthering crucial benefits stemming from academic and cultural exchange, innovation, and economic growth. Accordingly, this rule maintains the U.S. Government's longstanding legal and policy positions on this matter; practical training is an important and recognized element of a student's educational experience and full course of study.

Comment. A number of commenters took issue with the duration of STEM OPT extensions as proposed in the 2015 NPRM, asserting that a two-year extension was contrary to DHS's statutory authority. A commenter stated that authorizing post-completion employment for an ''extended period of time'' is unlawful and quoted the above-referenced 1977 final rule, in which legacy INS reduced the maximum OPT period from 18 months to one year. *See* 42 FR 26411 (May 24, 1977). The commenter asserted that legacy INS issued the 1977 rule based on a finding that an extended duration of OPT could cause injury to U.S. workers because OPT students could work for less than prevailing wages during their training period. The commenter asked whether DHS had considered this 1977 INS finding when developing the present rulemaking, and whether DHS ''now rejects the earlier finding of the INS'' that ''[t]here is no indication that the Congress intended that [a foreign student] remain and work in the U.S. for an extended period after completion of his course of study and until he becomes fully experienced in his occupational skill.'' 42 FR at 26412.

Response. DHS acknowledges that approximately 40 years ago, legacy INS limited the maximum overall period of practical training for all degree programs from 18 months to 12 months. The INS, however, made this change for policy reasons and not legal reasons. At no point did the INS conclude that statutory authority required it to reduce the 18-month maximum period for OPT. Moreover, INS apparently made the statement about legislative intent in the course of rejecting a request to provide an across-the-board maximum of two years for practical training in all fields of study. This statement did not define the scope of INS' legal authority. And as part of this rule, DHS neither considered nor proposed an across-the-board increase in the duration of OPT for all students, but instead only proposed the extension for on-the-job training in STEM fields.

With respect to policy, DHS also acknowledges that legacy INS recognized in the same 1977 rulemaking that ''[i]t may be that foreign students will be less likely to find employment, and perhaps fewer aliens would enter the U.S. to obtain their education here.'' *See* 42 FR at 26412. DHS, however, does not believe that it should be constrained to the factual and policy determinations that legacy INS made approximately 40 years ago with respect to the effect of the overall OPT program on the 1977 U.S. labor market. The world has changed a great deal since that time, and DHS believes it appropriate to shape policy accordingly.

As noted previously, the enhancements made by this rule are supported by data generally suggesting that international students contribute to the overall U.S. economy by building global connections between their hometowns and U.S. host cities.

[80] Congress added 26 U.S.C. secs. 3121(b)(19) and 3306(c)(19) to the Internal Revenue Code in 1961. *See* P.L. 87–256, Sections 110(b), 110(f)(3) (1961). These provisions exempt from payroll taxes certain F–1 nonimmigrants who have not been present in the United States in F–1 status for parts of five calendar years, as discussed supra in part IV.A.3 of this preamble.

Evidence links skilled migration to transnational business creation, trade, and direct investment between the United States and a migrant's country of origin. International STEM students also contribute more specifically to a number of advanced and innovative fields that are critical to national prosperity and security. By conducting scientific research, developing new technologies, advancing existing technologies, and creating new products and industries, for example, STEM workers diversify the economy and drive economic growth, while also producing increased employment opportunities and higher wages for U.S. workers. The rule also reflects DHS's consideration of potential impacts on the U.S. labor market and includes important safeguards for U.S. workers in STEM fields.

Comment. Some commenters made arguments based on comparisons between the STEM OPT program and the H–1B program, suggesting that DHS should infer from the H–1B category implicit limits on DHS's legal authority to allow F–1 students to engage in practical training as part of completing their full course of study. Some commenters asserted that DHS had no legal authority for a STEM OPT extension because it ''circumvents'' the statutory requirements of the H–1B visa classification. Relatedly, one commenter suggested that granting employment authorization through the OPT program permits F–1 students to sidestep restrictions on employment of foreign nationals enacted by Congress through establishment of a limited number of employment-authorized visa categories. In support of this contention, the commenter cited the decision by the U.S. District Court for the Northern District of California in *Int'l Union of Bricklayers & Allied Craftsman* v. *Meese,* 616 F. Supp. 1387 (N.D. Cal. 1985).

Response. DHS disagrees that the STEM OPT extension is an attempt to circumvent the requirements of the H–1B visa program, including the cap on H–1B visas. The H–1B nonimmigrant classification is a unique program designed to meet different policy objectives than those of the F–1 visa program or OPT. While this rule enhances the ability of F–1 students in STEM fields to implement and test educational concepts learned in the classroom in the context of on-the-job training, the rule does nothing to modify the congressionally established annual H–1B visa cap nor to modify the longstanding policy objectives of the H–1B program that generally allow U.S. employers to temporarily fill job openings in specialty occupations by employing workers who possess at least a bachelor's degree. Unlike the H–1B visa program where an employer must petition for an H–1B visa for a foreign worker to fill a job opening, in the F–1 visa program, it is F–1 students, including those affected by this final rule, who seek to participate in OPT in order to further their education attained through course work in the United States. Unlike an H–1B specialty occupation worker, a student will participate in STEM OPT as a way to complement his or her academic experience in the United States pursuant to an individualized Training Plan that helps ensure that the STEM OPT experience furthers the student's course of study.

DHS thus agrees with the U.S. District Court for the District of Columbia, which explained the relationship between the F–1 and H–1B visa classifications in its recent decision in *Washington Alliance.* In that decision, in which the court upheld the Department's legal authority to include a STEM OPT extension within the general OPT program, the court stated:

> F–1 and H–1B perform the interlocking task of recruiting students to pursue a course of study in the United States and retaining at least a portion of those individuals to work in the American economy. . . . But H–1B—which applies to aliens seeking to work in a ''specialty occupation''—is far broader than the employment permitted by the OPT program. DHS's interpretation of the word ''student'' does not render any portion of H–1B, or its related restrictions, surplusage. Congress has tolerated practical training of alien students for almost 70 years, and it did nothing to prevent a potential overlap between F–1 and H–1B when it created the modern H–1B category in 1990. As such, the Court does not believe that DHS's interpretation is unreasonable merely because of its limited overlap with H–1B.

Washington Alliance, No. 1:14–cv–00529, slip op. at 14, 28 (internal citations omitted).

As for a commenter's reference to the *Int'l Union of Bricklayers* case, DHS finds that decision of little relevance to this rulemaking. In the cited case, the district court's holding was grounded in its finding that the admission of certain individuals as B–1 nonimmigrant visitors for particular construction work purposes was inconsistent with section 101(a)(15)(B) of the INA, 8 U.S.C. 1101(a)(15)(B), which expressly precludes admission in B nonimmigrant status of an alien ''coming for the purpose . . . of performing skilled or unskilled labor.'' This case has no clear application to the STEM OPT extension, where there is no express statutory bar similar to section 101(a)(15)(B) of the INA, 8 U.S.C. 1101(a)(15)(B).[81] More critically, the overlap between the STEM OPT extension and the H–1B visa program does not invalidate DHS's interpretation of the controlling statutory authorities. For that reason, the court in *Washington Alliance* rejected arguments similar to those made by commenters that DHS had ''circumvented the statutory restrictions that rightfully should be applied'' to college-educated labor.[82]

Comment. A number of commenters similarly asserted that the proposed Cap-Gap provision, which further extends F–1 status for students who are beneficiaries of H–1B petitions, undermined the authority for this rulemaking. One commenter, for example, wrote that there is a fundamental conflict between the purpose of the student visa program and STEM OPT extensions in that student visas are not to be used as a means of immigrating to the United States. The commenter cited to comments from individuals who supported the proposed rule, including the Cap-Gap provision, as evidence that the rule would facilitate longer-term immigration to the United States. The commenter expressed that the rule would transform the statutory basis for the admission of foreign students—admission ''solely for the purpose of pursuing . . . a course of study''—into admission ''for pursuing a course of study or hanging around long enough to get an H–1B visa.'' The commenter stated that the Cap-Gap provision serves no purpose other than to assist F–1 students to remain in United States in violation of the terms of their admission.

Response. DHS does not agree with the commenter's views related to the Cap-Gap provision. First, both the STEM OPT extension and the Cap-Gap extension are of limited duration, and neither provides anything other than short-term temporary status. Second, as discussed above, practical training for international students has been authorized for many decades, and Congress has long recognized the Department's interpretation of the student visa and related sections of the INA. Congress also created the H–1B nonimmigrant classification specifically

[81] Similarly, one commenter cited *Texas* v. *United States,* 787 F.3d 733, 760–61 (5th Cir. 2015) as authority for the commenter's disagreement with DHS's statement of authority in the NPRM for the STEM OPT extension. That case is also inapposite here, as it did not address the Secretary's authority to grant work authorization for purposes of practical training.

[82] *Washington Alliance,* No. 1:14–cv–00529, slip op. at 28.

for specialty occupation workers with bachelors' degrees or higher. *See* INA Sec. 101(a)(15)(H)(i)(B) and 214(i)(l), 8 U.S.C. 1101(a)(15)(H)(i)(B) and 1184(i)(1). As noted in the recent *Washington Alliance* decision, the fact that F–1 students on OPT share certain similarities with H–1B nonimmigrant workers does not render the OPT program invalid. *See Washington Alliance,* No. 1:14–cv–00529, slip op. at 14, 28. Third, Congress also created provisions expressly allowing individuals with one nonimmigrant classification to change status to a different nonimmigrant classification. *See* INA Sec. 248, 8 U.S.C. 1258. There is thus nothing problematic about the fact that F–1 students in a period of OPT may seek to remain in the United States in H–1B nonimmigrant status. The immigration laws are specifically designed to facilitate such shifts. *See id.* And, as noted earlier, nothing about the Cap-Gap provision affects eligibility for H–1B status or visas, changes the number of such visas, or otherwise increases the ability of students to obtain classification as an H–1B nonimmigrant.

To the contrary, the Cap-Gap provision simply provides a temporary bridge between two lawfully available periods of nonimmigrant status. As noted above, the problem rectified by the Cap-Gap provision is the result of the misalignment between the academic year and the fiscal year. Because of this misalignment, F–1 students who were the beneficiaries of H–1B petitions often saw their F–1 status expire before they could effect the change to H–1B status, which required them to leave the United States and subsequently reenter on an H–1B visa. The Cap-Gap provision would simply remove the need to depart and subsequently reenter by extending the student's F–1 status for a limited number of months until his or her H–1B status commenced. The Cap-Gap provision is thus nothing more than a common-sense administrative measure that helps these students maintain legal status and avoids inconvenience to them and their employers. It is also fully consistent with existing legal authorities and the underlying purpose of the practical training program.

B. Enforcement, Monitoring, and Oversight

1. Description of Final Rule and Changes From NPRM

The final rule includes a number of requirements related to enforcement and oversight of the STEM OPT extension program. To better ensure its integrity, this rule prohibits STEM OPT extensions based on degrees from unaccredited institutions; provides for DHS site visits at STEM OPT employment sites; sets an overall limit for the amount of time a student may be unemployed during a STEM OPT extension; requires validation reports from students, as well as reporting from both students and employers, on the student's employment status; requires students to provide annual evaluation reports; and requires both students and employers to report material changes to training plans. The proposed rule included these provisions; DHS has retained the provisions in the final rule, with changes and clarifications in response to public comments. We summarize these provisions and changes below.

i. University Accreditation

To qualify for a STEM OPT extension, a student's STEM degree must be received from a U.S. educational institution accredited by an accrediting agency recognized by the Department of Education.[83] As noted in the proposed rule, the goal of accreditation is to ensure the quality of educational institutions and programs. Specifically, the accreditation process involves the periodic review of institutions and programs to determine whether they meet established standards in the profession and are achieving their stated educational objectives.[84]

DHS retains the accreditation requirements from the proposed rule, with only one change in response to public comments received. In cases where a student uses a previously obtained STEM degree to apply for the STEM OPT extension, the institution from which the qualifying degree was obtained must be accredited by an accrediting agency recognized by the Department of Education at the time of the student's application for the STEM OPT extension. This is a change from the proposed rule's requirement that the institution be accredited at the time the degree was conferred. This change will make the provision easier to administer by eliminating the need for DSOs to verify the historical accreditation status of other institutions.

[83] An accrediting agency is a private educational association of regional or national scope that develops evaluation criteria and conducts peer evaluations of educational institutions and academic programs. U.S. Department of Education Office of Postsecondary Education, ''The Database of Accredited Postsecondary Schools and Programs,'' available at *http://ope.ed.gov/accreditation.*

[84] U.S. *Department of Education Office of Postsecondary Accreditation, ''FAQs about Accreditation,'' available at http://ope.ed.gov/accreditation/FAQAccr.aspx.*

ii. Site Visits

DHS may, at its discretion, conduct site visits to ensure that employers and students meet program requirements, including that they are complying with assurances and that they possess the ability and resources to provide structured and guided work-based learning experiences in accordance with individualized Training Plans. The combination of requiring school accreditation and conducting discretionary DHS site visits of employers will reduce the potential for fraudulent use of F–1 student status during the period of STEM OPT training.

DHS retains the site visit provisions from the proposed rule, with one change to accommodate concerns about the potential disruption associated with unannounced site visits. DHS is including in this rule a requirement that DHS will provide notice to the employer 48 hours in advance of any site visit, unless the visit is triggered by a complaint or other evidence of noncompliance with the STEM OPT extension regulations, in which case DHS reserves the right to conduct a site visit without notice.

iii. Unemployment Limits

Under this rule, a student may be unemployed for no more than 90 days during his or her initial period of post-completion OPT, and for no more than a total of 150 days for students whose OPT includes a 24-month STEM OPT extension. This provision is finalized as proposed, with minor changes for clarity.[85]

iv. Employment Status and Validation Reporting

Under this rule, the employer must report to the relevant DSO when an F–1 student on a STEM OPT extension terminates or otherwise leaves his or her employment before the end of the authorized period of OPT and must do so no later than five business days after the student leaves employment. Employers must report this information to the DSO. The contact information for the DSO is on the student's Form I–20, Certificate of Eligibility for Nonimmigrant (F–1) Student Status (''Form I–20 Certificate of Eligibility''), and on the student's Form I–983, Training Plan for STEM OPT Students.

[85] The 90-day aggregate period during initial post-completion OPT was proposed to remain at the level proposed in the 2008 IFR. DHS proposed to revise the aggregate maximum allowed period of unemployment to 150 days for an F–1 student having an approved STEM OPT extension consistent with the lengthened 24-month period for such an extension.

DHS will extend OPT only for STEM students employed by employers that agree in the Training Plan to report this information. This requirement is identical to that in the proposed rule, except that in response to public comments, DHS determined to extend the report period from 48 hours to five business days. As noted below, DHS believes that this timeframe is more realistic and more likely to result in consistent efforts to comply.

The rule also enhances the ability to track F–1 students by requiring validation reporting every six months for such students on STEM OPT extensions. This additional requirement is important in fulfilling the goals of the STEM OPT extension and in timely and accurately tracking students, who are often away from their school's campus. Specifically, this rule requires students who are granted STEM OPT extensions to report to their DSOs every six months. As part of such reporting, students must confirm the validity of their SEVIS information, including legal name, address, employer name and address, and the status of current employment. This provision is largely finalized as proposed, but with some minor edits for clarity. The text has been reorganized to clearly state the types of events that require a validation report and to clearly state that the requirement to submit such reports starts on the date the STEM OPT extension begins and ends when the student's F–1 status expires or the 24-month OPT extension concludes, whichever occurs first.

v. Periodic Student Evaluations

As compared to the proposed rule, and in response to public comments received, the final rule makes a number of changes and clarifications to the student evaluation requirement. First, DHS has changed the frequency of the evaluation requirement. DHS proposed requiring an evaluation every six months, but is reducing the frequency to every 12 months. This change is intended to better reflect employer practices where annual reviews are standard, allowing students and employers to better align the evaluations required under this rule with current evaluation cycles. Second, DHS is providing additional flexibility for employer participation in the evaluation process. Although the NPRM would have required the student's immediate supervisor to sign the evaluation, the final rule allows any appropriate individual in the employer's organization with signatory authority to sign the evaluations that the student will submit to the DSO. Third, DHS clarifies that this evaluation is not meant to replace or duplicate an employer's general performance appraisal process. Instead, the student evaluation is intended to confirm that the student is making progress toward his or her training objectives. These evaluations will help document the student's progress toward the agreed-upon training goals and thus better ensure that such goals are being met.

vi. Reporting of Material Changes to or Deviations From the Training Plan

This final rule also provides that if there are material modifications to or deviations from the Training Plan during the STEM OPT extension period, the student and employer must sign a modified Training Plan reflecting the material changes, and the student must file this modified Training Plan with the DSO at the earliest available opportunity. Material changes relating to training for the purposes of the STEM OPT extension include, but are not limited to, any change of Employer Identification Number (EIN) resulting from a corporate restructuring; [86] any reduction in compensation from the amount previously submitted on the Training Plan that is not the result of a reduction in hours worked; and any significant decrease in the hours per week that a student will engage in the STEM training opportunity, including a decrease below the 20-hour minimum employment level per week that would violate the requirements of the STEM OPT extension.

This aspect of the final rule represents a clarification of a proposed provision in the NPRM. Commenters on the proposed rule requested additional clarity with respect to what types of changes to or deviations from the training plan would be considered ''material'' and would therefore require the submission of a modified plan to the DSO. As discussed in further detail below, DHS is departing from the proposal in response to public comments.

DHS further notes that ICE is working toward technology that would allow students to update their basic information in SEVIS without gaining access to restricted areas of the system where student access would be inappropriate. Once ICE implements this technology, students will have an increased ability to maintain their own records. This would also decrease the workload on DSOs, who would no longer be required to update student information while students are participating in OPT.

2. Public Comments and Responses

i. University Accreditation

Comment. A number of commenters suggested additional restrictions on the types of educational institutions that should be allowed to participate in the STEM OPT extension program. Several commenters asserted, for example, that STEM OPT extensions should be limited only to students from the ''top 50–100'' universities in the United States. One commenter proposed that ''academic programs that have been fined, reached a settlement, or are under investigation by federal or state law enforcement agencies should be barred from accessing OPT visas, as should any institutions that are subject to heightened cash monitoring.''

Other commenters recommended further restrictions. Some commenters suggested that accreditation alone was insufficient to ensure the quality of degree programs and that additional quality standards should be adopted for STEM OPT extensions. Other commenters stated that students should be ineligible for STEM OPT extensions based on STEM degrees earned at for-profit institutions. One commenter stated that for-profit institutions had been abusing the OPT system and should no longer be able to place students in OPT positions. Another commenter asserted that prohibiting for-profit institutions from participating would eliminate the incentive of such institutions to recruit F–1 students under false pretenses. One commenter stated that the Administration is seeking to curb abuses by for-profit institutions in other areas, and that such schools should be precluded from placing students in OPT, or, at a minimum, should be subject to heightened oversight.

Response. DHS declines to adopt the suggested restrictions. DHS, for example, does not believe it fair or appropriate to limit participation to an arbitrary number of accredited institutions and their students. Although DHS has chosen to set limits on participating institutions and degree programs by requiring accreditation, accreditation determinations are made by accrediting entities that are recognized by the Department of Education as having expertise in this area. DHS itself does not have the expertise to look behind the quality of assessments made by such entities, nor does it have the expertise necessary to further compare degree programs among accredited institutions. Notably, the

[86] Changes of employers or EINs that are not simply a consequence of a corporate restructuring require filing of a new, rather than a modified, Training Plan by the new employer. *See* 8 CFR 214.2(f)(10)(ii)(C)(7)(iv).

commenters that recommended limiting the extension to students at ''top'' universities did not specify how DHS would determine which institutions would be in the ''top'' 50 or 100. Nor did the commenters explain how to address smaller institutions that may provide excellent STEM instruction but are not large enough to make more generalized lists of ''top'' schools. DHS believes it would be inappropriate to adopt such an ambiguous and subjective standard for distinguishing between educational institutions and their students in this rulemaking.

DHS also does not agree that a settlement or an open federal or state law enforcement investigation, without more, should bar an institution and its students from participating in the STEM OPT extension program. A settlement or investigation is not, itself, a finding of wrongdoing, and a settlement, investigation, or fine may be totally unrelated to matters impacting the STEM practical training opportunity. Barring participation based on nothing more than the existence of an investigation would be fair neither to the relevant institution nor its students.

DHS further declines to limit participation only to public and not-for-profit institutions, as there are accredited for-profit institutions that operate in a lawful manner and offer a quality education. As noted above, DHS has chosen to rely on the determinations of accrediting entities with respect to the quality of participating institutions and their degree programs. Schools meeting the accreditation requirement are subjected to significant oversight, including periodic review of the institution's programs to determine whether it is meeting the established standards in the profession and achieving its stated educational objectives. These checks, in addition to the protections built into the rule, represent a comprehensive mechanism for detecting and avoiding fraud. In addition, DHS is unaware of any special risk of fraud presented by accredited for-profit institutions, and the commenter did not identify any data showing that such institutions commit fraud at a higher rate than other institutions. Requiring F–1 students to attend public or not-for-profit institutions is an unnecessary limitation that would reduce the program's adaptability and potential.

Comment. Some commenters stated that the definition of ''accreditation'' is too vague and may be abused by employers, schools, and students.

Response. DHS disagrees with these comments. As noted above, to be eligible for a STEM OPT extension, a student's degree must be received from an educational institution accredited by an accrediting agency recognized by the U.S. Department of Education. An accrediting agency is a private educational association of regional or national scope that develops evaluation criteria and conducts peer evaluations of educational institutions and academic programs. *See* U.S. Department of Education Office of Postsecondary Education, ''The Database of Accredited Postsecondary Schools and Programs,'' available at *http://ope.ed.gov/accreditation/*. Because there is an objective list of accrediting entities recognized by the Department of Education that is publicly available, it is straightforward to confirm whether a school is appropriately accredited under the rule. For that reason, DHS disagrees that the term ''accreditation'' is vague.

Comment. DHS also received a number of comments regarding the use of STEM degrees earned abroad. Some commenters, for example, requested that the rule allow students to use STEM degrees previously obtained from foreign institutions as a basis for STEM OPT extensions. One commenter disagreed with a statement in the proposed rule discussing the difficulty of determining the equivalency of foreign degrees, and stated that such equivalency is sometimes determined for other immigration programs. That commenter referenced the Council for Higher Education Accreditation as a resource that lists international accrediting agencies. Other commenters requested that, as an alternative to allowing foreign degrees, DHS should allow students to obtain STEM OPT extensions based on previously obtained degrees earned at the accredited overseas campuses of U.S. institutions. To that end, a commenter recommended that DHS clarify the term ''accredited U.S. educational institution'' to include accredited U.S. institutions located abroad as well as programs offered by accredited U.S. institutions at international branch campuses or other overseas locations, so long as the location or program located outside the United States falls under the school's institutional accreditation. This commenter also suggested that DHS consistently use the term ''accredited U.S. educational institution'' throughout the rule to reduce ambiguity.

Response. DHS does not believe it is appropriate to allow the use of degrees earned abroad as a basis for obtaining STEM OPT extensions. First, such extensions are part of the F–1 student visa program, and providing such extensions based on degrees previously earned abroad would be inconsistent with the Department's duty to administer the F–1 program. Second, although DHS allows individuals to establish the equivalency of foreign degrees for other immigration programs, the need to assess such degrees presents particularly difficult complications in the OPT program. Among other things, assessing foreign degrees and making equivalency determinations are often difficult and time-consuming tasks. Finally, DHS believes that limiting qualifying degrees to those from accredited and SEVP-certified U.S. institutions will help preserve the integrity of the STEM OPT extension program, because the U.S. accreditation process helps to ensure the quality of educational institutions and programs.

Accordingly, this rule only permits a STEM OPT extension where the degree that is the basis of the extension is conferred by a domestic campus of a U.S. educational institution accredited by an entity recognized by the Department of Education and certified by SEVP at the time of application. Because SEVP certifies educational institutions at the campus level, the overseas campuses of U.S. educational institutions are not eligible for SEVP certification. A degree granted by an overseas campus of a U.S. educational institution will not qualify an F–1 student for a STEM OPT extension. This clarification is consistent with the basis for this rulemaking, which includes maintaining attractive conditions for international students to choose to study in the United States.

ii. Site Visits

Comment. Some commenters inquired about the employer site-visit provision in the proposed rule, and specifically asked for clarification about the component within DHS that would conduct such site visits. In addition, a labor union opined that the Department of Labor would be the more appropriate agency to conduct site visits to ensure employer compliance with program requirements because ''protection of labor standards is the central role of the [Department of Labor] and the agency must have an oversight role in a program with the size and scope of the OPT visa and its STEM extension.''

Response. DHS anticipates that ICE, a component of DHS, will be the agency responsible for conducting site visits related to the STEM OPT extension program, though DHS may consult with DOL as appropriate based upon their expertise. These visits will be conducted by the appropriate component to ensure compliance with the requirements of this rule. DHS does

not intend to use these visits for other enforcement purposes; however, if evidence of a violation of other requirements is discovered during a site visit, such potential violation will be addressed appropriately.

DHS's authority to administer and enforce the immigration laws, track and monitor students, and, relatedly, to conduct site visits, has strong statutory support. For example, federal law requires DHS to establish an electronic means to monitor and verify, among other things, the admission of international students into the United States, their enrollment and registration at approved institutions, and any other relevant acts by international students. *See* 8 U.S.C. 1372 and 1762.

Relatedly, these statutes also obligate DHS to collect information concerning whether each nonimmigrant student is maintaining his or her status, any change in an international student's program participation as the result of being convicted of a crime, each international student's degree program and field of study, and the date of each nonimmigrant student's termination of enrollment in a program (including graduation, disciplinary action or other dismissal, and failure to re-enroll), among other things. *Id.* Significantly, the Enhanced Border Security and Visa Entry Reform Act of 2002, which clarified and augmented the requirements for international student data collection, also requires DHS to ensure that information concerning such students is timely reported and that all records are being kept in accordance with federal law. *See* 8 U.S.C. 1762.

Additionally, Homeland Security Presidential Directive No. 2 (HSPD–2) (2001), which directed legacy INS to implement measures to end the abuse of student visas, requires DHS to track the status of international students (to include the proposed major course of study, the individual's status as a full-time student, the classes in which the student enrolls, and the student's source of financial support) and to develop guidelines that may include control mechanisms, such as limited-duration student immigration status. HSPD–2 also provides that DHS may implement strict criteria for renewing student immigration status. The rule's provisions regarding employer site visits are consistent with the foregoing authorities, which require DHS to monitor students pursuing STEM OPT training programs. The site visits reduce the potential for abuse and ensure that STEM OPT students receive structured and guided work-based learning experiences.

Finally, DHS agrees that the Department of Labor (among other Federal, state, and local agencies) has significant expertise in worksite investigations, and may consult with the Department of Labor and other agencies as appropriate. Also, where appropriate, DHS will refer matters to the Department of Labor and other agencies should a site visit suggest that such a referral is warranted.

Comment. Some commenters requested additional information about the procedures and scope of employer site visits under the proposed rule. For example, one commenter stated that ''the Proposed Rule does not clearly define the scope of a STEM OPT site visit, nor what information DHS could appropriately elicit during a site visit.'' Other commenters stated that the scope of any site visits should be limited to ensuring that the F–1 student remains employed at the STEM OPT employer sponsor identified in SEVIS, that the student is being compensated consistent with the information listed in SEVIS, and that the employer can confirm that the STEM degree is related to the practical training opportunity. They stated that site visits should not become a *de facto* ''gateway'' to other DHS audits, such as I–9 audits. They also stated that to the extent the scope of the site visit permits DHS to inquire into whether the duties and compensation of STEM OPT students are commensurate with that of U.S. workers, enforcement officers should be provided with very specific guidance to assure that STEM OPT investigations are not used as an additional mechanism to conduct I–9 audits. Another commenter specifically called for site visits to include documentation vetting and employee interviews for the purpose of ensuring that no U.S. workers are negatively impacted by a STEM OPT extension.

Response. As indicated above, the purpose of the employer site visit is for DHS to ensure that information in SEVIS concerning the STEM OPT extension is accurate (*i.e.,* that students and employers are engaged in work-based learning experiences that are consistent with the student's Form I–983, Training Plan for STEM OPT Students). As part of a site visit, DHS may confirm that the employer has sufficient resources and supervisory personnel to effectively maintain the program. In addition, DHS may ask employers to provide the evidence they used to assess wages of similarly situated U.S. workers. DHS will train the officials who conduct these visits so they understand what information DHS expects from employers. Site visits will be limited to checking information related to student STEM OPT employment, including the attestations made by the employer on the approved Training Plan. Additionally, site visits based upon complaints or evidence of noncompliance may be tailored to the concerns asserted. Site visits will not be used for other enforcement purposes unless evidence of a violation is discovered during such visits.

Comment. Some commenters stated that DHS should provide advance notice for all site visits. Some stated that consistent with similar government audits, three business days of advance notice should be provided to the student and employer prior to site visits, while another commenter suggested that companies be provided with 72 hours' notice prior to the site visit in the absence of a complaint. One commenter stated that DHS should do unannounced site visits only when it has a reason to believe a violation has occurred based on specific, credible information from a known source that likely has knowledge of the employer's practices, employment conditions, or regulatory compliance.

Response. DHS understands the commenters' concerns and has made changes in the final rule that balance concerns about employer burden against the need to ensure compliance with the rule. Under this final rule, DHS will provide 48 hours' advance notice for any site visit unless the visit is triggered by a complaint or other evidence of noncompliance with these regulations, in which case DHS may conduct a site visit without notice.

Comment. One commenter stated that STEM OPT site visits should be conducted only by experienced and well-trained ICE officers, rather than by contractors. According to the commenter, DHS has previously recognized that the use of contractors to perform site visits on behalf of USCIS' Fraud Detection and National Security Directorate was inefficient and often problematic and thus eliminated their use in that context. Other commenters questioned the expertise of ICE officers to make judgments about employer training programs. One of these commenters stated that the proposed Mentoring and Training Plan requirement was so vague and devoid of standards that no meaningful review was possible, and no training plan would be deemed insufficient.

Response. ICE currently intends to use federal employees for site visits under this rule. There may be times when contractors accompany federal employees, but ICE currently intends that federal employees will be in charge of such visits. DHS disagrees with the commenter's assessment that the

Training Plan requirements are overly vague and unenforceable. The program requires employers to provide detailed information regarding the nature of the training to be provided and the measures to be used to ensure that the goals of such training are met. Form I–983, Training Plan for STEM OPT Students, which will be used to keep track of this information, requires employers to provide the information necessary to verify compliance.

Comment. Several commenters requested that DHS further specify requirements and procedures related to site visits. Such commenters expressed concern with the fact that the regulation does not specify: The manner in which a site visit would be conducted; the manner in which information gained in the course of a site visit would be stored, shared, or relied upon by the government; the manner in which a company or individual could correct or update information gained through a site visit; or the manner in which confidential business and personal information will be protected during a site visit.

Response. DHS clarifies that site visits will be conducted in a manner that balances the burden to the employer with the need to ensure compliance with the program. This means that while ICE will physically inspect some sites, it also may request information concerning compliance through email or by phone. The information obtained during a site visit will be stored and maintained by ICE. DHS will notify an employer 48 hours before conducting a site visit unless DHS has received a complaint about the employer or has other evidence of non-compliance, in which case DHS reserves the right to conduct a site visit without notice. If as a result of a site visit ICE determines that an employer or student needs to submit updated or corrected information, ICE will generally request the information in writing, with specific instructions on how the employer or student must submit the information. Federal law imposes protections on information obtained by DHS in connection with site visits, and the Department will comply with those requirements. Applicable federal laws include, but are not limited to, the Privacy Act, the Freedom of Information Act, and the Federal Information Security Management Act.

Comment. Some commenters stated that ICE, prior to initiating a site visit, should attempt to verify program compliance requirements by communicating with the student and employer via telephone and email, as these means of communication are ''less intrusive'' than site visits. The commenters suggested that if the information could be verified through these other means, there would then be no need to conduct a time-consuming site visit.

Response. DHS expects that it will use all available mechanisms to ensure compliance with STEM OPT extensions, including contacting employers, students, or DSOs by phone or email to verify or obtain information. The Department, however, reserves the right to conduct site visits of employers or schools to ensure full compliance with program requirements. The Department believes that the possibility that such site visits may be conducted to ensure compliance, including on an unannounced basis, will further incentivize compliance with the requirements of this rule.

iii. Unemployment Limits

Comment. Commenters asked DHS to reconsider and adjust the amount of time a student may be unemployed over the course of their STEM OPT extension. Others asked that DHS not allow for any unemployment while a student is on a STEM OPT extension. One commenter suggested that an unemployment period is inconsistent with student status and with the training program component of OPT. The commenter stated that unemployment would be an unsupervised period inconsistent with DHS' security duties and would run contrary to protections in place for U.S. workers.

By contrast, another commenter recommended that DHS allow unlimited unemployment during the STEM OPT extension period. The commenter stated that limiting the unemployment period will have the effect of tying students more closely to one employer and limiting their ability to change jobs. The commenter was concerned this would increase the opportunity for student exploitation. A different commenter suggested that DHS allow STEM OPT students to leave their initial employer during the 24-month extension, so as to allow students greater mobility and avoid potential exploitation. One commenter stated that the lack of mobility and other protections for individuals participating in OPT could lead those students who are worried about going out of status to ''collude'' with exploitative employers to cover up violations of the safeguards for U.S. workers.

Response. DHS respectfully disagrees with commenters' suggestions that the amount of time a student may be unemployed under this rule is too long, or that the allowance for a short period of unemployment should be eliminated altogether. DHS continues to believe that authorizing a limited period for possible unemployment during a student's STEM OPT extension is both fair and reasonable, and consistent with the stated aims and objectives of the STEM OPT extension. Moreover, the reporting requirement, with which a student must comply during any period of unemployment, effectively addresses security-related concerns by ensuring that DHS remains apprised of the student's location and status.

DHS also believes that limiting unemployment during the STEM OPT extension period is necessary to support the program's purpose and integrity. The rationale for the program is to extend status to facilitate practical training. Allowing an unlimited period of unemployment would thus undermine the purpose for the extension and increase the opportunity for fraud and abuse. Moreover, the limited period of unemployment does not preclude a student who is unhappy with his or her current employer (for whatever reason) from effectively searching for a new practical training opportunity. Under this rule, the student may seek such a new opportunity either while still employed with his or her current employer or in the period of unemployment provided by this rule. Nothing in the rule prevents students from switching employers or from being unemployed for a temporary period, as long as they complete and submit a new training plan and comply with all reporting requirements.

Finally, students who believe they are being exploited or abused by their employers in any manner have several mechanisms to address their concerns, including reporting the conduct to their DSO or the SEVP Response Center, or seeking legal redress in appropriate cases. DHS also provides information about studying in the United States on the DHS Study in the States Web site, which links to State Department information for nonimmigrants, including a ''Rights, Protections and Resources'' pamphlet.[87] DHS encourages all students to seek appropriate redress and emphasizes that such action will not impact their F–1 status.

Comment. Some commenters stated that students should not be penalized

[87] *See* DHS, Study in the States, available at *https://studyinthestates.dhs.gov/what-is-a-commission-based-recruiter*; U.S. Department of State, Rights, Protections and Resources Pamphlet (Dec. 22, 2014), available at *http://1.usa.gov/1G0Nt5X*.

for becoming unemployed for an extended period of time because their employers failed to provide appropriate training.

Response. The rule provides for a limited period of authorized unemployment precisely because DHS is aware that there may be situations where students may have their employment terminated for reasons that are beyond their control. The rule's limited period of authorized unemployment is intended to provide students who find themselves in such a situation with sufficient time to seek and obtain alternative practical training opportunities directly related to their STEM fields of study.

Comment. A DSO and a university requested clarification as to whether the proposed rule's authorized 90- and 150-day periods of unemployment are available at each educational level. They sought clarification, for instance, with respect to a student who had previously used his or her authorized periods of unemployment while engaged in post-completion OPT and a STEM OPT extension after completing an undergraduate degree. The commenters asked whether such a student would be eligible for the proposed rule's authorized periods of unemployment if the student subsequently engaged in post-completion OPT and a STEM OPT extension after completing a graduate degree.

Response. Similar to the provisions in the 2008 IFR, a separate 90- or 150-day unemployment limit will apply to each post-completion OPT period. A post-completion OPT period for these purposes means an initial period of up to 12 months of OPT, as well as the related 24-month STEM OPT extension. If a student completes one period of OPT (including a STEM OPT extension), and then pursues a second period of OPT on the basis of having earned a second degree at a higher educational level, the student will be able to benefit from the rule's authorized 90- and 150-day periods of unemployment (as appropriate) at both educational levels. DHS has revised the regulatory text to make this clear.

iv. Employment Status and Validation Reporting

Comment. Some commenters requested that DHS eliminate the requirement for the employer to timely report the termination of a STEM OPT student or, alternatively, extend the proposed 48-hour notification requirement. Commenters suggested timeframes of 10 days or 21 days to better correspond with other reporting requirements in the rule. Other commenters suggested alternative reporting periods of three business days or five business days. With respect to the 48-hour notification requirement, one commenter stated that ''it can be administratively difficult to comply within such a short timeframe given the amount of administrative work that accompanies a termination.'' In addition, a commenter stated that having both the employer and the STEM OPT student report loss of employment is duplicative.

Response. After reviewing these comments, DHS has agreed to extend the period for complying with the reporting requirement from 48 hours to 5 business days. DHS believes such a timeframe is more realistic and more likely to result in consistent compliance, while at the same time ensuring that DHS obtains timely information with respect to international students. DHS has been directed by Congress to monitor and track students, and obtaining current information is important to ensure that DHS continues to meet its responsibilities.

DHS recognizes that the rule requires reporting from both employers and students. While such dual reporting requirements may seem duplicative, DHS believes they are critical to ensuring compliance with program requirements. Employer reporting, for example, would be prudent in a situation involving a student who fails to report his or her termination so as to remain in the United States in violation of his or her status. Employers are also likely to have additional resources in comparison to individual employees, especially those who recently became unemployed. Moreover, DHS believes the burden imposed by the reporting requirements is minimal. Employers and students can satisfy these requirements with a simple email to the DSO indicating that the student was terminated or has otherwise departed, as well as the applicable date of such termination or departure.

Comment. Several educational institutions expressed opposition to the requirement that DSOs be informed whenever a student on a STEM OPT extension leaves the employment before the end of the extension period. These commenters expressed concern about the DSOs' role in such situations, especially because many students on STEM OPT extensions have left campus and are often removed from their university ties. A few universities stated that DHS should require employers to report this information directly to DHS, instead of to the DSO. One commenter argued that the reporting requirement would be an additional administrative burden on DSOs, who would now be responsible for data that that they do not ''own.'' Another commenter expressed concern that the DSO could be held responsible for not having this information if the employer fails to report it to them in a timely manner, or that the student could also be held responsible.

Response. While DHS understands the commenters' logistical concerns regarding students potentially not located on or near the DSO's campus, the compliance measure discussed in this section is not novel. Rather, it has been in place since implementation of the 2008 IFR. Moreover, DHS has sought to balance the burden that this requirement places on DSOs with the need for adequate oversight of the STEM OPT extension. Because DSOs, unlike STEM OPT students or employers, have access to SEVIS, DHS continues to believe the program is best served by requiring employers and students to report these changes to DSOs so that such information can be uploaded into SEVIS on a timely basis.

Additionally, with the changes in this final rule, an employer is now required to report the termination or departure of a STEM OPT student within five business days of the termination or departure, if the termination or departure is prior to the end of the authorized period of OPT. DHS believes this requirement, placed upon the entity with the closest connection to the student at the time of the termination or departure, is an effective mechanism for tracking students. The provision reflects DHS' belief that the responsibility to report should initially rest with the student or employer, as appropriate, and that DSOs should continue serving in the same role they had before—helping DHS track students and providing timely access to reported information. This system also reflects DHS' view that if an educational institution wishes to gain the benefits of F–1 students' enrollment with their school, including through the attraction of such students based upon the potential to participate in an extended period of practical training via the STEM OPT extension, the institution will be willing to undertake the associated reporting requirements as well. Finally, DHS is currently working on ways to allow other program participants to input information directly into SEVIS. Until that occurs, however, DHS believes the current reporting protocol should remain in place.

Comment. Many DSOs submitted comments stating that students should be responsible for updating their

information directly into SEVIS and that SEVIS should send automatic reminders to students about upcoming deadlines, such as deadlines for reporting termination of OPT.

Response. As noted above, DHS recognizes that requiring DSOs to provide STEM OPT student information may, at times, be burdensome. To aid in reducing this burden, DHS is developing a portal in SEVIS which, once fully deployed, will allow STEM OPT students to directly input information into SEVIS for DSO review. DHS plans to have the first stages of this portal, designed specifically to allow OPT students to submit information on their own behalf, operational by the beginning of 2017.

Comment. One employer stated that the requirement to notify DSOs in cases of termination or departure should be triggered only when STEM OPT students have actually abandoned their jobs, rather than for all absences of five consecutive days. The commenter noted that there may be legitimate reasons why an employee may be absent from work for a five-day period without the consent of the employer. The commenter suggested that employers should be allowed to follow their normal HR guidelines when determining whether the employment has been ''abandoned'' before reporting an employee's absence to the DSO, which may be either shorter or longer than the NPRM's five-day requirement.

Response. As noted above, STEM OPT is a cooperative undertaking between the student and employer, and both voluntarily commit to participating in the program. DHS therefore maintains that it is the employer's responsibility to notify the student's DSO if, for whatever reason, the student ceases to participate. While DHS understands that there may be instances where an employee may be absent from work for five consecutive days without the consent of the employer (such as a medical emergency requiring prolonged hospitalization where the employee is unable to notify the employer), any absence where the employee is unable to notify the employer and obtain consent remains material to the student's participation in the STEM OPT extension. DHS therefore is maintaining the requirement that an employer must notify the STEM OPT student's DSO if the student has been absent from work for five consecutive business days without the consent of the employer.

v. Periodic Student Evaluations

Comment. Some commenters requested clarification concerning the student and employer's respective roles in completing the student evaluation. For instance, some commenters noted that the proposed form referred to self-assessment by the student, but was entitled ''Six-Month Evaluation/Feedback on Student Progress.'' Similarly, a commenter stated that the evaluation should involve input from both the student and a supervisor, and the form should be structured in a way that allows for a supervisor's comments. One commenter requested that the evaluation consist solely of self-evaluations by the student, noting the burdens on employers of evaluations every six months.

A commenter expressed concern about being required to use the proposed Mentoring and Training Plan to evaluate STEM OPT students, explaining that the proposed rule's requirements ''will not add value and will merely add redundant bureaucratic requirements for employers, who are already following their own internal processes for these employees.'' The commenter stated that its company already ''provides an annual review of individual employee performance and compensation'' and that its review process ''is the culmination of year round performance management activities in which employees receive a formal review of their performance, development goals for the upcoming year, and a compensation review.'' One commenter stated that the proposed process for completing the evaluation (which entails the student preparing it, the employer signing off on it, and the DSO retaining a copy) is redundant to the Training Plan.

Response. DHS appreciates the commenters' concerns and clarifies that student evaluations are a shared responsibility of both the student and the employer to ensure that the student's practical training goals are being satisfactorily met. The student is responsible for conducting a self-evaluation based on his or her own progress. The employer must review and sign the self-evaluation to attest to its accuracy. By requiring employers to review the self-evaluations, DHS better ensures that employers and students will continue working together to help the student achieve his or her training goals. DHS believes that this requirement is integral to the success of the STEM OPT extension.

DHS has changed the title of the evaluation section to ''Evaluation on Student Progress.'' DHS has not modified the evaluation to include a separate space for an employer to provide comments, because many employers expressed concern about the burden involved in reviewing the Training Plan, and DHS determined that an additional requirement was unnecessary. However, nothing in the rule prevents an employer from attaching and submitting such an appraisal of a STEM OPT student.

DHS disagrees that the student evaluation provision duplicates or displaces existing employer processes for evaluating employee performance. The evaluation does not require employers to evaluate how well a STEM OPT student is performing his or her core duties at a job. Instead, the evaluation section of the form is a mechanism for the student to document his or her progress towards meeting specific training goals, as those goals are described in the Training Plan. DHS also disagrees that the student evaluation provision duplicates or is redundant to the Training Plan. In contrast to the Training Plan, which helps the student set his or her training objectives and ensures that the student's training conforms to the requirements of this rule, the 12-month evaluation confirms that the student is making progress toward his or her training objectives.

Comment. DHS received a number of comments from employers about the frequency of the proposed six-month student evaluation requirement. Some commenters stated that requiring students and employers to participate in such an evaluation every six months would be ''overly burdensome'' and would represent an ''unprecedented level of additional reporting without commensurate improvement in compliance outcomes.'' Some commenters indicated that they perform employee reviews every six months; however, given the timing of student graduations and STEM OPT start dates, the time of the year when these reviews occur might not coincide precisely with the schedule that is being mandated by DHS. Some commenters stated that DHS should require only annual evaluations to reduce an employer's time and paperwork burdens. Another commenter asked for 180 days to allow companies to adjust their processes if DHS insists on requiring evaluations every six months.

Response. DHS acknowledges the concerns expressed by some employers about the ability to implement the evaluation requirement every six months as proposed in the NPRM. While any burden associated with the evaluation is expected to rest in part on the student (who is responsible for drafting the self-assessment portion of his or her evaluation and ultimately submitting the evaluation to the DSO), DHS recognizes that the employer plays

an important role in the student's evaluation by providing feedback to the student and confirming the accuracy of the evaluation. Because of the concerns raised by commenters, DHS has decided to eliminate the six-month requirement and instead require annual evaluations: One evaluation after the first 12 months and a final evaluation when the student completes his or her practical training. DHS believes that annual reporting is a reasonable requirement when balanced against DHS's obligation to oversee the program and monitor students.

As finalized in this rule, a student on a 24-month STEM OPT extension must submit his or her first evaluation to the DSO within one year and 10 days of the first day of the validity period reflected on the Employment Authorization Document (EAD). Similarly, the STEM OPT student will be required to submit the final evaluation within 10 days of the conclusion of his or her practical training opportunity. DHS generally expects employers and students to be able to complete all reporting in a timely manner.

Comment. Commenters requested that DHS clarify when STEM OPT students must submit their periodic evaluations to their DSOs. Commenters stated that the proposed rule did not describe the reporting timeframe clearly. A commenter stated that it would be too burdensome to require students to submit each six-month evaluation within 10 business days of the conclusion of the evaluation period. The commenter suggested that DHS allow students to submit the evaluation either 15 or 30 days on either side of the reporting date. Similarly, a number of DSOs asked whether there would be SEVIS functionality for students who do not present Training Plans and whether there would be penalties for students who submit them late, and if so, what these penalties are. One commenter requested that, if the DSO is required to collect students' training plans for the six-month ''reporting obligations,'' DHS provide lead time of at least 30 days between the ''alert'' and the deadline for submission.

Response. DHS clarifies that under the proposed rule, STEM OPT students would have been required to submit each six-month evaluation prior to the conclusion of each six-month period. As noted above, DHS has changed the evaluation period from six months to 12 months. This change should make the requirements on students and DSOs less burdensome. DHS also agrees with the commenters that suggested additional flexibility and clarity for the submission of student evaluations. Accordingly, this final rule also revises the proposal by providing that a student must submit the 12-month and final evaluations no later than 10 days following the conclusion of the applicable reporting period.

In response to the questions from DSOs, DHS notes that the deadlines for submitting the required training plan and evaluations are firm. In order to maintain F–1 status, the STEM OPT student must submit the required materials to the DSO on a timely basis. As noted above, updates to SEVIS are being developed to make it easier for students to meet these submission requirements. DHS does note, however, that for the annual evaluation requirement, a full Training Plan form need not be submitted. Rather, the student would need to timely provide the evaluation section of the form to the DSO. DHS believes the associated timeline provides sufficient flexibility for all parties to comply with these requirements.

vi. Reporting of Material Changes to or Deviations From the Training Plan

Comment. Some commenters submitted comments related to the attestation included in the proposed Mentoring and Training Plan that would have required the student and employer to notify the DSO at the earliest available opportunity regarding any material changes to, or material deviations from, the training plan (''material changes''). The proposed plan indicated that such a material change would include a change in supervisor. A commenter objected to this requirement and posited that requiring the reporting of material changes would not advance the policies underlying the training plan requirement. Some commenters requested that DHS clarify the meaning of the term ''material'' in this context. Commenters stated that such clarification was necessary to minimize instances of over-reporting of immaterial changes to the Training Plan. One commenter stated that a mere change of supervisor should explicitly be considered an immaterial change to the STEM OPT opportunity.

Finally, a commenter recommended placing the responsibility for reporting material changes with the F–1 student, not the employer. The commenter reasoned that shifting this particular reporting obligation to students is consistent with students' other reporting obligations under the proposed rule, including ''reporting changes of employer.''

Response. DHS believes that the Training Plan requirement would be seriously undermined if DHS allowed students and employers to make material changes or deviations without creating a record of such changes and reporting those changes to the DSO. The reporting requirement keeps students and employers accountable to the original Training Plan, and ensures that the DSO and DHS have access to accurate information about STEM OPT students. DHS therefore declines the suggestion to eliminate the requirement to report material changes.

DHS agrees, however, that further clarification is warranted. Accordingly, DHS has revised the final regulatory text to make clear that the STEM OPT student and employer are jointly required to report material changes. The regulatory text also clarifies that material changes may include, but are not limited to, any change of Employer Identification Number resulting from a corporate restructuring; any reduction in compensation from the amount previously submitted on the Training Plan that is not a result of a reduction in hours worked; any significant decrease in hours per week that a student engages in the STEM training opportunity; and any decrease in hours below the 20-hours-per-week minimum required under this rule. If these or other material changes occur, the student and employer must sign a modified Training Plan reflecting the material changes or deviations, and they must ensure that the plan is submitted to the student's DSO at the earliest available opportunity.

DHS agrees with the comment stating that a change of supervisor does not, by itself, meet the level of a material change or deviation that would require submitting a modified Training Plan. Similarly, it is not necessarily a material change if a STEM OPT student rotates among different projects, positions, or departments, or there is a change in the F–1 student's assigned division or research focus. Such changes are not material unless they render inaccurate the information in the F–1 student's original Training Plan related to the nature, purpose, oversight, or assessment of the student's practical training opportunity.

In response to commenters' concerns, DHS has revised the regulatory text to make this clear. Under this final rule, a material change is a change that DHS has specifically identified as ''material'' by regulation, renders an employer attestation inaccurate, or renders inaccurate the information in the Training Plan on the nature, purpose, oversight, or assessment of the student's practical training opportunity. Thus, for example, a change in supervisor that results in such inaccuracy would be a

material change, but a change in supervisor standing alone is not material.

Because DHS expects that not all changes in supervisor would be material, DHS has revised the Training Plan form to replace the reference to a student's supervisor with a reference to the ''Official Representing the Employer.'' Along with the changes discussed above, this change aims to produce flexibility for employers in completing the requisite sections of the form and further clarifies that the Training Plan would not require updating solely because the student is assigned new project supervision.

Finally, DHS declines to adopt the recommendation to make the student solely responsible for reporting material changes, as the employer should be accountable for the Training Plan that it helped prepare. This joint employer-student requirement strengthens DHS's ability to track F–1 nonimmigrants and is essential to monitoring employer compliance, maintaining strong U.S. worker safeguards, and ensuring continuing employer-accountability.

Comment. A university stated that material changes or deviations to the original Training Plan will be self-reported events and that the DSO will have no other way of knowing if or when they occur. The commenter suggested that if the Department simply seeks to have this information on file, and there is no role for the DSO other than to collect the information, then such information should be submitted directly to DHS by the employer or student. The commenter further stated that the proposed rule was silent regarding DSO responsibilities over modified Training Plans, and that there appear to be no ''teeth'' for addressing a student's failure to report these changes.

Response. DHS understands that DSOs have a limited role with respect to receiving and storing material changes to, or deviations from, submitted Training Plans. DHS is developing a portal in SEVIS to allow students to provide their own information, including confirmation of modified Training Plans. At this time, however, the DSO's role in this regard remains essential to the effective administration of the STEM OPT extension. Consequently, the DSO at the student's school of most recent enrollment remains responsible for providing SEVP with access to the relevant information described in this section. This rule also makes clear that it is the student's responsibility to provide changes in information to his or her DSO, and that a failure to do so would constitute a violation of the student's F–1 status.

Comment. One commenter recommended that DHS require that changes in compensation be reported only when a student's salary has been lowered. The commenter stated that if this change were adopted, it would eliminate a significant burden on students and DSOs by eliminating the need to report when a student receives an annual cost-of-living increase as part of the employer's overall compensation program. The commenter stated that this would also avoid confusion over whether to report every time the student receives a raise or stock options, or when other forms of non-cash compensation are added to the student's compensation package.

Response. DHS understands the commenter's concern that the proposed rule lacked clarity on when compensation changes were required to be submitted through the Training Plan for STEM OPT Students. To avoid any confusion, the final rule clearly states that employers are responsible for reporting only material changes to the Training Plan, which will include changes to the compensation reporting field of the form, and are required to do so at the earliest available opportunity. However, a compensation change qualifies as material only when it is a reduction in compensation from the amount previously submitted on the Training Plan that is not the result of a reduction in hours worked. An increase in compensation, on its own, does not constitute a material change that must be reported. But such an increase may constitute a material change in the totality of the circumstances, such as when the increase is not commensurate with an increase in compensation afforded to the employer's similarly situated U.S. workers.

vii. General Comments on DHS Enforcement, Monitoring, and Oversight

Comment. DHS received a number of comments related to the Department's ability to track F–1 students on STEM OPT extensions. One commenter, for example, cited a February 2014 report from the Government Accountability Office (GAO) that highlighted difficulties experienced by the Department in tracking F–1 students engaging in practical training.[88] The commenter expressed concern over the ability of nonimmigrants to overstay their authorized periods of stay, and suggested that making schools responsible for former students would be unrealistic and would create a national security issue. Another commenter asked how DHS would keep track of all students participating in STEM OPT. Some commenters suggested that DHS adopt and publish a public list of program violators, identifying those companies and universities found to be abusing the STEM OPT extension or otherwise failing to comply with program requirements. One commenter requested information regarding actions DHS has taken to address problems identified by the February 2014 GAO report on the OPT program.

Response. DHS believes it has made important improvements to the oversight of the STEM OPT extension with this rule. In addition to maintaining the validation reporting requirement, this rule establishes an interlocking set of requirements that facilitate DHS enforcement (site visits), permit DHS to better monitor students on STEM OPT (evaluations, notification of material changes, and required notice if a student leaves an employer or fails to show up for five consecutive business days without the employer's consent), and protect the integrity of the program (accreditation requirements and unemployment limits). These requirements are intended to help DHS track F–1 nonimmigrants and better ensure their departure. *See, e.g.,* 8 U.S.C. 1103, 1184, 1372. All of these are discussed in detail above.

DHS believes that the enforcement, monitoring, and oversight provisions of this rule provide the necessary tracking resources and mechanisms to appropriately monitor compliance and to enforce the law against violators. For these reasons, the Department declines to adopt the suggestion to publish a list of program violators.

With regard to the 2014 GAO Report, DHS first notes that the report and its conclusions concerned individuals beyond the limited population of STEM OPT students, who represent a small subset of the total F–1 population engaging in authorized employment in the United States.[89] The report is thus much broader in scope than are the regulatory changes DHS has considered with this rulemaking. Nonetheless, DHS believes it has adequately addressed many aspects of the GAO report impacting STEM OPT extensions. DHS

[88] The commenter referred to GAO, ''Student and Exchange Visitor Program: DHS Needs to Assess Risks and Strengthen Oversight of Foreign Students with Employment Authorization,'' Feb. 2014, available at *http://www.gao.gov/assets/670/661192.pdf.*

[89] As of September 16, 2015, over 34,000 students were in the United States on a STEM OPT extension, as compared to more than 1.2 million international students studying in the United States.

has taken measures or is finalizing action regarding seven recommendations included in the report. For example, DHS has completed or is in the process of finalizing the following:

- Identifying and addressing risks in the OPT program through interagency coordination, including using relevant information from ICE's Counterterrorism and Criminal Exploitation Unit and field offices;
- Requiring that F–1 OPT students, both still in school and who have completed their education, provide DSOs with employer information, including their employer's name and address, so that DSOs can record that information in SEVIS;
- Developing and distributing guidance to DSOs for determining whether a practical training opportunity relates to a student's area of study, and requiring that DSOs provide information in SEVIS to help ensure that the regulatory requirement is met;
- Requiring that students report to DSOs, and that DSOs record in SEVIS, students' initial date of employment and any period of unemployment;
- Developing and implementing a process for SEVP to inform USCIS when students approved for OPT have transferred schools;
- Developing guidance to DSOs and USCIS regarding the definition of a full academic year for the purposes of recommending and authorizing OPT; and
- Developing and implementing a mechanism to monitor available information in SEVIS to determine if international students are accruing more OPT than allowed by DHS regulation.

Although DHS is always interested in ways to improve the security and efficacy of its programs, the Department believes that the above-referenced enforcement measures, as well as those described in this final rule, are thorough and sufficient to address the concerns discussed in the GAO report that relate to STEM OPT extensions.

Comment. Commenters expressed concern that many F–1 students on STEM OPT extensions work in fields unrelated to their areas of study and falsify work experience. Some commenters stated that many employers fabricate work documents in an attempt to show that a work experience relates to a student's field of study. Some commenters requested that DHS take additional steps to ensure that F–1 students do not work in unrelated fields, such as in restaurants, motels, gas stations or similar places of employment.

Other commenters expressed concerns about consulting firms that may seek to exploit F–1 students by underpaying them during their STEM OPT extension. One commenter asked DHS to implement background checks for all STEM OPT students before they accept employment opportunities. Similarly, another commenter suggested that DHS include annual in-person reissuance of identification cards with photos and fingerprints among measures required for ''all OPT students.''

Response. As noted above, this rule includes multiple requirements to ensure strong program oversight. DHS closely monitors the STEM OPT extension program, including F–1 students and schools certified to enroll such students. DHS takes claims of fraud and abuse very seriously and encourages all individuals to contact DHS if they have information regarding any individual or employer that he or she believes is engaging in fraud or abuse. Individuals possessing such information are encouraged to submit it online at *https://www.ice.gov/webform/hsi-tip-form*. Moreover, the rule requires employers to sign the Training Plan and comply with all reporting requirements, while providing for site visits to independently verify compliance. These additional requirements will mitigate the potential for fraud and abuse of the F–1 visa program and STEM OPT extension.

Regarding the request for DHS to implement background checks on STEM OPT students, DHS confirms that this process is already in place. USCIS conducts background checks on all STEM OPT students before rendering a final decision on their Form I–765, Application for Employment Authorization. DHS does not believe the commenters' suggested additional security measures (such as an annual ID card reissuance requirement) are necessary or appropriate at this time.[90]

Comment. Some commenters stated that the proposed rule was silent on the types of penalties that students and employers may face for non-compliance with reporting requirements. Other commenters expressed concern that DSOs may be held responsible if students and employers fail to comply with those requirements. One commenter described the reporting requirements as ''self-reporting events,'' noting that DSOs will have no way of monitoring students or knowing about violations if they are not reported to the DSOs. That commenter suggested that ''[t]here should be no repercussions to the school or the DSO for not getting these data from the student or employer.'' Similarly, another commenter voiced concerns about whether there will be consequences for DSOs if employers or students fail to meet their reporting obligations under the proposed rule, how DHS will monitor employers' and students' compliance with the proposed rule's reporting requirements, and whether students will face consequences if employers fail to timely report required information.

Response. DHS respectfully disagrees with the commenters' statements concerning available consequences for non-compliant students or employers. The rule reflects ICE's procedures for monitoring nonimmigrant students and provides for investigating employers' compliance with the rule's requirements, including all reporting and recordkeeping obligations, in accordance with SEVP's authority to track and monitor students. Moreover, the rule clarifies that employers will be monitored consistent with the site visit provisions, and that DHS has the ability to deny STEM OPT extensions with employers that DHS determines have failed to comply with the regulations. With regard to STEM OPT students, the rule also provides for serious consequences in instances of non-compliance. For example, the rule specifies that compliance with reporting requirements is required to maintain F–1 status. *See* 8 CFR 214.2(f)(12)(i)–(ii). Accordingly, a student's failure to comply with reporting obligations will result in a loss of F–1 status. Furthermore, although DHS expects certified schools and DSOs to meet their regulatory obligations, including updating a student's record to reflect reported changes for the duration of OPT, DHS does not intend to pursue enforcement actions against schools or their officials for the reporting failures of third parties.

C. Qualifying F–1 Nonimmigrants

1. Description of Final Rule and Changes From NPRM

This rule allows only certain F–1 nonimmigrants to receive STEM OPT extensions. The rule requires the student's STEM OPT opportunity to be directly related to the student's STEM degree; defines which fields DHS

[90] DHS notes that several commenters suggested that DHS implement new requirements for ''all OPT students.'' DHS believes these comments go beyond the scope of regulatory changes DHS has considered with this rulemaking. However, DHS understands and appreciates the commenters' concerns. As stated previously, the rule implements significant measures to strengthen program oversight and to mitigate fraud in the STEM OPT extension. DHS may consider extending these measures more broadly in a future rulemaking.

considers to be ''STEM fields'' for purposes of the extension; and allows students to use a previously obtained STEM degree as a basis for a STEM OPT extension. The rule effectively prohibits students from using the STEM OPT extension to work in a volunteer capacity, among other requirements to ensure appropriate oversight and training in connection with the extension. Finally, this rule clarifies that a student may qualify for a STEM OPT extension notwithstanding that the student has yet to complete a thesis requirement or equivalent, so long as the thesis requirement or equivalent is the only degree requirement still outstanding at the time of application (although this is not an available option when using a previously obtained STEM degree). The proposed rule included most of these provisions; the final rule makes changes and clarifications in response to public comments. We summarize these provisions and changes below.

i. Relationship of STEM OPT Opportunity to the Student's Degree

As noted above, under this final rule, the student's proposed STEM OPT opportunity must be directly related to the student's STEM degree. Like OPT generally, a STEM OPT extension is at its core a continuation of the student's program of study in a work environment. This provision is finalized without change.

ii. Limitation to STEM Degrees Only

This final rule limits eligibility for the STEM OPT extension to those qualifying students who have completed a degree in a STEM field. The degree that serves as the basis for the STEM OPT extension must be a bachelor's, master's, or doctoral degree. Under this rule, a ''STEM field'' is a field included in the Department of Education's CIP taxonomy within the 2-digit series containing engineering, biological sciences, mathematics, and physical sciences, or a related field. In general, related fields will include fields involving research, innovation, or development of new technologies using engineering, mathematics, computer science, or natural sciences (including physical, biological, and agricultural sciences). This definition is drawn in part from a definition developed by the Department of Education's National Center for Education Statistics (NCES).[91] DHS added the definition of ''related fields'' in response to comments about the clarity of the proposed definition.

DHS will maintain a complete list of fields that DHS has determined fall within the regulatory definition of ''STEM field.'' This list is known as the STEM Designated Degree Program List (''STEM list''). DHS may publish updates to the STEM list in the **Federal Register**. A clear definition of the types of degree fields that DHS considers ''STEM fields'' for purposes of the STEM OPT extension will more effectively facilitate the process for altering categories contained within the STEM list.

In the proposed rule, DHS advised commenters that it was considering future revisions of the STEM list to include certain degrees listed within the two-digit series for Agriculture, Agriculture Operations, and Related Sciences; Computer and Information Sciences and Support Services; Engineering; Engineering Technologies and Engineering-Related Fields; Biological and Biomedical Sciences; Mathematics and Statistics; and Physical Sciences. As noted in the comment summary below, DHS received a number of recommendations for fields to add to the STEM list and one recommendation to remove a field from the list. As discussed below DHS has revised the list in response to the comments received; the final list is available in the docket for this rulemaking. Consistent with past practice, DHS will continue to accept for consideration suggested changes to the STEM list at *SEVP@ice.dhs.gov.*

iii. Prior STEM Degrees

The rule allows students to use a previously obtained and directly related STEM degree from an accredited school as a basis to apply for a STEM OPT extension. This provision makes the STEM OPT extension available to students who have significant prior background in STEM but who are currently engaging in practical training that has been authorized based on their study towards a non-STEM degree. The extension is available only to those students who seek to develop and utilize STEM skills from their prior STEM degree during the STEM OPT extension. A DSO at the student's school of most recent enrollment is responsible for certifying a prior STEM degree, which must have been obtained in the ten years prior to the DSO recommendation. In addition, the regulatory text clarifies that the practical training opportunity that is the basis for the 24-month STEM OPT extension must directly relate to the degree that qualifies the student for such extension, including a previously obtained STEM degree.

iv. Prior STEM Degrees—Additional Eligibility Requirements

This final rule includes a number of requirements intended to ensure the educational benefit of a STEM OPT extension based on a previously obtained STEM degree. First, for a student relying on a previously obtained degree, the student's most recent degree must also be from an accredited institution, and the student's practical training opportunity must be directly related to the previously obtained STEM degree. Second, for a previously obtained degree to qualify as the basis for a STEM OPT extension, the degree must have been received within the 10 years preceding the student's STEM OPT application date.

As previously noted, the final rule clarifies that the prior degree cannot have been conferred via an overseas campus. The institution that conferred the prior degree must be accredited and SEVP certified at the time the DSO recommends the student for the STEM OPT application.[92]

v. Volunteering and Bona Fide Employer-Employee Relationships

The final rule clarifies issues relating to various types of practical training scenarios and whether such scenarios qualify an F–1 student for a STEM OPT extension. The rule specifically clarifies that a student may not receive a STEM OPT extension for a volunteer opportunity. The rule also requires that a student must have a bona fide employer-employee relationship with an employer to obtain a STEM OPT extension. In response to comments received, DHS clarifies that students may be employed by start-up businesses, but all regulatory requirements must be met and the student may not provide employer attestations on his or her own behalf.

vi. Thesis Requirement

The final rule clarifies that F–1 students who have completed all other course requirements for their STEM degree may be eligible for a STEM OPT extension notwithstanding the

[91] U.S. Department of Education, NCES, Institute of Education Sciences, ''Stats in Brief'' (July 2009), available at *http://nces.ed.gov/pubs2009/2009161.pdf.*

[92] This final rule also clarifies that a qualifying, previously obtained degree provides eligibility for the STEM OPT extension so long as the educational institution that conferred the degree is accredited at the time of the student's application for the extension. As discussed more fully below, DHS does not have full access to historical information on accreditation for all U.S. schools. An organization's current status as accredited nonetheless serves as a signal of the quality of the education that the organization offers.

continuing need to complete the thesis requirement or equivalent for their STEM degree. DHS believes that this flexibility is consistent with DHS's historical interpretation of the regulatory provisions governing STEM OPT extensions. This exception, however, does not apply with respect to a previously earned STEM degree if the student seeks to base the STEM extension on such a degree.

2. Public Comments and Responses

i. Relationship of STEM OPT Opportunity to the Student's Degree

Comment. DHS received a number of comments regarding the proposed relationship between students' degrees and their practical training opportunities. Several commenters agreed with DHS that the rule should require a direct relationship between the student's qualifying STEM degree and the practical training opportunity. One commenter indicated that the Department needed to be flexible in evaluating such relationships, particularly because of rapid changes in certain STEM fields. Specifically, the commenter stated that ''[i]n assessing whether a STEM degree relates to a particular position, it is important for DHS to be open to employers' explanations regarding the nexus between the STEM degree field and the employment opportunity.'' Other commenters suggested that STEM OPT students should work only in the exact fields in which they earned their degrees, rather than in other related fields where their skills may be valued by employers. One commenter opposed the requirement that work be directly related to the degree, especially in regard to prior STEM degrees. The commenter suggested that eliminating the nexus requirement would create greater opportunities for STEM OPT students.

Response. DHS does not believe further changes to the ''directly related'' standard are necessary or appropriate. DHS disagrees, on the one hand, with comments recommending that STEM OPT extensions only be allowed where the practical training will be in the exact field in which the F–1 student earned his or her degree. DHS also disagrees, on the other hand, with comments recommending the elimination of any connection between the degree and the practical training opportunity. DHS believes that the rule strikes the right balance between these two positions.

The requirement that the practical training opportunity be directly related to the student's degree ensures that the opportunity is an extension of the student's academic studies and enhances the knowledge acquired during those studies. The purpose of the rule is not to give students unlimited employment opportunities. At the same time, the ''directly related'' standard allows sufficient flexibility to give F–1 students a range of options when choosing how to apply and enhance their acquired knowledge in work settings. DHS recognizes that the knowledge acquired when earning a STEM degree typically can be applied in a range of related fields, and the Department does not seek to narrow such options for students; rather, this rule requires that the practical training opportunity be directly related to the F–1 student's field of study. Limiting opportunities to the exact field of study as named on the degree would create an unnecessary and artificial distinction, resulting in fewer opportunities for STEM OPT students.

DHS notes that the Training Plan required for a STEM OPT extension under this rule includes an entry for articulating how the practical training opportunity is directly related to the student's field of study. DHS will carefully consider this explanation, among other relevant evidence, when evaluating the relationship between the practical training opportunity and the student's degree.

Comment. One commenter stated that STEM OPT extensions should be granted based on the needs of U.S. industries. Specifically, the commenter recommended that DHS make extensions available to F–1 students who have earned degrees in fields that have a demonstrated need for workers, rather than to all fields on the STEM list.

Response. The primary purpose of this rule is to expand upon the academic learning of F–1 students in STEM fields through practical training, not to supply STEM workers or address labor shortages. Moreover, as noted previously, the NSF has reviewed the body of research in this area and concluded that there is no straightforward answer on whether there is a surplus or shortage of STEM workers.[93] Although it appears axiomatic that at any given time one industry may need workers more than another, the NSF has also found that labor needs in STEM fields are determined by factors other than industry, including level of education, training, and geographic location.[94] Due to the complex set of factors that combine to affect the supply and demand of STEM workers, and the fact that labor needs are in constant flux, DHS has concluded that it would not be administratively feasible to limit STEM OPT extensions based on industry-specific needs that would be complex and difficult to ascertain objectively. DHS declines to adopt the suggestion by the commenter.

Comment. Another comment suggested that because the DHS-approved STEM list is actually a list of major areas (*i.e.,* fields) of study, DHS should amend the proposed definition for the type of STEM degree that would qualify a student for a STEM OPT extension to refer to ''program categories'' instead of ''degree programs.'' The commenter added that the reference to ''program categories'' would be more consistent with other parts of the regulation that also use that term.

Response. DHS agrees that the proposed definition could be confusing and has amended the regulatory text accordingly. The final rule now provides that the degree that is the basis for the STEM OPT extension must be a bachelor's, master's, or doctoral degree in ''a field'' determined by the Secretary, or his or her designee, to qualify within a science, technology, engineering, or mathematics field.

Comment. Several commenters requested that the STEM OPT extension program be broadened to include non-STEM degrees. For example, one commenter remarked that it ''sometimes encounters individuals with excellent technical credentials whose decision to obtain an MBA or other non-STEM advanced degrees precludes them from continuing employment in the United States due to an inability to access STEM–OPT.'' Other commenters similarly suggested that STEM OPT extensions be available to students with non-STEM degrees by citing to the changing nature of higher education and the need for increased experiential learning in other fields. One commenter suggested that DHS should create a process for expanding practical training opportunities for foreign students in non-STEM fields.

Response. An expansion of practical training to non-STEM degrees would be outside the scope of this rulemaking. In 2015, there were more than 1.2 million international students studying in the United States, but only approximately 34,000 students on STEM OPT extensions. DHS did not propose to authorize an extension of OPT for the entire international student population, and will not authorize such an extension in this rule.

[93] *See supra* note 52.

[94] *Id.*

Moreover, as noted in the proposed rule, DHS received similar comments in response to the 2008 IFR creating the 17-month extension for STEM graduates. DHS has taken these concerns into consideration in crafting this rule, and the Department determined that extending OPT is particularly appropriate for STEM students because of the specific nature of their studies and fields and the increasing need for enhancement of STEM skill application outside of the classroom. DHS also found, as noted previously, that unlike post-degree training in many non-STEM fields, training in STEM fields often involves multi-year research projects [95] as well as multi-year grants from institutions such as the NSF. Although DHS recognizes that there may be some non-STEM fields in which a student could benefit from increased practical training, the Department believes the current 12-month post-completion OPT period is generally sufficient for such fields. For these reasons, DHS is limiting the STEM OPT extension to STEM fields at this time.

Finally, DHS also notes that the rule does expand the availability of STEM OPT extensions to certain STEM students with advanced degrees in non-STEM fields. Under the rule, a student who earns a STEM degree and then goes on to earn a non-STEM advanced degree, such as a Master of Business Administration (MBA), may apply for a STEM OPT extension following the MBA so long as the practical training opportunity is directly related to the prior STEM degree.

ii. Definition of ''STEM Field'' and the STEM List

Comment. Many commenters supported DHS's proposal to designate CIP codes in the STEM list at the two-digit level for the summary groups (or series) containing mathematics, natural sciences (including physical sciences and biological/agricultural sciences), engineering/engineering technologies, and computer/information sciences. Commenters stated that this approach would provide important clarity to the public, as well as flexibility as STEM fields change.

Many commenters emphasized the importance of also allowing STEM OPT extensions for certain students who studied in fields that are not classified within the proposed definition of ''STEM field.'' Some commenters stated that DHS should not base its definition of the term on the NCES definition alone.[96] Commenters stated that the Department of Education originally developed this definition in order to define the scope of a study of educational trends related to students who pursue and complete STEM degrees. One commenter argued that repurposing this categorization for the STEM OPT extension would produce an unnecessarily narrow definition of ''STEM field'' for the STEM OPT extension.

Similarly, another commenter advised that the NCES description of STEM fields ''is too narrow to capture graduate level STEM fields, especially those being pursued by students who obtained their baccalaureate-level education outside the United States, and who have come here for more specialized STEM education.'' Another commenter stated that the proposed rule's definition would ''create[] a static definition of STEM fields that fails to provide the flexibility to adapt to the latest innovations and discoveries in STEM.'' The commenter suggested that DHS clarify that it may add new CIP codes to the list beyond the summary groups specifically identified in the proposed regulatory text.[97]

Another commenter stated that DHS's definition of ''STEM field'' differs from the NCES definition of the term in that DHS has included ''related fields'' in its definition. The commenter believed that DHS's expanded definition would lead to requests for DHS to include in the new STEM list a number of fields that DHS had included in prior versions of the STEM list, but that did not fall within the summary groups that DHS identified in the NPRM (mathematics, natural sciences (including physical sciences and biological/agricultural sciences), engineering/engineering technologies, and computer/information sciences). To address this concern, the commenter suggested that DHS include an innovation or competitiveness-related criterion as a factor in selecting STEM fields for inclusion on the list.

Response. DHS believes the NCES definition for ''STEM field'' provides a sound starting point for the definition of that term in this rule. First, the NCES definition draws on the Department of Education's expertise in the area of higher education. Second, the NCES definition identifies STEM fields using CIP terminology, which is widely used by U.S. institutions of higher education and provides a straightforward and objective measure by which DSOs and adjudicators can identify STEM fields of study. Consistent with the proposed rule, DHS has determined that four areas are core STEM fields and will list these four areas at the two-digit CIP code level. As a result, any new additions to those areas will automatically be included on the STEM list. These four areas are: Engineering (CIP code 14), Biological and Biomedical Sciences (CIP code 26), Mathematics and Statistics (CIP code 27), and Physical Sciences (CIP code 40).

DHS also recognizes that some STEM fields of study may fall outside the summary groups (or series) identified in the NCES definition. As many commenters noted, the proposed rule defined ''STEM field'' to also include fields of study *related to* mathematics, natural sciences (including physical sciences, biological, and agricultural sciences), engineering and engineering technologies, and computer and information sciences. The ''related fields'' language in the STEM definition means that DHS may consider a degree to be in a STEM field even if not within the CIP two-digit series cited in the rule, and it authorizes DHS to designate CIP codes meeting the definition at the two-, four-, or six-digit level. DHS believes that the clarification provided here, coupled with the STEM list itself, are sufficient to address any concern about qualifying STEM degrees and therefore declines to amend the regulatory text.

DHS agrees, however, with comments suggesting that the ''related fields'' criterion alone may provide insufficient guidance and predictability to adjudicators and the public. Consistent with these commenters' suggestions and the basis of the STEM OPT extension, DHS has revised the regulatory text to clarify that in general, related fields will

[95] Many STEM OPT practical training opportunities are research related, as indicated by the fact that the employer that retains the most STEM OPT students is the University of California system and that two other universities are among the top six of such employers (Johns Hopkins University and Harvard University).

[96] The NCES definition of ''STEM fields'' includes ''mathematics; natural sciences (including physical sciences and biological/agricultural sciences); engineering/engineering technologies; and computer/information sciences.'' U.S. Department of Education, NCES, Institute of Education Sciences, ''Stats in Brief'' 2 (July 2009), available at *http://nces.ed.gov/pubs2009/2009161.pdf.*

[97] One comment suggested that DHS clarify how it will map CIP codes to each of the listed summary groups if it retains these summary groups because, according to the commenter, neither the NPRM nor the Department of Education document provide enough detail to compare the proposed list to the current list, or to provide feedback on the scope of the proposed change. Another commenter asked whether DHS intended to retain fields on the list if they fell outside of the summary groups for mathematics, natural sciences, engineering/engineering technologies, and computer/information sciences. As noted above, as part of the 2015 NPRM, DHS offered for public comment the then-current STEM Designated Degree Program List, and specifically identified which codes it was considering designating at the two-digit level.

include fields involving research, innovation, or development of new technologies using engineering, mathematics, computer science, or natural sciences (including physical, biological, and agricultural sciences). DHS intends to list any such ''related fields'' at the 6-digit level.

Comment. DHS received a number of comments related to the process for updating the STEM list. One commenter recommended that DHS publish a list and provide for notice and comment regarding any fields DHS intends to add or remove. Other commenters proposed that, in order to retain flexibility to adapt the definition of eligible STEM fields to an innovative economy, DHS should make additions to the list through publication of updates in the **Federal Register** but without providing for notice and comment. Another commenter asked DHS ''to create a system whereby applications to add fields to the STEM list can be made and acted upon quickly'' but that ''DHS provide a notice and comment period before eliminating specific fields from the STEM list.''

Response. DHS agrees that the STEM list should be flexible and envisions making periodic updates to the STEM list in response to changes in STEM fields, academic programs, or technological trends. DHS will review recommendations from the public concerning potential additions or deletions to the list, and may announce changes through publication in the **Federal Register**. DHS intends to use a single procedure for amending the list and therefore disagrees with the commenter who recommended two different procedures for additions and deletions. Additionally, notice and comment publication for every change to the STEM list would hinder DHS's ability to be flexible and responsive to changes in STEM fields. DHS notes, however, that changes to the STEM list would be based on the regulatory definition of ''STEM field,'' which was subjected to notice and comment. In addition, DHS has provided a mechanism for continuous feedback on the degrees included on the list and encourages interested parties to suggest changes by sending their recommendations to *SEVP@ice.dhs.gov*. DHS believes this language and the process described provide sufficient clarity for the continued regulatory implementation of the STEM list.

Comment. Many commenters requested that DHS include additional broad categories of degrees on the STEM list. For instance, some commenters requested that DHS include all science degrees. Others requested that DHS include ''certain essential fields in the health care and business sectors,'' without specifically identifying the specific fields they considered ''essential.'' A commenter recommended adding to the STEM list programs with CIP codes within the summary groups (or series) for Business Management, Marketing, and Related Support Services (CIP code 52) and Homeland Security, Law Enforcement, Firefighting and Related Protective Services (CIP code 43). Other commenters recommended specific degrees for DHS to include in the STEM OPT extension. These proposed fields of study covered a wide range of subjects including patient-care fields such as nursing and dental sciences, business administration, exercise sciences, neuroscience, pharmaceuticals, economics, accounting, and geography. Some commenters stated that ''financial engineering'' and ''quantitative finance'' (fields that are potentially encompassed within the CIP code for Financial Mathematics) should not be on the list of qualifying fields as many of those students work for financial institutions, and some degree programs in those fields might not focus heavily on quantitative skills.

Response. DHS cannot fully respond to requests to include broad groups of degrees—such as degrees in certain ''essential'' health care and business fields—without an indication of the specific fields that are being suggested or a detailed explanation as to why those fields should be included on the list. Nevertheless, DHS declines to define ''STEM field'' to generally include patient care and business fields of study. As noted above, these fields do not generally fall within the rubric of ''STEM fields.'' For similar reasons, DHS declines to add all CIP codes that begin with 52 and 43. DHS notes, however, that the final STEM list that DHS is adopting with this rulemaking includes four CIP codes beginning with 52: Management Science; Business Statistics; Actuarial Science; and Management Science and Quantitative Methods, Other. The final STEM list also includes two CIP codes beginning with 43: Forensic Science and Technology, and Cyber/Computer Forensics and Counterterrorism.

DHS notes that a number of the additional fields that commenters recommended for inclusion on the STEM list are included in the final list DHS is adopting with this rulemaking. These include Medical Technology (CIP code 51.1005), Health/Medical Physics (CIP code 51.2205), Econometrics and Quantitative Economics (CIP code 45.0603), Exercise Physiology (CIP code 26.0908), Neuroscience (CIP code 26.1501), Pharmacoeconomics/Pharmaceutical Economics (CIP code 51.2007), Industrial and Physical Pharmacy and Cosmetic Sciences (CIP code 51.2009), Pharmaceutical Sciences (CIP code 51.2010),[98] and Geographic Information Science and Cartography (CIP code 45.0702).

With respect to suggestions to include certain accounting degree programs, DHS notes that accounting is not generally recognized as a STEM field and does not involve research, innovation, or development of new technologies using engineering, mathematics, computer science, or natural sciences (including physical, biological, and agricultural sciences). DHS is thus not generally including accounting degrees on the STEM List. DHS also disagrees with the suggestion to prohibit eligibility based on ''financial engineering'' and ''quantitative finance'' degrees. Financial Mathematics is a very specialized field that involves utilizing traditional research methods and applying scientific principles and rigorous mathematical concepts (such as stochastic calculus). These underlying principles, and not the end employer, dictate the bases for including this field on the STEM list.

Comment. Many commenters requested that DHS classify STEM CIP codes at the two-digit level to allow for more majors to qualify as bases for STEM OPT extensions. A commenter recommended that DHS consider identifying eligible CIP codes by the two-digit series of the CIP taxonomy, and that in cases where such series is too broad, DHS consider using the four-digit series, which ''represent intermediate groupings of programs that have comparable content and objectives.''

Some commenters requested that DHS include additional categories of degrees on the STEM list. One commenter recommended that DHS designate at the two-digit level a number of potentially ''related fields,'' including Psychology (CIP code 42), Health professions and Related Programs (CIP code 51), Military Science, Leadership and Operational Art (CIP code 28), Military Technologies and Applied Sciences (CIP code 29), and Agriculture, Agriculture Operations, and Related Sciences (CIP

[98] DHS believes that those pharmacy-related CIP codes currently listed on the STEM list are in line with the STEM definition, whereas the recommendation of ''Pharmacy'' is too vague, and the other two recommendations, ''Pharmacy Administration'' and ''Pharmacy Policy and Regulatory Affairs,'' fall outside the STEM definition.

code 1). The comment further recommended that DHS designate at the four-digit level ''relevant 4-digit codes'' from Architecture and Related Services (CIP code 04), Library Science (CIP code 25), Multi/Interdisciplinary Studies (CIP code 30), Homeland Security, Law Enforcement, Firefighting and Related Protective Services (CIP code 43), and Business, Management, Marketing, and Related Support Services (CIP code 52). The commenter stated that these changes would account for ''the increasingly multidisciplinary nature of education, the needs of the STEM pipeline and STEM industry infrastructure, and other technically-based areas of national interest.''

Response. DHS believes that outside of the categories for which DHS proposed moving to a two-digit designation, designation at the two- or four-digit level may result in overbroad eligibility. DHS reviewed the additional groups of CIP codes that were recommended for designation at the two- and four-digit level, and found that significant additional research would be necessary to determine whether all of the covered fields are appropriately characterized as STEM fields for purposes of this rule. DHS welcomes further input on these designations and others within the standard process for providing input on the STEM list.

Comment. DHS received a number of comments requesting that DHS explain whether the rule would effectively eliminate certain fields from the STEM list. Specifically, commenters were concerned that the following fields would be removed from the list: Architectural and Building Sciences/Technology (CIP code 4.0902), Digital Communication and Media/Multimedia (CIP code 9.0702), Animation, Interactive Technology, Video Graphics and Special Effects (CIP code 10.0304), Management Science (CIP code 52.1301), Business Statistics (CIP code 52.1302), Actuarial Science (CIP code 52.1304), Management Science and Quantitative Methods, Other (CIP code 52.1399), Archaeology (CIP code 45.0301), Econometrics and Quantitative Economics (CIP code 45.0603), Geographic Information Science and Cartography (CIP code 45.0702), and Aeronautics/Aviation/Aerospace Science and Technology, General (CIP code 49.0101).

Response. DHS has retained these fields in the final version of the list. These fields continue to fit within DHS's criteria for covered degrees.

iii. Prior STEM Degrees—Application Process

Comment. DHS received a substantial number of comments pertaining to provisions allowing students to use previously earned degrees to apply for STEM OPT extensions. Many commenters, particularly DSOs, supported the inclusion of previously earned degrees. Other DSOs submitted comments requesting clarification regarding the process for DSOs to nominate students for STEM OPT extensions based on such degrees. Some comments expressed concern about the increased responsibilities these provisions would place on DSOs. To reduce DSO recordkeeping burdens, a few commenters recommended that a previously earned degree be allowed to suffice for nomination only if the student obtained the degree at his or her current school. Other commenters asked DHS to clarify how DSOs would verify the accreditation of other institutions, while other commenters questioned how DSOs would verify previously earned degrees from other institutions.

Some commenters stated that DSOs need clear guidance on how to determine whether a previously earned degree qualifies as a STEM degree sufficient to support a STEM OPT extension. Some commenters also stated that DSOs may have trouble verifying that a practical training opportunity is closely related to the student's prior field of study. Some commenters asked DHS to clarify whether the DSO at the school from which the student received his or her most recent degree would be the DSO responsible for verifying the Department of Education CIP codes used to classify the student's previously earned degree. Many commenters noted that for students with double majors or dual degrees, only the primary major's CIP code is visible on the Form I–20 Certificate of Eligibility. Some commenters expressed an interest in displaying a CIP code history (*i.e.,* a complete list of the student's earned degrees) in SEVIS for ease of reference and verification for students who are applying based on previously earned STEM degrees.

Response. In response to commenters' concerns, DHS clarifies several requirements related to the use of previously earned degrees. First, a STEM OPT extension may be granted based on a previously earned degree if that degree is on the STEM list at the time of application for the STEM OPT extension, rather than at the time that the student received the degree. Second, the DSO at the school from which the student received his or her most recent degree (*i.e.,* the DSO who recommended the student's current period of post-completion OPT) is the DSO responsible for verifying the CIP code(s) used to classify the student's previously earned degree. Finally, the institution that conferred the prior degree must be accredited and SEVP-certified at the time the DSO recommends the student for the STEM OPT extension.

Thus, prior to approving a student's STEM OPT extension based on a previously earned degree, the DSO must ensure that the student is eligible for the extension based on the degree, which includes verifying that the degree is on the current STEM list, that the degree directly relates to the practical training opportunity, and that the degree was issued by an institution that is currently accredited and SEVP-certified. DHS acknowledges that such verification may place an additional burden on DSOs. But DHS expects this burden will be minimal, as the required information should be readily accessible in most cases.

With respect to verifying previously earned degrees, DHS notes that many institutions already require information about such degrees from incoming students. As such, the certification required by this rule is consistent with an academic institution's normal review of its students' prior accomplishments. Additionally, for the majority of degrees granted in the past 10 years, recent and upcoming improvements to SEVIS may provide additional assistance to DSOs. CIP codes began appearing in SEVIS in 2008 and on Form I–20 Certificates of Eligibility in 2009, and in the December 2015 SEVIS upgrade, SEVP improved the student history section for DSO reference.[99] DHS is working toward an even more robust student history section. Based on these improvements, a significant amount of information related to previously earned degrees will be included in the SEVIS system and immediately available to DSOs. The Department also commits to providing additional training through SEVP to facilitate DSOs' ability to perform this work in an efficient manner.

With respect to determining whether a previously earned degree is in a STEM field, DHS notes that DSOs will only be required to determine whether the degree is on the current STEM list (*i.e.,* the list in effect at the time of the application for a STEM OPT extension), not the list in effect at the time that the degree was conferred. DSOs will not be required to review historical STEM lists.

[99] DHS will provide specific training and guidance related to this and other issues following publication of this rule and further SEVIS upgrades.

As such, DHS expects that verification of a previously earned degree in this regard will be no more burdensome than that required of a recently-earned STEM degree.

Similarly, with respect to the institution that conferred the prior degree, the rule does not require the DSO to verify whether the institution was accredited or SEVP-certified at the time the degree was conferred. The rule requires the DSO to determine only whether that institution is currently accredited and SEVP-certified. Regarding the accreditation requirement, the DSO may simply consult the Department of Education's Database of Accredited Postsecondary Institutions and Programs, or any other reasonable resource used by DSOs, to verify the institution's accreditation. Regarding SEVP-certification, the DSO may search the Certified Schools list available at *https://studyinthestates.dhs.gov/school-search*, to see if a student's educational institution is on the list at the time the DSO determines whether to make the recommendation.

Additionally, DHS understands the concerns raised by DSOs regarding students with double majors or dual degrees. DHS clarifies that in scenarios where a student has simultaneously earned a degree with a double major, or more than one degree, the DSO should first attempt to confirm eligibility through SEVIS data. If the DSO is unable to do so, the DSO may then consult the student's academic file at the DSO's own institution to review whether the qualifying STEM degree was listed on the student's application for admission. The DSO's educational institution either would already have access to that information or could request documentation from the student. For further clarity, DHS has amended the regulatory text at 8 CFR 214.2(f)(10)(ii)(C) in this final rule to include a specific reference to dual degrees.

Finally, although DHS shares commenters' goals of minimizing administrative burdens on DSOs and their institutions, the Department disagrees with the recommendation to allow STEM OPT extensions based on previously earned degrees only if such degrees are obtained from the students' current educational institutions. This restriction would severely limit educational options for F–1 students, as it would effectively require those who may wish to engage in extended practical training to pursue advanced degrees at the same institutions in which they had earned their prior degree(s). Indeed, the limitation may even create disincentives to attend smaller colleges or other institutions that may not provide as many degree programs as larger universities. And it would disqualify students based on nothing more than their decision to switch institutions. Curtailing F–1 students' options with respect to educational institutions in the United States is inconsistent with the rule's objectives. Furthermore, as noted previously, DHS has considered the suggestion to shift the rule's recordkeeping and reporting obligations to students and employers and is currently developing technological capabilities aimed at reducing administrative burdens on DSOs, employers, and students.

Comment. DHS received comments seeking clarification on the specific types of information needed by DSOs to approve STEM OPT extensions based on previously earned STEM degrees. One commenter, for example, asked whether DSOs would need to provide SEVIS printouts when the necessary CIP codes do not appear on the Form I–20 Certificate of Eligibility but are found in SEVIS. The commenter also asked for information regarding the types of ''authoritative evidence . . . regarding changes in CIP codes'' that DSOs from prior institutions may provide ''so that the STEM OPT-granting DSO has confidence that they are appropriately authorizing STEM OPT.''

Response. DHS continues to upgrade the SEVIS system to bring clear, specific, and easily-accessible information to users. As the system evolves, DHS expects to update guidance concerning methods for acquiring and confirming CIP codes, and to provide specific training and guidance relating to these questions. DHS clarifies, however, that the Department will not generally require DSOs to provide SEVIS printouts, as SEVIS information is already available to DHS. For previously earned degrees, DSOs should provide, if it is available, the CIP code applicable at the time the degree was conferred. CIP codes are currently republished every ten years, and immediately prior versions remain available electronically through the National Center for Education Statistics Web site, with a crosswalk that connects any changes between current and prior versions.[100] DHS will take all circumstances into account when adjudicating the application and may ask for additional information as needed.

iv. Previously Earned STEM Degrees—Eligibility Requirements

Comment. DHS received a number of comments applauding DHS's proposal to allow students to qualify for STEM OPT extensions based on previously earned STEM degrees. Some employers stated that this change will be especially helpful in retaining scientists who obtain higher-level degrees in public health fields, as well as engineers and scientists who pursue MBA and other advanced business degrees after receiving a STEM degree. Other commenters, however, expressed concern with the proposal. One commenter, for example, asserted that students who have ''abandoned'' their previous STEM degrees to study in another non-STEM field should not be allowed to obtain STEM OPT extensions. Another commenter stated that it was not clear from the regulatory text that an extension would be allowed ''only to such students who seek to develop and utilize STEM skills from their prior STEM degree during the extended OPT period.''

Response. DHS agrees with comments stating that the provision related to prior STEM degrees provides important educational and training benefits to accomplished students with STEM backgrounds. DHS acknowledges the benefits of combining STEM and non-STEM disciplines, as recognized by the majority of commenters who commented on this specific issue. DHS also disagrees with the notion that STEM students who subsequently pursue non-STEM degrees have ''abandoned'' their STEM degrees. It is not uncommon for STEM degrees to provide a foundation for career advancement in fields where multi-disciplinary backgrounds can be advantageous.[101] Moreover, as stated previously, the rule requires that any practical training during the STEM OPT extension period must be ''directly related'' to the STEM degree. This requirement applies with equal force to

[100] *See* U.S. Department of Education, National Center for Education Statistics, Classification of Instructional Programs (CIP) 2010, available at *http://nces.ed.gov/ipeds/cipcode/crosswalk.aspx?y=55*.

[101] As the National Science Foundation explained in its 2015 report entitled, ''Revisiting The STEM Workforce: A Companion to Science and Engineering Indicators 2014,'' the education-to-occupation pathways in STEM fields are not always linear, and individuals who earn multiple degrees, such as a ''STEM-educated lawyer or an individual with both a STEM degree and a Master of Business Administration degree can add unique value in a number of work settings.'' National Science Foundation, Revisiting the STEM Workforce: A Companion to Science and Engineering Indicators 2014 at 12 (Feb. 4, 2015), *http://www.nsf.gov/nsb/publications/2015/nsb201510.pdf*.

any such practical training based on a prior STEM degree.

Comment. One commenter requested clarification on when the 10-year ''clock'' starts for determining eligibility for STEM OPT extensions based on previously earned STEM degrees. The commenter requested that the final rule should clarify whether the 10-year period begins on the date of graduation listed on the diploma or the date on which all degree requirements were completed. Additionally, the commenter requested that DHS clarify the meaning of the term ''application date'' with respect to applications for STEM OPT extensions.

Response. DHS clarifies that the 10-year eligibility period for previously earned STEM degrees is determined from the date the degree was conferred, which would be the date on which the degree was earned or finalized, as reflected on the official transcript. For purposes of this rule, the application date is the date on which the DSO recommends the STEM OPT extension in SEVIS.

Comment. Commenters also submitted comments requesting that the proposed 10-year period for accepting previously earned STEM degrees be shortened. Such commenters asserted that the 10-year period is too long for various reasons, including because degree programs, as well as the STEM list, change over time. Some commenters also stated that students with older degrees would not be knowledgeable on current topics and research methods and would thus have to spend a greater portion of the STEM OPT extension learning new information rather than applying previously obtained knowledge.

Response. DHS agrees with commenters that a previously earned STEM degree should not be a basis for a STEM OPT extension if the degree was awarded in the distant past. DHS, however, believes that 10 years is a reasonable period for recognizing prior STEM degrees under this rule. DHS disagrees that students who earned STEM degrees in the last 10 years are necessarily behind peers who have earned their degrees more recently. A student in a STEM field that has changed since the student received his or her degree may very well have kept up with the state of knowledge in his or her field through employment, training, or other means.

Moreover, DHS notes that employers are likely to provide practical training opportunities to candidates who are qualified based upon their individual degrees and knowledge. As noted previously, this rule provides that when a STEM OPT extension is based on a previously earned STEM degree, the practical training opportunity must be directly related to that previous degree. Based in part on this requirement, DHS expects that an employer will accept an F–1 student that the employer believes is qualified and prepared to engage in the offered position. While the pool of qualified STEM OPT candidates based on prior STEM degrees earned in the United States up to 10 years ago may be small, DHS believes the provision is an important feature of the final rule.

Comment. Commenters stated that the proposed rule did not address whether an F–1 student who earned a prior STEM degree in the United States while in another nonimmigrant status would qualify for STEM OPT extensions under this rule. In some cases, the commenters specifically recommended that DHS clarify that a current F–1 student who obtained a prior STEM degree in the United States while in H–4, L–2, or another nonimmigrant status would be eligible for a STEM OPT extension.

Response. DHS generally agrees with these comments and clarifies here that a current F–1 student who earned a prior STEM degree from a qualifying educational institution, regardless of whether he or she earned that prior degree as an F–1 student, may qualify for a STEM OPT extension so long as the degree otherwise meets the requirements for previously earned STEM degrees set out in this rule.

Comment. A number of commenters requested that the regulations explicitly provide that a student who completes a double major or obtains dual degrees—with one major or degree in a STEM field and the other not in a STEM field—would be eligible for a STEM OPT extension.

Response. DHS supports allowing students who previously graduated with dual degrees to participate in the STEM OPT extension so long as one of the prior degrees is an eligible STEM degree. In response to the comments received on this issue, DHS has made changes to the proposed regulatory text. The final rule now includes a specific reference to dual degrees in the regulatory text at 8 CFR 214.2(f)(10)(ii)(C).

Comment. One commenter requested certain clarifications to the proposal to allow students to use a previously earned STEM degree as a basis for a STEM OPT extension. Specifically, the commenter requested that DHS clarify that the proposal would allow STEM OPT extensions for the following students:

1. A student who completes a STEM degree and then subsequently completes a non-STEM degree;

2. A student who earns a non-STEM degree after previously completing a double major or receiving dual degrees, where one major or degree was in a STEM field and the other was not; and

3. A student who, while on post-completion OPT for a non-STEM degree, completes a STEM degree (*e.g.,* the student was concurrently enrolled in two degree programs, and finishes the non-STEM program first, obtains post-completion OPT on the completed non-STEM program, then subsequently completes the STEM program while on OPT).

To further clarify this proposal, the commenter suggested that DHS delete the words ''previously'' and ''previous'' in proposed 8 CFR 214.2(f)(10)(ii)(C)(*3*), amend the section with suggested language, and issue guidance to assist DSOs responsible for facilitating STEM OPT extensions on the basis of degrees from other institutions.

Response. DHS clarifies that the students in the first two scenarios described above would be able to request and obtain STEM OPT extensions if they are in compliance with all other OPT requirements, including that the practical training opportunity is directly related to the STEM degree. For the student in the third scenario, however, eligibility may depend upon the degree level of the student's STEM degree. In the commenter's description, the STEM degree was earned after the initiation of the student's current OPT period. Because the rule limits eligibility for STEM OPT extensions in this context to those degrees obtained ''previous to the degree that provided the [12-month OPT period],'' the subsequently earned degree would not qualify the student for an extension of his or her current OPT period. While the student would be unable to directly request a STEM OPT extension based on the new STEM degree, such a student may be able to start a new 12-month period of OPT based on that degree if the degree is of a more advanced level than the non-STEM degree. If the commenter's scenario, however, involved a student receiving two degrees at the same level (*e.g.,* both degrees are bachelor's degrees), the student could not start a new 12-month period of OPT based on the STEM degree.

DHS considered making adjustments to the rule to allow STEM OPT extensions for all students described in the third scenario, but the Department decided against making such changes after weighing several factors. First,

DHS does not believe that the situation described in the third scenario is very common. Second, future students who find themselves in that scenario can preserve eligibility for STEM OPT extensions simply by waiting to request post-completion OPT until after completing the coursework toward their STEM degrees. Based on the small number of students impacted and the relative ease with which such students can retain STEM OPT eligibility, DHS concluded that the benefit to such students was outweighed by the administrative complexity presented in allowing STEM OPT extensions based on subsequently earned STEM degrees awarded at the same degree level. For these reasons, DHS has not agreed to make the changes recommended by the commenter. DHS will address any remaining confusion through training and guidance.

v. Volunteering, Employer-Employee Relationships, and Related Matters

DHS received several comments concerning various types of practical training scenarios and whether they qualify under the STEM OPT extension provisions of this rule. For the reasons described below, DHS has determined that as a result of the rule's general requirements, a student seeking a STEM OPT extension will not be allowed to use a volunteer opportunity as a basis for a STEM OPT extension. In addition, a STEM OPT extension must involve a bona fide employer-employee relationship. Finally, DHS clarifies that under this final rule students may seek practical training opportunities with start-up businesses, so long as all regulatory requirements are met. Such students may not provide employer attestations on their own behalf.

Comment. Some commenters requested that F–1 students be allowed to gain practical training as volunteers during their STEM OPT extensions. Relatedly, a commenter asked DHS ''to carve out a limited exception to allow volunteering at the student's academic institution to qualify as 'employment' for purposes of maintaining F–1 status.''

Response. DHS carefully considered whether to allow volunteer positions to qualify under the STEM OPT extension program but has decided against permitting such arrangements. Among other things, DHS is concerned that allowing volunteering would increase the potential for abuse on the part of international students who may accept volunteer positions for no reason other than a desire to extend their time in the United States. DHS is also concerned that allowing volunteering positions could undermine the protections for U.S. workers contained in the rule, including the requirement that F–1 students on STEM OPT extensions receive compensation commensurate to that provided to similarly situated U.S. workers. Similarly, disallowing volunteering avoids potentially negative impacts on U.S. students who may otherwise be denied paying research opportunities because universities, professors, or other employers would be able to retain F–1 student(s) for extended periods as volunteers. Requiring commensurate compensation for F–1 students—which does not include no compensation—protects both international and domestic students and ensures that the qualifying STEM positions are substantive opportunities that will equip students with a more comprehensive understanding of their selected areas of study and provide broader functionality within their chosen fields.

Comment. DHS received several comments concerning various types of employment relationships and whether F–1 students could request STEM OPT extensions based on such relationships. For example, commenters suggested that an F–1 student be allowed to obtain a STEM OPT extension based on a business established and staffed solely by the student. Commenters stated that such a change would allow students to remain in the United States to start their own companies, while also improving their ability to directly benefit from their own innovations. Other commenters suggested that DHS allow STEM OPT students to engage in employment with more than two employers and be employed through a temporary agency or a consulting firm arrangement that provides labor for hire. A commenter asked DHS to clarify its position relating to placement agencies, asserting that there may be some legitimate situations in which a staffing company that supervises STEM students should not be prohibited from participating in the STEM OPT extension. In addition, a commenter suggested that DHS expand the definition of ''supervisor'' to include advisory board members of venture capital firms, faculty advisors, and ''start-up mentors.'' The commenter stated that many start-up companies are not able to offer salaries before they become profitable (instead offering compensation plans that might include stock options or alternative benefits), and recommended that DHS allow STEM OPT students to work for such companies.

Response. There are several aspects of the STEM OPT extension that do not make it apt for certain types of arrangements, including multiple employer arrangements, sole proprietorships, employment through ''temp'' agencies, employment through consulting firm arrangements that provide labor for hire, and other relationships that do not constitute a bona fide employer-employee relationship. One concern arises from the difficulty individuals employed through such arrangements would face in complying with, among other things, the training plan requirements of this rule. Another concern is the potential for visa fraud arising from such arrangements. Furthermore, evaluating the merits of such arrangements would be difficult and create additional burdens for DSOs. Accordingly, DHS clarifies that students cannot qualify for STEM OPT extensions unless they will be bona fide employees of the employer signing the Training Plan, and the employer that signs the Training Plan must be the same entity that employs the student and provides the practical training experience. DHS recognizes that this outcome is a departure from SEVP's April 23, 2010 Policy Guidance (1004–03).

DHS, moreover, anticipates that it will be very unusual, though not expressly prohibited, for students to work with more than two employers at the same time during the STEM OPT extension period, given that each employer must fully comply with the requirements of this rule and employ the student for no less than 20 hours per week.

DHS also clarifies that F–1 students seeking STEM OPT extensions may be employed by new ''start-up'' businesses so long as all regulatory requirements are met, including that the employer adheres to the training plan requirements, remains in good standing with E-Verify, will provide compensation to the STEM OPT student commensurate to that provided to similarly situated U.S. workers, and has the resources to comply with the proposed training plan. For instance, alternative compensation may be allowed during a STEM OPT extension as long as the F–1 student can show that he or she is a bona fide employee and that his or her compensation, including any ownership interest in the employer entity (such as stock options), is commensurate with the compensation provided to other similarly situated U.S. workers.

vi. Thesis Requirement

Comment. One commenter asked for clarification about a possible contradiction between USCIS and SEVP policies. Specifically, the commenter stated that on October 6, 2013, USCIS

issued an interim policy memorandum (PM 602–0090) that clarified that an F–1 student engaging in post-completion OPT is eligible for a STEM OPT extension if the student has completed all course requirements, except for the thesis, dissertation, or equivalent requirement, when applying for the extension.[102] The commenter noted that SEVP had not yet provided a written update consistent with this USCIS policy memorandum, but instead had previously issued guidance indicating that before a DSO could recommend a STEM OPT extension, the DSO needed to ensure that the student had already finished his or her thesis. Another commenter asked DHS to clarify whether the completion of a STEM degree is a requirement before a student can apply for a STEM OPT extension, as the proposed rule referenced the ''completion'' of a degree.

Response. DHS clarifies that an F–1 student engaging in a 12-month period of post-completion OPT based on the completion of coursework toward a STEM degree is eligible for a STEM OPT extension based on that same degree if the only outstanding requirement for obtaining the degree at the time of application is the completion of a thesis (or equivalent). As USCIS noted in the cited policy memorandum, because the STEM OPT extension is an extension of a previously granted period of post-completion OPT, it is logical to conclude that students who are applying for the STEM OPT extension need not necessarily have completed their STEM degree thesis requirement (or equivalent) in order to be eligible for the extension. DHS believes that this policy serves the nation's interest in attracting and retaining talented STEM students from around the world.

This option, however, is not applicable to a request for a STEM OPT extension based on a previously obtained STEM degree; in such a case, the prior STEM degree must be fully conferred. The provision on previously obtained degrees requires that the student must have received the degree itself within 10 years preceding his or her STEM OPT application date. In order to have received the degree, the student would have needed to complete his or her thesis (or equivalent), if such a requirement pertains to the degree. Moreover, DHS does not believe it would be necessary or appropriate to excuse the thesis requirement for previously earned STEM degrees. Importantly, the option to use a previously earned STEM degree as the basis for a STEM OPT extension is for students who are participating in a 12-month period of OPT based on the completion of coursework toward a non-STEM degree at a higher educational level. Because such students have been admitted to degree programs at a higher educational level, DHS anticipates that such students would have already received their lower-level STEM degrees. Moreover, because the rule allows previously earned STEM degrees to qualify if they were conferred up to 10 years ago, DHS believes the need for conferral of the degree would further ensure the integrity of the program and reduce the possibility of fraud.

Finally, DHS does not agree that there are contradictions between the USCIS policy memorandum and the ICE guidance cited in the comments. The USCIS policy memorandum is consistent with the position taken by SEVP in the ICE Policy Guidance (1004–03) with respect to the completion of a thesis (or equivalent). For example, section 6.7 of the ICE policy guidance states that a student in a graduate-level program who has completed all course requirements except for completion of the thesis (or equivalent) may apply for either pre-completion or post-completion OPT while completing the thesis. A student in this situation who applies for and receives post-completion OPT may work full-time in a field related to his or her degree; may apply for the STEM OPT extension if otherwise eligible; and would be eligible for the Cap-Gap extension.[103] As noted above, however, such a student would be eligible for a STEM OPT extension only if that extension is based on the same STEM degree that is the basis for the student's current 12-month period of OPT. A student who is on a 12-month period of OPT based on a non-STEM degree and who seeks a STEM OPT extension based on a previously earned STEM degree must have completed all requirements for conferral of the STEM degree—including any applicable thesis requirement (or equivalent).

D. Qualifying Employers

1. Description of Final Rule and Changes From NPRM

The final rule imposes certain additional requirements on employers as a condition of employing STEM OPT students. This rule requires all such employers to participate in E-Verify and to make a number of attestations intended to better ensure the educational benefit of STEM OPT extensions and the protection of U.S. workers. The proposed rule included these provisions, and the final rule retains them with certain changes and clarifications in response to public comments. We summarize these provisions and changes below.

i. Employer Enrollment in E-Verify Required

This final rule requires all employers training STEM OPT students to participate in E-Verify, as has been required since 2008. E-Verify electronically compares information contained on Form I–9, Employment Eligibility Verification, with records contained in government databases to help employers confirm the identity and employment eligibility of newly-hired employees. DHS includes this requirement because E-Verify is a well-established and important measure that complements other oversight elements in the rule, and because it represents an efficient means for employers to determine the employment eligibility of new hires, including students who have received STEM OPT extensions.

ii. Use of E-Verify Company ID Number

DHS adopts the regulation as proposed with regard to E-Verify, but has modified Form I–983, Training Plan for STEM OPT Students, so that it will not require the insertion of an employer's E-Verify Company Identification number (E-Verify ID number). DHS makes this change in response to comments that raised concerns regarding the potential for fraud that may arise from requiring this number on a form accessible by other program participants, including students and DSOs.

iii. Employer Attestations

As noted in further detail below (*see* section IV.F. of this preamble, Training Plan for F–1 Nonimmigrants on a STEM OPT Extension), the rule requires the student and employer to complete Form I–983, Training Plan for STEM OPT Students. Given DHS' recognition of the need to protect U.S. workers from possible employer abuses of the STEM OPT extension, the Training Plan contains terms and conditions for employer participation aimed at providing such protection. For instance, under the rule, any employer wishing to hire a student participating in the STEM OPT extension must attest that, among other things: (1) The employer has sufficient resources and personnel

[102] USCIS Policy Memorandum PM–602–0090, 17-Month Extension of Post-Completion Optional Practical Training (OPT) for F–1 Students Enrolled in Science, Technology, Engineering, and Mathematics (STEM) Degree Programs, available at *http://www.uscis.gov/sites/default/files/files/nativedocuments/OPT_STEM.pdf.*

[103] *See www.ice.gov/doclib/sevis/pdf/opt_policy_guidance_042010.pdf.*

available to provide appropriate training in connection with the specified opportunity; (2) the STEM OPT student will not replace a full- or part-time, temporary or permanent U.S. worker; and (3) the opportunity assists the student in attaining his or her training goals. As described below, DHS has revised the second of these attestations in response to public comments. DHS believes that the revised language is clearer and better protects U.S. workers.

Finally, consistent with the proposed rule, the final rule requires that the terms and conditions of an employer's STEM practical training opportunity—including duties, hours and compensation—be commensurate with those provided to the employer's similarly situated U.S. workers. Work duties must be designed to assist the student with continued learning and be set at a minimum of 20 hours per week. If the employer does not employ and has not recently employed more than two similarly situated U.S. workers, the employer must instead ensure that the terms and conditions of a STEM practical training opportunity are commensurate with those for similarly situated U.S. workers employed by other employers of analogous size and industry and in the same geographic area of employment. The term ''similarly situated U.S. workers'' includes U.S. workers performing similar duties and with similar educational backgrounds, employment experience, levels of responsibility, and skill sets as the STEM OPT student. The student's compensation must be reported on the Training Plan, and the student and employer will be responsible for reporting any change in compensation to help the Department monitor whether STEM OPT students are being compensated fairly. The employer must affirm that all attestations contained in the Training Plan are true and correct to the best of the employer's knowledge, information and belief.

2. Public Comments and Responses

i. Employer Enrollment in E-Verify Required

Comment. Many commenters expressed support for requiring employers of F–1 students with STEM OPT extensions to participate in E-Verify as proposed. Several commenters stated that the E-Verify requirement is an effective way to protect against employment of unauthorized individuals. They observed that E-Verify provides the best means available for employers to confirm employment eligibility of new hires and, in some cases, existing employees. Comments also reported that E-Verify is easy to use and clearly lays out the consequences of violations, while helping avoid hiring abuses.

Some commenters noted that employers would be less likely to use E-Verify unless such use was required. Other commenters stated that the extra burden and expense placed on employers by the E-Verify requirement helps protect U.S. workers by providing an incentive for employers to hire U.S. citizens over international students. Other commenters criticized the E-Verify requirement on the grounds that it also created a burden for students by limiting where they could receive work-based training. Some commenters noted that employers are willing to incur E-Verify-related burdens because they believe that an F–1 student may be their only candidate for the specific job.

Response. DHS agrees with commenters that support the E-Verify enrollment requirement, including because E-Verify contains important protections for U.S. and other workers. Before an employer can participate in E-Verify, the employer must enter into a Memorandum of Understanding (MOU) with DHS. This MOU requires that employers follow required procedures in the E-Verify process to ensure maximum reliability and ease of use with the system, while preventing unauthorized disclosure of personal information and unlawful discriminatory practices based on national origin or citizenship status. In particular, the employer agrees not to use E-Verify for pre-employment screening of job applicants or in support of any unlawful employment practice.[104] The employer further agrees to comply with Title VII of the Civil Rights Act of 1964 and section 274B of the INA, 8 U.S.C. 1324b, by not discriminating unlawfully against any individual in hiring, firing, employment eligibility verification, or recruitment or referral practices because of his or her national origin or citizenship status, or by committing discriminatory documentary practices. Illegal practices can include selective verification, improper use of E-Verify, or discharging or refusing to hire employees because they appear or sound ''foreign'' or have received tentative nonconfirmations.

The MOU also makes clear that USCIS may suspend or terminate an employer's access to E-Verify if the employer violates Title VII or section 274B of the INA, 8 U.S.C. 1324b, fails to follow required verification procedures, or otherwise fails to comply with E-Verify requirements. Any employer who violates the immigration-related unfair employment practices provisions in section 274B of the INA could face civil penalties, including back pay awards. Employers who violate Title VII face potential back pay awards, as well as compensatory and punitive damages. Under the MOU, employers who violate either section 274B of the INA or Title VII may have their participation in E-Verify terminated. DHS may also immediately suspend or terminate the MOU, and thereby the employer's participation in E-Verify, if DHS or the Social Security Administration determines that the employer failed to comply with established E-Verify procedures or requirements.

DHS disagrees with comments asserting that E-Verify will impose significant burdens or costs on employers or students.[105] First, E-Verify does not require a fee for its use. Second, the E-Verify requirement remains unchanged since it was first established in the 2008 IFR, and DHS is not aware of significant burdens or costs on employers that have participated in the STEM OPT extension program since that time. In fact, while in 2008 there were just over 88,000 employers enrolled in E-Verify, there are now more than 602,000 enrolled employers.[106] Third, E-Verify is fast and accurate, with 98.8 percent of employees automatically confirmed as authorized to work either instantly or within 24 hours.[107] Finally, E-Verify is one of the federal government's highest-rated services for customer satisfaction as measured by employer surveys,[108] and DHS

[104] *See* U.S. Citizenship and Immigration Services, The E-Verify Memorandum of Understanding for Employers, available at *http://www.uscis.gov/sites/default/files/USCIS/Verification/E-Verify/E-Verify_Native_Documents/MOU_for_E-Verify_Employer.pdf*.

[105] When DHS studied E-Verify costs, 76% of responding employers stated that the cost of using E-Verify was zero ($0). *See* Westat study evaluating E-Verify, ''Findings of the E-Verify Program Evaluation'' at 184 (Dec. 2009). Available at *http://www.uscis.gov/sites/default/files/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-09_2.pdf*.

[106] USCIS, History and Milestones, *https://www.uscis.gov/e-verify/about-program/history-and-milestones*.

[107] USCIS, E-Verify Program Statistics: Performance, *http://www.uscis.gov/e-verify/about-program/performance*.

[108] Since 2011, USCIS has collected information through E-Verify surveys, which reflect high rates of customer satisfaction by employers. For example, the employer 2014 Customer Satisfaction Index of USCIS E-Verify rose one point from 2013 for a score 87 (on a scale from 1–100) for all and existing users, and 86 for new enrollees. Moreover, since 2010, employer users have been highly satisfied with E-Verify and the E-Verify CSI number has never scored below the low 80s. See The E-Verify Customer Satisfaction Survey, July 2015 available at

Continued

continually looks for ways to improve and enhance the system.

Comment. Commenters also supported the E-Verify requirement because its increased use further maximizes the reliability and ease of use of the system, while preventing the unauthorized disclosure of personal information and unlawful discriminatory practices based on national origin or citizenship status. Many commenters stated that when using E-Verify pursuant to program requirements, an applicant's citizenship is less likely to be disclosed to employers, and E-Verify employers are more likely to provide the same job opportunities, wages, and benefits to employees. Some commenters stated that E-Verify helps ensure that employers will recruit applicants to meet their needs without negatively affecting the employment of U.S. workers. They added that these requirements thus ensure the integrity of the STEM OPT extension.[109]

Response. DHS agrees with comments supporting the E-Verify requirement, including because E-Verify protects against the unauthorized disclosure of personal information. E-Verify has implemented an extensive set of technical, operational and physical security controls to ensure the confidentiality of an individual's information. Those controls include user-specific accounts and complex passwords that must be changed often to access the system; user accounts that are locked after several failed attempts to log on; active session timeouts within the E-Verify interface; data encryption during all data transmissions between the employer's workstation and the system; and procedures for reporting and responding to breaches of information. DHS continues to incorporate privacy principles and security measures into all E-Verify processes, and any changes to E-Verify will include the highest level of privacy protections possible.[110]

Comment. A number of commenters stated their belief that E-Verify's non-discrimination provisions will ensure that all employees will receive the same wages and benefits.

Response. DHS clarifies that the non-discrimination provisions in the E-Verify MOU prohibit only discrimination based on national origin or citizenship (or immigration) status in violation of section 274B of the INA, 8 U.S.C. 1324b, or Title VII. The language is not intended to ensure that all employees will receive the same wages and benefits, except where any differential is based on national origin status. DHS notes, however, that the STEM OPT extension program contains separate provisions to prevent adverse impacts on U.S. workers. Among other things, the Training Plan established by this rule requires employers to attest to various wage and other protections for U.S. workers and STEM OPT students.

Comment. One commenter stated that employers and the academic community are not familiar with E-Verify and suggested that DHS promote and explain it to stakeholders.

Response. DHS agrees that it is important to promote and explain E-Verify to stakeholders, and the Department continues to focus on such outreach. Additionally, the USCIS Web site contains an informative portal (*http://www.uscis.gov/e-verify*) with a number of resources regarding E-Verify, including but not limited to E-Verify manuals and guides; various memoranda of understanding; E-Verify brochures, fliers and presentations (in English and various other languages); presentations specially designed for employers, workers, federal contractors, and state workforce agencies; and the E-Verify monthly newsletter.

Comment. One commenter suggested that DHS either apply the E-Verify participation requirement to the entire OPT program or waive it as a requirement for STEM OPT extensions.

Response. DHS disagrees with the commenter's recommendation that the E-Verify requirement either be applied to the entire OPT program or waived as a requirement for STEM OPT extensions. The focus of this rule is to amend regulations related to STEM OPT extensions. There are, of course, many cases in which DHS could condition receipt of a benefit on the use of E-Verify, but the Department has chosen to take a measured and incremental approach by thus far applying the E-Verify requirement to employers of STEM OPT workers. DHS notes that this approach has so far been highly successful. DHS may consider requiring the use of E-Verify with respect to other benefits granted by the Department in future rulemakings.

Comment. Several commenters recommended eliminating the E-Verify requirement. These commenters cited several concerns, including that E-Verify may increase burdens and expenses on both employers and employees; unfairly limit job options and career opportunities for STEM OPT students, because many companies are not willing to participate in E-Verify; and create an unnecessary barrier to the hiring of qualified F–1 students. Some commenters stated that the E-Verify requirement is redundant for students in compliance with STEM OPT rules and instead simply works against the interest of those students.

Response. E-Verify is not new for employers of STEM OPT students. Since 2008, every employer that has employed F–1 students on STEM OPT extensions has been required to enroll the relevant hiring site or work location in E-Verify. Because E-Verify is fast and easy to use (as discussed above) and STEM OPT employers have experience with the system, DHS does not believe the requirement would be particularly burdensome to potential employers affected by this rule. Relatedly, DHS also disagrees that the E-Verify requirement will substantially change the volume of STEM OPT employers or unfairly limit job options for STEM OPT students.

Comment. One commenter provided anecdotal information suggesting that a specific Federal agency does not currently participate in E-Verify. According to that commenter, if a federal agency is unwilling to register for E-Verify, ''what hope is there that non-governmental employers will utilize the system?'' Another commenter stated that companies with federal employment contracts do not have policies reflecting E-Verify's prohibitions against unlawful discriminatory practices based on national origin or citizenship status.

Response. DHS supports the premise that the Federal Government should lead by example, and notes that the Office of Management and Budget (OMB) requires all Executive Branch agencies to participate in E-Verify. The Federal Government also requires covered federal contractors to participate in E-Verify as a condition of federal contracting. Even if a federal contractor that uses E-Verify does not have its own policies reflecting E-Verify's prohibitions against unlawful discriminatory practices based on national origin or citizenship status, that federal contractor is bound to the same prohibitions, as articulated in the E-Verify Memorandum of Understanding, regarding violation of Title VII and the

http://www.uscis.gov/sites/default/files/USCIS/Verification/E-Verify/E-Verify_Native_Documents/E-Verify_Annual_Customer_Satisfaction_Survey_2015.pdf.

[109] Additionally, one commenter supported the regulation generally, but expressed a misunderstanding about the process and the E-Verify program, writing that the ''Government will check that if the company really need [sic] those F1 students or not and decide to give them E-verify or not.'' DHS notes that a need-based check is not part of the E-Verify enrollment or participation process.

[110] *See* U.S. Citizenship and Immigration Services, ''Our Commitment to Privacy,'' available at *http://www.uscis.gov/e-verify/about-program/our-commitment-privacy.*

anti-discrimination provision of the INA (INA sec. 274B, 8 U.S.C. 1324b) applicable to all E-Verify users.

Comment. One commenter suggested that the E-Verify requirement should depend on the size of the employer's workforce or on the employer's specific industry.

Response. DHS disagrees with the commenter's recommended change because of the inequities such a change would introduce into E-Verify. Requiring all STEM OPT extension employers to enroll in E-Verify, without exception, supports a consistent and transparent program that treats all participants the same and helps protect both STEM OPT students and U.S. workers. Further, E-Verify's robust public outreach materials and frequent technological enhancements reduce burdens on all employers, large and small. Finally, when E-Verify employers sign the required Memorandum of Understanding, they agree to train their users on proper employment verification procedures. This is in addition to the obligation to avoid unlawful discriminatory practices based on national origin or citizenship status. Waiving the E-Verify requirement for certain employers would thus undermine the safeguards of the rule.

Comment. Several commenters supported mandatory E-Verify participation for all employers, with resulting fines for any program violations, and recommended that DHS require all employers to use E-Verify. Another commenter requested more government regulation of E-Verify. Another commenter suggested additional regulation of E-Verify, but did not specify what such regulation would entail. Additionally, a commenter suggested that the E-Verify parameters should include ''better screening [mechanisms] to weed out'' participation by what the commenter described as dishonest consulting companies that exploit students.

Response. With respect to requiring all employers to use E-Verify, DHS notes both (1) that this request is outside the scope of this rulemaking and (2) that because participation requirements are set by federal statute, congressional action would be required to make any such changes. With respect to the other suggestions noted above, DHS notes that the E-Verify MOU already prescribes E-Verify enrollment and use, and broadly prohibits unlawful or improper use of E-Verify. USCIS also maintains an E-Verify Hotline and a Monitoring and Compliance Division that investigates and responds to complaints regarding E-Verify-related exploitation. The Department does not agree that additional mechanisms are necessary, and to the extent that the comments are directed at the E-Verify program generally, they are outside the scope of this rulemaking.

Accordingly, DHS is finalizing the proposed E-Verify requirement without change. DHS invites employers and employees to learn more about E-Verify. Tutorials, guidance, and other informative resources are available at *http://uscis.gov/e-verify*. Information about employer obligations and employee rights under the anti-discrimination provision of the INA (INA sec. 274B, 8 U.S.C. 1324b) is available on the following Web site: *www.justice.gov/crt/about/osc*.

ii. Use of E-Verify Company ID Number

Comment. Several commenters recommended eliminating the requirement that the employer's E-Verify ID number be listed on Form I–983, Training Plan for STEM OPT Students, because having this information visible to the student and DSO could lead to fraudulent use of such numbers. According to two commenters, some employers currently refuse to provide their E-Verify ID number to students or universities due to fraud concerns and have adopted processes to avoid revealing this sensitive information, such as filing the students' STEM OPT extensions themselves.

One commenter cited anecdotal reports of E-Verify ID numbers being posted online and F–1 students fraudulently using those numbers to apply for STEM OPT extensions. According to the commenter, there is no follow-up or investigation as to whether the student actually works for the employer whose number is listed on Form I–765, Application for Employment Authorization, so students can freely pass these numbers around, and have reportedly done so. The commenter also asked DHS to bolster E-Verify anti-fraud measures by allowing the employer to file the application instead of the prospective employee. Similarly, another commenter asked DHS to give employers a list of F–1 students who have used their E-Verify ID numbers as a security measure.

Response. DHS is concerned about the possible abuse of the E-Verify program and potential fraud from the unauthorized publication of E-Verify ID numbers. In addressing this issue, DHS had considered that employers often provide their E-Verify ID numbers to potential employees in order to apply for work authorization from USCIS by filing Applications for Employment Authorization.[111] In addition, some employers and universities make their E-Verify ID numbers available on the internet. For that reason, DHS believed that releasing such numbers to a limited group of students would not represent a significant fraud risk.

DHS understands, however, that some employers take significant steps to protect their E-Verify ID numbers from publication, including mailing Applications for Employment Authorization directly to USCIS on their employees' behalf in order to avoid revealing the number to such employees. Some employers believe that the unauthorized release or publication of an employer's E-Verify ID number could result in significant fraud that might be difficult to redress. Accordingly, in response to these concerns, DHS has decided to remove the E-Verify ID number from the Training Plan for STEM OPT Students. DHS notes that it will continue to receive such employers' E-Verify ID numbers through the submission of Applications for Employment Authorization.

DHS declines to adopt the suggestion to change the current STEM OPT application process so that the employer (rather than the student) would be required to file the Application for Employment Authorization on the student's behalf. This change, in which the employer would effectively become the applicant for employment authorization, would represent a significant policy shift and could produce broad and unwanted repercussions. Among other things, such a change would largely and improperly exclude the STEM OPT student from the application process, and further make the student dependent on the employer for maintaining the student's status. DHS believes such a change to its longstanding policy would be disproportionate to the relatively few alleged cases of fraud. Finally, DHS declines to adopt the recommendation to provide employers with lists of F–1 students, due to privacy considerations and the administrative burdens related to issuing such lists.

iii. Non-Replacement Attestation

Comment. Several commenters voiced concern about the breadth of some of the language in the Employer Certification section (Section 4) of the proposed Mentoring and Training Plan, stating that such language could create litigation risks or interfere with

[111] *See* item #17 on Form I–765, available at *http://www.uscis.gov/sites/default/files/files/form/i-765.pdf*.

employers' business judgments. Specifically, several employers and business associations took issue with proposed certification 4(d), which would require the employer to attest that ''the Student's practical training opportunity will not result in the termination, laying off, or furloughing of any full- or part-time, temporary or permanent U.S. workers.''

Those commenters stated that the proposed attestation was overly broad and problematic. One commenter stated that this language could restrict the employer's ability to terminate a U.S. worker for cause. As an example, the commenter added that ''if an employee's work performance was deficient enough to warrant termination for cause, but the employee's work group also had employees working pursuant to STEM OPT, one could argue that the termination could not proceed.'' Another commenter stated that ''if an employee working pursuant to STEM OPT reported another employee for egregious misconduct, and the allegations were substantiated, an employer would be unable to proceed with a termination of the individual.''

To alleviate these concerns, commenters alternatively requested that DHS entirely eliminate the attestation requirement, delete the word ''terminate'' from the attestation, or change the language to read as follows: ''The employer is not providing the practical training opportunity for the purpose of and with the intent to directly terminate, lay off, or furlough, any full- or part-time, temporary or permanent U.S. workers.'' Additionally, a commenter recommended amending the proposed rule to include a ''presumption of non-violation for any employment decisions'' that are supported by bona fide business reasons or reasons unrelated to replacing U.S. workers with STEM OPT students. Finally, another commenter proposed that DHS consult protections provided to U.S. workers pursuant to provisions in the H–1B regulations.

Response. DHS believes many of the recommendations described above would undermine the protections the attestation is meant to provide to the U.S. workers of participating employers. In this rulemaking, the Department has sought to balance the benefit that STEM OPT students derive from practical training opportunities; the benefit that the U.S. economy, U.S. employers, and U.S. institutions of higher education receive from the continued presence of STEM OPT students in the United States; and the protection of U.S. workers, including those employed by STEM OPT employers. The attestation related to U.S. employees is essential to achieving this balance, and the Department thus declines to eliminate it or to weaken its protections by introducing elements of intent or including a presumption of non-violation.

DHS, however, has made changes to the attestation in the final rule in response to comments expressing concern that the proposed attestation, including its reference to ''terminating,'' could be understood to prohibit STEM OPT employers from terminating U.S. workers for cause. In instituting this policy, the Department intends that employers be prohibited from using STEM OPT students to replace full- or part-time, temporary or permanent U.S. workers. DHS has revised certification 4(d) on the Training Plan, and the associated regulatory text, to say exactly that. *See* Section 4 of Form I–983, Training Plan for STEM OPT Students; 8 CFR 214.2(f)(10)(ii)(*C*)(*10*)(*ii*). This modification is meant to address employers' claims about potential litigation risks and interference with their business judgments. DHS also notes that the word ''terminating'' has been removed entirely from the attestation, as the Department believes its inclusion is unnecessary to make certain that STEM OPT extensions are not used as a mechanism to replace U.S. workers.

DHS further clarifies that hiring a STEM OPT student and signing certification 4(d) does not bar an employer from discharging an employee for cause, including inadequate performance or violation of workplace rules. DHS will look at the totality of the circumstances to assess compliance with the non-replacement certification. For example, evidence that an employer hired a STEM OPT student and at the same time discharged a U.S. worker who was employed in a different division, worked on materially different project assignments, or possessed substantially different skills, would tend to suggest that the U.S. worker was not replaced by the STEM OPT student. Conversely, evidence that an employer sought to obscure the nexus between a STEM OPT student's hire and the termination of a U.S. worker by delaying or otherwise manipulating the timing of the termination would tend to suggest that the U.S. worker was replaced by the STEM OPT student. In any event, the barred ''replacement'' of U.S. workers refers to the loss of existing or prior employment.

With respect to the comment suggesting that DHS consult the protections for U.S. workers found in the H–1B statute, DHS notes that it considered those protections and other similar provisions in the INA. DHS relied on many of these provisions as informative guideposts for this rulemaking, but the Department was also required to weigh the specific and different goals of the STEM OPT extension program and other factors specific to this rulemaking. The Department believes it has found the right balance with revised certification 4(d). This revised certification makes the Department's policy clear and thus provides protection for U.S. workers while addressing the legitimate business concerns raised by commenters.

Comment. Some commenters requested that DHS amend certification 4(d) to further protect U.S. workers. These commenters asked that the certification: (1) More broadly prohibit an employer from employing a STEM OPT student when the employer has laid off any U.S. worker employed in the occupation and field of the intended practical training within the 120-day period immediately preceding the date the student is to begin his or her practical training with that employer; and (2) during the term of such practical training, require the employer to lay off any F–1 student before laying off any U.S. worker engaged in similar employment. The commenters further proposed that the relevant section of the proposed regulation be amended to prohibit an employer from providing practical training when there is a strike or lockout at any of the employer's worksites within the intended field of the OPT.

Response. DHS agrees that STEM OPT employment should be subject to strike or lockout protections. DHS notes, however, that current DHS regulations already provide such protections with regard to the employment of all F–1 students, not just those on STEM OPT extensions. The Department's regulations at 8 CFR 214.2(f)(14) automatically suspend any employment authorization granted to an F–1 student when the Secretary of Labor or designee certifies to DHS that there is a strike or other labor dispute involving work stoppage in the student's occupation at his or her place of employment. That regulation will remain in effect.

DHS has also considered the suggestion to establish a timeframe, such as the 120-day period suggested by commenters, for prohibiting layoffs of U.S. workers related to the employment of STEM OPT students. DHS believes, however, that its approach in the final rule, which contains no such timeframe, provides reasonable protections for U.S. workers while also balancing the legitimate business needs expressed by

employer commenters. Under the final rule, an employer cannot replace a U.S. worker with a STEM OPT student, regardless of the timeline. DHS therefore declines to implement new attestations on this subject at this time, but will remain attentive to the effects of the attestations and the aforementioned balance produced by this rule, and may consider revising or supplementing the employer attestations at a future date.

iv. Commensurate Compensation Attestation

Comment. DHS received a number of comments on the requirement that employers provide STEM OPT students with compensation commensurate with that provided to similarly situated U.S. workers. Some commenters supported the proposed ''commensurate compensation'' requirement, ''applaud[ing] DHS's adoption of a standard that draws upon real world practices that employers already utilize in their hiring practices.'' One commenter stated that the evidentiary requirements related to the commensurate compensation provision should not be so burdensome as to deter the participation of small employers or employers new to the OPT program.

Other commenters opposed the proposed requirement, suggesting that the proposal was unworkable because DHS had not defined the commensurate compensation standard in the proposed regulatory text. One commenter stated that the proposed rule lacked necessary guidance on how to ensure that compensation offered to STEM OPT students is commensurate with compensation levels offered to U.S. workers. Another commenter stated that the requirements for commensurate compensation were too stringent because STEM OPT should include students who are performing unpaid work or are awarded grants or non-monetary remuneration. A significant number of comments, from universities and higher education associations, stated that STEM OPT students and U.S. students perform research for colleges and universities under a variety of grant and stipend programs without necessarily receiving taxable wages, and requested clarification that such participation was still contemplated for STEM OPT participants. In contrast, another commenter urged that students doing unpaid work, or receiving only a ''stipend,'' be explicitly ineligible for OPT status. Another commenter stated that the proposed additional protections for American workers would prove to be ''meaningless'' due to a variety of purported deficiencies in the proposed regulation, including participation by employers who hire only foreign workers. One commenter recommended that employers be allowed to factor in the effect of training time on productivity when setting compensation. One commenter suggested that employers be required to pay the Level Three wage from the Online Wage Library provided by the Department of Labor's Office of Foreign Labor Certification.

Response. The final rule includes specific requirements to address the potential for adverse impact on U.S. workers. For instance, any employer wishing to hire a student on a STEM OPT extension would, as part of the newly required Training Plan, be required to sign a sworn attestation affirming that, among other things: (1) The employer has sufficient resources and personnel available and is prepared to provide appropriate training in connection with the specified opportunity; (2) the student will not replace a full- or part-time, temporary or permanent U.S. worker; and (3) the opportunity assists the student in attaining his or her training objectives. Moreover, the final rule requires that the terms and conditions of an employer's STEM practical training opportunity—including duties, hours and compensation—be commensurate with those provided to the employer's similarly situated U.S. workers.

Along the same lines, work duties must be designed to assist the student with continued learning and satisfy existing ICE guidelines for work hours when participating in post-completion OPT. To help gauge compliance, employers are required to provide DHS with student compensation rate information, which will help the Department monitor whether STEM OPT students are being compensated fairly. Additionally, the rule authorizes a recurrent evaluation process and mandates notification of material changes to the Training Plan, including material changes to STEM OPT student compensation, to allow ICE to monitor student progress during the OPT period. The evaluations will ensure continuous focus on the student's development throughout the student's training period. Finally, the rule clarifies the Department's authority to conduct site visits to ensure compliance with the above requirements.

The above provisions protect against adverse consequences on the U.S. labor market, including consequences that may result from exploitation of STEM OPT students. DHS believes that the assurances regarding the practical training opportunity, the attestation of non-replacement of existing employees, the requirement for commensurate compensation, and other related requirements, provide adequate safeguards to protect U.S. worker interests. DHS expects this will still be the case even if a participating employer employs many non-U.S. workers. If such an employer does not employ and has not recently employed more than two similarly situated U.S. workers in the area of employment, the employer nevertheless remains obligated to attest that the terms and conditions of a STEM practical training opportunity are commensurate with the terms and conditions of employment for other similarly situated U.S. workers in the area of employment.

DHS expects that STEM OPT students will be engaging in productive employment. DHS also expects the commensurate compensation of similarly situated U.S. workers would account for any effects of training time on productivity. While it is required for participating students and employers to explain the goals, objectives, supervision, and evaluation of a STEM OPT period, the fact that the employer is providing a work-based learning opportunity is not a sufficient reason to reduce the F–1 student's compensation. Furthermore, such a discounted compensation also runs the risk of having a negative impact on similarly situated U.S. workers. A commenter's suggestion to this effect is thus rejected.

DHS also disagrees with comments stating that the proposed rule lacked adequate guidance on the issue of commensurate pay and suggesting further definition in the regulatory text. These commenters did not explain which aspects of DHS's guidance on this topic were ambiguous; nevertheless, DHS now further clarifies the commensurate compensation requirement. Commensurate compensation refers to direct compensation provided to the student (pre-tax compensation). This compensation must be commensurate to that provided to similarly situated U.S. workers. ''Similarly situated U.S. workers'' means those U.S. workers who perform similar duties and have similar educational backgrounds, experience, levels of responsibility, and skill sets. The employer must review how it compensates such U.S. workers and compensate STEM OPT students in a reasonably equivalent manner. If an employer, for example, hires recent graduates for certain positions, the compensation provided to a STEM OPT student in such a position must be in accordance with the same system and scale as that provided to such similarly situated U.S. workers.

If the employer, however, does not employ or has not recently employed at least two other U.S. workers who are performing similar duties, then the employer is obligated to obtain information about other employers offering similar employment in the same geographic area. Helpful information can be obtained, for example, from the Department of Labor, which provides wage information based on data from the Occupational Employment Statistics survey through its Office of Foreign Labor Certification's Online Wage Library, available at *http://flcdatacenter.com/OesWizardStart.aspx*. Whether relying on information from the Department of Labor, wage surveys, or other reasonable sources, the wage data must relate to the same area of employment as the work location of the STEM OPT student and the same occupation. In general, it is DHS's expectation that employers have legitimate, market-based reasons for setting compensation levels. This rule requires that an employer hiring a STEM OPT student be prepared to explain those reasons and show that such F–1 students receive compensation reasonably equivalent to similarly situated U.S. workers.

In addition to these detailed requirements, DHS noted in the preamble of the proposed rule, and reiterates here, that DHS interprets the compensation element to encompass wages and other forms of remuneration, including housing, stipends, or other provisions typically provided to employees. While positions without compensation may not form the basis of a STEM OPT extension, the compensation may include items beyond wages so long as total compensation is commensurate with that typically provided to U.S. workers whose skills, experience, and duties would otherwise render them similarly situated. Any deductions from salary must be consistent with the Department of Labor's Fair Labor Standards Act regulations at 29 CFR part 531 regarding reasonable deductions from workers' pay. The combination of all the information here provides a sufficient basis for compliance with the rule's commensurate compensation provision.

In short, DHS believes that the protections provided in this rule are sufficient, but the Department will continue to monitor the program and may consider revising or supplementing program requirements at a future date.

Comment. A commenter stated that the proposed rule lacks an enforcement mechanism to ensure compliance with the provisions included to protect American workers. The commenter stated that the proposed rule provides no process to report and adjudicate suspected violations of the protections for U.S. workers, and fails to include any penalties for doing so. The commenter also stated that if the STEM OPT student is ''contract[ed] out'' by the employer, DHS's ability to enforce the attestations will be significantly circumscribed.

Response. There are a number of enforcement and oversight mechanisms built into the rule that will facilitate compliance, as detailed above (see section IV.B. of this preamble). These include reporting requirements, site visits, periodic evaluation of a student's training, and required notification of any material changes to or deviations from the Training Plan. In addition, individuals may contact the Student and Exchange Visitor Program at ICE by following the instructions at *https://www.ice.gov/sevis/contact*. Finally, violations of the regulation may also be reported through the form accessible at *https://www.ice.gov/webform/hsi-tip-form*. For the reasons previously stated, DHS believes that the new protections for U.S. workers in this rule—which are unprecedented in the 70-year history of the overall OPT program—provide a reasonable and sufficient safeguard.

Comment. The same commenter wrote that the rule should include more protections for U.S. workers; the commenter suggested that the rule should (1) require an approval process for employers similar to the process for approving schools that admit nonimmigrant students and (2) explain what constitutes sufficient resources and personnel in the employer attestation statement. Finally, the commenter suggested that the rule should also address discriminatory hiring advertisements that seek to recruit only OPT students, including by providing a remedy for Americans who are replaced by OPT students.

Response. For the reasons previously stated, DHS believes that the protections for U.S. workers in this rule provide a reasonable and sufficient safeguard. With respect to the specific alternatives proposed by the commenter: Item (1) would be extremely burdensome and resource intensive for DHS, and item (2) requests clarification for language that DHS believes is either self-explanatory or sufficiently addressed elsewhere in this preamble. Of course, DHS stands ready to provide further clarification through guidance as needed.

Finally, DHS does not anticipate that the application of this rule will result in discriminatory hiring. The rule in no way requires or encourages employers to target students based on national origin or citizenship, particularly through any type of hiring advertisements. Rather, the rule protects against employment discrimination by requiring that an employer make and adhere to an assurance that the student on a STEM OPT extension will not replace a full- or part-time, temporary or permanent U.S. worker. Furthermore, existing federal and state employment discrimination laws and regulations provide appropriate authorities for addressing and remedying employment discrimination. In particular, employers that generally prefer to hire F–1 students over U.S. workers (including U.S. citizens), or that post job advertisements expressing a preference for F–1 students over U.S. workers, may violate section 274B of the INA, 8 U.S.C. 1324b, which is enforced by the Department of Justice's Office of Special Counsel for Immigration-Related Unfair Employment Practices. This anti-discrimination provision provides for civil penalties and backpay, among other remedies, for employers found to have violated the law. Such authorities clearly fall within certification 4(e) on the Form I–983, Training Plan for STEM OPT Students, which establishes a commitment by the employer that the training conducted under STEM OPT ''complies with all applicable Federal and State requirements relating to employment.''

Comment. Some commenters stated that because STEM OPT participants are students, they would not be comparable to similarly situated U.S. workers, who are not students.

Response. DHS disagrees that STEM OPT students cannot be compared to other members of the labor force. Conditions experienced by an F–1 student participating in the STEM OPT extension should be the same as those experienced by U.S. workers performing similar duties and with similar educational backgrounds, employment experience, levels of responsibility, and skill sets. If a university, for example, hires individuals who have just completed courses of study for certain positions, the university cannot use a different scale or system to determine the compensation of a STEM OPT student. The STEM OPT student must be compensated commensurate with the compensation provided to such similarly situated U.S. workers.

Comment. One commenter suggested that employers should be required to provide compensation figures for all of their employees, not just STEM OPT employees.

Response. The employer is required to identify the compensation provided to each STEM OPT student, as part of the

Training Plan the employer signs. DHS also reserves the right to ask employers to provide the evidence they used in assessing the compensation of similarly situated U.S. workers. This may include compensation figures for similarly situated employees who are U.S. workers. Requiring employers to report compensation figures for all U.S. worker employees, however, would not necessarily provide meaningful data. STEM OPT students will use their knowledge and skills to perform duties and assume responsibilities that are not similar to those, for instance, of corporate management or mailroom employees.

iv. Other Comments on Attestations and Restrictions

Comment. DHS received a number of comments suggesting that additional attestations or other restrictions, including recruitment requirements, be added to further protect U.S. workers. A number of commenters stated that companies should be unable to hire anyone but a U.S. citizen until U.S. citizens are all employed, whether in on-the-job training positions or regular staff positions. One commenter stated that ''[o]nly when a position cannot be filled by a U.S. worker should an international worker be considered; this is especially true for entry level positions since many international students have the benefit of experience or additional education in their home country before beginning their OPT qualifying degree program and are not truly 'entry level' employees.'' One commenter proposed additional provisions to safeguard U.S. workers, including requiring companies to look for U.S. citizen workers before hiring international students and having the U.S. Department of Labor fine companies that did not comply with the proposed labor protections. Another comment referenced opinions of a professor that STEM OPT contributes to employers hiring younger workers who may replace more-experienced U.S. workers, and suggested that recruitment requirements favoring experienced U.S. workers be added to the rule.

One commenter also suggested that DHS amend the rule consistent with section 212(a)(5)(A) of the INA, 8 U.S.C. 1182(a)(5)(A), which designates as inadmissible any foreign national ''seeking to enter the United States for the purpose of performing skilled or unskilled labor'' absent a certification from the Department of Labor that such employment will not adversely affect similarly employed U.S. workers. According to the commenter, this provision required DHS to include a recruitment requirement for STEM OPT employers and a role for the Department of Labor. Some commenters similarly stated that the Department of Labor should review all employer submissions with respect to hours and wages. Another commenter suggested that DHS add a labor condition application requirement and petition process similar to those used for seeking H–1B visas.

Response. DHS carefully considered the suggestions to include recruitment requirements in the STEM OPT extension program but has determined not to include such requirements at this time. DHS notes that it has implemented a number of new protections for U.S. workers and STEM OPT students in this rule, including the requirement to pay commensurate compensation, the prohibition against replacing U.S. workers, various reporting requirements, and clarifying the agency's authority to conduct site visits. Balanced within the broader goals of this rule, DHS has determined that these protections are sufficient. The Department, however, will continue to evaluate these protections and may choose to include new attestations or other requirements in future rulemakings.

With regard to the suggestion that DHS is not in compliance with section 212(a)(5) of the INA, this provision is limited, by definition, to certain individuals seeking permanent immigrant status. *See* INA sec. 212(a)(5)(D), 8 U.S.C. 1182(a)(5)(D). The provision does not apply to students in F–1 nonimmigrant status or to any other nonimmigrant seeking employment in the United States.

With regard to suggestions to provide a greater role for the Department of Labor, DHS appreciates that the Department of Labor's long experience with foreign labor certification might assist DHS in its ongoing administration of the STEM OPT extension. Accordingly, where it may prove valuable and as appropriate, DHS may consult with the Department of Labor to benefit from that agency's expertise.

E. STEM OPT Extension Validity Period

1. Description of Final Rule and Changes from NPRM

This final rule sets the duration of the STEM OPT extension at 24 months. Following seven years of experience with the 17-month STEM OPT extension implemented in the 2008 IFR, DHS re-evaluated the length of the extension, primarily in light of the educational benefits such training provides to F–1 students and the benefits such students provide to the U.S. economy and other national interests. Consistent with the proposed rule, this final rule increases the STEM OPT extension period to 24 months for students meeting the qualifying requirements. The 24-month extension, when combined with the 12 months of initial post-completion OPT, allows qualifying STEM students up to 36 months of practical training.

Also consistent with the proposed rule, the final rule provides, for students who subsequently attain another STEM degree at a higher educational level, the ability to participate in an additional 24-month extension of any post-completion OPT based upon that second STEM degree. In particular, the rule would allow a student who had completed a STEM OPT extension pursuant to previous study in the United States and who subsequently obtained another qualifying degree at a higher degree level (or has a qualifying prior degree, as discussed in more detail below), to qualify for a second 24-month STEM OPT extension upon the expiration of the general period of OPT based on that additional degree.

This aspect of the rule is finalized as proposed.

2. Public Comments and Responses

i. Length of STEM OPT Extension Period

Comment. Many commenters expressed support for the proposed 24-month STEM OPT extension period. One commenter stated that this length, in combination with the 12-month post-completion OPT period, aligns well with the typical training period for doctoral students, as well as the three-year grants often provided by the NSF to such students. A commenter commended the three-year total insofar as it ''mirrors a cycle of research and training that is more in line with real-world, practical applications.'' Another commenter, who self-identified as an F–1 student in Electrical Engineering, suggested that the 24-month period for a STEM OPT extension would dovetail with many research and development projects and was an appropriate time period because it would further encourage employers to allow STEM OPT students to gain practical experience related to their fields of study. The student explained that a summer internship on a power generation project could lead to a post-completion training opportunity with the same company if the STEM OPT extension was finalized for a 24-month period.

Another commenter stated that ''most development projects are done on a yearly basis,'' and that by lengthening the STEM OPT extension period to 24 months, students would be eligible to participate in STEM OPT for multiple project cycles. One commenter welcomed the proposed 24-month extension because it provided ''added flexibility'' for workforce planning needs. That commenter explained that this change could improve innovation and development of new products and services, and it could help STEM students gain necessary experience for their own career growth.

A commenter added that the extension period would allow students to gain more ''hands-on practical experience'' by working on new products and initiatives that are more complex and that have a longer development cycle. One commenter suggested that the 24-month extension would greatly benefit research activities. This commenter opined that such extensions would help students by providing a period of stay consistent with the research needs in the commenter's field, which would also benefit the commenter's future job prospects in the commenter's home country.

Some commenters recommended a longer STEM OPT extension, most commonly 36 months, thus increasing practical training to a total of 48 months for STEM students. Other commenters suggested a total STEM OPT period as long as six years. Some commenters sought longer extensions so as to allow students additional attempts at applying for and obtaining H–1B visas.

Response. Currently, DHS views a 24-month extension as being sufficient to attract international STEM students to study in the United States, and to offer a significant opportunity for such students to develop their knowledge and skills through practical application. Moreover, as stated elsewhere, the 24-month period—in combination with the 12-month post-completion OPT period—is based on the complexity and typical duration of research, development, testing, and other projects commonly undertaken in STEM fields. Such projects frequently require applications for grants and fellowships, grant money management, focused research, and publications. As such, they usually require several years to complete. For instance, NSF typically funds projects through grants that last for up to three years.[112] As the NSF is the major source of federal funding for grants and projects in many STEM fields, including mathematics and computer science, DHS believes the standard duration of an NSF grant served as a reasonable benchmark for determining the maximum duration of OPT for STEM students. DHS reiterates that the focus of this rule is to enhance educational objectives, not to allow certain graduates more opportunities to apply for or obtain H–1B visas.

Comment. Some commenters viewed the 24-month extension as too lengthy, stating that a promising individual does not need an additional 24 months to prove his or her worth in a position. One comment quoted a university professor as stating that ''[i]t's an over-reach to claim that someone who completes a master's degree in as little as 12 months needs three years interning—at low or no pay in many cases—to get further training.'' The commenter stated that few STEM OPT graduates will work on an NSF grant-funded project and that ''[v]irtually all of the STEM graduates will work in the private sector on applied projects and tasks where lengths are typically 6 months or less.'' The commenter did not provide a basis for these factual assertions.

Response. The purpose of the 24-month extended practical training period is to provide the student an opportunity to receive work-based guided learning and generally enhance the academic benefit provided by STEM OPT extensions. The purpose is not to have the student prove his or her worth. DHS disagrees with the implication that the extension will not effectively enhance and supplement the individual's study through training. Consistent with many comments received from higher education associations and universities, DHS believes that allowing students an additional two years to receive training in their field of study would significantly enhance the knowledge and skills such students obtained in the academic setting, benefitting the students, U.S. educational institutions, and U.S. national interests.

Moreover, while DHS agrees it is possible that some STEM OPT students may not ''need'' the extension, DHS expects that many qualifying students (including master's students) will receive significant educational benefits from the extension. Based on the public comments received, DHS expects that some students in some fields and degree programs in fact would benefit from more than three years of practical training. DHS concludes, however, that conditioning the period of employment authorization on case-by-case demonstrations of need would significantly increase burdens on the Department and potentially yield inefficient and inconsistent adjudications. DHS also disagrees with the notion that the STEM OPT extension allows internships at little or no pay; this rule specifically prohibits that kind of activity. Based on the above, DHS considers 24-month STEM OPT extensions, combined with the other features of this rule, sufficient to serve the purpose of this rule while appropriately protecting U.S. worker interests.

Comment. Some commenters stated that DHS did not base the proposed 24-month duration on sufficient information. One commenter stated that his first post-college software development project took one year, and that ''[t]he average time a new graduate stays at a first job is only 18 months.'' The commenter did not cite the source of this information or state whether the 18-month figure applies to STEM graduates only.

Response. The anecdotal information provided by the commenter about the commenter's first software development project contradicts many other comments in the record stating that the proposed extension length was consistent with their experience in STEM fields generally. The commenter's general statement about the average time a graduate stays at a first job is unsupported; DHS has no basis to determine whether this figure relates to STEM students specifically, or what the relationship might be between this figure and the appropriate period of time for practical training.

Comment. Several commenters suggested differentiating STEM OPT extension periods by grade or degree level. One commenter recommended that doctoral students should obtain longer OPT periods than others.

Response. DHS has decided to extend OPT periods based on field of study—specifically, for students completing requirements for their degrees that are in STEM fields—rather than based upon education level. As noted above, this rule recognizes the need to strengthen the existing STEM OPT extension, in significant part, to enhance the integrity and educational benefit of the program

[112] National Science Foundation, *Grant Proposal Guide.* sec. II.c.2.a.(4)(b), available at *http://www.nsf.gov/pubs/policydocs/pappguide/nsf15001/gpg_index.jsp* (''The proposed duration for which support is requested must be consistent with the nature and complexity of the proposed activity. Grants are normally awarded for up to three years but may be awarded for periods of up to five years.''). For instance, NSF funding rate data show that in fiscal years 2012–2014, grant awards for biology were provided for an average duration of 2.87, 2.88, and 2.81 years, respectively.

in order to help maintain the nation's economic, scientific, and technological competitiveness. Additionally, a primary basis for extending OPT to 24 months for STEM students is, as stated above, the complexity and typical duration of research, development, testing, and other projects commonly undertaken in STEM fields. This policy is also consistent with DHS practice, which has traditionally not extended the length of the OPT period based upon level of degree. For all these reasons, DHS declines to incorporate the commenter's request to extend the validity period of the extension based upon degree level.

Comment. A commenter suggested a total post-completion OPT period of three to four months. The commenter stated that a shorter OPT period was necessary to prevent wages from declining and to avoid ''pit[ting] foreign students against [U.S.-based workers] in [the] job market.'' Another commenter stated that ''[p]erhaps if the program is short enough, employers will treat it as mutually beneficial training rather than a more long-term employment prospect.''

Response. To the extent the commenters seek a change in the overall OPT program, the comment is outside the scope of the rulemaking. And for the reasons stated above, DHS has determined that an OPT extension of three to four months would be insufficient for students in the STEM fields to further the objectives of their courses of study by gaining knowledge and skills through on-the-job training. Additionally, this rule includes safeguards for the interests of U.S. workers.

ii. Availability of a Second STEM OPT Extension

Comment. One commenter requested that DHS provide further explanation as to ''why a foreign student would need a *second* 2-year extension period after receiving an advanced STEM degree, when the student has already enjoyed a full 3 years of OPT after the initial STEM degree.'' The commenter stated that, at a minimum, DHS should require a student who seeks a second STEM OPT extension to show that the advanced degree is in a field completely different from the undergraduate degree field. A commenter similarly requested that DHS limit the extension to once per lifetime, stating that the increased duration ''has the potential to blur the line between a student visa and an employment visa.''

Response. DHS disagrees with the commenter's suggestion that a second two-year STEM OPT extension be contingent upon obtaining an advanced degree in a completely different field. Such a requirement could stifle a student's effort to specialize and build substantial expertise in a selected field of interest, whereas affording a second two-year STEM OPT extension could encourage the student to invest further in his or her education to develop greater expertise or specialization within the STEM field. In addition, an enormous range of practical training opportunities may exist within a given field. For example, a student could initially graduate with a bachelor's degree in microbiology, physics, or engineering and conduct academic research during the first STEM OPT extension. Then, the student could return to school to obtain a masters or doctoral degree in the same field and use a second STEM OPT extension to obtain practical training in a more specialized or industrial capacity. Allowing only one lifetime STEM OPT extension may unnecessarily disincentivize specialization in these important and innovative fields.

iii. Other Comments Related to Multiple Extensions

Comment. One commenter sought clarification on whether the proposed rule would allow a student to obtain two consecutive STEM OPT extensions, with one directly following the other. Another commenter stated that a footnote in the preamble to the proposed regulation suggested that an international student who earns successive qualifying STEM degrees ''will be unable to link this extension with his or her first extension.'' The commenter recommended that DHS clarify that an international student who qualifies for two OPT extensions may complete them without any disruption in his or her practical training, provided all other requirements are met.

Response. DHS clarifies that the final rule, as with the proposed rule, does not allow students to obtain back-to-back STEM OPT extensions. A STEM OPT extension can only be granted as an extension of a regular OPT period, and not as a freestanding period of practical training. A student who has already participated in a STEM OPT extension would need to engage in a new course of study and subsequently complete a new initial post-completion practical training period before applying for a second STEM OPT extension based on a new STEM degree or a previously obtained degree (other than a degree that had already been the basis for a STEM OPT extension). The new or previously obtained STEM degree would need to be at a higher level than the STEM degree that formed the basis of the first STEM OPT extension. For program integrity reasons, DHS believes that it would be inappropriate to allow a student to obtain two consecutive STEM OPT extensions without an intervening degree and period of post-completion OPT.

Comment. Some commenters recommended that DHS consider allowing a third extension for students, thereby allowing one grant per higher education degree level (*i.e.,* bachelor's, master's, and Ph.D.). One such commenter noted that ''[l]imiting the number of lifetime grants to two STEM periods would negatively impact Ph.D. graduates who do not already have an H–1B or qualify for another classification of employment authorization.''

Response. More often than not, nonimmigrant students do not take extended breaks after graduating from a master's program before pursuing a doctoral degree.[113] For that reason, it would be rare for a Ph.D. student to use one STEM OPT extension for the master's portion of the degree, and another STEM OPT extension for the Ph.D. portion of the degree. Most doctoral degrees are combined into a single program which grants both master's degrees and doctoral degrees. DHS believes that the two extensions provided by this rule are consistent with typical education patterns and sufficient to provide the educational, economic, and cultural benefits intended by the rule.

Comment. Commenters requested that a student be allowed multiple extensions for multiple degrees earned at the same educational level.

Response. DHS has considered these comments. Longstanding administration of the F–1 visa classification and the OPT program, *see* 8 CFR 214.2(f)(10), has required students to move to higher education levels before qualifying for additional periods of OPT, so that practical experience is more likely to be progressive in quality and scope. DHS has determined that limiting additional periods of OPT, including a second STEM OPT extension, to a new educational level continues to be a legitimate construct to protect program integrity and better ensure work-based learning for F–1 students is progressive.

This higher degree requirement has long attached to 12-month post-completion OPT. Because 24-month

[113] SEVIS data as of January 28, 2016, shows that approximately 88 percent of students who had been at a master's education level and subsequently enrolled in a program at the doctoral level did so within one year of the end of their master's course of study.

STEM OPT extensions only are available to individuals completing their 12-month post-completion OPT period, individuals by definition can only obtain a STEM OPT extension after completing a higher education level. The policy in this final rule merely recognizes that longstanding policy.

F. Training Plan for F–1 Nonimmigrants on a STEM OPT Extension

1. Description of Final Rule and Changes from NPRM

Central to the STEM OPT extension is a new training plan requirement to formalize the relationship between the F–1 student's on-the-job experience and the student's field of study and academic learning. The rule requires the submission of Form I–983, Training Plan for STEM OPT Students (Training Plan), jointly executed by the F–1 student and the employer, but permits an employer to utilize certain training programs already in place. The proposed rule included this provision; DHS has retained the provision in the final rule, with changes and clarifications in response to public comments. We summarize these provisions and changes below.

i. General Training Plan Requirement and Submission Requirements

The rule requires a formal training program for STEM OPT students in order to enhance and better ensure the educational benefit of STEM OPT extensions. The employer must agree to take responsibility for the student's training and skill enhancement related to the student's field of academic study. The student must prepare a formalized Training Plan with the employer and submit the plan to the DSO before the DSO may recommend a STEM OPT extension in the student's SEVIS record. If the student intends to request an extension based on a previously-obtained STEM degree, the plan must be submitted to the institution that provided the student's most recent degree (*i.e.,* the institution whose official is certifying, based on SEVIS or official transcripts, that a prior STEM degree enables the student to continue his or her eligibility for practical training through a STEM OPT extension).

As noted in the proposed rule, DHS expects to incorporate the submission of the Training Plan into SEVIS at a later date. Until that time DHS may require the submission of the Training Plan to ICE or USCIS when the student seeks certain benefits from USCIS, such as when the student files an Application for Employment Authorization during a STEM OPT extension. Under 8 CFR 103.2(b)(8)(iii), for example, USCIS may request additional evidence of eligibility for a benefit if the evidence submitted in support of an application does not establish eligibility. Accordingly, USCIS may request a copy of the Training Plan, in addition to other documentation that may be in the possession of the student, the employer, or the student's DSO.

DSOs may not recommend a student for a STEM OPT extension if (1) the employer has not provided the attestations for that student required by the rule or (2) the Training Plan does not otherwise reflect compliance with the relevant reporting, evaluation and other requirements of the rule. DHS may deny STEM OPT extensions with employers that the Department determines have failed to comply with the regulatory requirements, including the required attestations. As noted above, ICE may investigate an employer's compliance with these attestations, based on a complaint or otherwise, consistent with the employer site-visit provisions of the rule.

As compared to the proposed rule, and in response to public comments received, DHS has made two changes to the general training plan requirement. First, DHS modified the regulatory text and Training Plan form to clarify that employers may use their existing training programs for STEM OPT students, so long as the existing training program meets this rule's requirements. Second, DHS has modified the form to focus on training and has thus removed the word ''mentoring'' from the form. The information collection instrument for this plan is now titled ''Training Plan for STEM OPT Students,'' and not ''STEM OPT Mentoring and Training Plan'' as DHS had originally proposed.[114]

ii. Standard of Review for Training Plan

Under this final rule, once the student and the employer complete and sign the Training Plan, the student must submit the plan to the DSO. DSOs must review the Training Plan to ensure that it is completed and signed, and that it addresses all program requirements. USCIS maintains the discretion to request and review all documentation for eligibility concerns. A number of commenters requested additional information about the standards under which the DSO and DHS will review Training Plans. DHS clarifies the standard below.

iii. Form Fields, Form Number, Form Instructions

A number of commenters provided specific suggestions regarding the proposed form and instructions. For instance, commenters recommended that DHS relabel certain fields, use a different form number than the Form I–910 that DHS had initially proposed, and otherwise improve the form. DHS has made a number of changes in response to these comments, including relabeling certain fields and changing the form number. DHS explains these changes below.

iv. Training Plan Obligations and Non-Discrimination Requirements

A number of commenters stated or implied that U.S. employers do *not* have training programs, or related policies, and that any requirement that such programs be offered to F–1 students would thus benefit such students and not U.S. workers. Others stated that the program was intended to benefit students from particular countries or backgrounds, to the disadvantage of others. Some of these commenters raised concerns about various non-discrimination laws that they believed would be violated as a result of the training plan requirements. DHS carefully considered these concerns, and we summarize the comments and DHS's response below.

2. Public Comments and Responses

i. General Training Plan Requirement and Submission Requirements

DHS received a number of comments raising general concerns with the proposed Mentoring and Training Plan, as well as related requirements. Such comments concerned the timelines proposed for training plan submission and review, as well as requirements related to reporting changes of employer.

Comment. DHS received many comments related to the training programs and policies that many employers already have in place. These comments expressed a range of positions, from offering strong support for the proposed Mentoring and Training Plan to suggesting more flexible training plan requirements to suggesting the elimination of training plan requirements altogether. Some commenters stated that the requirements for the proposed Mentoring and Training Plan were burdensome and unrealistic, that the proposed rule contained confusing references to the F–1 student's role in

[114] DHS has also finalized the form with a new number in response to public comments, as explained below in the discussion of comments below regarding the form fields, number, and instructions. As noted throughout the rule, the form is now designated as Form I–983, Training Plan for STEM OPT students.

''the training program,'' and that the rule contained complex training requirements that seemed unrelated to the anticipated experiences of F–1 students seeking a STEM OPT extension. Some commenters were concerned that small and medium-sized businesses may not have the resources to dedicate to fulfilling the proposed training plan requirements. In addition, some stated that these requirements could deter both school officials and employers from authorizing and participating in the STEM OPT extension program. One commenter stated that the proposed requirements were not mandated by the court decision in *Washington Alliance*. The commenter stated that the court decision only compels DHS to allow for notice-and-comment on the STEM OPT extension itself, and ''does not compel DHS to adopt new and more stringent requirements like the [Training Plan].''

Many commenters supported the requirement of a proposed Mentoring and Training Plan but requested the ability to utilize training programs and associated policies already in place in many businesses. For example, one commenter stated that the requirement ''validates DHS's efforts to preserve the academic component inherent in STEM OPT'' but recommended that ''DHS create a flexible framework that allows these controls to exist within the parameters of an employer's existing Human Resources policies.'' Another commenter noted its broad experience in this area, stating that as a large employer, it ''has achieved widespread recognition for the steps that it takes to develop and train employees.'' The commenter added that in 2014, it ''was inducted into the Training 'Top 10 Hall of Fame' and was ranked seventh for learning and development by the Association for Talent Development.'' As such, the commenter stated that it should be able to utilize its existing training policies.

Another commenter stated that its STEM OPT student trainees already participate in ''company training programs and develop ongoing mentoring relationships with senior team members in the natural course of employment.'' This commenter proposed that DHS provide more flexibility to employers by allowing them to meet the training plan requirements ''by providing . . . any documentation evidencing [a current training program] that is currently operated by the company'' and amending the proposed Mentoring and Training Plan to only ask for general objectives at the beginning of practical training.

Response. DHS believes that the burdens that students and employers may experience in seeking to comply with training plan requirements are outweighed by the benefits the STEM OPT extension will afford to students, employers, schools, and the U.S. economy as a whole. The Training Plan will help ensure the integrity of the program by holding employers and students jointly responsible for monitoring the students' progress and continued learning, while also better protecting U.S. workers.

DHS recognizes that many employers have existing training programs and related policies that enhance the learning and capabilities of their employees. DHS does not intend to require duplicative training programs or to necessarily require the creation of new programs or policies solely for STEM OPT students. Nor does DHS intend to require training elements that are unnecessary or overly burdensome for F–1 students seeking to engage in work-based learning. However, employer-specific training programs and policies may not always align with the rule's primary policy goals. For example, some businesses may focus more on managing a workload or maximizing individual output, whereas DHS's primary concern is the student's continued learning and the relationship between the work-based learning experience and the student's studies.

Accordingly, DHS clarifies that employers may rely on an existing training program or policy to meet certain training plan requirements under this rule, so long as the existing training program or policy meets certain specifications. In addition, DHS has modified the Training Plan to make it easier for employers to refer to existing training programs when completing the Training Plan. For example, instead of requiring specific information about the individual supervisor's qualifications to provide supervision or training, the final Training Plan prompts the employer to explain how it provides oversight and supervision of individuals in the F–1 student's position. DHS also revised the Training Plan to replace the reference to a student's supervisor with a reference to the ''Official Representing the Employer.'' Finally, DHS also modified the regulatory text to clarify that for companies that have a training program or policy in place that controls performance evaluation and supervision, such a program or policy, if described with specificity, may suffice.

DHS expects that in many cases, employers will find that existing training programs align well with the fields on the final Training Plan. For instance, it should be straightforward for employers with existing programs to describe what qualifications the employer requires of its trainers or supervisors, and how the employer will measure an employee's training progress. DHS emphasizes, however, that most fields in the Training Plan must be customized for the individual student. For instance, every Training Plan must describe the direct relationship between the STEM OPT opportunity and the student's qualifying STEM degree, as well as the relationship between the STEM OPT opportunity and the student's goals and objectives for work-based learning.

In addition, the Training Plan will document essential facts, including student and employer information, qualifying degrees, student and employer certifications, and program evaluations. This data is important to DHS for tracking students as well as for evaluating compliance with STEM OPT extension regulations. DHS is concerned that an employer's existing training program would not normally contain this information. DHS believes these portions of the Training Plan should take a relatively short period of time to complete.

Comment. Several commenters expressed concern that the proposed Mentoring and Training Plan would reduce flexibility within the STEM OPT extension program, and some of these commenters proposed alternatives to address these concerns. Some commenters stated that requiring a training plan that ties the on-the-job training to the field of academic study would ''limit [the participating F–1 student] to a specific department or reporting relationship.'' Commenters suggested that in order for STEM OPT extensions to reflect real world practices, STEM OPT students need to be able ''to participate in project rotations that give them a broader skill set relating to their chosen academic field'' and to accommodate already existing rotational programs and dynamic business environments. Some commenters stated that requiring employers to list specific information about a supervisor's qualifications and the evaluation process for STEM OPT students would add an unnecessary and burdensome level of bureaucracy to the application process.

Commenters also indicated that they want to maintain the ability to easily and quickly shift STEM OPT students among positions, projects, or departments, and thus recommended the elimination of new training plan filings following each project, position,

or department rotation or change. For example, several commenters stated that even in currently existing, long-established in-house mentoring and training programs, flexibility is built-in because there are many things that can change for an employer over a two-year period. As examples of events necessitating such flexibility, commenters cited gaining and losing customers to competitors and changing focus from one product line to another. A commenter stated that business plans are confidential in nature and employers may not be comfortable releasing detailed information to external sources, which will likely lead to the creation of training plans that are limited to generic, high level job descriptions. The commenter suggested instead that the employer provide a ''job profile document detailing employee roles and responsibilities and an organization structure chart,'' which would be updated in light of ''any significant changes in job profile or positions during the course of OPT.''

Another commenter stated that instead of requiring a training plan, DHS should send periodic SEVIS reports to employers and require the employers to verify that they still employ the listed students. The commenter suggested that DHS also consider creating an employer portal to allow STEM OPT employers to verify and update information as required. Another commenter recommended that DHS replace the proposed written Mentoring and Training Plan with an additional employer attestation that training will be provided consistent with similarly situated new hires, with the proviso that the training will relate directly to the STEM field. One commenter recommended that all training plan requirements be better streamlined with already existing requirements contained on the Form I–20 Certificate of Eligibility.

One commenter stated that it was ''impractical'' to impose the proposed Mentoring and Training Plan requirements on ''more seasoned trainees'' who have completed one year of OPT and who are seeking a STEM OPT extension under the proposed rule. This commenter suggested exempting students who plan to use their STEM OPT extension to continue their 12-month post-completion OPT with the same employer. The commenter recommended that DHS look to H–1B regulations as an example of a regulatory scheme that exempts certain individuals with advanced degrees from certain requirements and obligations.

Response. DHS disagrees that employers' standard training practices are always sufficient for ensuring that the training needs of STEM OPT students are met. The STEM OPT extension program, including its training plan requirement, is designed to be a work-based learning opportunity that meets specific long-term goals related to the student's course of study. Existing training practices may or may not ensure that such goals are met, and thus the fact that an employer has training practices is insufficient on its own to demonstrate that a practical training opportunity will support the central purpose of this rule.

For this reason, DHS rejects the alternative suggestions by commenters to replace the training plan requirement with an attestation related to employers' existing training practices, the submission of periodic SEVIS reports, or a revised Form I–20 Certificate of Eligibility. As discussed, the main objective of the training plan requirement is to ensure that the work that the STEM OPT student undertakes is ''directly related'' to his or her STEM degree and is continuing his or her training in that field. Providing generic job descriptions or periodically verifying that the student remains employed would not provide sufficient focus on the student's training. The training plan requirement aims to elicit the level of detail needed to ensure appropriate oversight of the STEM OPT extension. Additionally, requiring all participants to use a uniform form ensures that minimum requirements are met and makes it easier to evaluate the eligibility of an applicant without requiring agency adjudicators to familiarize themselves with the peculiarities of different employers' records and standards.

However, in response to commenters' concerns, DHS has modified the regulatory text to further ensure that employers may rely on their existing training programs to meet certain training plan requirements under this rule, so long as such training programs otherwise meet the rule's training plan requirements. Under the final rule, the Training Plan must, among other things: (1) Identify the goals for the STEM practical training opportunity, including specific knowledge, skills, or techniques that will be imparted to the student; (2) explain how those goals will be achieved through the work-based learning opportunity with the employer; (3) describe a performance evaluation process; and (4) describe methods of oversight and supervision. The rule additionally provides that employers may rely on their otherwise existing training programs or policies to satisfy the requirements relating to factors (3) and (4) (performance evaluation and oversight and supervision of the STEM OPT student), as applicable. These provisions are intended to make it easier for employers to refer to existing training programs or policies when completing the Training Plan, as can be seen in Section 5 of the Training Plan form.

DHS has also made a number of changes to the Training Plan form for the same reason. For example, instead of requiring specific information about the individual supervisor's qualifications to provide supervision or training, the final Training Plan prompts the employer to explain how it provides oversight and supervision of individuals in the STEM OPT student's position. DHS also revised the form to replace the reference to a student's supervisor with a reference to the ''Official with Signatory Authority.'' Such an official need not be the student's supervisor. These modifications are intended to address specific comments indicating that the proposed Mentoring and Training plan would prevent employers from assigning such students to project rotations and ''limit them to a single department or reporting relationship.'' DHS made these modifications to provide employers with additional flexibility in complying with the rule's training plan requirements.

Moreover, as revised, DHS does not envision anything required in the final Training Plan as unnecessarily inhibiting flexibility for employers or STEM OPT students. Instead, the standards set forth in the rule are intended to ensure that employers meet the STEM OPT extension requirements, including demonstrating compliance with the attestations, and ensuring that employers possess the ability and resources to provide structured and guided work-based learning experiences for the duration of the extension. Nothing in the rule prohibits employers from incorporating into the Training Plan provisions for project, position, or department rotations that directly relate to STEM students' fields of study, provided there will be appropriate supervision during each rotation and the employer otherwise meets all relevant requirements. To the extent new circumstances arise and such a change was not contemplated in the initial Training Plan, the employer may, working with the student, prepare and submit a modified Training Plan to the student's DSO. Additionally, with regard to concerns relating to an employer sharing sensitive information, DHS does not anticipate that Training Plans would need to contain a level of detail that would reveal business plans.

Finally, DHS respectfully disagrees with the notion that students who have completed one year of OPT are ''seasoned trainees'' who should not be subject to the training plan requirements when seeking an extension under the rule. DHS also disagrees that students pursuing a STEM OPT extension with the same employer should be exempt from the reporting obligations of the rule, including all training plan requirements. As discussed, the purpose of the STEM OPT extension is to provide practical training to STEM students so they may pursue focused research and meaningful projects that contribute to a more complete understanding of their fields of study and help develop skills. The requirements of the Training Plan are designed to assist students and employers in their pursuit of the aforementioned goals.

Comment. Some commenters stated concerns about the ''mentoring'' requirements described in the proposed Mentoring and Training Plan. For example, a commenter expressed concern that formalizing mentoring and training requirements could hinder students' ability to naturally develop mentorships and mentoring relationships, and suggested eliminating the proposed Mentoring and Training Plan requirement or, at least, aligning the proposed Mentoring and Training Plan requirement with current employer practices to minimize compliance burdens. Some employers stated that the references to mentoring were so problematic that the proposed Mentoring and Training Plan be dropped altogether. One commenter stated that many technology companies lack expertise in establishing the kind of mentoring program contemplated in the proposed rule. The commenter stated further that, because of this, some technology companies will likely submit whatever paperwork is necessary to demonstrate compliance with the mentoring requirement, without doing more. Another commenter suggested eliminating the reference to mentoring and instead focusing on ''the relevance of the proposed employment to the individual's STEM-related course of study.''

A number of employers stated that they had long established practices concerning mentoring, some formal and some not. Most of these comments suggested that what DHS proposed regarding mentoring was difficult to understand in the context of existing business practices. For example, one company that said it was strongly committed to ''the importance and benefits of well-designed mentoring programs,'' asserted that the proposed rule failed to define mentoring. The commenter explained that:

> some mentoring relationships are highly structured in content and regularity of interactions, while others are more ad hoc and organic in nature. In many circumstances, it is the mentee who takes responsibility for leading the interactions; in others, it is the mentor or the organization who structures the engagement.

This commenter believed it would not be feasible for DHS to provide sufficient certainty to employers about their mentoring responsibilities and obligations. A comment co-signed by ten associations representing a variety of industries, as well as small, medium, and large businesses and professionals, stated that the proposed Mentoring and Training Plan would ''in many cases force companies to make drastic changes to their current mentoring programs.''

Response. In light of the commenters' concerns, DHS has removed reference to, and the requirements related to, mentoring in the final rule and associated Training Plan. For instance, DHS has removed the reference to ''mentoring'' in Form I–983 and re-designated it as the ''Training Plan for STEM OPT Students.'' The Training Plan, however, continues to serve the core goal of the practical training program: to augment a student's learning and functionality in his or her chosen field of interest.

DHS disagrees with the suggestion that technology companies do not have robust training capabilities or a commitment to training and skill development. This comment is directly contradicted by the many comments filed by employers asking that company policies on training, mentoring, and evaluation already in place be permitted as an alternative to the training plan requirements in the proposed rule.

Comment. A few commenters suggested that DSOs should not be required to issue a new STEM OPT recommendation in SEVIS before a student can change employers during the STEM OPT extension period. A university recommended that it should be sufficient for the student to submit the new Training Plan to the DSO, along with an update to the employer address information in SEVIS, as specified under current SEVIS reporting requirements. Similarly, a school official asked whether an update in STEM employment information, rather than a recommendation, would suffice for such purposes. The commenter stated that a recommendation should be required only if the DSO is expected to review the content of the Training Plan, which the commenter suggested should be outside the DSO's duties. The commenter stated that the requirement for a new DSO recommendation each time the student changes employers ''implies'' that the STEM extension is employer specific. The commenter suggested that STEM OPT should not be tied to a specific employer, but should be tied solely to the student's field of study. Another commenter stated that the requirement for DSOs to issue a new STEM OPT recommendation served no particular purpose, and that the requirement could increase the likelihood that an employer might choose to hire a STEM OPT student over a U.S. worker. According to the commenter, such a STEM OPT student would be less likely to change employers during the STEM OPT period, which could lead to exploitation of the student by the employer.

Response. To ensure proper oversight and promote the continued integrity of the STEM OPT extension program, DHS declines to make the changes requested. When a student changes employers, the requirement to submit a new Training Plan to the DSO and have the DSO update SEVIS with a new recommendation is necessary for ensuring that DHS has the most up-to-date information on F–1 students. The requirement also ensures that STEM OPT students are receiving the appropriate training and compensation, which in turn helps to protect such students and U.S. workers. As noted previously, SEVIS is the real-time database through which the Department tracks F–1 student activity in the United States. Timely review by the DSO of the new Training Plan and timely updating of SEVIS with certain information from that form substantially assists DHS with meeting its statutory requirements related to F–1 students.

DHS also does not agree that the requirements related to changing employers, including obtaining a new DSO recommendation, are so burdensome that they would cause a STEM OPT student to stay with an employer that is exploiting him or her. Among other things, this rule provides a substantial amount of time for students to find new practical training opportunities. And DHS anticipates that in most cases, DSOs will be able to review a newly submitted Training Plan and issue a new recommendation for a STEM OPT extension in a matter of days. For this reason, when a student changes employers, the rule requires a new Training Plan, new DSO recommendation, and update to SEVIS. DHS acknowledges that the potential exists for a student to begin a new

practical training opportunity with a new employer less than 10 days after leaving the student's prior employer; in such a case, the student must fulfill his or her reporting obligations by submitting a new Training Plan, but can begin the new practical training opportunity only after submitting the new plan.

Comment. Some commenters expressed concern that various requirements and timeframes provided in the rule were inconsistent with each other. A university, for example, submitted a comment referencing a provision in the proposed rule that required STEM OPT students who changed employers to submit, within 10 days of beginning their new practical training opportunities, a new Mentoring and Training Plan to their DSOs, and subsequently obtain new DSO recommendations. The commenter believed this timeline contradicted the reporting obligation contained in another provision, which required such students to report changes in certain biographic and employment information to their DSOs ''within 10 days'' of the change in employer. The commenter said the former requirement implied that STEM OPT students must receive a new DSO recommendation before beginning new employment, while ignoring the fact that DSOs are given 21 days in which to report any such change of employer. The commenter further noted that DSOs depend on this 21-day reporting window to complete administrative tasks, and the commenter urged DHS to amend the proposed regulations to fix the above inconsistencies.

Response. DHS does not see a conflict between (1) the requirement that a STEM OPT student must submit a new Training Plan to the DSO within 10 days of starting a new practical training opportunity with a new employer and (2) the separate, general requirement that a STEM OPT student report to the DSO within 10 days certain changes in biographic and employment information. Nor does DHS see a conflict between these requirements and the DSO's reporting period for inputting some of this information into SEVIS.

The two student reporting requirements cited by the commenter will frequently apply in different circumstances, and serve different purposes. The requirement to submit a new training plan applies only when the student begins a new practical training opportunity with a new employer, and is intended to ensure that each STEM OPT extension will be accompanied by an accurate, up-to-date Training Plan. The 10-day period for the requirement balances the burden of completing the Training Plan on a timely basis against the important benefits derived from the preparation and submission of such plans. In contrast, the general student reporting requirement (which also existed in the 2008 IFR) applies whenever a STEM OPT student experiences a loss of employment, as well as a change in the student or employer's name or address.

Where a student begins a new practical training opportunity with a new employer less than 10 days after leaving the student's prior employer, the student may fulfill both reporting obligations by submitting a new Training Plan. In cases where the period of time between employers is longer than 10 days, the student must first report the loss of employment to the DSO, and later submit a new Training Plan. In either case, the DSO's SEVIS obligations will begin after the DSO receives the information from the student. Again, these two student reporting requirements serve different purposes; both reports will serve important functions at the time they are made.

Comment. One commenter suggested that requiring both the student and the employer to attest that the job offer is directly related to the student's STEM degree is redundant, and that the employer's attestation should be sufficient for this purpose. Another commenter suggested that the student and employer's attestation together should be sufficient, and that as a result, DSO review would be superfluous. Some commenters implied that because the proposed rule required that training plans be completed by STEM OPT students and their employers, those plans would concern work-related training and not training of an academic nature.

Response. DHS believes that it is appropriate to document that both the student and the employer agree that the practical training opportunity is directly related to the student's degree. The need for employer and student attestations helps ensure compliance by both relevant parties. And such attestations are not overly burdensome on either the student or the employer.

With respect to comments about the academic nature of the required Training Plans, DHS agrees that such plans will relate to practical training experiences, rather than academic coursework. But that is the intent of the rule: to allow students to apply their academic knowledge in practical, work-based settings. The Training Plan in this final rule helps ensure that the purpose of the rule is met, by clarifying the direct connection between the student's STEM degree and the practical training opportunity.

Comment. DHS received a number of comments concerning the proposed rule's document retention requirements. Some commenters suggested that in order to reduce the administrative and paperwork burdens on employers, DHS should allow employers to use electronic signatures, as well as electronic storage methods to maintain required records. Commenters noted that allowing such options would be consistent with I–9 completion and retention requirements. Some commenters requested that employers and DSOs specifically be allowed to electronically submit and retain the training plans required by the proposed rule,

DHS also received comments on the duration of the proposed rule's retention requirements. One commenter stated that a 1-year retention requirement, rather than a 3-year requirement, would be more feasible. Another commenter recommended that, to mitigate the substantial investment of time required of schools with many STEM students, no electronic form of the proposed Mentoring and Training Plan should be required until the form is provided electronically through the SEVIS system with batch functionality. The commenter also requested that enough time be given to third-party software providers so that they may develop an equivalent upgrade to allow batch uploads of the forms to SEVIS.

One commenter also stated that if the student's school must maintain the training plan, the school then becomes responsible for maintaining sensitive information about the employer. The commenter did not describe which data elements it considered particularly sensitive. The commenter stated that the requirement to maintain this information constituted an ''undue burden'' for the school and a liability for both the employer and the school ''in an age when data hacking and data breaches'' are common occurrences. The commenter also noted that DSOs would be ''holding'' training plans during a student's STEM OPT period, which, in some cases, would be unrelated to any similar degree conferred by the DSO's school.

Response. DHS clarifies that the STEM OPT student's educational institution may retain the Training Plan using either paper or electronic means. DHS acknowledges the burdens inherent with requiring DSOs to retain information on students who may have already graduated. Because DSOs must already meet 3-year retention

requirements for other documents concerning F–1 students, this requirement is already a common standard with which DSOs have experience. Under 8 CFR 214.3(g)(1), institutions that educate F–1 students must keep records indicating compliance with reporting requirements for at least three years after such students are no longer pursuing a full course of study.

DHS understands the commenter's concern about the potential sensitivity of certain information contained in training plan documents. However, DHS has made efforts to ensure that the final Training Plan requires only information necessary for the Department to carry out the STEM OPT extension program. DHS notes that it is developing a portal that, once fully deployed, will allow students to directly input training plans into SEVIS for DSO review, thus reducing burdens and potential liability on the part of DSOs and their institutions. DHS plans to have the first stages of this portal operational by the beginning of 2017. In the interim, DHS does not anticipate a significant increase in data storage costs for employers as a result of this rule, and the Department remains open to implementing additional technology improvements to reduce administrative processing and paperwork.

Under this final rule, the student's educational institution associated with his or her latest OPT period must ensure that SEVP has access to the student's Training Plan and associated student evaluations. Such documents may be retained in either electronic or hard copy for three years following the completion of the student's practical training opportunity and must be accessible within 30 days of submission to the DSO.

ii. DHS and DSO Review of the Training Plan

Comment. DHS received a number of comments concerning the need to review training plans and the respective roles that DHS and DSOs would play in such review. Some commenters stated that DSOs are best positioned to evaluate the connection between a practical training opportunity and a student's field of study, and requested confirmation that DHS does not intend to second-guess routine approvals of training plans by DSOs. Some commenters requested that DHS clarify the relevant criteria and standards that USCIS and DSOs should apply when reviewing such plans. Some commenters expressed uncertainty about how a qualitative review of training plans would or should be conducted. Such commenters indicated that unless additional standards and instructions are given, DSO review of such plans would simply consist of making sure each field on the form is completed. A commenter stated that DSOs should not be expected to become experts with respect to each individual student, nor should they be burdened with the weighty responsibility of fraud detection.

One commenter stated that it was unclear how a DSO would know, prior to the commencement of the STEM OPT extension, whether the employer had failed to meet the program's regulatory requirements. The commenter recommended that DHS clarify the applicable standards for DSO review of training plans and ensure that such standards are appropriate for DSOs, given that they are experts neither in each area of STEM education nor in detecting fraud. The commenter recommended that the level of review be similar to that required for Labor Condition Applications submitted to the Department of Labor. According to the commenter, such applications require review only for completeness and obvious errors or inaccuracies.

A commenter stated that the proposed rule did not include standards for determining whether a STEM OPT student is being ''trained,'' rather than simply working. According to the commenter, this would result in every training plan being approved whether or not a bona fide educational experience is being achieved. This commenter was also concerned that DSOs have an inherent conflict of interest in this regard. According to the commenter, DSOs ''have every incentive, and likely pressure from their administrations, to approve all work permits.'' The commenter concluded that the proposed rule's focus on ''training'' and ''educational experience'' will not prevent participants from seeing OPT as a work permit and treating it as such.

Some commenters requested that USCIS adjudicators make the final assessment as to the sufficiency of training plans, including because such plans are central to qualifying for STEM OPT extensions and employment authorization. Other commenters asked for clear guidance and coordination with respect to USCIS's review of training plans. Commenters expressed concern that in the absence of clear standards, USCIS adjudicators may issue erroneous Requests for Evidence (RFEs) or deny applications without appropriate due process. Some commenters expressed concerns about the effect of the training plan requirement on USCIS processing times. Another commenter stated that USCIS review of training plans would be insufficient, because ''DHS employees have no expertise in evaluating what is, and is not, practical training.''

Response. DHS agrees with the commenters' suggestions to issue clear guidance for DSOs and USCIS adjudicators with respect to the adjudication of Training Plans. As noted above, DHS has revised for clarity the regulatory text describing the requirements governing Training Plans, and has also revised the form itself. DHS is aware that the new requirements will also require training and outreach to ensure that all affected parties understand their role in the process.

DHS also clarifies that DSO approval of a request for a STEM OPT extension means that the DSO has determined that the Training Plan is completed and signed, and that it addresses all program requirements. DHS anticipates that such review will be fairly straightforward. The Department does not expect DSOs to possess technical knowledge of STEM fields of study. When reviewing the Training Plan for completeness, the DSO should confirm that it (1) explains how the training is directly related to the student's qualifying STEM degree; (2) identifies goals for the STEM practical training opportunity, including specific knowledge, skills, or techniques that will be imparted to the student, and explains how those goals will be achieved through the work-based learning opportunity with the employer; (3) describes a performance evaluation process to be utilized in evaluating the OPT STEM student; and (4) describes methods of oversight and supervision that generally apply to the OPT STEM student. The DSO should also ensure that all form fields are properly completed. So long as the Training Plan meets these requirements, the DSO has met his or her obligation under the rule.

DHS also understands commenters' concerns on the ability of DSOs to determine whether an employer had failed to meet regulatory requirements prior to the commencement of a STEM OPT extension. DHS clarifies that DSOs are not required to conduct additional outside research into a particular employer prior to making a STEM OPT recommendation. In making such a recommendation, DSOs should use their knowledge of and familiarity with the F–1 regulations, including the STEM OPT requirements finalized in this rule. DHS notes that a student often may be requesting to extend a training opportunity already underway with an employer for which he or she will have already received training, which the DSO will have previously recommended

and of which he or she will already have some record. Where this is not the case, the DSO can still rely, as he or she can in all cases, upon the information provided on the Training Plan and any other information the DSO believes to be pertinent to his or her recommendation decision, at the time he or she makes the recommendation.

DHS also disagrees with comments suggesting that DSOs have conflicts of interest with respect to reviewing training plans. Based on decades of experience with OPT, DHS has no reason to question the integrity of DSOs or their ability to fulfill their obligations effectively and maintain the integrity of the STEM OPT extension program. The role of DSOs under this program is similar to the role they have historically played in the F–1 program.

DHS also notes that it may, at its discretion, withdraw a previous submission by a school of any individual who serves as a DSO. *See* 8 CFR 214.3(1)(2). Additionally, under longstanding statutes and regulations, SEVP may withdraw on notice any school's participation in the F–1 student program (or deny such a school recertification) for any valid and substantive reason. *See* 8 CFR 214.4(a)(2). For instance, SEVP may withdraw certification or deny recertification if SEVP determines that a DSO willfully issued a false statement, including wrongful certification of a statement by signature, in connection with a student's application for employment or practical training. *See id.* SEVP may take the same action if it determines that a DSO engaged in conduct that does not comply with DHS regulations. *Id.*

With respect to comments about USCIS's role in the process, DHS clarifies that USCIS maintains the discretion to request and review all documentation when determining eligibility for benefits. *See* 8 CFR 103.2(b)(8)(iii). Accordingly, USCIS may request a copy of the Training Plan (if it is not otherwise available) or other documentation when such documentation is necessary to determine an applicant's eligibility for the benefit, including instances when there is suspected fraud in the application.[115] DHS further clarifies that USCIS would deny an Application for Employment Authorization if it finds that any of the regulatory standards are not met. DHS believes that the regulatory standards are articulated at a sufficient level of particularity for this purpose.

Beyond the clarifications provided above, DHS does not believe it is necessary or appropriate to issue significant additional guidance in this final rule. Given the many different practical training opportunities available to students, it would be cumbersome for DHS to define with more particularity the full range of student-employer interactions or guided-learning opportunities that may meet the rule's requirements. DHS believes that it would be more appropriate to issue any necessary guidance separately, as needed. Issuing guidance in this manner will allow DHS to promote consistent adjudications while allowing for flexibility as issues develop. As such, DHS confirms that ICE and USCIS will finalize guidance and provide training to ensure that all entities are ready to process requests for STEM OPT extensions as soon as possible.

Comment. Some commenters suggested that employers and students, rather than DSOs or DHS, are best positioned to explain how a student's STEM degree is related to a practical training opportunity.

Response. DHS agrees that employers and students must identify the relationship between the student's STEM degree and the practical training opportunity. This final rule requires the student and employer to complete and submit to the DSO a Training Plan that describes this relationship (among other things). DHS does not agree, however, that students and employers should be solely responsible for determining whether a student's STEM degree is directly related to the practical training opportunity being offered, as doing so would result in a true conflict of interest and lack of accountability.

Comment. One commenter expressed concern that DSOs will be required to check wages through the Department of Labor Foreign Labor Certification Data Center's Online Wage Library to ensure that the employee is being paid fairly. The commenter stated that such a requirement would add additional time to approval of training plans and could expose schools to legal action from employers and students who submitted plans that were not accepted by the school. The commenter also said DSOs would be required to function as de facto USCIS adjudicators when approving or denying training plans, and as de facto ICE agents when trying to locate a student who has not completed his or her 6-month validation report.

Response. As noted above, the DSO's role with respect to the Training Plan for STEM OPT Students is limited. DSOs are not expected to conduct independent research to determine whether an employer attestation or other information in the Training Plan, including wage information, is accurate. Thus, DSOs are not expected to assess the wage information. With respect to validation reports, such reports have served since 2008 as important confirmations that critical student information in SEVIS is current and accurate. When a student fails to submit a validation report on a timely basis, however, there is no requirement for further action on the part of the DSO. All necessary data for determining when a student has failed to submit a validation report is contained in SEVIS, and no further action is necessary to alert DHS of the student's failure.

iii. Form Fields, Form Number, Form Instructions

Comment. Some commenters stated that USCIS already has a form designated as Form I–910, Application for Civil Surgeon Designation, and requested that ICE assign a different form number to the Training Plan form. Another commenter suggested that DHS use a form number other than I–910 to avoid confusion with the current Form I–901, which all F–1 students use to pay their SEVIS fees.

Response. In response to these comments, DHS has revised the number for the Training Plan for STEM OPT Students associated with this final rule to ''Form I–983.'' This change should prevent confusion among F–1 students and other stakeholders.

Comment. As proposed, the Mentoring and Training Plan would have required the student to attest that he or she will notify the DSO ''at the earliest possible opportunity if I believe that my employer or supervisor . . . is not providing appropriate mentorship and training as delineated on this Plan.'' Some commenters recommended that the student attestation on the Training Plan form be revised to eliminate the words ''if I believe'' and ''appropriate'' because they are confusing and ask students to make subjective assessments regarding the required training and mentoring. Commenters suggested that the student should only be required to notify the DSO if the student believes that ''a gross deviation'' from the training plan has occurred. Another commenter stated that this notification requirement was not necessary because students are already required to report any interruption of employment.

[115] When Training Plans are available through SEVIS, USCIS will have real-time access to each plan without needing to issue an RFE.

Response. DHS believes that the student's subjective assessment matters. If a student believes that the employer is not providing the practical training opportunity described in the Training Plan, the student should report the matter to his or her DSO. DHS considers students in this program to be capable of self-reporting in a responsible manner. DHS believes that relying upon students' reasonable judgment in the student attestation will best protect the well-being of students and the integrity of the STEM OPT extension. Additionally, DHS clarifies that this attestation element does not reference, and is not intended to apply to, interruptions of employment. Students and employers that are concerned about the risk of frequent reporting of the student's assessment may be able to avoid potential issues by clearly setting forth mutual expectations in the Training Plan.

Comment. As proposed, the Mentoring and Training Plan included an attestation by the student that he or she understands that DHS may deny, revoke, or terminate a student's STEM OPT extension if DHS determines the student is not engaging in OPT in compliance with law, including if DHS determines that the student or his or her employer is not complying with the Training Plan. One commenter suggested removing this attestation because, according to the commenter, it is vague and overly harsh and holds the student accountable for the employer's noncompliance. The commenter also stated that because the proposed rule allowed for 150 days of authorized unemployment, ''there should be no further immigration repercussion to the student if they need to interrupt STEM OPT due to lack of appropriate mentorship.''

Response. DHS disagrees with the commenter. The attestation serves as an important reminder to the student that failure to comply with the regulatory requirements related to the STEM OPT extension may result in a loss of status. Moreover, contrary to the commenter's understanding, the attestation does not state or imply that DHS would take action against students who become unemployed, including because an employer has failed to comply with program requirements. A period of unemployment, on its own, will not affect the STEM OPT student's status so long as the student reports changes in employment status and adheres to the overall unemployment limits.

Comment. One commenter recommended that the phrase ''SEVIS ID No.'' on the first page of the form (Section 1) should read ''Student SEVIS ID No.'' for clarity.

Response. DHS agrees that the suggested change increases clarity and has made this change to the Training Plan for STEM OPT Students.

Comment. The same commenter stated that the ''School Name and Campus Name'' section should be reorganized for additional clarity. Specifically, the commenter stated that the form should include a section for ''School that Recommended Current OPT'' and a separate section for ''School Where Qualifying Degree was Earned'' in order to cover students who are using previously obtained STEM degrees as the basis for a STEM OPT extension.

Response. DHS agrees and the form has been updated to clarify information for previously obtained STEM degrees.

Comment. A commenter requested that DHS clarify the question in Section 3 of the proposed Mentoring and Training Plan, which requests the number of full-time employees that work for the employer. The commenter also suggested that DHS add the Web site address for North American Industry Classification System (NAICS) codes (*http://www.census.gov/eos/www/naics*) to the instructions for the relevant question on NAICS codes in Section 3.

Response. DHS agrees with both of these suggestions. To increase clarity, DHS has revised the question concerning full-time employees to read, ''Number of full-time employees in the U.S.'' DHS also has amended the form instructions to Section 3 to add the Web site for NAICS codes.

Comment. Commenters suggested eliminating the ''Training Field'' box in Section 5 of the proposed Mentoring and Training Plan. According to the commenters, a detailed description of the training opportunity was already required in other fields and it was not clear what the ''Training Field'' box added given that there was also a separate box for ''Qualifying Major.''

Response. DHS agrees with the commenter and has removed the field from the final version of the Training Plan.

Comment. One commenter sought clarification on whether all fields in the Mentoring and Training Plan were mandatory. The commenter also sought clarification on what an employer should do if one or more fields were not applicable to that employer.

Response. DHS clarifies that employer information should be filled in as applicable. If an employer does not have a Web site, for example, ''N/A'' will suffice in the field requesting the employer Web site.

Comment. One commenter stated that the form requirements should be included in the regulatory text. The commenter noted that certain sections of the proposed Mentoring and Training Plan required parties to certify that they would make notifications ''at the earliest available opportunity,'' but that such a requirement was not included in the regulatory text itself.

Response. In response to this comment, DHS has amended the final regulatory text to more clearly reflect the responsibilities of participating parties. The Department believes these requirements are now sufficiently clear.

iv. Training Plan Obligations and Non-Discrimination Requirements

Comment. One comment stated that ''[t]he proposed OPT STEM hiring and extension process would also constitute national origin discrimination, as the program is clearly intended to benefit aliens whose nationality is among one of the nations for which employment based immigrant visas are continuously oversubscribed, in particular nationals of India and China.''

Response. DHS rejects the suggestion that the STEM OPT extension program will benefit individuals based on their national origin or nationality. The program is equally available to all F–1 students with a qualifying STEM degree and has neither quotas nor caps for nationals of any given country or region. The comment also offers no evidence to support the statement that the rule ''is clearly intended to benefit'' individuals based on nationality.

Comment. Some commenters stated that the proposed rule would ''induce'' employers and universities to discriminate against U.S. workers in violation of 8 U.S.C. 1324b and would ''impermissibly facilitate prohibited employment-related discrimination on the basis of alienage and national origin.'' These commenters cited to various statutory provisions (42 U.S.C. 1981(a); 42 U.S.C. 2000e–2(a),(d); and 8 U.S.C. 1324b(a)(1)(A) and (B)) and suggested that the Department's proposed Mentoring and Training Form would violate these Federal anti-discrimination laws. Commenters stated that the rule would discriminate against U.S. citizen and lawful permanent resident students because it would not require employers to offer an identical ''program'' to such students. One commenter also likened the proposed Mentoring and Training Plan to the execution of a contract in violation of 42 U.S.C. 1981(a), which prohibits discrimination in making contracts. The comment cited to case law purporting to support the commenter's argument, but

did not explain how the plan violated the statute.

Response. As a preliminary matter, the Training Plan for STEM OPT Students requires an employer to certify that the training conducted pursuant to the plan complies with all applicable Federal and State requirements relating to employment. This broad certification encompasses compliance with all of the laws the commenters referenced.

DHS also disagrees with the apparent premise behind the commenters' arguments. That premise appears to be that the rule will require or inappropriately induce U.S. employers to provide benefits to F–1 students that are not provided to its other employees, including U.S. workers. Neither the rule nor the Training Plan, however, requires or encourages employers to exclude any of their employees from participating in training programs. And insofar as an employer may decide to offer training required by the regulation only to STEM OPT students, doing so does not relieve that employer of any culpability for violations of section 274B of the INA, 8 U.S.C. 1324b, or any other federal or state law related to employment.

Moreover, the training plan requirement is not motivated by any intention on the part of DHS to encourage employers to treat STEM OPT students preferentially. Rather, DHS is requiring the Training Plan to obtain sufficient information to ensure that any extension of F–1 student status under this rule is intended to augment the student's academic learning through practical experience and equip the student with a broader understanding of the selected area of study and functionality within that field. The Training Plan also serves other critical functions, including, but not limited to, improving oversight of the STEM OPT extension program, limiting abuse of on-the-job training opportunities, strengthening the requirements for STEM OPT extension participation, and enhancing the protection of U.S. workers. By documenting the student's participation in a training program with the employer, the Training Plan provides information necessary for oversight, verification, tracking, and other purposes.

The training plan requirement does not discriminate against U.S. students or anyone else, or create a discriminatory contract (even assuming that it creates a contractual obligation at all). In pertinent part, 42 U.S.C. 1981(a) provides that ''[a]ll persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts.'' The commenter that raised concerns related to this provision did not identify any feature of the proposed rule that would deny or otherwise impair any person's rights ''to make and enforce contracts'' or any other rights described in the statute. The statute has no bearing on the training plan requirement in this rule.

G. Application Procedures for STEM OPT Extension

1. Description of Final Rule and Changes From NPRM

Under the rule, a student seeking an extension must properly file a Form I–765, Application for Employment Authorization, with USCIS within 60 days of the date the DSO enters the recommendation for the STEM OPT extension into the SEVIS record. The 2008 IFR had previously established a time period of 30 days after the DSO recommendation for the filing of the Application for Employment Authorization. As proposed in the NPRM, DHS believes the longer 60-day application period will, among other things, reduce the number of USCIS denials of such applications that result from expired Form I–20 Certificates of Eligibility, the number of associated data corrections needed in SEVIS, and the number of students who would need to ask DSOs for updated Certificates of Eligibility to replace those that have expired. Under this rule, the ''time of application'' for a STEM OPT extension refers to the date that the Application for Employment Authorization is properly filed at USCIS.

2. Public Comments and Responses

Comment. Several commenters agreed with DHS's assessment in the proposed rule that no changes to Form I–765, Application for Employment Authorization, are needed. These commenters thought that the application form is clear and that any minor changes or clarifications (such as the regulatory cite included on the form) should be incorporated into the instructions to the application rather than into the application itself. Many commenters also agreed with DHS's proposal to extend the period of time to file the Application for Employment Authorization from 30 to 60 days from the date that the DSO enters the STEM OPT extension recommendation in SEVIS. Some of these commenters stated that it can be challenging for DSOs and students to meet the current 30-day deadline, as STEM OPT students are already working at the time of application and may no longer be as close in proximity or contact with their DSOs as they were prior to starting practical training. Commenters also stated that the 60-day filing deadline would provide greater flexibility for students and likely reduce the workload of DSOs, who would otherwise need to reissue Form I–20 Certificates of Eligibility to students whose forms have expired, as well as reduce the number of Applications for Employment Authorization that need to be filed. Some commenters so strongly supported the 60-day deadline that they requested it apply to all students requesting OPT in any academic field, noting that having two different application filing windows serves no useful purpose and also has the potential to confuse both students and adjudicators.

Response. DHS agrees that no revisions to the Application for Employment Authorization are needed and that any minor revisions should be incorporated into the form instructions. DHS also appreciates commenters' support for the proposed 60-day filing period for students to file their Application for Employment Authorization after the DSO enters the STEM OPT extension recommendation in SEVIS. This final rule includes this proposal. As noted in the proposed rule, the longer filing window addresses problems that resulted from expiration of Form I–20 Certificates of Eligibility and reduces the need for data corrections in SEVIS. DHS also clarifies that this change only applies to STEM OPT extensions. Changing the 30-day filing period for students seeking a 12-month period of post-completion OPT is outside the scope of this rulemaking.

Comment. One commenter advocated for students to be able to file only one Application for Employment Authorization to cover the entire OPT period, including the 12-month post completion period and the 24-month STEM OPT extension period. In support of this suggestion, the commenter noted that the application form already requires the applicant to reveal all previously filed Applications for Employment Authorization and provides an opportunity to request a STEM OPT extension. The commenter also suggested that such form should be available to request a second STEM OPT extension. Another commenter requested that the $380 fee for filing Applications for Employment Authorization not apply to students seeking STEM OPT extensions. The commenter characterized the fee as generally a ''heavy burden'' for students, and as an ''unreasonable'' burden for those students who failed to meet the eligibility requirements for reasons beyond their control.

Response. DHS believes that it would be unwieldy and potentially confusing to allow a student to apply for a STEM OPT extension as part of the student's application for initial post-completion OPT. The requirement for a separate application allows the student to engage in an initial period of post-completion OPT without requiring a student and employer to complete a full Training Plan a year in advance of the student's STEM OPT extension. The requirement for a separate application also allows DHS to consider program eligibility closer in time to the start of the student's STEM OPT extension.

In regard to the fee for the associated Application for Employment Authorization, DHS declines to exempt certain students from the filing fee, which generally applies to all such applications filed by F–1 students. As noted above, each application for STEM OPT requires DHS to consider the student's eligibility under the applicable regulations at the time of application.

Comment. Some commenters expressed concern that USCIS officers adjudicating Applications for Employment Authorization from STEM OPT students would not have sufficient training on the contents or veracity of the proposed Mentoring and Training Plan to determine whether and how it should affect the student's eligibility for a STEM OPT extension and attendant employment authorization. These commenters questioned whether the proposed plan was necessary for the adjudication of Applications for Employment Authorization, particularly because USCIS officers are not trained career counselors. In contrast, some commenters requested that USCIS officers expand the scope of the adjudication of such applications. Such requests included having USCIS officers make evaluations of a prior institution's accreditation status and the student's proposed Mentoring and Training Plan, as such information is not related to the student's current academic program and is not widely available.

Response. DHS appreciates commenters' concerns about appropriate training for USCIS officers and assures the public that USCIS will provide appropriate guidance and training resources for its adjudicators. Adjudicators will be equipped with guidance that address, among other issues, whether the submitted evidence is sufficient to establish eligibility for employment authorization; what to do when the applicant has not provided sufficient evidence; and what information should be requested in an RFE or Notice of Intent to Deny. Finally, in this final rule, USCIS confirms that adjudicators have the discretion to request a copy of the Training Plan, in addition to other documentation, when such documentation is necessary to determine an applicant's eligibility for the STEM OPT extension, including instances where there is suspected fraud in the application.

Comment. An advocacy organization recommended that DHS publicly disclose raw data gathered from Applications for Employment Authorization. The commenter argued that this disclosure would improve transparency and enhance the ability of policymakers and advocates to ensure fair treatment and compliance with these programs.

Response. To the extent the commenter is seeking data from all filed Applications for Employment Authorization, and not just from STEM OPT students, the request is well outside the scope of this rulemaking. With respect to applications filed by STEM OPT students, even assuming such a request is within the scope of this rule, DHS declines to affirmatively publish all raw data gathered from such applications. Among other things, the application contains sensitive personally identifiable information, and blanket public disclosure would violate applicable privacy laws and policies. Relevant information related to the STEM OPT extension program may be available through the FOIA process. The USCIS centralized FOIA office receives, tracks, and processes all USCIS FOIA requests to ensure transparency within the agency. Instructions on how to submit a FOIA request to USCIS are available on-line at *https://www.uscis.gov/about-us/freedom-information-and-privacy-act-foia/uscis-freedom-information-act-and-privacy-act*.

Comment. One commenter sought clarification on whether relevant changes to the Application for Employment Authorization and SEVIS will be completed by the date that this rule goes into effect. The commenter also asked whether these changes would affect the SEVIS releases scheduled for November 2015 and spring 2016.

Response. DHS is not making any changes, as a result of this rulemaking, to the Application for Employment Authorization; rather, minor changes have been included in the form instructions. The Application for Employment Authorization and its instructions are available on USCIS' Web site (*http://www.uscis.gov/i-765*), where users can also find information about filing locations and filing fees. SEVIS, including planned releases, will not be affected by the minor changes to the form instructions.

Comment. An individual commenter requested a change to the proposed rule's provision allowing F–1 students to file for a STEM OPT extension prior to the end of their initial 12-month period of post-completion OPT. The commenter suggested that DHS also allow students to apply for a STEM OPT extension up to 60 days following the end of the initial OPT period. The commenter stated that this change would align the provision with the application period for initial post-completion OPT, in which a student can file an application up to 60 days following graduation.

Response. DHS declines to adopt the commenter's recommendation. The current requirement to properly file the request for a STEM OPT extension prior to the end of the initial period of post-completion OPT allows sufficient time for the F–1 student to apply for the extension and is administratively convenient as it ensures continuing employment authorization during the transition from the initial OPT period to the STEM OPT extension period. The requirement thus helps prevent disruption in the student's employment authorization as the student transitions from his or her initial post-completion OPT period to the STEM OPT extension period.

Comment. One commenter requested clarification on whether a student who violates his or her F–1 status during a STEM OPT extension period may apply for reinstatement to F–1 status under 8 CFR 214.2(f)(16) if the status violation resulted from circumstances beyond the student's control. The commenter also asked whether such a student would be able to continue working while the reinstatement application is pending.

Response. A student who violates his or her F–1 status during the STEM OPT extension period may be granted reinstatement to valid F–1 status if he or she meets the regulatory requirements. See 8 CFR 214.2(f)(16). Importantly, in the STEM OPT context, the student will need to establish that the status violation resulted from circumstances beyond the student's control. The student, however, will not be able to continue working during the pendency of the reinstatement application; such employment would be considered unlawful. Moreover, if the student's reinstatement application is approved, the student will need to file a new Form I–765, Application for Employment Authorization. If the Application for Employment Authorization is approved, the period of time the student spent out of status will be deducted from his or

her 24-month STEM OPT extension period.

Comment. One commenter recommended that the rule increase the time period during which a student with a pending STEM OPT application is allowed to remain employed. The proposed rule provided an automatic extension of employment authorization of up to 180 days upon the timely filing of the application for a STEM OPT extension. The commenter suggested amending the rule to provide a 240-day period, which the commenter believed would be consistent with a similar provision for other nonimmigrants who timely file applications for extensions of stay.[116] According to the commenter, employers are familiar with the 240-day period provided in other contexts and using a common timeframe for STEM OPT applications would help employers more efficiently maintain their obligations to verify the eligibility of employees to work in the United States through the Form I–9 Employment Eligibility Verification process. The commenter also noted that the 240-day period would better accommodate lengthy USCIS processing times.

Response. DHS has determined that the current period of up to 180 days is appropriate and will not adopt the commenters' suggestion to lengthen this period. DHS did not propose any changes to this 180-day period, which has been in existence since 2008. Employers who hire individuals on STEM OPT extensions should thus already be familiar with this timeframe. Moreover, given that USCIS' average EAD processing time is typically at about the 90-day mark,[117] the 180-day timeframe provides sufficient flexibility in case of unexpected delays. Therefore, a longer auto-extension period for EADs is unnecessary.

[116] 8 CFR 274a.12(b)(6)(iv) authorizes employment for students seeking a STEM OPT extension if they timely file an Application for Employment Authorization and such application remains pending. Employment is authorized beginning on the expiration date of the student's OPT-related EAD and ending on the date of USCIS' written decision on the Application for Employment Authorization, but not to exceed 180 days. In contrast, 8 CFR 274a.12(b)(20) allows certain nonimmigrants (not including F–1 students) whose statuses have expired but who have timely filed applications for an extension of stay to continue employment with the same employer for a period not to exceed 240 days beginning on the date of the expiration of the authorized period of stay.

[117] For updated processing times, please see ''USCIS Processing Time Information,'' available at *https://egov.uscis.gov/cris/processTimesDisplay.do.*

H. Travel and Employment Authorization Documentation of Certain F–1 Nonimmigrants Changing Status in the United States or on a STEM OPT Extension

1. Description of Final Rule and Changes From NPRM

This final rule includes the 2008 IFR's Cap-Gap provision, which allows for automatic extension of status and employment authorization for any F–1 student with a timely filed H–1B petition and request for change of status, if the student's petition has an employment start date of October 1 of the following fiscal year. The measure avoids inconvenience to some F–1 students and U.S. employers through a common-sense administrative mechanism to bridge two periods of authorized legal status. As noted previously, the so-called Cap Gap is a result of the misalignment of the academic year with the fiscal year.

This final rule also clarifies that an EAD that appears to have expired on its face but that has been automatically extended under 8 CFR 274a.12(c)(3)(i)(B) is considered unexpired for the period beginning on the expiration date listed on the Employment Authorization Document and ending on the date of USCIS' written decision on the current employment authorization request, but not to exceed 180 days, when combined with a Form I–20 Certificate of Eligibility endorsed by the DSO recommending the Cap-Gap extension. Otherwise, DHS is finalizing the Cap-Gap provision as proposed, but provides clarification and explanation below in response to public comments regarding status, travel, and employment authorization during a Cap-Gap period or a STEM OPT extension.

Lastly, the final rule clarifies that if a petitioning employer withdraws an H–1B petition upon which a student's Cap-Gap period is based, the student's Cap-Gap period will automatically terminate. In other words, if an employer withdraws the H–1B petition before it is approved, the student's automatic extension of the student's duration of status and employment authorization under the Cap-Gap provision will automatically end, and the student will enter the 60-day grace period to prepare for departure from the United States. 8 CFR 214.2(f)(5)(iv).

2. Public Comments and Responses

i. Inclusion of Cap-Gap Relief and End Date of Cap-Gap Authorization

Comment. Many commenters supported the Cap-Gap provision as proposed, noting that it would help the United States attract talented international students and bolster the economy. Some stated that Cap-Gap relief was an important part of the 2008 IFR and requested that it be retained because the H–1B visa program is a common mechanism for F–1 students to transition to long-term employment in the United States. According to the commenters, Cap-Gap relief is essential to avoid gaps in work authorization between the April filing window for H–1B visas and the October 1 start date for most new H–1B beneficiaries who are subject to the H–1B cap.

Some commenters supported Cap-Gap relief for certain F–1 students based on the notion that these students have been following immigration laws and helping to maintain the United States' position as the world's leader in technology and innovation. Other supporters asserted that Cap-Gap relief will boost productivity and entrepreneurship and thus provide the United States with a competitive advantage in the global market. Several commenters stated that the Cap-Gap extension is helpful to employers as it avoids disruptions in the workplace caused by the students' departure from the United States solely due to a temporary gap in status.

Response. DHS agrees with commenters that the Cap-Gap provision is a common-sense administrative measure to avoid gaps in status fully consistent with the underlying purpose of the practical training program. The Cap-Gap provision is needed to address the inherent misalignment of the academic year with the fiscal year. This relief measure avoids inconvenience to some F–1 students and U.S. employers by bridging short gaps in status for students who are the beneficiaries of H–1B petitions.

Comment. Under the 2008 IFR and as proposed, the Cap-Gap provision automatically extends a qualifying student's status and employment authorization based on the filing of an H–1B petition and request for change of status until the first day of the new fiscal year (October 1). Some commenters requested that DHS revise the Cap-Gap provision so as to automatically extend status and employment authorization ''until adjudication of such H–1B petition is complete.'' Commenters stated that an extension until October 1 may have been appropriate in the past, when H–1B petitions were adjudicated well before that date, but current USCIS workload issues and RFE responses can delay such adjudications beyond October 1. The result, according to one commenter, is that the beneficiary of an

H–1B petition that remains pending beyond October 1 must stop working on that date and wait for a decision. By amending the regulations to provide extensions until the date that the H–1B petition is finally adjudicated, the commenter noted, a beneficiary could avoid any such gaps in status.

In addition, one commenter requested that DHS clarify the date on which the automatic extension of status ends. The commenter stated that September 30 would be a more appropriate end date than October 1, as the beneficiary's H–1B status would generally become effective on October 1.

Response. DHS recognizes that some cap-subject H–1B petitions remain pending on or after October 1; however, in light of the importance that DHS places on international students, USCIS prioritizes petitions seeking a change of status from F–1 to H–1B. This prioritization normally results in the timely adjudication of these requests, so the vast majority of F–1 students changing status to H–1B do not experience any gap in status.

The general presumption is that when a nonimmigrant's period of authorized stay has expired, he or she must depart the United States. However, the Cap-Gap provision provides a special accommodation to F–1 students who are seeking to change to H–1B status, based on the understanding that the academic year of most colleges and universities does not align with the fiscal year cycle upon which the H–1B program is based. The Cap-Gap provision is based in part on the premise that students who seek to benefit from the provision actually qualify for H–1B status. USCIS is thus concerned that extending the Cap-Gap employment authorization beyond October 1, a date by which virtually all approvable change-of-status petitions for F–1 students are adjudicated by USCIS, would reward potentially frivolous filings. The October 1 cut-off thus serves to prevent possible abuse of the Cap-Gap extension. USCIS will continue to make every effort to complete adjudications on all petitions seeking H–1B status for Cap-Gap beneficiaries prior to October 1, including by timely issuing RFEs in cases requiring further documentation. DHS therefore declines to allow students whose H–1B petitions remain pending beyond October 1 to continue to benefit from the Gap-Gap extension, primarily because doing so would enable students who may ultimately be found not to qualify for H–1B status to continue to benefit from the Cap-Gap extension.

Finally, DHS clarifies that F–1 status for a Cap-Gap beneficiary under this provision expires on October 1, consistent with the regulatory text at 8 CFR 214.2(f)(5)(A)(vi). However, an individual with a timely-filed, non-frivolous H–1B change-of-status petition will be considered to be in a period of authorized stay during the pendency of the petition. An individual may remain in the United States during this time, but is not authorized to work. If an H–1B change-of-status petition requesting a start date of October 1 has been approved, the F–1 status will expire on the same day as the H–1B status begins.

Comment. Some commenters requested that DHS clarify that OPT students whose employment authorization has been extended pursuant to the Cap-Gap provision are permitted to change employers. Commenters expressed confusion because under the 2008 IFR, and as proposed, the regulatory provision authorizing employment for Cap-Gap beneficiaries is included in a list of nonimmigrant classifications that are authorized for employment ''with a specific employer incident to status.'' *See* 8 CFR 274a.12(b) and (b)(6)(v). Commenters recommended that DHS revise the title of the list to eliminate confusion and clarify that an F–1 student can change employers between the filing of an H–1B petition (generally in April) and the date on which a cap-subject H–1B petition takes effect (generally on October 1). One of these commenters recommended that DHS include Cap-Gap beneficiaries under 8 CFR 274a.12(a), which lists categories of aliens who are authorized for employment ''incident to status,'' in order to make such beneficiaries employment authorized without employer-specific restrictions.

Response. DHS clarifies that there is generally no prohibition against an F–1 student's changing of employers during a Cap-Gap period. However, F–1 students may only engage in employment that is directly related to their major area of study. Moreover, because the list of nonimmigrant classifications at 8 CFR 274a.12(b) covers a broad range of nonimmigrant classes, DHS believes deletion of the phrase ''with a specific employer'' from the regulatory provision would lead to confusion. DHS thus declines to adopt this suggestion. Additionally, given that the vast majority of commenters supported the Cap-Gap provision as proposed, DHS has determined that the provision is sufficiently clear and therefore declines to further amend 8 CFR 274a.12(b)(6)(v) or to place the regulatory provision under 8 CFR 274a.12(a). Again, an F–1 student may change employers during a Cap-Gap period, but must do so in accordance with the OPT regulations (*e.g.,* by finding a position directly related to his or her major area of study, among other requirements).

Comment. Some commenters requested clarification about whether the Cap-Gap provisions apply to H–1B petitions that are cap-exempt (*i.e.,* not subject to the annual numerical cap on H–1B visas). According to these commenters, proposed 8 CFR 214.2(f)(5)(vi) appeared to state that a STEM OPT student who was the beneficiary of a cap-exempt H–1B petition could also extend his or her duration of status and possibly employment authorization under the provision, provided the H–1B petition was timely filed and requested an employment start date of October 1.

Response. DHS clarifies that the Cap-Gap provision applies only to the beneficiaries of H–1B petitions that are subject to the annual numerical cap. The purpose of the Cap-Gap provision is to avoid situations where F–1 students are required to leave the country or terminate employment at the end of their authorized period of stay, even though they have an approved H–1B petition that would again provide status to the student in a few months' time. Due to the realities associated with the H–1B filing season, employers filing H–1B petitions for *cap-subject* F–1 students are effectively required to file petitions with start dates of October 1, which allows such employers to file the change-of-status petitions with USCIS at the beginning of the H–1B filing window (generally April 1 of the preceding fiscal year).[118] A petitioner filing an H–1B petition for a cap-subject beneficiary that does not file at the beginning of the filing window risks not being able to file at all if the window closes due to high demand for H–1B visas.

In contrast, employers filing H–1B petitions on behalf of *cap-exempt* beneficiaries may request an employment start date based on the petitioners' actual need rather than on the H–1B filing season. As such, cap-exempt beneficiaries do not share the same need as cap-subject beneficiaries

[118] Employers may not file, and USCIS may not accept, H–1B petitions submitted more than six months in advance of the date of actual need for the beneficiary's services or training. However, because demand for H–1B visas far exceeds supply in most years, employers generally rush to file at the first available opportunity. As H–1B visas are authorized by fiscal year, and thus may begin to authorize employment as early as the first date of the fiscal year (October 1), the filing window for cap-subject H–1B petitions opens (and generally closes) six months earlier (April 1 of the preceding fiscal year).

to bridge status until the next fiscal year. For these reasons, the Cap-Gap provision benefits only those beneficiaries who are subject to the H–1B cap. DHS maintains its long-standing interpretation that 8 CFR 214.2(f)(5)(vi) is limited to cap-subject H–1B beneficiaries, but has revised the regulatory text to clarify this practice.

Comment. One commenter asked DHS to clarify the deadline for filing applications for STEM OPT extensions by F–1 students in a Cap-Gap period. According to the commenter, the relevant section in the proposed rule indicated that students are required to file ''prior to the expiration date of the student's current OPT employment authorization.'' The commenter asked DHS to clarify the meaning of this provision with respect to F–1 students with an approved Cap-Gap extension. Specifically, the commenter asked whether ''the expiration date of the student's current OPT employment authorization'' refers to the date on which the student's EAD expires or the end date of the student's approved Cap-Gap extension.

Response. A student may file for a STEM OPT extension only if the student is in a valid period of post-completion OPT at the time of filing. A student whose post-completion OPT period has been extended under Cap-Gap is in a valid period of post-completion OPT, and may therefore apply for a STEM OPT extension during the Cap-Gap period if he or she meets the STEM OPT extension requirements.[119] Please note, however, that if the H–1B petition upon which the student's Cap-Gap period is based has been approved and is not withdrawn prior to October 1, the student's change to H–1B status will take effect on October 1, and the student will no longer be eligible for a STEM OPT extension.

ii. Travel During Cap-Gap and While on STEM OPT Extension

Comment. Several commenters requested that DHS allow students to travel abroad during the Cap-Gap period. Some of these commenters requested that F–1 students in OPT be allowed to travel overseas if they have a pending or approved request to change status to that of an H–1B nonimmigrant during the Cap-Gap period. One commenter asked DHS to harmonize policies with the Department of State regarding travel and reentry to the United States in Cap-Gap scenarios. The commenter opined that the two Departments' policies on this issue have been inconsistent, recommending this rulemaking as an appropriate opportunity to clarify when an F–1 student in a Cap-Gap period may travel. Another commenter suggested that the guidance in the Department of State Foreign Affairs Manual (9 FAM 41.61 N13.5–2 Cap Gap Extensions of F–1 Status and OPT) could serve as the basis for a unified policy among the two departments that allows travel and reentry during the Cap-Gap period.[120] One commenter also asked DHS to allow a Cap-Gap beneficiary to return to the United States in F–1 status without having a valid visa.

Response. DHS clarifies that an F–1 student may generally travel abroad and seek readmission to the United States in F–1 status during a Cap-Gap period if: (1) The student's H–1B petition and request for change of status has been approved; (2) the student seeks readmission before his or her H–1B employment begins (normally at the beginning of the fiscal year, *i.e.,* October 1); and (3) the student is otherwise admissible. However, as with any other instance in which an individual seeks admission to the United States, admissibility is determined at the time the individual applies for admission at a port of entry. U.S. Customs and Border Protection (CBP) makes such determinations after examining the applicant for admission. Students should refer to CBP's Web site (*http://www.cbp.gov/travel/international-visitors/study-exchange/exchange-arrivals*) for a list of the appropriate documentary evidence required to confirm eligibility for the relevant classification. Moreover, DHS believes that the guidance provided in this response is fully consistent with the Department of State's Cap-Gap policy as outlined in its Foreign Affairs Manual.[121]

DHS also notes that if an F–1 student travels abroad before his or her H–1B change-of-status petition has been approved, USCIS will deem the petition abandoned. Consequently, such a student no longer would be authorized for F–1 status during the Cap-Gap period based on the H–1B change-of-status petition and thus would be unable to rely on the Cap-Gap provision's extension of duration of status for purposes of seeking readmission as an F–1 student. This has been the legacy INS and USCIS interpretation of its change-of-status authority under the INA for decades, applicable to all changes from one nonimmigrant status to another, not just those involving F–1 nonimmigrants.[122] As such, DHS declines to adopt the suggestion to allow travel for Cap-Gap students while a change-of-status petition is pending.[123]

Comment. Some commenters stated that certain documentary requirements in DHS regulations unnecessarily hampered a student's mobility. Such commenters specifically cited 8 CFR 214.2(f)(13)(ii), which allows an otherwise admissible F–1 student with an unexpired EAD issued for post-completion practical training to return to the United States to resume employment after a period of temporary absence. Under this provision, the EAD must be used in combination with an I–20 Certificate of Eligibility endorsed for reentry by the DSO within the last six months. Some commenters claimed that this requirement resulted in DHS officers rejecting facially expired EADs at port of entries—despite the presentation of other documents indicating valid employment

[119] A student in Cap-Gap who meets the eligibility requirements for a 24-month STEM OPT extension may file his or her Application for Employment Authorization, with the required fee and supporting documents, up to 90 days prior to the expiration of the Cap-Gap period on October 1. 8 CFR 214.2(f)(11)(i)(C).

[120] 9 FAM 402.5–5(N)(6)(f) (previously 9 FAM 41.61 N13.5–2) provides that if an F–1 student is the beneficiary of a timely filed petition for a cap-subject H–1B visa, with a start date of October 1, the F–1 status and any OPT authorization held on the eligibility date is automatically extended to dates determined by USCIS allowing for receipt or approval of the petition, up to September 30. The Cap-Gap OPT extension is automatic, and USCIS will not provide the student with a renewed EAD. However, F–1 students in this situation can request an updated Form I–20 Certificate of Eligibility from the DSO, annotated for the Cap-Gap OPT extension, as well as proof that the Form I–129, Petition for a Nonimmigrant Worker, was filed in a timely manner. Consular officers must verify that the electronic SEVIS record has also been updated before issuing a visa. *See* 9 FAM 402.5–5(N)(6)(f), available at *https://fam.state.gov/FAM/09FAM/09FAM040205.html.*

[121] *See* 9 FAM 402.5–5(N)(6)(f), available at *https://fam.state.gov/FAM/09FAM/09FAM040205.html.*

[122] *See* INA Sec. 248(a), 8 U.S.C. 1258(a) (providing that USCIS, in its discretion, may authorize a change from any nonimmigrant classification to any other nonimmigrant classification in the case of any alien lawfully admitted to the United States as a nonimmigrant who is continuing to maintain that status). *See also* INS memo HQ 70/6.2.9 (June 18, 2001 memo noting that it has long been Service policy deny a request for change of status where an alien travels outside of the United States while a request for a change of status is pending); Letter from Jacquelyn A. Bednarz, Chief, Nonimmigrant Branch, Adjudications, INS, CO 248–C (Oct. 29, 1993), *reprinted in* 70 Interp. Rel. 1604, 1626 (Dec. 6, 1993).

[123] An individual who travels while his or her H–1B petition and request for change of status is pending would be required to apply for an H–1B visa at a consular post abroad (unless visa-exempt) in order to be admitted to the United States in H–1B status, presuming the underlying H–1B petition is approved.

authorization—and denying entry to the applicants.

Response. The Department acknowledges that it has previously cited 8 CFR 214.2(f)(13)(ii) in connection with travel during the Cap-Gap period. That regulatory provision addresses the validity period of EADs. Following careful review, DHS has determined that 8 CFR 214.2(f)(13)(ii), which expressly addresses the effects of departure from the United States by individuals with *unexpired* EADs, does not apply to Cap-Gap beneficiaries, who by definition have *expired* EADs. Therefore, 8 CFR 214.2(f)(13)(ii) does not apply to F–1 students who depart the United States during a Cap-Gap period.

Comment. Several commenters requested that DHS allow students to travel abroad during the STEM OPT extension period or during the pendency of an application for such an extension. One commenter stated that although the F–1 visa is a multiple entry visa, the Form I–20 Certificate of Eligibility states that a STEM OPT student's EAD is not valid for reentry into the United States. The commenter requested that DHS allow STEM OPT students to make multiple entries based on their status. The commenter noted that this would allow such students to visit their home countries at least once during the up-to-three-year period of practical training.

Similarly, some commenters requested that DHS permit F–1 students to travel during the pendency of a request for a STEM OPT extension and to reenter after a period of temporary absence. Another commenter recommended that students with pending applications for STEM OPT extensions be permitted to travel outside the United States because many employers require their employees to engage in international travel as part of their jobs. The commenter noted that the proposed rule prohibits such students from fulfilling such job requirements.

Response. Students on STEM OPT extensions (including those whose application for a STEM OPT extension is pending) may travel abroad and seek reentry to the United States in F–1 status during the STEM OPT extension period if they have a valid F–1 visa that permits multiple entries [124] and a current Form I–20 Certificate of Eligibility endorsed for reentry by the DSO within the last six months. The student's status is determined by CBP upon admission to the United States or through a USCIS adjudication of a change-of-status petition.

Comment. Several commenters raised the issue of whether F–1 nonimmigrants may have ''dual intent'' (*i.e.,* whether such students, as F–1 nonimmigrants, may simultaneously seek lawful permanent residence or otherwise have the intent to immigrate permanently to the United States). Commenters that supported dual intent for F–1 students stated that such a policy would help attract and retain talented F–1 students in the United States. Certain commenters that opposed dual intent for students stated that this rule should be limited to maintaining F–1 status in order to allow students to gain post-graduate practical experience and training in their fields of study. Other such commenters asserted that dual intent for students would violate Congressional intent and run counter to the F–1 visa classification provisions in the INA. *See* INA 101(a)(15)(F)(i).

Response. These comments, which concern dual intent for F–1 students generally, are beyond the scope of this rulemaking. The changes in this rule affect only those F–1 students applying for STEM OPT extensions or Cap-Gap extensions, not the entire F–1 student population. Moreover, none of the changes in this rule relate to individuals seeking lawful permanent resident status or their ability to hold immigrant intent while holding nonimmigrant status.

iii. Terms and Conditions of Employment Authorization Documents

Comment. A few commenters requested that DHS include written restrictions on the face of the EADs provided to STEM OPT students. Commenters stated that all EADs, including STEM OPT EADs, appear on their face to be valid for unrestricted employment. Commenters were concerned that if a job candidate presents an EAD to complete the Form I–9 process, an employer will not know whether the underlying employment authorization is actually limited to employment with an E-Verify employer in a field related to the student's STEM degree. Because of this confusion, commenters believed it was possible that an employer could hire a STEM OPT student whose employment authorization was in fact linked in SEVIS to a different employer. These commenters requested that DHS address this issue by adding a written restriction on the EAD itself.

Response. DHS already places written restrictions on the face of the EADs provided to STEM OPT students (under the ''Terms and Conditions'' section). Such EADs currently contain the following notation: ''Stu: 17-Mnth Stem Ext.'' In response to the potential confusion described in the above comments, however, DHS has decided to update the notation to provide a stronger indication of the limitations of such EADs. Such EADs will now contain the following notation: ''STU: STEM OPT ONLY.'' DHS believes this new notation will better alert employers that the cardholder's employment authorization is subject to certain conditions.

Comment. Another commenter requested that DHS issue new EADs to OPT students with expired EADs who either are in a Cap-Gap period or have a pending application for a STEM OPT extension. The commenter stated that these new EADs would allow such students to renew their driver's licenses and thus facilitate their work commute. In the alternative, the commenter requested that USCIS issue these students formal documents that would allow them to renew their driver's licenses.

Response. Under current processes, USCIS cannot issue new EADs to F–1 students with pending applications without adversely affecting fee revenues and overall EAD processing times. Under current guidance in the Handbook for Employers (M–274), the combination of the student's expired EAD and his or her Form I–20 Certificate of Eligibility endorsed by the designated school official is acceptable proof of identity and employment authorization for purposes of Form I–9 requirements. In response to the above comments, however, DHS has decided to clearly articulate this policy by updating the regulation at 8 CFR 274a.12(b)(6)(iv) to indicate that this combination of documents is considered an unexpired EAD for purposes of complying with Form I–9 requirements. DHS believes the regulatory change clearly articulates that students with the appropriate documents remain in F–1 status and are authorized for employment.

Comment. One commenter recommended that DHS clarify whether EADs would be revoked if the Mentoring and Training Plan described in the proposed rule were to require modification or the insertion of additional information subsequent to the commencement of the STEM OPT student's employment.

Response. As noted in section IV.B. of this preamble, if any material change to or deviation from the Training Plan occurs, the student and employer must

[124] Department of State consular officers determine whether an F–1 visa is valid for multiple or single entries, which is generally based on reciprocity.

sign a modified Training Plan reflecting the material changes or deviations, and must ensure that the modified plan is submitted to the student's DSO at the earliest available opportunity. So long as the student and employer meet the regulatory requirements, and the modified Training Plan meets the requirements under this rule, the student's employment authorization will not cease based on a change to the plan.

I. Transition Procedures

1. Description of Final Rule and Changes From NPRM

The 17-month STEM OPT regulations remain in force through May 9, 2016. This rule is effective beginning on May 10, 2016. This rule includes procedures to allow for a smooth transition between the old rule and the new rule, as discussed below.

i. STEM OPT Applications for Employment Authorization Pending on May 10, 2016

DHS will continue to accept and adjudicate applications for 17-month STEM OPT extensions under the 2008 IFR through May 9, 2016. The Department, however, has modified the transition procedures in the proposed rule for adjudicating those applications that remain pending when the final rule takes effect on May 10, 2016. In the NPRM, DHS had proposed that USCIS would adjudicate pending applications using the regulations that existed at the time the applications were submitted. As discussed further below, DHS has reconsidered its original proposal in light of comments received, and will instead apply the requirements of this rule to such pending cases. Beginning on May 10, 2016, USCIS will issue RFEs to students whose applications are still pending on that date. *See* 8 CFR 214.16(a). The RFEs will allow these students to effectively amend their application to demonstrate eligibility for 24-month extensions without incurring an additional fee or having to refile the Application for Employment Authorization.

Specifically, USCIS will issue RFEs requesting documentation that will establish that the student is eligible for a 24-month STEM OPT extension, including a Form I–20 Certificate of Eligibility endorsed on or after May 10, 2016, indicating that the DSO recommends the student for a 24-month STEM OPT extension. To obtain the necessary DSO endorsement in the Form I–20 showing that the student meets the requirements of this rule, the Training Plan has to be submitted to the DSO. Generally, under 8 CFR 214.2(f)(11)(i), a student must initiate the OPT application process by requesting a recommendation for OPT by his or her DSO. Thus, a DSO's recommendation for OPT on a Form I–20 Certificate of Eligibility is generally not recognized as valid if such endorsement is issued after the Application for Employment Authorization is filed with USCIS. DHS, however, will consider the submission of the Form I–20 Certificate of Eligibility as valid if the form is submitted in response to the RFE that has been issued under the transition procedures described in 8 CFR 214.16.

DHS recognizes that following this rule's effective date, some students may prefer to withdraw their pending application for a 17-month STEM OPT extension and instead file a new application for a 24-month STEM OPT extension. Before a student decides to do so, however, the student should understand the applicable filing deadlines and ensure that he or she does not lose F–1 status. Importantly, a student may file for a STEM OPT extension only if the student is in a valid period of post-completion OPT at the time of filing. Thus if a student withdraws an application for a STEM OPT extension after his or her period of post-completion OPT has ended, the student will no longer be eligible to file for a STEM OPT extension.

ii. Applications for 24-Month STEM OPT

DHS will begin accepting applications for STEM OPT extensions under this rule on May 10, 2016. Beginning on that date, DHS will process all Applications for Employment Authorization seeking 24-month STEM OPT extensions in accordance with the requirements of this rule. In other words, the final rule's new requirements will apply to all STEM OPT students whose applications are pending or approved on or after the final rule is effective.

Thus, a student whose Application for Employment Authorization is filed and approved prior to May 10, 2016 will be issued an EAD that is valid for 17 months (even if he or she erroneously requested a 24-month STEM OPT extension). As indicated above, a student whose application is pending on May 10, 2016 will be issued an RFE requesting documentation establishing that the student is eligible for a 24-month STEM OPT extension. As described more fully below, this documentation must include, among other things, a Form I–20 Certificate of Eligibility endorsed on or after May 10, 2016, indicating that the requirements for a 24-month STEM OPT extension have been met.

iii. Students With Valid, Unexpired 17-Month STEM OPT Employment Authorization on May 10, 2016

Any 17-month STEM OPT EAD that is issued before May 10, 2016 will remain valid until the EAD expires or is terminated or revoked. *See* 8 CFR 214.16(c)(1).[125] As a transitional measure, starting on May 10, 2016, certain students with such EADs will have a limited window in which to apply for an additional 7 months of OPT, effectively enabling them to benefit from a 24-month period of STEM OPT. *See* 8 CFR 214.16(c)(2). To qualify for the 7-month extension, the student must satisfy the following requirements:

- The STEM OPT student must properly file an Application for Employment Authorization with USCIS, along with applicable fees and supporting documentation, on or before August 8, 2016, and within 60 days of the date the DSO enters the recommendation for the 24-month STEM OPT extension into the student's SEVIS record. *See* 8 CFR 214.16(c)(2)(i). DHS believes that the 90-day window for filing such applications provides sufficient time for students to submit a required Training Plan, obtain the necessary Form I–20 Certificate of Eligibility and recommendation from the student's DSO, and fulfill other requirements for the 24-month extension.
- The student must have at least 150 calendar days [126] remaining prior to the expiration of the 17-month STEM OPT EAD at the time the Application for Employment Authorization is filed. *See* 8 CFR 214.16(c)(2)(ii). This 150-day period guarantees that a student who obtains an additional 7-month extension will have at least 1 year of practical training under the enhancements introduced in this rule, including site visits, reporting requirements, and statement and evaluation of goals and objectives. For students who choose to seek an additional 7-month extension, the new enhancements apply upon the proper filing of the Application for Employment Authorization requesting the 7-month extension. *See* 8 CFR 214.16(c)(3).
- The student must meet all the requirements for the 24-month STEM OPT extension as described in 8 CFR 214.2(f)(10)(ii)(C), including but not limited to submission of the Training Plan to the DSO. *See* 8 CFR 214.16(c)(2)(iii). STEM OPT students applying for this additional 7-month extension must be in a valid period of OPT, but are not required to be in a valid period of 12-month post-completion OPT authorized under 8 CFR 274a.12(c)(3)(i)(B) as would

[125] As explained previously, 17-month STEM OPT EADs currently have annotations placed in the Terms and Conditions as follows: ''Stu: 17-Mnth Stem Ext.''

[126] DHS recognizes that it proposed a 120-day period in the NPRM, but has determined for the reasons stated above that the 150-day period is more appropriate.

normally be required for a STEM OPT extension request.

DHS believes that these requirements are necessary to ensure that those who receive the additional 7-month extension are covered by this rule's improved compliance, reporting, and oversight measures.

Moreover, unless and until a student with a 17-month STEM OPT extension properly files the application for the 7-month extension under the transition procedures of 8 CFR 214.16, the student, and the student's employer and DSO, must continue to follow all the terms and conditions that were in effect when the 17-month STEM OPT employment authorization was granted. *See* 8 CFR 214.16(c)(1). Upon the proper filing of the application for the additional 7-month STEM OPT period, the student, and the student's employer and DSO, will be subject to all but one of the requirements of the 24-month STEM OPT extension period. The only exception concerns the period of unemployment available to such a student. Under the rule, the 150-day unemployment limit described in 8 CFR 214.2(f)(10)(ii)(E) will apply to a student seeking a 7-month extension only upon approval of that extension. Thus, while the application for the additional 7-month extension is pending, the student may not accrue an aggregate of more than 120 days of unemployment during the entire post-completion OPT period. If the application for the 7-month extension is approved, the student may accrue up to 150 days of unemployment during the entire OPT period.

If an application for a 7-month extension is approved, USCIS will issue an EAD with a validity period that starts on the day after the expiration date stated in the 17-month STEM OPT EAD. If an application for a 7-month extension is denied, the student, and the student's employer and DSO, must, subsequent to denial, abide by all the terms and conditions that were in effect when the 17-month STEM OPT EAD was issued, including reporting requirements. *See* 8 CFR 214.16(c)(3). They must abide by such terms throughout the remaining validity period of the 17-month STEM OPT extension.

DHS recommends that students who choose to request the additional 7-month extension obtain the necessary DSO recommendation and file their application as early as possible in advance of the August 8, 2016, application deadline. USCIS's current processing times are available at *https://egov.uscis.gov/cris/processTimesDisplayInit.do*.

2. Public Comments and Responses

i. STEM OPT Applications for Employment Authorization Pending on May 10, 2016

Comment. DHS received comments requesting clarification on the procedures that would apply to F–1 students whose applications for STEM OPT extensions are pending at the time of the implementation of the final rule.

Response. As noted above, USCIS will issue RFEs to students whose applications for employment authorization requesting a 17-month STEM OPT extension are pending on the effective date of this rule. By responding to the RFE, students will have the opportunity to demonstrate that they are eligible for a 24-month STEM OPT extension without incurring an additional fee, or having to refile the Application for Employment Authorization.

Comment. Several commenters expressed concern about the proposed USCIS adjudicative process for 17-month STEM OPT applications that remain pending on the effective date of the final rule. For example, one commenter noted that the proposed rule indicated that DHS intended to adjudicate STEM OPT applications ''consistent with the regulations that existed at the time the application was submitted.'' The commenter was concerned with the potential confusion that would arise if a DSO issued a 17-month STEM OPT recommendation before the new rule's effective date but the student filed the Application for Employment Authorization after that date. In such a case, the commenter added, the student's Application for Employment Authorization would not meet the applicable requirements at the time of filing. The commenter recommended that DHS instead use the date of the DSO recommendation as the determinative factor as to which regulatory requirements to apply.

Response. DHS appreciates commenters' concerns about the possibility for confusion. To clarify, 17-month STEM OPT applications that are filed prior to, and remain pending on, May 10, 2016 will be processed in accordance with the requirements of this rule. As described above, USCIS will issue RFEs to students with such pending applications. The RFE will request documentation showing that the student meets the requirements of the 24-month STEM OPT extension. The documentation must include a Form I–20 Certificate of Eligibility endorsed on or after May 10, 2016, indicating that the DSO recommends the student for a 24-month STEM OPT extension. Submission of the Form I–20 in response to the RFE will be regarded as fulfillment of the requirement, contained in 214.2(f)(11)(i) of this section, that a student must initiate the OPT application process by requesting a recommendation for OPT by his or her DSO. *See* 8 CFR 214.16(a)(1).

Moreover, DHS will deem 17-month STEM OPT applications that remain pending on May 10, 2016, to be covered by 8 CFR 214.2(f)(11)(i)(C) and 8 CFR 274a.12(b)(6)(iv) of this rule. These provisions state that if a student's post-completion OPT expires while his or her timely filed STEM OPT application is pending, the student will receive an automatic extension of employment authorization of up to 180 days upon the expiration of his or her current employment authorization.[127] *See* 8 CFR 214.16(a)(2).

ii. *New Applications for STEM OPT Under This Rule*

Comment. Some commenters sought clarification on whether a student in the 60-day grace period following an initial 12-month period of post-completion OPT would be given the opportunity to apply for a STEM OPT extension if the new rule takes effect during the student's 60-day grace period. Some commenters asked whether there will be an additional grace period allowing students to come into compliance with the final rule once it is published.

Response. This rule, like the 2008 IFR, does not allow students to apply for STEM OPT extensions during the 60-day grace period following an initial 12-month period of post-completion OPT. The current requirement to properly file the request for a STEM OPT extension prior to the end of the initial OPT period allows sufficient time for the F–1 student to apply for the extension and is administratively convenient as it ensures continuing employment authorization during the transition from the initial OPT period to the STEM OPT period. Accordingly, if a student anticipates that he or she will enter the 60-day grace period before May 10, 2016, the student should not wait to apply. Such a student should apply for the 17-month STEM OPT extension before his or her initial OPT period expires.

[127] In addition, DHS considers students who apply for and are granted an additional 7-month period of STEM OPT eligible for the Cap-Gap provision described in section IV.H. of this preamble.

iii. Students with Valid, Unexpired 17-Month STEM OPT Employment Authorization on May 10, 2016.

Comment. Some commenters stated that a failure to promulgate a new rule prior to the vacatur of the 2008 IFR would result in negative impacts to students currently on 17-month STEM OPT extensions, as well as U.S. employers and the U.S. economy. Commenters stated that a regulatory gap would result in negative financial impacts for a great number of employers as well as several thousand students who will be at a risk of losing their status.

Response. DHS has endeavored to have a final rule in place before the vacatur takes effect. DHS understands the commenters' concerns, but believes that such concerns are now moot.

Comment. Some commenters also asked whether, following the final rule's effective date, students currently on 17-month STEM OPT extensions would be allowed to apply for a 24-month STEM OPT extension. One commenter requested that existing 17-month extensions automatically be extended to a 24-month period to reduce workload for both students and USCIS. Other commenters stated that students who received 17-month STEM OPT EADs should receive a waiver of application fees for a revised 24-month EAD. According to these commenters, students had not caused the program requirements to change, and they should not be punished for it.

Response. As noted above, after the effective date of this final rule, certain students with 17-month STEM OPT extensions may apply for an additional 7-month extension to effectively obtain the balance of the new 24-month STEM OPT extension. To qualify for the 7-month extension, such students must have at least 150 days remaining before the end of the student's 17-month OPT period, and they must otherwise meet all requirements of the final rule governing the 24-month STEM OPT extension. DHS considered commenters' suggestions, but ultimately determined that automatically converting 17-month extensions into 24-month extensions would be inconsistent with many parts of the rule, including the requirements related to Training Plans, employer attestations, and reporting requirements. For these reasons, students with 17-month extensions who seek to benefit from the 24-month extension must apply for the balance of the 24-month extension consistent with this rule's requirements.

Comment. DHS received a number of comments seeking clarification on the categories of students who would be affected by the new requirements for obtaining STEM OPT extensions. Several commenters asked DHS to clarify whether the new requirements would apply to students on 17-month STEM OPT extensions on the date the final rule becomes effective. One commenter asked whether students currently on 17-month STEM OPT extensions would be permitted to complete their period of authorized STEM OPT.

Response. As noted above, the new requirements apply only to STEM OPT applications that are pending on the effective date of the final rule or that are submitted after that date. The new requirements do not affect current 17-month STEM OPT beneficiaries, except to the extent that such beneficiaries seek to avail themselves of the additional 7-month OPT period available to them under the transition provisions of the final rule. Students currently on 17-month STEM OPT extensions who do not seek 7-month extensions will be permitted to complete their authorized 17-month STEM OPT period, barring termination or revocation of their EAD under 8 CFR 274a.14. During this time, the student, and the student's employer and DSO, must continue to abide by all the terms and conditions that were in effect when that EAD was issued.

J. Comments on the Initial Regulatory Impact Analysis

Comment. Some commenters were generally supportive of the proposed rule, but stated that DHS severely underestimated the time-burden and costs to DSOs for complying with requirements concerning the submission of training plans and periodic evaluations. Commenters believed that DHS estimates related to these requirements—including 30 minutes for review of training plans and 15 minutes for review of periodic evaluations—were unrealistic. Specifically, one university representative explained that DSOs would need to spend 50 to 60 minutes reviewing and storing each training plan. The commenter explained that DSOs would need 30 minutes to review training plans for completeness and follow up with students as necessary, and an additional 20 to 30 minutes to upload the document into SEVIS. Other commenters stated that it would take an employer 90 to 120 minutes to complete the proposed Mentoring and Training Plan.

Response. In response to comments, DHS revised the time estimated to initially complete the Training Plan form. DHS added an hour to the estimate of DSO's time to initially complete the Training Plan form, and 50 minutes to the estimate of DSO's time for the coordination and completion of each evaluation. DHS added two hours to the estimate of employer's time to initially complete the Training Plan form, and 30 minutes to the estimate of employer's time for the coordination and completion of each evaluation. DHS added 30 minutes to the estimate of student's time for the coordination to initially complete the Training Plan form, and 30 minutes for the coordination and completion of each evaluation.

As noted above, this final rule includes a number of provisions intended to minimize burden on employers while ensuring that the Training Plan for STEM OPT Students serves its stated purposes. For instance, DHS has revised the regulatory text and the Training Plan form to clarify that employers may rely on existing training programs for STEM OPT students, so long as those programs satisfy this rule's requirements. Also in response to comments, DHS has clarified the form instructions and various fields on the form. Among other things, DHS has removed the reference to ''mentoring,'' which many commenters stated would comprise a significant part of the expected time to both complete and review the proposed form.

With regard to the commenter's estimate of the approximate time required to upload the training plan into SEVIS, DHS clarifies that the rule does not require the Training Plan for STEM OPT Students to be uploaded into that database at this time, but instead only requires that DSOs properly store it. Once SEVIS functionality is upgraded to permit the Training Plan to be uploaded, the form must be uploaded into SEVIS for each F–1 student participating in a STEM OPT extension. DHS anticipates, however, that the new student portal will allow F–1 students to upload certain information, including the Training Plan, directly into SEVIS. This means that DSOs ultimately will not be required to spend any time uploading the form into SEVIS and that their burdens will otherwise be reduced due to the student portal.

Comment. Another commenter suggested that DHS ''is neglecting its duty under federal guidance to discuss crucial economic considerations, such as how many OPT workers will be hired instead of American workers; how many STEM grads have given up finding work in the STEM field; how the new rule will affect tech-worker wages and American STEM-grad employment.''

Response. DHS disagrees that it neglected to consider the economic

impact of the proposed rule, much of which was described in the Initial Regulatory Impact Analysis. DHS carefully considered the potential direct costs and benefits of the proposed rule, and has carefully considered the potential direct costs and benefits of the final rule.

Comment. Some commenters suggested that DHS shift costs away from students and universities. For instance, some commenters supported the rule, but suggested fees to employers or students that would cover government costs or costs for universities, including the training of DSOs on how to administer and review the proposed Mentoring and Training Plan.

One DSO recommended that DHS establish a minimum personnel full-time equivalent (FTE) requirement for ''SEVP regulatory advising and SEVIS reporting requirement[s],'' which would be based on the number of F–1 students enrolled and whether the school uses SEVIS Real-time Interactive web processing or batch processing. The same DSO also suggested that this FTE figure be a SEVIS reporting requirement as part of a school's recertification. Some commenters said that DHS' estimation of the time required for reviewing the proposed Mentoring and Training Plan was too low in light of DSOs' current work duties.

Response. DHS views the Training Plan as primarily the student's responsibility to create and submit, but has made a number of changes in this rule that will reduce the implementation costs for schools. For example, DHS has decided to require only an annual evaluation, and the Department has also clarified a DSO's review responsibilities in section IV.F. of this preamble. In addition, SEVIS will soon be updated to include a portal allowing students to update their own information. DHS believes the rule offers benefits to U.S. institutions of higher education that outweigh administrative implementation costs.

With respect to the commenters' specific proposals, DHS notes that there are currently no plans to add a surcharge to employers to defray additional costs to schools or students. DHS does not expect that this rule would require new hiring by the school; nevertheless, in 2015 DHS lifted the prior cap of 10 DSOs per campus, allowing schools to better allocate personnel to suit their F–1 student population needs. *See* 8 CFR 214.3(l)(1)(iii); Final Rule: Adjustments to Limitations on Designated School Official Assignment and Study by F–2 and M–2 Nonimmigrants, 80 FR 23680 (Apr. 29, 2015). DHS will continue to seek feedback and proposals from school officials on ways to increase clarity and minimize burden.

Comment. Some DSOs stated that their workloads would increase if they were obligated to follow up with students who miss their Training Plan deadlines and reporting requirements.

Response. If a student does not submit his or her evaluation on time, the DSO should report that fact to DHS. After such reporting is completed, the DSO would have no further responsibility related to student non-compliance aside from any potential case-by-case DHS request for documentation regarding the student.

Comment. One commenter sought clarification on which persons would be responsible for advising U.S. employers of their reporting obligations under 8 CFR 214.2(f)(10)(ii)(C)(*6*). The commenter, a school, stated that this would be another burden that would fall on schools as they would end up educating employers about their obligations.

Response. The employer, as an active participant in the STEM OPT extension program, is responsible for reporting any changes in student employment and monitoring students' progress and work via the Training Plan. DHS will make initial guidance available to all parties—DSOs, employers, and students—regarding the responsibilities of each, as soon as feasible. These guides will be posted at *http://www.ice.gov* and *http://studyinthestates.dhs.gov*.

Comment. The Initial Regulatory Impact Analysis estimated that it would take approximately three hours for the employer to complete the proposed Mentoring and Training Plan, including 2 hours for employers to initially complete the plan and an additional hour for employers to help complete the required evaluations.[128] Some commenters stated that DHS' initial estimate of the time burden for employers to complete the proposed Mentoring and Training Plan and conduct the required evaluation every six months was too low. One commenter cited a survey of employers in which four out of five employers responded that ''the government's estimate regarding time and cost to comply with the program requirements is too low.'' Another commenter observed that DHS' initial time estimate did not account for time necessary for communication between the student, the DSO, and the employer in order to complete Section 1 of the form.

Response. DHS recognizes the concerns of students and employers with regard to complying with the Training Plan requirements. As noted above, DHS has incorporated significant flexibilities and clarifications into the Training Plan requirement, including by reducing the frequency of evaluations. DHS has also revised the burden estimates upwards, including to account for time for necessary communication between the student, DSO, and employer.

Comment. Some commenters stated that any government costs incurred to implement the rule should be used instead to help train and prepare U.S. students and graduates.

Response. The STEM OPT extension is a program implemented by SEVP, which is entirely funded by fees paid by students and schools. The program does not receive appropriated funds from Congress, and the program is not implemented at taxpayers' expense. Thus, any elimination of the STEM OPT extension would not result in increased budget flexibility to address training of U.S. citizen students and workers.

K. Other Comments

1. Introduction

DHS received a number of comments related to matters falling outside the topics discussed above. The comments are addressed below.

2. Public Comments and Responses

i. Procedural Aspects of the Rulemaking

Comment. Several commenters asserted that foreign nationals (including students and non-U.S. workers) should not be allowed to comment on the proposed rule.

Response. Such an approach would be inconsistent with the statutory requirements established by Congress in the APA's notice-and-comment provision, which do not include a citizenship or nationality requirement and places a priority on allowing all interested persons to participate in a rulemaking proceeding.

Comment. One commenter stated that the use of a 30-day comment period instead of a 60-day comment period suggested an ''executive power grab.'' The commenter added that the 30-day comment period was intentionally designed to allow the rule to go into effect on February 13, 2016, when the 2008 STEM OPT extension was originally scheduled to be vacated. The commenter stated that a February 13 effective date would allow DHS to avoid a hiatus in processing applications.

[128] *See* DHS, Initial Regulatory Impact Analysis, table 7 (Oct. 2015), available at *http://www.regulations.gov/#!documentDetail;D=/ICEB-2015=/-0002=/-0206.*

Another commenter stated that the 30-day comment period has the potential to expose the Department and this rule to unneeded scrutiny and possible delay. The commenter suggested that DHS consider withdrawing the current proposal and re-release a new proposed rule with a timeline that is consistent with Executive Order 13563.

Response. DHS recognizes that Executive Order 13563 recommends a 60-day comment period. However, the Administrative Procedure Act makes no reference to that time period. *See* 5 U.S.C. 553. For many years courts have recognized that 30 days provides a meaningful opportunity for public input into rulemaking. *See, e.g., Conference of State Bank Sup'rs* v. *Office of Thrift Supervision*, 792 F. Supp. 837, 844 (D.D.C. 1992). DHS notes that the fact that it received over 50,500 comments on the proposed rule suggests that the 30-day period provided an adequate opportunity for public input. Especially in light of the need for swift action to address impending vacatur of the 2008 IFR, DHS believes that the 30-day comment period was reasonable.

Comment. One commenter expressed doubts that DHS would consider comments regarding this regulation rather than ''just dismiss[ing]'' them because, according to the commenter, ''the Department seemingly didn't think the 'over 900' comments it got in response to the 2008 IFR were worth any response at all.'' The commenter suggested that the final rule should explain why the first STEM OPT regulation was never finalized and why it was not a ''violation of the spirit or the letter of the APA to not finalize the 2008 IFR.''

Response. DHS disagrees with the commenter. DHS has considered all comments submitted in regard to this rulemaking, as reflected in the extensive discussion in this preamble. In any case, notwithstanding that DHS was under no legal obligation to do so, DHS relied on the comments to the 2008 IFR when developing the 2015 NPRM. *See, e.g.,* 80 FR 66380–82, 63384, 63386–91 (Oct. 19, 2015).

ii. Impact of STEM OPT on the H–1B Program

Comment. A number of commenters expressed concern about the impact that this rulemaking will have on the H–1B visa program. One commenter stated that the proposed rule would make it harder for individuals to obtain H–1B visas. The commenter explained that the extended OPT period effectively will give F–1 students multiple opportunities to apply for H–1B visas, and that without a commensurate increase in the number of H–1B visas, the rule would increase competition and make it harder to obtain such visas. Some commenters stated that only students who are not granted H–1B visas should be granted STEM OPT extensions, apparently believing the two programs are best considered as alternatives.

Another commenter stated that ''DHS predicts the number of [individuals] working on student visas will be greater than the H–1B quotas.'' Another commenter expressed that STEM OPT graduates are advantaged over H–1B workers, because they have the liberty of changing employers more frequently and with more ease than H–1B workers. However, another commenter stated that students participating in the STEM OPT extension lack mobility and described them as ''indentured laborers'' that do not have rights ''like being able . . . to change jobs.''

Response. DHS acknowledges that some employers may choose to sponsor F–1 students on STEM OPT extensions for H–1B visas. However, DHS expects that employers will invest in retaining only those STEM OPT students who have demonstrated through their performance during OPT that they are likely to make valuable contributions in a position related to their STEM field of study. Employers would make such decisions using the same business judgments they currently rely on to competitively recruit and retain talent and, in some cases, sponsor foreign nationals for H–1B visas.

DHS does not believe sufficient data has been presented to make a determination one way or the other regarding the suggestion that the rule will make it harder for individuals to obtain H–1B visas but believes that any impact will be minimal. DHS notes that there is no limit on the total number of H–1B petitions that an employer may submit in any given year, and no requirement that the individual be in the United States when a petition is submitted on his or her behalf. As compared to the total number of people in the world who may be eligible for H–1B visas, the total number of STEM OPT extension participants in any given year will be quite small. And to the extent that an increase in interest in the H–1B program from STEM OPT students may result in increased competition for scarce H–1B visas, the appropriate remedy for increasing the statutory limits imposed by Congress on H–1B visas would require legislative action.

Additionally, as noted above, the fundamental purpose of the STEM OPT extension is not to provide students with another chance at the H–1B lottery while in the United States. Instead, as explained in detail in the above discussions regarding experiential learning and important U.S. national interests, DHS believes the STEM OPT extension will promote what DHS believes to be the worthy goals of expanding the educational and training opportunities of certain international students, improving the competitiveness of U.S. academic institutions, and ensuring the continued substantial economic, scientific, technological, and cultural benefits that F–1 students bring to the United States generally.

DHS considered comments expressing concerns that STEM OPT students would add to the number of workers competing for jobs in the U.S. labor market beyond those Congress authorized in other employment-based nonimmigrant visa programs, and that they would potentially displace more-experienced U.S. workers. DHS considered potential impacts of student training in the employment context and has included specific labor market safeguards in this final rule. Specifically, any employer providing a training opportunity to a STEM OPT student must attest that the student will not replace a full- or part-time, temporary or permanent U.S. worker. The rule also includes protections to deter use of the STEM OPT extension to undercut U.S. workers' compensation, or sidestep other terms and conditions of employment that the employer would typically provide to U.S. workers. Specifically, the rule requires that the terms and conditions of a STEM practical training opportunity (including duties, hours, and compensation) be commensurate with those applicable to similarly situated U.S. workers. As stated previously, OPT is a part of the educational experience that individuals come to the United States to obtain, and the presence of these individuals in U.S. colleges and universities, as well as in workplaces, exposes U.S. students and workers to their intellectual and cultural perspectives, which ultimately provides significant cultural and economic benefits.

In response to the comment asserting that STEM OPT students can change jobs more easily and frequently than H–1B nonimmigrants, DHS first notes that commenters expressed varying views on whether the STEM OPT extension would result in such an impact. Additionally, unlike the H–1B program's objective to temporarily satisfy a sponsoring employer's need for labor, the STEM OPT extension's objective is to ensure adequate training appropriate to the major area of study

for the student. DHS determined that in order to meet that objective, the employer must comply with the requirements of this final rule, which include providing training conditions consistent with the established Training Plan. Therefore, F–1 students may change employers during a STEM OPT extension, but only in accordance with the STEM OPT regulations and in order to further their practical education in a position directly related to their major area of study. Outside of such a situation, STEM OPT students who leave their employers risk a loss of immigration status and the opportunity to further develop their skills through practical training.

iii. Miscellaneous Other Comments

Comment. A university applauded the clarification in a footnote that ''OPT can be full-time even while a student is attending school that is in session,'' but requested that the statement be affirmed via regulatory text.

Response. DHS declines to make this change because it would impact not only STEM OPT extensions but also the general OPT program, which would be outside the scope of this rulemaking.

Comment. A commenter asked whether a student can choose to end his or her post-completion OPT before the end of the eligibility period, so that the student may preserve some OPT eligibility time for another degree the student plans to pursue at the same educational level.

Response. The time that a student may spend on OPT is not ''bankable'' between two different degrees. This concept remains applicable to the STEM OPT extension as well as to all pre- or post-completion OPT. If a student does not use the full period of time eligible for one degree, the extra time cannot be used for OPT based on a different degree.

Comment. DHS received several comments regarding potential environmental costs resulting from an increased population, both in the United States generally, and in Silicon Valley, California specifically, where many STEM jobs are located. Some also noted that California has been struggling with an ongoing drought.

Response. Upon review, DHS remains convinced that our review pursuant to the National Environmental Policy Act is in compliance with the law and with our Directive and Instruction.

V. Statutory and Regulatory Requirements

DHS developed this final rule after considering numerous statutes and executive orders related to rulemaking. The below sections summarize our analyses based on a number of these statutes and executive orders.

A. Executive Orders 12866 and 13563: Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects, as well as distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. DHS has prepared an analysis of the potential costs and benefits associated with this final rule. The analysis can be found in the docket for this rulemaking and is briefly summarized here. This rule has been designated a ''significant regulatory action'' that is economically significant, under section 3(f)(1) of Executive Order 12866. Accordingly, OMB has reviewed this regulation.

1. Summary

DHS is amending nonimmigrant student visa regulations on OPT for students with degrees in STEM from U.S. accredited institutions of higher education. The final rule includes a 24-month STEM OPT extension. The rule also seeks to strengthen the STEM OPT program by requiring formal training plans by employers, adding wage and other protections for STEM OPT students and U.S. workers, allowing extensions only to students with degrees from accredited schools, and requiring employers to enroll and remain in good standing with E-Verify. The rule also provides Cap-Gap relief for any F–1 student with a timely filed H–1B petition and request for change of status.

The rule provides a formal mechanism for updating the STEM Designated Degree Program list, and permits a student participating in post-completion OPT to use a prior eligible STEM degree from a U.S. institution of higher education as a basis to apply for an extension, provided the most recent degree was also received from a currently accredited institution. The rule implements compliance and reporting requirements that focus on formal training programs to augment academic learning through practical experience, in order to equip students with a more comprehensive understanding of their selected area of study and broader functionality within their chosen field. These changes also help ensure that the nation's colleges and universities remain globally competitive in attracting international STEM students to study and lawfully remain in the United States.

2. Summary of Affected Population

DHS has identified five categories of students who will be eligible for STEM OPT extensions under the final rule: (1) Those currently eligible based on a recently obtained STEM degree; (2) those eligible based upon a STEM degree earned prior to their most recent degree; (3) those eligible for a second STEM OPT extension; (4) those eligible based on potential changes to the current STEM list; and (5) those eligible to increase a currently authorized STEM OPT extension period from 17 to 24 months.

DHS estimates the total number of affected students across the five categories to be almost 50,000 in year one and grow to approximately 92,000 in year 10. This estimation is based on the growth rate of the overall proportion of students with an eligible STEM degree who participate in the post-completion OPT program. DHS utilized a 15 percent growth rate that levelled off to 11 percent to achieve a long run stabilized participation rate in six years. Based on slightly lower and higher growth rates, DHS calculated low and high estimates; for year 1 the low and high figures are about the same as the primary estimate, but by year 10 the low estimate is about 80,000 and the high estimate is approximately 112,000.

DHS conducted a statistically valid sample analysis to estimate the number of STEM OPT employers and schools that would be considered small entities. To identify the entities that would be considered ''small,'' DHS used the Small Business Administration's (SBA) guidelines on small business size standards applied by NAICS code. This analysis indicated that 48 percent of schools are small entities. Based on 1,109 approved and accredited schools participating in STEM OPT extensions, about 532 could reasonably be expected to be small entities impacted by this rule. A sample of 26,260 entities that employed STEM OPT students under the 2008 IFR revealed that about 69 percent were small. Hence, this rule could affect about 18,000 employers that are small entities.

3. Estimated Costs of Final Rule

DHS estimates that the direct costs imposed by the implementation of this rule will be approximately $886.1 million over a 10-year analysis time period. At a 7 percent discount rate, the rule will cost $588.5 million over the

same period, which amounts to $83.8 million per year when annualized at a 7 percent discount rate. At a 3 percent discount rate, the rule will cost $737.6 million over the same period, which amounts to $86.5 million per year when annualized at a 3 percent discount rate. These costs include the direct and monetized opportunity costs to the three types of entities primarily affected by this rule: students, schools, and employers. Students will incur costs completing application forms and paying application fees; reporting to DSOs; preparing, with their employers, the Training Plan; and periodically submitting updates to employers and DSOs. DSOs will incur costs reviewing information and forms submitted by students, inputting required information into the SEVIS, and complying with other oversight requirements related to prospective and participating STEM OPT students. Employers will incur costs preparing the Training Plan with students, confirming students' evaluations, undergoing site visits, researching the compensation of similarly situated U.S. workers, enrolling in (if not previously enrolled) and using E-Verify to verify employment eligibility for all new hires, and complying with additional requirements related to E-Verify. The following table shows a summary of the total costs for a 10-year period of analysis.

TABLE 2—SUMMARY OF THE TOTAL COSTS OF THE FINAL RULE, 2016–2025

[$ millions]

Year	STEM OPT extension cost a	E-Verify cost b	Total cost c = a + b
1	$65.5	$1.8	$67.3
2	50.1	2.1	52.2
3	57.7	2.5	60.2
4	66.3	3.0	69.3
5	76.2	3.5	79.7
6	84.6	4.2	88.8
7	93.9	5.0	98.9
8	104.2	6.0	110.2
9	115.7	7.1	122.8
10	128.4	8.4	136.8
Total	842.5	43.6	886.1
Total (7%)	560.6	27.9	588.5
Total (3%)	701.9	35.7	737.6
Annual (7%)	79.8	4.0	83.8
Annual (3%)	82.3	4.2	86.5

* Estimates may not sum to total due to rounding.

DHS estimates the following distribution of costs per STEM OPT extension under the final rule at: $767 per student, $239 per university DSO, $1,268 per employer (with E-Verify), and $1,549 per employers new to STEM OPT (new to E-Verify).

In addition to the quantified costs summarized above, there could be unquantified direct costs associated with this rule. Such costs could include costs to students and schools resulting from the final accreditation requirement; costs to employers from the final requirement to provide STEM OPT students with compensation commensurate to similarly situated U.S. workers; and decreased practical training opportunities for students no longer eligible for the program due to revisions to the STEM OPT program. DHS does not have adequate data to estimate the monetary value of these possible costs.

4. Estimated Benefits of Final Rule

Making the STEM OPT extension available to additional students and extending its length will enhance students' ability to achieve the objectives of their courses of study by allowing them to gain valuable knowledge and skills through on-the-job training that may be unavailable in their home countries. The changes will also benefit the U.S. educational system, U.S. employers, and the U.S. economy. The rule will benefit the U.S. educational system by helping ensure that the nation's colleges and universities remain globally competitive in attracting international students in STEM fields. U.S. employers will benefit from the increased ability to rely on the skills acquired by STEM OPT students while studying in the United States, as well as their knowledge of markets in their home countries. The U.S. economy as a whole will benefit from the increased retention of STEM students in the United States, including through increased research, innovation, and other forms of productivity that enhance the nation's scientific and technological competitiveness.

Furthermore, strengthening the STEM OPT extension by implementing requirements for training, tracking objectives, reporting on program compliance, and requiring the accreditation of participating schools will further prevent abuse of the limited on-the-job training opportunities provided by this program. These and other elements of the rule will also improve program oversight, strengthen the requirements for program participation, and better protect against adverse consequences on U.S. workers, as well as consequences that may result from exploitation of students.

DHS has not attempted to quantify the potential benefits of the rule because such benefits are difficult to measure. These benefits encompass a number of dynamic characteristics and explanatory variables that are very difficult to measure and estimate. Quantifying these variables would require specific analyses to develop reasonable and accurate estimates from survey methods that are not within the scope of this regulatory analysis.

5. Alternatives

For purposes of this analysis, DHS considered three principal alternatives to the final rule. The first alternative was to take no regulatory action, in

which case STEM OPT students would no longer be allowed to work or reside in the United States past their 12-month post-completion OPT period, unless they were able to convert to another employment-authorized visa classification or complete another academic program. DHS believes the benefits that accrue from allowing the F–1 STEM OPT extension for students and educational institutions would not be realized under this alternative and that in many cases these students would have to leave the United States. DHS rejects this alternative because it would deter future international students from applying to STEM degree programs at U.S. educational institutions and reduce the attractiveness of U.S. educational institutions compared to educational systems in other countries that have more flexible postgraduate training programs.

The second alternative considered was to keep the maximum length of the STEM OPT extension at 17 months, while implementing all other aspects of the final rule. For students seeking a STEM OPT extension based on a second or previously earned STEM degree, the alternative would be similar to the final rule, except with respect to the duration of the OPT period. The 10-year total of this alternative is $29 million less than the final rule, discounted at 7 percent. After evaluation of DHS's experience with the STEM OPT extension, DHS has rejected this alternative so as to ensure that the practical training opportunity is long enough to complement the student's academic experience and allow for a meaningful educational experience, particularly given the complex nature of many STEM projects.

The third alternative to the final rule was to include a six-month evaluation as part of the Training Plan. This alternative was considered in the NRPM. After considering an employer's typical schedule of annual evaluations for all employees, including STEM OPT extension students, DHS has rejected this alternative in favor of an annual evaluation.

The results of this comparison of alternatives are summarized in the following table.

TABLE 3—TOTAL COSTS FOR REGULATORY ALTERNATIVES CONSIDERED

[$ millions]

Year	Alternative 1 no action	Alternative 2 no change in STEM OPT length	Alternative 3 6 month evaluations	Improving and extending STEM OPT (final rule)
1	$0.0	$44.8	$81.0	$67.3
2	0.0	51.6	64.2	52.2
3	0.0	59.3	73.8	60.2
4	0.0	68.2	85.0	69.3
5	0.0	78.5	97.8	79.7
6	0.0	87.4	108.9	88.8
7	0.0	97.3	121.2	98.9
8	0.0	108.4	134.9	110.2
9	0.0	120.8	150.2	122.8
10	0.0	134.6	167.3	136.8
Total	0.0	851.1	1,084.4	886.1
Total (7%)	0.0	559.5	720.0	588.5
Total (3%)	0.0	705.5	902.5	737.6

* Estimates may not sum to total due to rounding.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (March 29, 1996), requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small business, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

1. A Statement of the Need for, and Objectives of, the Rule

The final rule improves the STEM OPT extension by increasing oversight and strengthening requirements for participation. The changes to the STEM OPT extension regulations are intended to enhance the educational benefit of the STEM OPT extension, create a formal process for updating the list of STEM degree programs that are eligible for the STEM OPT extension, and incorporate new measures to better ensure that STEM OPT extensions do not adversely affect U.S. workers. DHS objectives and legal authority for this final rule are further discussed elsewhere in this preamble.

2. A Statement of the Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis, a Statement of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Rule as a Result of Such Comments

Comment. Many universities and employers specifically stated that the rule would improve overall U.S. economic competitiveness. However, commenters stated that the burden of the proposed Mentoring and Training Plan would be felt more acutely by small- to medium-sized businesses that use this program. Commenters stated that managers of such businesses have many daily responsibilities—they are responsible for payroll, managing the Human Resources department, and personally working with their customers or clients, among other responsibilities. Commenters stated that DHS underestimated the increased administrative burdens that will be borne by small businesses, and noted that this time cannot be spent on the core competencies of the firm. Many of these same concerns are shared by larger companies as well. Commenters identifying as large participants in the OPT program stated concerns that the individualized training plan must be tracked by a supervisory employee at the firm for each worker.

Commenters stated that many firms already have workable mentoring and training programs in place at their firms, and some expressed concerns that the

training plan requirement, in many cases, would force companies to make major changes to their current mentoring programs while imposing an unreasonable cost burden. Other commenters expressed concern that DHS severely underestimated the time to fill out the form. Finally, in the initial regulatory flexibility analysis, DHS presented the costs to schools as a percentage of annual revenue. A university commenter stated that comparing costs against revenue is not appropriate because schools do not generate revenue from their graduates directly, and universities do not fund their international student offices based on student population.

Response. DHS recognizes the concerns of employers with regard to complying with the training plan requirements. As noted in sections IV.B. and IV.F. of this preamble, DHS has revised the NPRM to allow for additional flexibilities for employers. For instance, DHS has changed the frequency of the evaluation requirement. DHS proposed requiring an evaluation every six months, but is reducing the frequency to every 12 months. This change is intended to better reflect employer practices where annual reviews are standard, allowing students and employers to better align the evaluations required under this rule with current evaluation cycles. In addition, DHS has modified the regulatory text to further ensure that employers may rely on their existing training programs to meet certain training plan requirements under this rule, so long as such training programs otherwise meet the rule's training plan requirements. Finally, in response to comments received, DHS has updated the estimate of time to complete the Training Plan for STEM OPT Students form to 7.5 hours.

While employers may need to make adjustments due to the training plan requirement, DHS views the educational and program integrity benefits as outweighing any costs associated with the Training Plan and supporting documentation. In addition, it is primarily the student's responsibility to complete the Training Plan with the employer and submit it to the DSO.

Finally, DHS disagrees with the comment concerning school revenue. DHS presents the costs to schools as a percentage of estimated annual revenue in order to assess the impact of universities' costs in the context of their overall revenue.

3. The Response of the Agency to Any Comments Filed by the Chief Counsel for Advocacy of the Small Business Administration in Response to the Proposed Rule, and a Detailed Statement of Any Changes Made to the Proposed Rule in the Final Rule as a Result of the Comments

DHS did not receive comments from the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule.

4. A Description of and an Estimate of the Number of Small Entities to Which the Rule Will Apply or an Explanation of Why No Such Estimate Is Available

DHS conducted a statistically valid sample analysis to estimate the number of STEM OPT employers and schools that would be considered small entities. To identify the entities that would be considered ''small,'' DHS used the SBA guidelines on small business size standards applied by NAICS code. This analysis indicated that 48 percent of schools are small entities. Based on 1,109 approved and accredited schools participating in STEM OPT extensions, about 532 could reasonably be expected to be small entities impacted by the rule. Analysis of a sample of 26,260 entities that employed students who had obtained STEM OPT extensions revealed that about 69 percent were small. Hence, about 18,000 employers that are small entities could be affected by the rule.

5. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirements and the Types of Professional Skills Necessary for Preparation of the Report or Record

The final rule requires assurance that STEM OPT students develop, with their employers, a training plan. When completed, students submit the Training Plan for STEM OPT Students form to their DSOs when requesting the 24-month STEM OPT extension. The DSO must retain a copy of the form. The student and employer must ensure that any modified Training Plan is submitted to the student's DSO (at the earliest available opportunity). The student and employer must sign the modified Training Plan reflecting the material change(s) or deviation(s). Additionally, students will be required to update the form every 12 months to include a progress report on accomplishments and skills or knowledge obtained. Employers must meet with the student and sign the 12-month evaluation, and DSOs will check to ensure the evaluation has been completed and retain a copy.

Schools

Under the final rule, students must provide the completed Training Plan for STEM OPT Students forms to their DSOs to request STEM OPT extensions. DHS's analysis includes an opportunity cost of time for reviewing the form to ensure its proper completion and filing the record either electronically or in a paper folder.

Schools will incur costs providing oversight, reporting STEM OPT students' information, and reviewing required documentation. DSOs will be required to ensure the form has been properly completed and signed prior to making a recommendation in SEVIS. Schools will be required to ensure that SEVP has access to student evaluations (electronic or hard copy) for a period of at least three years following the completion of each STEM practical training opportunity. This rule, like the 2008 IFR, requires six-month student validation check-ins with DSOs. While the DSO will be in communication with the student during a six-month validation check-in, the final rule adds an additional requirement that DSOs also check to ensure the 12-month evaluation has been properly completed and retain a copy. The final rule maintains the 2008 IFR requirements for periodic information reporting requirements on students, which results in a burden for DSOs. Table 3 summarizes the school costs from the final rule, as described in the Costs section of the separate Regulatory Impact Analysis.

TABLE 4—SCHOOLS—COST OF COMPLIANCE PER STEM OPT OPPORTUNITY

Final provision	Calculation of school cost per student	Cost in year 1 per student	Cost in year 2 per student
Initially Reviewing and Filing Training Plan Form [1]	(1.33 hours × $39.33)	$52.31	$0.00
12-Month Evaluation [2]	(1 hour × 1 eval × $39.33)	39.33	39.33
6-Month Validation Check-Ins [2]	(0.17 hours × 2 validation check-ins × $39.33)	13.37	13.37

TABLE 4—SCHOOLS—COST OF COMPLIANCE PER STEM OPT OPPORTUNITY—Continued

Final provision	Calculation of school cost per student	Cost in year 1 per student	Cost in year 2 per student
Additional Implementation [2]	0.10 × (Training Plan Initial + eval + validation check-ins costs).	10.83	5.27
Periodic Reports to DSO	0.17 hours × 2 reports × $39.33	13.37	13.37
Total		128.88	71.34

[1] Training Plan initial costs are only in year 1 per STEM OPT student.
[2] Estimated based on 12-month-period.

DHS estimates the annual impact to schools based on the school cost of compliance as a percentage of annual revenue. Second-year costs account for new additional STEM OPT extension students. For not-for-profit schools, DHS multiplied full-time first-year student tuition by total number of students to estimate school revenue.[129] While tuition revenue may underestimate actual school revenue, this is the best information available to DHS, and certainly the largest source of income for most schools. DHS's analysis shows that the first-year annual impact for the sampled small-entity schools with sufficient data would be less than 1 percent, with the average annual impact being 0.005 percent. All sampled small-entity schools with sufficient data had second-year annual impacts of less than 1 percent, with the average annual impact being 0.009 percent.

TABLE 5—SCHOOLS—ANNUAL IMPACT IN YEAR 1

Revenue impact range	Number of for-profit small entities with data	Number of non-profit small entities with data	Percent of small entity schools
0% < Impact ≤ 1%	4	137	100%
Total	141		100

TABLE 6—SCHOOLS—ANNUAL IMPACT IN YEAR 2

Revenue impact range	Number of for-profit small entities with data	Number of non-profit small entities with data	Percent of small entity schools
0% < Impact ≤ 1%	4	137	100%
Total	141	100	

Finally, schools not accredited by a Department of Education-recognized accrediting agency may incur unquantified costs from the final rule's prohibition on participation in the STEM OPT extension by students attending unaccredited schools. A few schools may choose to seek accreditation, or may potentially lose future international students and associated revenue.

Employers

Employers will be required to provide information for certain fields in the Training Plan for STEM OPT Students form, review the completed form, and attest to the certifications on the form. The final rule also prohibits using STEM OPT extension students as volunteers. The rule additionally requires that students work at least 20 hours per week while on their STEM OPT extension, and that they receive commensurate compensation. DHS does not have data on the number of STEM OPT students who do not currently receive compensation. Nor does DHS have data on the number of STEM OPT students who do not currently receive wages or other qualifying compensation that would be considered commensurate under the final rule. To the extent that employers are not currently compensating STEM OPT students in accordance with the final rule, this rulemaking creates additional costs to these employers. In the quantified costs, DHS does account for the possible additional burden of reviewing the employment terms of similarly situated U.S. workers in order to compare the terms and conditions of their employment to those of the STEM OPT student's practical training opportunity.

The final rule indicates that DHS, at its discretion, may conduct a site visit of an employer. The employer site visit is intended to ensure that each employer meets program requirements, including that they are complying with their attestations and that they possess the ability and resources to provide structured and guided work-based learning experiences outlined in students' Training Plans. Site visits will be performed at the discretion of DHS either randomly or when DHS determines that such an action is needed. The length and scope of such a visit would be determined on a case-by-case basis. For law enforcement reasons, DHS does not include an estimate of the basis for initiating a site visit and is unable to estimate the number of site

[129] U.S. Department of Education, National Center for Education Statistics, Institute of Education Sciences, ''Academic year prices for full-time, first-time undergraduate students,'' (Total enrollment, including Undergraduate and Graduate) 2014–2015, Available at *http://nces.ed.gov/globallocator/*.

visits that may be conducted, and thus is unable to provide a total annual estimated cost for such potential occurrences. However, based on previous on-site-reviews to schools, DHS estimates that an employer site visit may include review of records and questions for the supervisor, and will take five hours per employer. Therefore, DHS estimates that if an employer were to receive such a site visit, it would cost the employer approximately $394.80 (5 hours × $78.96).[130]

TABLE 7—EMPLOYERS—COST OF COMPLIANCE

Final provision	Calculation of costs	Cost in year 1	Cost in year 2
Initially Completing Training Plan Form[1]	(3 hours × $78.96) + (1 hour × $43.93)	$280.81	$0.00
12-Month Evaluations[2]	(0.75 hours × 1 eval × $78.96)	59.22	59.22
Additional Implementation	0.1 × (Training Plan Initial + evals costs)	34.00	5.92
Employer STEM OPT Costs per Student =	Total	374.03	65.14
Cost for E-Verify per New Hire Case	(0.16 hours × $43.93)	7.03	7.03
E-Verify Enrollment & Setup	(2.26 hours × $80.12) + $100	281.07	0.00
E-Verify Annual Training & Maintenance	(1 hour × $43.93) + $398	441.93	441.93
Compliance Site Visit	([5 hours × $78.96] + [5 hours × $43.93])	0.00	614.45
E-Verify and Site Visit Employer Costs =	Total	723.00	1,056.38

[1] Training Plan initial costs are only in year 1 per STEM OPT student.
[2] Estimated based on 12-month-period.

DHS estimates the annual impact to employers based on the employer cost of compliance as a percentage of annual revenue. Second-year costs include initial submission of Training Plans for new STEM OPT students who will be hired in the second year. For not-for-profit school employers without revenue data, DHS multiplied the tuition per full-time first-year student with total enrollment numbers to estimate their revenue. DHS's analysis shows that the first- and second-year annual impact for 99 percent of the sampled small entities with sufficient data would be less than 1 percent, with the average first-year annual revenue impact being 0.11 percent and second-year annual revenue impact being 0.13 percent. Additionally, the cost impact per employer included a compliance site visit in year 2; therefore, costs could be less for employers that do not receive a site visit.

TABLE 8—EMPLOYERS—ANNUAL IMPACT IN YEAR 1

Revenue impact range	Number of for-profit small entities with data	Number of non-profit small entities with data	Percent of small entity employers
0% < Impact ≤ 1%	240	7	99%
1% < Impact ≤ 3%	2	0	1
Total	249		100.0

TABLE 9—EMPLOYERS—ANNUAL IMPACT IN YEAR 2

Revenue impact range	Number of for-profit small entities with data	Number of non-profit small entities with data	Percent of small entity employers
0% < Impact ≤ 1%	239	7	99%
1% < Impact ≤ 3%	3	0	1
Total	249		100.0

Current Employers That Do Not Continue to Participate

Due to additional employer requirements that must be met in order to receive the benefit of a STEM OPT extension opportunity, some employers (such as temporary employment agencies) will no longer be allowed to participate in STEM OPT extensions. DHS has not attempted to quantify costs associated with this possible impact on employers due to lack of available information on employers that would fall under this category and the associated economic impacts.

[130] DHS estimates that this work will be performed by general management staff at an hourly rate of $54.08 (as published by the May 2014 BLS Occupational Employment and Wage Estimates), which we multiply by 1.46 to account for employee benefits to obtain a total hourly labor cost of $78.96. Calculated 1.46 by dividing total compensation for all workers of $33.13 by wages and salaries for all workers of $22.65 per hour (yields a benefits multiplier of approximately 1.46 × wages). Bureau of Labor Statistics, Employer Costs for Employee Compensation, Table 1. Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major occupational and industry group, December 2014.'' Available at: *http://www.bls.gov/news.release/archives/ecec_03112015.htm.*

6. A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule, and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected

DHS recognizes that the final rule will increase requirements on schools and employers of STEM OPT students. DHS has tried to minimize, to the extent possible, the small entity economic impacts of the final rule by structuring the program such that students are largely responsible for meeting its requirements. This not only minimizes the burden of the final program on schools and employers but also helps to ensure that students, who are the most direct beneficiaries of the practical training opportunities, bear an equitable amount of responsibility.

DHS has tried to minimize additional DSO responsibilities while balancing the need for oversight. For example, Training Plan evaluations will be conducted and submitted annually, rather than semi-annually, as DHS had initially proposed.

DHS has tried to provide flexibility for small entities in methods they can use to meet the commensurate duties, hours, and compensation requirements for STEM OPT students. The final rule allows employers to perform an analysis that uses their own wage and compensation data to determine how to compensate their STEM OPT employee in a comparable manner to their similarly situated U.S. workers. This provides small entities flexibility rather than applying a prescriptive national, state, or metropolitan data requirement. And because small entities may not have similarly situated U.S. workers, the rule provides alternative options, discussed in the preamble, for compliance with the requirement to provide commensurate compensation. Finally, the rule allows employers to meet some of the Training Plan requirements using existing training programs.

DHS will engage in further stakeholder outreach activities and provide clarifying information as appropriate. DHS envisions that this outreach will reduce the burden that may result from small entities' uncertainty in how to comply with the requirements.

As explained in greater detail in Chapter 8 of the RIA, DHS examined three alternative options that could have reduced the burden of the rule on small entities. The alternatives considered were (1) no regulatory action, (2) no change in the duration of the STEM OPT extension, and (3) requiring a six month evaluation. DHS rejected these alternatives. First, without regulatory action, OPT students would no longer be allowed to work or reside in the United States past their 12-month post-completion OPT period. This would deter future international students who would pursue STEM degrees from applying to U.S. educational institutions, and reduce the attractiveness of U.S. educational institutions compared to educational systems in other countries that have more flexible student work programs. Second, without increasing the duration of the STEM OPT extension, students' practical training opportunities would not be long enough to complement the student's academic experience and allow for a meaningful educational experience, particularly given the complex nature of STEM projects. After weighing the advantages and disadvantages of each alternative, DHS elected to improve and extend the STEM OPT program in order to increase students' ability to gain valuable knowledge and skills through on-the-job training in their field that may be unavailable in their home countries, increase global attractiveness of U.S. colleges and universities, increase program oversight and strengthen requirements for program participation, and institute new protections for U.S. workers.

C. Small Business Regulatory Enforcement Fairness Act of 1996

Pursuant to Sec. 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, DHS wants to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions, please consult DHS using the contact information provided in the **FOR FURTHER INFORMATION CONTACT** section above. DHS will not retaliate against small entities that question or complain about this rule or about any DHS policy or action related to this rule.

D. Unfunded Mandates Reform Act

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

E. Congressional Review Act

DHS has sent this final rule to the Congress and to Comptroller General under the Congressional Review Act, 5 U.S.C. 801 *et seq.* This rule is a ''major rule'' within the meaning of the Congressional Review Act.

F. Collection of Information

Federal agencies are required to submit to OMB, for review and approval, any reporting or recordkeeping requirements inherent in a rule under the Paperwork Reduction Act of 1995, as amended, 44 U.S.C. 3501–3520. Under the Paperwork Reduction Act, 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.

DHS has submitted the following information collection request to the OMB for review and approval in accordance with the review procedures of the Paperwork Reduction Act. The information collection requirements are outlined in this rule. The rule maintains the 2008 IFR revisions to previously approved information collections. The 2008 IFR impacted information collections for Form I–765, Application for Employment Authorization (OMB Control No. 1615–0040); SEVIS and Form I–20, Certificate of Eligibility for Nonimmigrant Student Status (both OMB Control No. 1653–0038); and E-Verify (OMB Control No. 1615–0092). These four approved information collections corresponding to the 2008 IFR include the number of respondents, responses and burden hours resulting from the 2008 IFR requirements, which remain in this final rule. Therefore DHS is not revising the burden estimates for these four information collections. Additional responses tied to new changes to STEM OPT eligibility will minimally increase the number of responses and burden for Form I–765 and E-Verify information collections, as the two collections cover a significantly broader population of respondents and responses than those impacted by the rule and already account for growth in the number of responses in their respective published information collection notices burden estimates.

As part of this rule, DHS is creating a new information collection instrument for the Training Plan for STEM OPT

Students, which is now available at *https://studyinthestates.dhs.gov/*. This information collection is necessary to enable reporting and attesting to specified information relating to STEM OPT extensions, to be executed by STEM OPT students and their employers. Such reporting will include goals and objectives, progress, hours, and compensation. Attestations will ensure proper training opportunities for students and safeguard interests of U.S. workers in related fields.

Additionally, DHS is making minor non-substantive changes to the instructions to Form I–765 to reflect changes to the F–1 regulations that lengthen the STEM OPT extension and allow applicants to file Form I–765 with USCIS within 60 days (rather than 30 days) from the date the DSO endorses the STEM OPT extension. Accordingly, USCIS submitted an OMB 83–C, Correction Worksheet, to OMB, which reviewed and approved the minor edits to the Form I–765 instructions.

Overview of New Information Collection- Training Plan for STEM OPT Students

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Training Plan for STEM OPT Students.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* Immigration and Customs Enforcement Form I–983;

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

- *Primary:* Students with F–1 nonimmigrant status, state governments, local governments, educational institutions, businesses, and other for-profit and not-for-profit organizations.
- *Other:* None.
- *Abstract:* DHS is publishing a final rule that makes certain changes to the STEM OPT extension first introduced by the 2008 IFR. The rule lengthens the duration of the STEM OPT extension to 24 months; requires a Training Plan executed by STEM OPT students and their employers; requires that the plan include assurances to safeguard students and the interests of U.S. workers in related fields; and requires that the plan include objective-tracking and reporting requirements. The rule requires students and employers (through an appropriate signatory official) to report on the Training Plan certain specified information relating to STEM OPT extensions. For instance, the Training Plan explains how the practical training is directly related to the student's qualifying STEM degree; explains the specific goals of the STEM practical training opportunity and how those goals will be achieved through the work-based learning opportunity with the employer, including details of the knowledge, skills, or techniques to be imparted to the student; identifies the performance evaluation process; and describes the methods of oversight and supervision. The Training Plan also includes a number of employer attestations intended to ensure the educational benefit of the practical training experience, protect STEM OPT students, and protect against appreciable adverse consequences on U.S. workers. The rule also requires schools to collect and retain this information for a period of three years following the completion of each STEM practical training opportunity.

5. An estimate of the total annual average number of respondents, annual average number of responses, and the total amount of time estimated for respondents in an average year to collect, provide information, and keep the required records is:

- 42,092 STEM OPT student respondents; 1,109 accredited schools endorsing STEM OPT students; and 16,891 employers of STEM OPT students.
- 42,092 average responses annually at 7.5 hours per initial Training Plan response.
- 70,153 average responses annually at 3.66 hours per 12-month evaluation response by STEM OPT students, DSOs, and employers.

6. An estimate of the total public burden (in hours) associated with the collection: 566,698 hours.

The recordkeeping requirements set forth by this rule are new requirements that require a new OMB Control Number.

During the NPRM, DHS sought comment on these proposed requirements. DHS received a number of comments on the burden potentially imposed by the proposed rule. The comments, and DHS's responses to those comments, can be found in the discussion of public comments regarding Form I–983 in section IV of this preamble. The final form and instructions are available in the docket for this rulemaking.

G. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

I. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

J. Environment

The U.S. Department of Homeland Security Management Directive (MD) 023–01 Rev. 01 establishes procedures that DHS and its components use to comply with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4375, and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, 40 CFR parts 1500–1508. CEQ regulations allow federal agencies to establish categories of actions, which do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require an Environmental Assessment or Environmental Impact Statement. 40 CFR 1508.4. The MD 023–01 Rev. 01 lists the Categorical Exclusions that DHS has found to have no such effect. MD 023–01 Rev. 01 Appendix A Table 1.

For an action to be categorically excluded, MD 023–01 Rev. 01 requires the action to satisfy each of the following three conditions:

(1) The entire action clearly fits within one or more of the Categorical Exclusions.

(2) The action is not a piece of a larger action.

(3) No extraordinary circumstances exist that create the potential for a significant environmental effect. MD 023–01 Rev. 01 section V.B(1)–(3).

Where it may be unclear whether the action meets these conditions, MD 023–01 Rev. 01 requires the administrative record to reflect consideration of these conditions. MD 023–01 Rev. 01 section V.B.

DHS has analyzed this rule under MD 023–01 Rev. 01. DHS has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on

the human environment. This rule clearly fits within the Categorical Exclusion found in MD 023–01 Rev. 01, Appendix A, Table 1, number A3(a): ''Promulgation of rules . . . of a strictly administrative or procedural nature;'' and A3(d): ''Promulgation of rules . . . that interpret or amend an existing regulation without changing its environmental effect.'' This rule is not part of a larger action. This rule presents no extraordinary circumstances creating the potential for significant environmental effects. Therefore, this rule is categorically excluded from further NEPA review.

K. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

L. Taking of Private Property

This rule would not cause a taking of private property or otherwise have takings implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

M. Protection of Children

DHS has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule would not create an environmental risk to health or risk to safety that might disproportionately affect children.

N. Technical Standards

The National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

List of Subjects

8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

The Amendments

For the reasons set forth in the preamble, the Department of Homeland Security amends parts 214 and 274a of Chapter 1 of Title 8 of the Code of Federal Regulations as follows:

PART 214—NONIMMIGRANT CLASSES

■ 1. Revise the authority citation for part 214 to read as follows:

Authority: 6 U.S.C. 111 and 202; 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305, 1324a, 1372 and 1762; Sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; Pub. L. 106–386, 114 Stat. 1477–1480; Pub. L. 107–173, 116 Stat. 543; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; 48 U.S.C. 1806; 8 CFR part 2.

■ 2. Amend § 214.2 by revising paragraphs (f)(5)(vi), (f)(10)(ii)(A)(*3*), (f)(10)(ii)(C), (D), and (E), and (f)(11) and (12) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(f) * * *

(5) * * *

(vi) *Extension of duration of status and grant of employment authorization.* (A) The duration of status, and any employment authorization granted under 8 CFR 274a.12(c)(3)(i)(B) or (C), of an F–1 student who is the beneficiary of an H–1B petition subject to section 214(g)(1)(A) of the Act (8 U.S.C. 1184(g)(1)(A)) and request for change of status shall be automatically extended until October 1 of the fiscal year for which such H–1B status is being requested where such petition:

(*1*) Has been timely filed; and

(*2*) Requests an H–1B employment start date of October 1 of the following fiscal year.

(B) The automatic extension of an F–1 student's duration of status and employment authorization under paragraph (f)(5)(vi)(A) of this section shall automatically terminate upon the rejection, denial, revocation, or withdrawal of the H–1B petition filed on such F–1 student's behalf or upon the denial or withdrawal of the request for change of nonimmigrant status, even if the H–1B petition filed on the F–1 student's behalf is approved for consular processing.

(C) In order to obtain the automatic extension of stay and employment authorization under paragraph (f)(5)(vi)(A) of this section, the F–1 student, consistent with 8 CFR part 248, must not have violated the terms or conditions of his or her nonimmigrant status.

(D) An automatic extension of an F–1 student's duration of status under paragraph (f)(5)(vi)(A) of this section also applies to the duration of status of any F–2 dependent aliens.

* * * * *

(10) * * *

(ii) * * *

(A) * * *

(*3*) After completion of the course of study, or, for a student in a bachelor's, master's, or doctoral degree program, after completion of all course requirements for the degree (excluding thesis or equivalent). Continued enrollment, for the school's administrative purposes, after all requirements for the degree have been met does not preclude eligibility for optional practical training. A student must complete all practical training within a 14-month period following the completion of study, except that a 24-month extension pursuant to paragraph (f)(10)(ii)(C) of this section does not need to be completed within such 14-month period.

* * * * *

(C) *24-month extension of post-completion OPT for a science, technology, engineering, or mathematics (STEM) degree.* Consistent with paragraph (f)(11)(i)(C) of this section, a qualified student may apply for an extension of OPT while in a valid period of post-completion OPT authorized under 8 CFR 274a.12(c)(3)(i)(B). An extension will be for 24 months for the first qualifying degree for which the student has completed all course requirements (excluding thesis or equivalent), including any qualifying degree as part of a dual degree program, subject to the requirement in paragraph (f)(10)(ii)(C)(*3*) of this section that previously obtained degrees must have been conferred. If a student completes all such course requirements for another qualifying degree at a higher degree level than the first, the student may apply for a second

24-month extension of OPT while in a valid period of post-completion OPT authorized under 8 CFR 274a.12(c)(3)(i)(B). In no event may a student be authorized for more than two lifetime STEM OPT extensions. A student who was granted a 17-month OPT extension under the rule issued at 73 FR 18944, whether or not such student requests an additional 7-month period of STEM OPT under 8 CFR 214.16, is considered to have been authorized for one STEM OPT extension, and may be eligible for only one more STEM OPT extension. Any subsequent application for an additional 24-month OPT extension under this paragraph (f)(10)(ii)(C) must be based on a degree at a higher degree level than the degree that was the basis for the student's first OPT extension. In order to qualify for an extension of post-completion OPT based upon a STEM degree, all of the following requirements must be met.

(*1*) *Accreditation.* The degree that is the basis for the 24-month OPT extension is from a U.S. educational institution accredited by an accrediting agency recognized by the Department of Education at the time of application.

(*2*) *DHS-approved degree.* The degree that is the basis for the 24-month OPT extension is a bachelor's, master's, or doctoral degree in a field determined by the Secretary, or his or her designee, to qualify within a science, technology, engineering, or mathematics field.

(*i*) The term ''science, technology, engineering or mathematics field'' means a field included in the Department of Education's Classification of Instructional Programs taxonomy within the two-digit series or successor series containing engineering, biological sciences, mathematics, and physical sciences, or a related field. In general, related fields will include fields involving research, innovation, or development of new technologies using engineering, mathematics, computer science, or natural sciences (including physical, biological, and agricultural sciences).

(*ii*) The Secretary, or his or her designee, will maintain the STEM Designated Degree Program List, which will be a complete list of qualifying degree program categories, published on the Student and Exchange Visitor Program Web site at *http://www.ice.gov/sevis*. Changes that are made to the Designated Degree Program List may also be published in a notice in the **Federal Register**. All program categories included on the list must be consistent with the definition set forth in paragraph (f)(10)(ii)(C)(*2*)(*i*) of this section.

(*iii*) At the time the DSO recommends a 24-month OPT extension under this paragraph (f)(10)(ii)(C) in SEVIS, the degree that is the basis for the application for the OPT extension must be contained within a category on the STEM Designated Degree Program List.

(*3*) *Previously obtained STEM degree(s).* The degree that is the basis for the 24-month OPT extension under this paragraph (f)(10)(ii)(C) may be, but is not required to be, the degree that is the basis for the post-completion OPT period authorized under 8 CFR 274a.12(c)(3)(i)(B). If an application for a 24-month OPT extension under this paragraph (f)(10)(ii)(C) is based upon a degree obtained previous to the degree that provided the basis for the period of post-completion OPT authorized under 8 CFR 274a.12(c)(3)(i)(B), that previously obtained degree must have been conferred from a U.S. educational institution that is accredited and SEVP-certified at the time the student's DSO recommends the student for the 24-month OPT extension and must be in a degree program category included on the current STEM Designated Degree Program List at the time of the DSO recommendation. That previously obtained degree must have been conferred within the 10 years preceding the date the DSO recommends the student for the 24-month OPT extension.

(*4*) *Eligible practical training opportunity.* The STEM practical training opportunity that is the basis for the 24-month OPT extension under this paragraph (f)(10)(ii)(C) must be directly related to the degree that qualifies the student for such extension, which may be the previously obtained degree described in paragraph (f)(10)(ii)(C)(*3*) of this section.

(*5*) *Employer qualification.* The student's employer is enrolled in E-Verify, as evidenced by either a valid E-Verify Company Identification number or, if the employer is using an employer agent to create its E-Verify cases, a valid E-Verify Client Company Identification number, and the employer remains a participant in good standing with E-Verify, as determined by USCIS. An employer must also have an employer identification number (EIN) used for tax purposes.

(*6*) *Employer reporting.* A student may not be authorized for employment with an employer pursuant to paragraph (f)(10)(ii)(C)(*2*) of this section unless the employer agrees, by signing the Training Plan for STEM OPT Students, Form I–983 or successor form, to report the termination or departure of an OPT student to the DSO at the student's school, if the termination or departure is prior to the end of the authorized period of OPT. Such reporting must be made within five business days of the termination or departure. An employer shall consider a student to have departed when the employer knows the student has left the practical training opportunity, or if the student has not reported for his or her practical training for a period of five consecutive business days without the consent of the employer, whichever occurs earlier.

(*7*) *Training Plan for STEM OPT Students, Form I–983 or successor form.* (*i*) A student must fully complete an individualized Form I–983 or successor form and obtain requisite signatures from an appropriate individual in the employer's organization on the form, consistent with form instructions, before the DSO may recommend a 24-month OPT extension under paragraph (f)(10)(ii)(C)(*2*) of this section in SEVIS. A student must submit the Form I–983 or successor form, which includes a certification of adherence to the training plan completed by an appropriate individual in the employer's organization who has signatory authority for the employer, to the student's DSO, prior to the new DSO recommendation. A student must present his or her signed and completed Form I–983 or successor form to a DSO at the educational institution of his or her most recent enrollment. A student, while in F–1 student status, may also be required to submit the Form I–983 or successor form to ICE and/or USCIS upon request or in accordance with form instructions.

(*ii*) The training plan described in the Form I–983 or successor form must identify goals for the STEM practical training opportunity, including specific knowledge, skills, or techniques that will be imparted to the student, and explain how those goals will be achieved through the work-based learning opportunity with the employer; describe a performance evaluation process; and describe methods of oversight and supervision. Employers may rely on their otherwise existing training programs or policies to satisfy the requirements relating to performance evaluation and oversight and supervision, as applicable.

(*iii*) The training plan described in the Form I–983 or successor form must explain how the training is directly related to the student's qualifying STEM degree.

(*iv*) If a student initiates a new practical training opportunity with a new employer during his or her 24-month OPT extension, the student must submit, within 10 days of beginning the new practical training opportunity, a

new Form I–983 or successor form to the student's DSO, and subsequently obtain a new DSO recommendation.

(*8*) *Duties, hours, and compensation for training.* The terms and conditions of a STEM practical training opportunity during the period of the 24-month OPT extension, including duties, hours, and compensation, must be commensurate with terms and conditions applicable to the employer's similarly situated U.S. workers in the area of employment. A student may not engage in practical training for less than 20 hours per week, excluding time off taken consistent with leave-related policies applicable to the employer's similarly situated U.S. workers in the area of employment. If the employer does not employ and has not recently employed more than two similarly situated U.S. workers in the area of employment, the employer nevertheless remains obligated to attest that the terms and conditions of a STEM practical training opportunity are commensurate with the terms and conditions of employment for other similarly situated U.S. workers in the area of employment. ''Similarly situated U.S. workers'' includes U.S. workers performing similar duties subject to similar supervision and with similar educational backgrounds, industry expertise, employment experience, levels of responsibility, and skill sets as the student. The duties, hours, and compensation of such students are ''commensurate'' with those offered to U.S. workers employed by the employer in the same area of employment when the employer can show that the duties, hours, and compensation are consistent with the range of such terms and conditions the employer has offered or would offer to similarly situated U.S. employees. The student must disclose his or her compensation, including any adjustments, as agreed to with the employer, on the Form I–983 or successor form.

(*9*) *Evaluation requirements and Training Plan modifications.* (*i*) A student may not be authorized for employment with an employer pursuant to paragraph (f)(10)(ii)(C)(*2*) of this section unless the student submits a self-evaluation of the student's progress toward the training goals described in the Form I–983 or successor form. All required evaluations must be completed prior to the conclusion of a STEM practical training opportunity, and the student and an appropriate individual in the employer's organization must sign each evaluation to attest to its accuracy. All STEM practical training opportunities require an initial evaluation within 12 months of the approved starting date on the employment authorization document granted pursuant to the student's 24-month OPT extension application, and a concluding evaluation. The student is responsible for ensuring the DSO receives his or her 12-month evaluation and final evaluation no later than 10 days following the conclusion of the reporting period or conclusion of his or her practical training opportunity, respectively.

(*ii*) If any material change to or deviation from the training plan described in the Form I–983 or successor form occurs, the student and employer must sign a modified Form I–983 or successor form reflecting the material change(s) or deviation(s). Material changes and deviations relating to training may include, but are not limited to, any change of Employer Identification Number resulting from a corporate restructuring, any reduction in compensation from the amount previously submitted on the Form I–983 or successor form that is not tied to a reduction in hours worked, any significant decrease in hours per week that a student engages in a STEM training opportunity, and any decrease in hours worked below the minimum hours for the 24-month extension as described in paragraph (f)(10)(ii)(C)(*8*) of this section. Material changes and deviations also include any change or deviation that renders an employer attestation inaccurate, or renders inaccurate the information in the Form I–983 or successor form on the nature, purpose, oversight, or assessment of the student's practical training opportunity. The student and employer must ensure that the modified Form I–983 or successor form is submitted to the student's DSO at the earliest available opportunity.

(*iii*) The educational institution whose DSO is responsible for duties associated with the student's latest OPT extension under paragraph (f)(10)(ii)(C)(*2*) of this section is responsible for ensuring the Student and Exchange Visitor Program has access to each individualized Form I–983 or successor form and associated student evaluations (electronic or hard copy), including through SEVIS if technologically available, beginning within 30 days after the document is submitted to the DSO and continuing for a period of three years following the completion of each STEM practical training opportunity.

(*10*) *Additional STEM opportunity obligations.* A student may only participate in a STEM practical training opportunity in which the employer attests, including by signing the Form I–983 or successor form, that:

(*i*) The employer has sufficient resources and personnel available and is prepared to provide appropriate training in connection with the specified opportunity at the location(s) specified in the Form I–983 or successor form;

(*ii*) The student on a STEM OPT extension will not replace a full- or part-time, temporary or permanent U.S. worker; and

(*iii*) The student's opportunity assists the student in reaching his or her training goals.

(*11*) *Site visits.* DHS, at its discretion, may conduct a site visit of any employer. The purpose of the site visit is for DHS to ensure that each employer possesses and maintains the ability and resources to provide structured and guided work-based learning experiences consistent with any Form I–983 or successor form completed and signed by the employer. DHS will provide notice to the employer 48 hours in advance of any site visit, except notice may not be provided if the visit is triggered by a complaint or other evidence of noncompliance with the regulations in this paragraph (f)(10)(ii)(C).

(D) *Duration of status while on post-completion OPT.* For a student with approved post-completion OPT, the duration of status is defined as the period beginning on the date that the student's application for OPT was properly filed and pending approval, including the authorized period of post-completion OPT, and ending 60 days after the OPT employment authorization expires.

(E) *Periods of unemployment during post-completion OPT.* During post-completion OPT, F–1 status is dependent upon employment. Students may not accrue an aggregate of more than 90 days of unemployment during any post-completion OPT period described in 8 CFR 274a.12(c)(3)(i)(B). Students granted a 24-month OPT extension under paragraph (f)(10)(ii)(C)(*2*) of this section may not accrue an aggregate of more than 150 days of unemployment during a total OPT period, including any post-completion OPT period described in 8 CFR 274a.12(c)(3)(i)(B) and any subsequent 24-month extension period.

(11) *OPT application and approval process*—(i) *Student responsibilities.* A student must initiate the OPT application process by requesting a recommendation for OPT from his or her DSO. Upon making the recommendation, the DSO will provide the student a signed Form I–20 indicating that recommendation.

(A) *Applications for employment authorization.* The student must properly file an Application for

Employment Authorization, Form I–765 or successor form, with USCIS, accompanied by the required fee, and the supporting documents, as described in the form's instructions.

(B) *Applications and filing deadlines for pre-completion OPT and post-completion OPT*—(*1*) *Pre-completion OPT.* For pre-completion OPT, the student may properly file his or her Form I–765 or successor form up to 90 days before being enrolled for one full academic year, provided that the period of employment will not start prior to the completion of the full academic year.

(*2*) *Post-completion OPT.* For post-completion OPT, not including a 24-month OPT extension under paragraph (f)(10)(ii)(C)(*2*) of this section, the student may properly file his or her Form I–765 or successor form up to 90 days prior to his or her program end date and no later than 60 days after his or her program end date. The student must also file his or her Form I–765 or successor form with USCIS within 30 days of the date the DSO enters the recommendation for OPT into his or her SEVIS record.

(C) *Applications and filing deadlines for 24-month OPT extension.* A student meeting the eligibility requirements for a 24-month OPT extension under paragraph (f)(10)(ii)(C) of this section may request an extension of employment authorization by filing Form I–765 or successor form, with the required fee and supporting documents, up to 90 days prior to the expiration date of the student's current OPT employment authorization. The student seeking such 24-month OPT extension must properly file his or her Form I–765 or successor form with USCIS within 60 days of the date the DSO enters the recommendation for the OPT extension into his or her SEVIS record. If a student timely and properly files an application for such 24-month OPT extension and timely and properly requests a DSO recommendation, including by submitting the fully executed Form I–983 or successor form to his or her DSO, but the Employment Authorization Document, Form I–766 or successor form, currently in the student's possession expires prior to the decision on the student's application for the OPT extension, the student's Form I–766 or successor form is extended automatically pursuant to the terms and conditions specified in 8 CFR 274a.12(b)(6)(iv).

(D) *Start of OPT employment.* A student may not begin OPT employment prior to the approved start date on his or her Employment Authorization Document, Form I–766 or successor form, except as described in paragraph (f)(11)(i)(C) of this section. A student may not request a start date that is more than 60 days after the student's program end date. Employment authorization will begin on the date requested or the date the employment authorization is adjudicated, whichever is later.

(ii) *Additional DSO responsibilities.* A student must have a recommendation from his or her DSO in order to apply for OPT. When a DSO recommends a student for OPT, the school assumes the added responsibility for maintaining the SEVIS record of that student for the entire period of authorized OPT, consistent with paragraph (f)(12) of this section.

(A) Prior to making a recommendation, the DSO at the educational institution of the student's most recent enrollment must ensure that the student is eligible for the given type and period of OPT and that the student is aware of the student's responsibilities for maintaining status while on OPT. Prior to recommending a 24-month OPT extension under paragraph (f)(10)(ii)(C) of this section, the DSO at the educational institution of the student's most recent enrollment must certify that the student's degree being used to qualify that student for the 24-month OPT extension, as shown in SEVIS or official transcripts, is a bachelor's, master's, or doctorate degree with a degree code that is contained within a category on the current STEM Designated Degree Program List at the time the recommendation is made. A DSO may recommend a student for a 24-month OPT extension under paragraph (f)(10)(ii)(C) of this section only if the Form I–983 or successor form described in paragraph (f)(10)(ii)(C)(*7*) of this section has been properly completed and executed by the student and prospective employer. A DSO may not recommend a student for an OPT extension under paragraph (f)(10)(ii)(C) of this section if the practical training would be conducted by an employer who has failed to meet the requirements under paragraphs (f)(10)(ii)(C)(*5*) through (*9*) of this section or has failed to provide the required assurances of paragraph (f)(10)(ii)(C)(*10*) of this section.

(B) The DSO must update the student's SEVIS record with the DSO's recommendation for OPT before the student can apply to USCIS for employment authorization. The DSO will indicate in SEVIS whether the OPT employment is to be full-time or part-time, or for a student seeking a recommendation for a 24-month OPT extension under paragraph (f)(10)(ii)(C) of this section whether the OPT employment meets the minimum hours requirements described in paragraph (f)(10)(ii)(C)(*8*) of this section, and note in SEVIS the OPT start and end dates.

(C) The DSO must provide the student with a signed, dated Form I–20 or successor form indicating that OPT has been recommended.

(iii) *Decision on application for OPT employment authorization.* USCIS will adjudicate a student's Form I–765 or successor form on the basis of the DSO's recommendation and other eligibility considerations.

(A) If granted, the employment authorization period for post-completion OPT begins on the requested date of commencement or the date the Form I–765 or successor form is approved, whichever is later, and ends at the conclusion of the remaining time period of post-completion OPT eligibility. The employment authorization period for a 24-month OPT extension under paragraph (f)(10)(ii)(C) of this section begins on the day after the expiration of the initial post-completion OPT employment authorization and ends 24 months thereafter, regardless of the date the actual extension is approved.

(B) USCIS will notify the applicant of the decision on the Form I–765 or successor form in writing, and, if the application is denied, of the reason or reasons for the denial.

(C) The applicant may not appeal the decision.

(12) *Reporting while on optional practical training*—(i) *General.* An F–1 student who is granted employment authorization by USCIS to engage in optional practical training is required to report any change of name or address, or interruption of such employment to the DSO for the duration of the optional practical training. A DSO who recommends a student for OPT is responsible for updating the student's record to reflect these reported changes for the duration of the time that training is authorized.

(ii) *Additional reporting obligations for students with an approved 24-month OPT extension.* Students with an approved 24-month OPT extension under paragraph (f)(10)(ii)(C) of this section have additional reporting obligations. Compliance with these reporting requirements is required to maintain F–1 status. The reporting obligations are:

(A) Within 10 days of the change, the student must report to the student's DSO a change of legal name, residential or mailing address, employer name, employer address, and/or loss of employment.

(B) The student must complete a validation report, confirming that the

information required by paragraph (f)(12)(ii)(A) of this section has not changed, every six months. The requirement for validation reporting starts on the date the 24-month OPT extension begins and ends when the student's F–1 status expires or the 24-month OPT extension concludes, whichever is first. The validation report is due to the student's DSO within 10 business days of each reporting date.

* * * * *

■ 3. In § 214.3, revise paragraph (g)(2)(ii)(F) to read as follows:

§ 214.3 Approval of schools for enrollment of F and M nonimmigrants.

* * * * *

(g) * * *

(2) * * *

(ii) * * *

(F) For F–1 students authorized by USCIS to engage in a 24-month extension of OPT under 8 CFR 214.2(f)(10)(ii)(C):

(*1*) Any change that the student reports to the school concerning legal name, residential or mailing address, employer name, or employer address; and

(*2*) The end date of the student's employment reported by a former employer in accordance with 8 CFR 214.2(f)(10)(ii)(C)(6).

* * * * *

■ 4. Section § 214.16 is added, effective May 10, 2016 through May 10, 2019, to read as follows:

§ 214.16 Transition Procedures for OPT Applications for Employment Authorization

(a) *STEM OPT Applications for Employment Authorization that are filed prior to, and remain pending on May 10, 2016.* (1) On or after May 10, 2016, USCIS will issue Requests for Evidence (RFEs) to students whose applications for a 17-month OPT extension under the rule issued at 73 FR 18944 are still pending. The RFEs will request documentation that will establish that the student is eligible for a 24-month OPT extension under 8 CFR 214.2(f)(10)(ii)(C), including a Form I–20 endorsed on or after May 10, 2016, indicating that the Designated School Official (DSO) recommends the student for a 24-month OPT extension and that the requirements for such an extension have been met. Submission of the Form I–20 in response to an RFE issued under 8 CFR 214.16(a) will be regarded as fulfilling the requirement in 8 CFR 214.2(f)(11)(i) that a student must initiate the OPT application process by requesting a recommendation for OPT by his or her DSO.

(2) Forms I–765 that are filed prior to, and remain pending on, May 10, 2016, will be regarded as being covered by 8 CFR 214.2(f)(11)(i)(C) and 8 CFR 274a.12(b)(6)(iv).

(b) *STEM OPT Applications for Employment Authorization that are filed and approved before May 10, 2016.* A student whose Form I–765 is filed and approved prior to May 10, 2016 will be issued an Employment Authorization Document, Form I–766, that is valid for 17 months even if the student requested a 24-month OPT extension.

(c) *Students with 17-Month STEM OPT employment authorization.* (1) Subject to paragraph (c)(3) of this section, any Employment Authorization Document, Form I–766, indicating a 17-month OPT extension under the rule issued at 73 FR 18944 that has been issued and is valid prior to May 10, 2016 remains valid until such Form I–766 expires or is terminated or revoked under 8 CFR 274a.14, and the student, the student's employer, and the student's DSO must continue to abide by all the terms and conditions that were in effect when the Form I–766 was issued.

(2) Subject to the requirements in paragraphs (c)(2)(i) through (iii) of this section, F–1 students with a 17-month OPT extension under the rule issued at 73 FR 18944 are eligible to apply for an additional 7-month period of OPT. The F–1 student applying for the additional 7-month period of OPT must:

(i) Properly file a Form I–765, with USCIS on or after May 10, 2016 and on or before August 8, 2016, and within 60 days of the date the DSO enters the recommendation for the 24-month OPT extension into the student's SEVIS record, with applicable fees and supporting documentation, as described in the form instructions;

(ii) Have at least 150 calendar days remaining prior to the end of his or her 17-month OPT extension at the time the Form I–765, is properly filed; and

(iii) Meet all the requirements for the 24-month OPT extension as described in 8 CFR 214.2(f)(10)(ii)(C), except the requirement that the student must be in a valid period of post-completion OPT authorized under 8 CFR 274a.12(c)(3)(i)(B).

(3) Students on a 17-month OPT extension who apply for and are granted an additional 7-month period of OPT shall be considered to be in a period of 24-month OPT extension, as authorized under 8 CFR 214.2(f)(10)(ii)(C). Upon proper filing of the application for the additional 7-month OPT extension, the student, the student's employer as identified in the student's completed Form I–983 and the student's DSO are subject to all requirements of the 24-month OPT extension period, except for the 150-day unemployment limit described in 8 CFR 214.2(f)(10)(ii)(E), which applies to students only upon approval of the additional 7-month OPT extension. Subsequent to any denial of the application for the additional 7-month extension, the student, the student's employer, and the student's DSO must abide by all the terms and conditions that were in effect when the 17-month OPT extension was issued throughout the remaining validity period of the 17-month OPT extension.

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

■ 5. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 48 U.S.C. 1806; 8 CFR part 2.

Subpart B—Employment Authorization

■ 6. In § 274a.12, revise paragraph (b)(6)(iv) and (v) and (c)(3)(i) to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(b) * * *

(6) * * *

(iv) An Employment Authorization Document, Form I–766 or successor form, under paragraph (c)(3)(i)(C) of this section based on a STEM Optional Practical Training extension, and whose timely filed Form I–765 or successor form is pending and employment authorization and accompanying Form I–766 or successor form issued under paragraph (c)(3)(i)(B) of this section have expired. Employment is authorized beginning on the expiration date of the Form I–766 or successor form issued under paragraph (c)(3)(i)(B) of this section and ending on the date of USCIS' written decision on the current Form I–765 or successor form, but not to exceed 180 days. For this same period, such Form I–766 or successor form is automatically extended and is considered unexpired when combined with a Certificate of Eligibility for Nonimmigrant (F–1/M–1) Students, Form I–20 or successor form, endorsed by the Designated School Official recommending such an extension; or

(v) Pursuant to 8 CFR 214.2(h) is seeking H–1B nonimmigrant status and whose duration of status and employment authorization have been extended pursuant to 8 CFR 214.2(f)(5)(vi).

* * * * *

(c) * * *

(3) * * *

(i)(A) Is seeking pre-completion practical training pursuant to 8 CFR 214.2(f)(10)(ii)(A)(*1*) and (*2*);

(B) Is seeking authorization to engage in up to 12 months of post-completion Optional Practical Training (OPT) pursuant to 8 CFR 214.2(f)(10)(ii)(A)(*3*); or

(C) Is seeking a 24-month OPT extension pursuant to 8 CFR 214.2(f)(10)(ii)(C);

* * * * *

Jeh Charles Johnson,

Secretary of Homeland Security.

[FR Doc. 2016–04828 Filed 3–9–16; 8:45 am]

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Removal of the Louisiana Black Bear From the Federal List of Endangered and Threatened Wildlife and Removal of Similarity-of-Appearance Protections for the American Black Bear; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2015–0014; FXES11130900000C2–167–FF09E32000]

RIN 1018–BA44

Endangered and Threatened Wildlife and Plants; Removal of the Louisiana Black Bear From the Federal List of Endangered and Threatened Wildlife and Removal of Similarity-of-Appearance Protections for the American Black Bear

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are removing the Louisiana black bear (*Ursus americanus luteolus*) from the Federal List of Endangered and Threatened Wildlife (List). This action is based on a thorough review of the best available scientific and commercial information, which indicates that this subspecies has recovered and no longer meets the definition of an endangered or threatened species under the Endangered Species Act of 1973, as amended (Act). Our review of the status of this subspecies shows that the threats have been eliminated or reduced, adequate regulatory mechanisms exist, and populations are stable such that the species is not currently, and is not likely to again become, a threatened species within the foreseeable future in all or a significant portion of its range. This rule also removes from the List the American black bear, which is listed within the historical range of the Louisiana black bear due to similarity of appearance, and removes designated critical habitat for the Louisiana black bear. Finally, this rule also announces the availability of a final post-delisting monitoring (PDM) plan for the Louisiana black bear.

DATES: This rule is effective on April 11, 2016.

ADDRESSES: This final rule and the post-delisting monitoring plan are available on the Internet at *http://www.regulations.gov* at Docket Number FWS–R4–ES–2015–0014. Comments and materials received, as well as supporting documentation used in the preparation of this rule, will be available for public inspection by appointment, during normal business hours, at the Service's Louisiana Ecological Services Field Office, 646 Cajundome Boulevard, Suite 400, Lafayette, LA 70506.

FOR FURTHER INFORMATION CONTACT: Brad Rieck, Acting Field Supervisor, U.S. Fish and Wildlife Service, Louisiana Ecological Services Field Office, 646 Cajundome Boulevard, Suite 400, Lafayette, LA 70506; telephone (337) 291–3100. Individuals who are hearing-impaired or speech-impaired may call the Federal Information Relay Service at (800) 877–8339 for TTY assistance 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Executive Summary

This document contains: (1) A final rule to remove the Louisiana black bear from the Federal List of Endangered and Threatened Wildlife in part 17 of title 50 of the Code of Federal Regulations at 50 CFR 17.11(h) due to recovery, removal of regulatory provisions for the Louisiana black bear at 50 CFR 17.40(i), and removal of designated critical habitat for the Louisiana black bear at 50 CFR 17.95(a); (2) a final rule to remove the similarity of appearance protections for the American black bear; and (3) a notice of availability of a final post-delisting monitoring plan.

Species addressed—The Louisiana black bear (*Ursus americanus luteolus*) is one of 16 subspecies of the American black bear (*Ursus americanus*). Historically, black bears were widely distributed in the forested areas of North America, including Mexico (Pelton 2003, p. 547). Today, the status and density of American black bears varies throughout their range with some areas having large populations and others with smaller populations and restricted numbers (Pelton 2003, p. 547). Hall (1981, pp. 948–951) recognized three black bear subspecies occurring in the southeastern United States; the Louisiana black bear historically occurred from eastern Texas, throughout Louisiana, and southwestern Mississippi (Hall 1981, pp. 950–951). The Louisiana black bear was listed as a threatened subspecies primarily because of the historical modification and reduction of habitat, the reduced quality of remaining habitat due to fragmentation, and the threat of future habitat conversion and human-related mortality (57 FR 588, January 7, 1992). To address one of those threats (human-related mortality), in the 1992 final rule we also listed the American black bear in § 17.11(h) due to similarity of appearance to the Louisiana black bear. At that time, the Louisiana black bear population consisted of three breeding subpopulations, the Tensas River, Upper Atchafalaya River, and Lower Atchafalaya River Basins (TRB, UARB, and LARB, respectively (see Figure 1 in the supporting documents section, in Docket Number FWS–R4–ES–2015–0014 at *http://www.regulations.gov*) in Louisiana. An indirect result of habitat fragmentation was isolation of the already small bear populations, subjecting them to threats from such factors as demographic stochasticity and inbreeding. Key demographic attributes (*e.g.,* survival, fecundity, population growth rates, home ranges) for the Louisiana black bear were not known at the time of listing.

The Louisiana black bear population now consists of four main subpopulations in Louisiana and several additional satellite subpopulations in Louisiana and Mississippi. Research has documented that the four main Louisiana subpopulations (TRB, Three Rivers Complex (TRC), UARB, and LARB (see Figure 1, *http://www.regulations.gov* at Docket Number FWS–R4–ES–2015–0014) are stable or increasing (Hooker 2010, O'Connell 2013, Troxler 2013, Laufenberg and Clark 2014, entire documents respectively). Furthermore, results of our analyses indicate that sufficient restoration and protection of habitat supporting breeding subpopulations is in place and is expected to continue to expand in the future, and movement of individuals between those subpopulations has been achieved.

A large proportion of habitat (an increase of over 430 percent since the time of listing) that supports breeding subpopulations and interconnects those subpopulations has been protected and restored through management on publicly owned lands, or through private landowner restoration efforts with permanent non-developmental easements. The threat of significant habitat loss and conversion that was present at listing has been significantly reduced and in many cases reversed. These habitat restoration and protection activities are expected to continue due to their value to many other species. Since the listing of the Louisiana black bear in 1992, voluntary landowner-incentive-based habitat restoration programs and environmental regulations have not only stopped the net loss of forested lands in the Lower Mississippi River Alluvial Valley (LMRAV; a subset of the Lower Mississippi River Valley limited to Louisiana and Mississippi only), but have also resulted in significant habitat gains within both the LMRAV and the Louisiana black bear habitat restoration planning area (HRPA) in Louisiana. A substantial portion of those restored habitats are protected with perpetual non-development easements (through the Natural Resources Conservation

Service's [NRCS]' Wetland Reserve Program [WRP]) (see the Factor D evaluation). Public management areas such as National Wildlife Refuges (NWRs), Wildlife Management Areas (WMAs), and Corps of Engineers (Corps) lands supporting Louisiana black bear subpopulations are also protected and managed in a way that benefits the Louisiana black bear. Remnant and restored forested wetlands are provided protection through applicable conservation regulations (*e.g.,* section 404 of the Clean Water Act of 1972 [CWA]).

Taking into consideration the current long-term viability of the Louisiana black bear metapopulation (TRB, TRC, and UARB), the protection of suitable habitat, and the lack of significant threats to the Louisiana black bear or its habitat, our conclusion is that this subspecies no longer meets the definition of a threatened species under the Act.

Purpose of the Regulatory Action—In 2015, we proposed to remove the Louisiana black bear from the Federal List of Endangered and Threatened Wildlife (80 FR 29394, May 21, 2015), based on recovery criteria in the recovery plan and the five-factor threats analysis required under section 4(a) of the Act. Threats to this subspecies have been largely ameliorated or reduced; therefore, the purpose of this action is to remove the Louisiana black bear and the American black bear, which is listed within the historical range of the Louisiana black bear due to only similarity of appearance, from the Federal List of Endangered and Threatened Wildlife. This rule also removes the critical habitat designation for the Louisiana black bear throughout its range.

Basis for the Regulatory Action—Under the Act, we may determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We must consider the same factors in delisting a species. Further, we may delist a species (or subspecies) if the best scientific and commercial data indicate the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is extinct; (2) the species has recovered and is no longer threatened or endangered; or (3) the original scientific data used at the time the species was classified were in error.

We reviewed all available scientific and commercial information pertaining to the five threat factors for the Louisiana black bear, and the results are summarized below.

- We consider the Louisiana black bear to be ''recovered'' because all substantial threats to this subspecies have been eliminated or reduced and adequate regulatory mechanisms exist.
- The subspecies is now viable over the next 100 years with sufficient protected habitat to support breeding and movement of individuals between subpopulations so that the subspecies is not currently, and is not likely to again become, a threatened species within the foreseeable future in all or a significant portion of its range.

Previous Federal Actions

Please refer to the proposed rule to remove the Louisiana black bear from the Federal List of Endangered and Threatened Wildlife (80 FR 29394, May 21, 2015) for a detailed description of previous Federal actions concerning this species.

Background

It is our intent to discuss in this final rule only those topics directly relevant to the removal of the Louisiana black bear from the Federal List of Endangered and Threatened Wildlife. A list of acronyms used in this rule may be found at *http://www.regulations.gov* at Docket Number FWS–R4–ES–2015–0014 under the Supporting Documents.

Species Information

The following section contains information updated from that presented in the proposed rule to remove Louisiana black bear from the Federal List of Endangered and Threatened Wildlife, which published in the **Federal Register** on May 21, 2015 (80 FR 29394).

Species Description and Life History— The Louisiana black bear is a large, bulky mammal with long, coarse black hair and a short, well-haired tail. The facial profile is blunt, the eyes small, and the nose pad broad with large nostrils. The muzzle is yellowish brown with a white patch sometimes present on the lower throat and chest. Black bear color varies between black, blonde, cinnamon, and brown; but in Louisiana, bears have only been documented as black (Davidson et al. 2015, p. 8). Louisiana black bears are not readily visually distinguishable from other black bear subspecies. Black bears have five toes with short, curved claws on the front and hind feet. The median estimated weight for male and female Louisiana black bears in north Louisiana is 292 lb (133 kg) and 147 lb (67 kg), respectively (Weaver 1999, p. 26). These figures are similar to those reported for black bears throughout their range by Pelton (2003, p. 547).

Average age at first reproduction varies widely across black bear studies; however, most reports state that bears first reproduce between 3 and 5 years of age (Weaver et al. 1990a, p. 5). Weaver (1999, p. 28) reported that all adult females (greater than or equal to 4 years old) in the TRB subpopulation had evidence of previous lactation or were with cubs; however, reproduction may occur as early as 2 years of age for black bears in high-quality habitat and in poor or marginal habitat, reproduction may not occur until 7 years of age (Rogers 1987, pp. 51–52). Breeding occurs in summer and the gestation period for black bears is 7 to 8 months. Delayed implantation occurs in the black bear (blastocysts float free in the uterus and do not implant until late November or early December) (Pelton 2003, p. 547). Observations of Louisiana black bears indicate that they enter dens primarily from late November to early December and emerge in March and April (Weaver 1999, p. 125, Table 4.4). Adult Louisiana black bears generally den longer than subadults, and females longer than males (Weaver 1999, p. 123). Cubs are born in winter dens at the end of January or the beginning of February (Pelton 2003, p. 548). The normal litter sizes range from one to four cubs (Laufenberg and Clark 2014, p. 35), and occasionally litters of five have been documented (Davidson et al. 2015, p. 11). Cubs are altricial (helpless) at birth (Weaver et al. 1990a, p. 5; Pelton 2003, p. 547) and generally exit the den site with the female in April or May. Young bears stay with the female through summer and fall, and den with her the next winter (Pelton 2003, p. 548). The young disperse in their second spring or summer, prior to the female's becoming physiologically capable of reproducing again (Pelton 2003, p. 548).

Adult females normally breed every other year (Pelton 2003, p. 548). Not all females produce cubs every other winter; reproduction is related to physiological condition (*i.e.,* female bears that do not reach an optimal weight or fat level may not reproduce in a given year) (Rogers 1987, p. 51). If a female's litter is lost prior to late summer, she may breed again, producing cubs in consecutive years (Young 2006, p. 16). An important factor affecting black bear populations appears to be variation in food supply and its

effect on physiological status and reproduction (Rogers 1987, pp. 436–437). Nutrition may have an impact on the age of reproductive maturity and subsequent female fecundity (Pelton 2003, p. 547). Black bear cub survival and development are closely associated with the physical condition of the mother (Rogers 1987, p. 434). Cub mortality rates and female infertility are typically greater in years of poor mast (mast includes food sources such as acorns and pecans) production or failure (Rogers 1987, p. 53; Eiler et al. 1989, p. 357; Elowe and Dodge 1989, p. 964). Litter size may be affected by food availability prior to denning (Rogers 1987, p. 53).

Bear activity revolves primarily around the search for food, water, cover, and mates during the breeding season. Though classified as a carnivore by taxonomists, black bears are not active predators and prey on vertebrates only when the opportunity arises; most vertebrates are consumed as carrion (Pelton 2003, p. 551). Bears are best described as opportunistic feeders, as they eat almost anything that is available; thus, they are typically omnivorous. Their diet varies seasonally, and includes primarily succulent vegetation during spring, fruits and grains in summer and hard mast during fall. Bears utilize all levels of forest for feeding; they can gather foods from tree tops and vines, but also collect beetles and grubs in fallen logs and rotting wood.

Habitats used by the Louisiana black bear—Like other black bears, the Louisiana black bear is a habitat generalist. Large tracts of bottomland hardwood (BLH) forest communities having high species and age class diversity can provide for the black bear's life requisites (*e.g.,* escape cover, denning sites, and hard and soft mast supplies) without intensive management (Pelton 2003, pp. 549–550). We use the term BLH forest community with no particular inference to hydrologic influence, but to mean forests within southeastern United States floodplains, which can consist of a number of woody species occupying positions of dominance and co-dominance (Black Bear Conservation Coalition [Committee] (BBCC) 1997, p. 15). Other habitat types may be used by Louisiana black bears including marsh, upland forested areas, forested spoil areas along bayous, brackish and freshwater marsh, salt domes, and agricultural fields (Nyland 1995, p. 48; Weaver 1999, p. 157). Bears have the ability to climb large-cavity trees (especially bald cypress (*Taxodium distichum*) or water tupelo gum (*Nyssa aquatic*)), that are commonly found along water courses and are important for denning; however, Louisiana black bears have been observed to use a variety of den types, including ground nests, cavities at the base and in the top of hollow trees, and brush piles (Crook and Chamberlain 2010, p. 1645).

Den trees may be an important component for female reproductive success in areas subject to flooding (Hellgren and Vaughan 1989, p. 352). Den trees located in cypress swamps would also appear to increase the security (*e.g.,* decrease the susceptibility to disturbance) of bears utilizing these dens compared to ground dens; however, the availability of den trees does not appear to be a limiting factor in reproductive success as bears demonstrate flexibility in den use (Weaver and Pelton 1994, p. 431; Crook and Chamberlain 2010, p. 1644). For instance, bears typically excavate open ground/brushpile nests, or shallow depressions that are either bare or are lined with vegetation found in the vicinity of the nest (Weaver and Pelton 1994, p. 430). These nests are located in thick vegetation, usually in areas logged within the past 1 to 5 years (Crook and Chamberlain 2010, p. 1643) and are typically found within felled tops and other logging slash (Crook and Chamberlain 2010, p. 1646).

Home range and dispersal—The size of the area necessary to support black bears may differ depending on population density, habitat quality, conservation goals, and assumptions regarding minimum viable populations (Rudis and Tansey 1995, p. 172, Pelton 2003, p. 549). Maintaining and enhancing key habitat patches within breeding habitat is a critical conservation strategy for black bears (Hellgren and Vaughan 1994, p. 276). Areas should be large enough to maintain female survival rates above the minimum rate necessary to sustain a population (Hellgren and Vaughan 1994, p. 280). Weaver (1999, pp. 105–106) documented that bear home ranges and movements were centered in forested habitat and noted that actions to conserve, enhance, and restore that habitat would promote population recovery, although no recommendations on minimum requirements were provided. Hellgren and Vaughn (1994, p. 283) concluded that large, contiguous forests are a critical conservation need for black bears. The home ranges of Louisiana black bears appear to be closely linked to forest cover (Marchinton 1995, p. 48, Anderson 1997, p. 35).

Female range size may be partly determined by habitat quality (Amstrup and Beecham 1976, p. 345), while male home range size may be determined by the distribution of females (*i.e.,* to allow for a male's efficient monitoring of a maximum number of females) (Rogers 1987, p. 19). Male black bears commonly disperse, and adult male bears can be wide-ranging with home ranges generally three to eight times larger than those of adult females (Pelton 2003, p. 549) and that may encompass several female home ranges (Rogers 1987, p. 19). Dispersal by female black bears is uncommon and typically involves short distances (Rogers 1987, p. 43). In their studies of dispersal, Laufenberg and Clark (2014, p. 85) found no evidence of natural female dispersion in Louisiana black bears. Females without cubs generally had larger home ranges than females with newborn cubs (Benson 2005, p. 46), although this difference was observed to vary seasonally, with movements more restricted in the spring (Weaver 1999, p. 99). Following separation of the mother and yearling offspring, young female black bears commonly establish a home range partially within or adjacent to their mother's home range (Rogers 1987, p. 39). Young males, however, generally disperse from their maternal home range. Limited information suggests that subadult males may disperse up to 136 miles (219 kilometers) (Rogers 1987, p. 44).

Home range estimates, calculated as the minimum convex polygon (MCP), vary for the Louisiana black bear. The MCP is a way to represent animal movement data and is calculated as the smallest (convex) polygon that contains all the points a group of animals has visited. Mean MCP home range estimates for the Tensas River NWR subpopulation were 35,736 ac (14,462 ha) and 5,550 ac (2,426 ha) for males and females, respectively (Weaver 1999, p. 70). Male home ranges (MCP) in the UARB population may be as high as 80,000 ac (32,375 ha), while female home ranges are approximately 8,000 ac (3,237 ha) (Wagner 1995, p. 12). LARB population home ranges (MCP) were estimated to be 10,477 ac (4,200 ha) for males, and 3,781 ac (1,530 ha) for females (Wagner 1995, p. 12).

Abundance and Distribution—Historically, the Louisiana black bear was believed to be common or numerous in BLH forests such as the Big Thicket area of Texas, the TRB, UARB, LARB, and LMRAV in Louisiana, and the Yazoo River Basin in Mississippi (St. Amant 1959, p. 32; Nowak 1986, p. 4). Exploitation of Louisiana black bears due to hunting and large-scale destruction of forests from the 1700s to the early 1800s resulted in low numbers

of bears that were confined to the BLH forests of Madison and Tensas Parishes and the LARB BLH forests in Louisiana (St. Amant 1959, pp. 32, 44); black bears in Mississippi were similarly affected (Shropshire 1996, pp. 25–33). At the time of listing, additional extensive land clearing, mainly for agricultural purposes, had further reduced its habitat by more than 80 percent (Gosselink et al. 1990, p. 592), and the remaining habitat quality had been degraded by fragmentation. That fragmentation caused isolation of the already small subpopulations, subjecting them to threats from such factors as demographic stochasticity and inbreeding. Known breeding subpopulations occurred in fragmented BLH forest communities of the TRB, LARB, and UARB of Louisiana (Weaver et al. 1990a, p. 2; Service 1992, p. 2) (Figure 1, *http://www.regulations.gov* at Docket Number FWS–R4–ES–2015–0014), and were believed to be demographically isolated (BBCC 1997, p. 10). No reliable estimates of population numbers were available at the time of listing, but only 80 to 120 Louisiana black bears were estimated to remain in Louisiana in the 1950s (Nowak 1986, p. 4). Bears had occasionally been reported in Louisiana outside of these areas, but it was unknown if those bears were reproducing females or only wandering subadult and adult males (Service 1992, p. 2).

Black bears were also known to exist in Mississippi along the Mississippi River and smaller areas in the Lower East Pearl River and Lower Pascagoula River Basins of southern Mississippi (Weaver et al. 1990a, p. 2). Fewer than 25 bears were estimated to reside in Mississippi at the time of listing (Shropshire 1996, p. 35 citing Jones 1984). The last known Mississippi breeding subpopulation occurred in Issaquena County in 1976 (Shropshire 1996, p. 38 citing Jones 1984). Similarly, black bears were exterminated from southeastern Texas during the period from 1900 to 1940 largely as a result of overhunting (Schmidley 1983, p. 1); and, except for wanderers, resident bear populations had not been observed in eastern Texas for many years (Nowak 1986, p. 7). Key demographic attributes (*e.g.,* survival, fecundity, population growth rates, and home ranges) for the Louisiana black bear were not known at the time of listing.

Currently, the Louisiana black bear remains in the BLH forests of the LMRAV in Louisiana and western Mississippi. However, based on the number and distribution of confirmed sighting reports by the Louisiana Department of Wildlife and Fisheries (LDWF) and Mississippi Department of Wildlife, Fisheries, and Parks (MDWFP) (Simek et al. 2012, p. 165; Davidson et al. 2015, p. 22), the geographic distribution of bears has expanded; the number and size of resident breeding subpopulations and the habitat they occupy has also increased (Table 1; Figure 1, *http://www.regulations.gov* at Docket Number FWS–R4–ES–2015–0014). These changes have resulted in a more scattered distribution of breeding females between the original TRB and UARB subpopulation areas.

TABLE 1—ESTIMATED AREA SUPPORTING LOUISIANA BLACK BEAR BREEDING SUBPOPULATIONS

(Shown in acres (ac) and [hectares (ha)]) in 1993 and 2014)

Breeding habitat	Tensas River basin [1]	Upper Atchafalaya River basin [2]	Lower Atchafalaya River basin [3]	Louisiana total	Mississippi total [3]	Total
1993	84,402 [34,156]	111,275 [45,031]	144,803 [58,600]	340,480 [137,787]	0	340,480 [137,787]
2014	1,002,750 [405,798]	290,263 [117,465]	130,839 [52,949]	1,423,853 [576,213]	382,703 [154,875]	1,806,556 [731,087]

[1] Includes the TRC subpopulation and the Louisiana black bear subpopulation in north-central Louisiana near the Arkansas State line.

[2] Includes the Louisiana black bear subpopulation found in the Florida parishes of Louisiana (east of the Mississippi River).

[3] Although the LARB subpopulation area appears to have decreased in acreage over time; the decrease is due to more detailed mapping in 2014 that excluded many non-habitat areas that were included in the more general 1993 boundary. In 1993, we did not have the data to support including breeding bears on Avery Island (at the western end of this area) even though we knew bears occurred there. We now have that data to support and delineate breeding habitat on Avery Island and, therefore, have included that area in the 2014 mapping updates. The actual area and spatial distribution of the LARB subpopulation has likely not changed over time.

The TRC is a new breeding subpopulation (*i.e.,* it was not present at the time of listing) located at the confluence of the Mississippi and Red Rivers in Louisiana (formed as a result of a multi-year reintroduction project (2001–2009) (Figure 1, *http://www.regulations.gov* at Docket Number FWS–R4–ES–2015–0014), and serves to facilitate movement of bears from the UARB to the TRB (Laufenberg and Clark 2014, p. 85). Several additional new breeding subpopulations, indirectly resulting from those translocations (*i.e.,* female dispersal), are forming in Louisiana and three new breeding subpopulations are forming in Mississippi, partially as an indirect effect of the Louisiana translocation project and from the immigration of bears from White River Basin (WRB; Figure 1, *http://www.regulations.gov* at Docket Number FWS–R4–ES–2015–0014). Demographic attributes including subpopulation abundance estimates, growth rates, and adult survival rates have been obtained for the three original Louisiana breeding subpopulations (TRB, UARB, LARB) (Hooker 2010, pp. 26–27; Lowe 2011, pp. 28–30; Troxler 2013, pp. 30–37; Laufenberg and Clark 2014, pp. 76–82).

Based on the best available data, all three original breeding subpopulations appear to be stable or increasing, and emigration and immigration (*i.e.,* gene flow) has been documented among several of the Louisiana and Mississippi subpopulations (Laufenberg and Clark 2014, pp. 91–94). The areas supporting Louisiana black bear breeding subpopulations have increased over 430 percent from an estimated 340,000 acres [ac] (138,000 hectares [ha]) in Louisiana in 1993, to the present estimated 1,424,000 ac (576,000 ha) and 382,703 ac (154,875 ha), in Louisiana and Mississippi, respectively, for a total of 1,806,556 ac (731,087 ha) (Table 1). In addition, approximately 148,400 ac (60,055 ha) of private lands have been restored and permanently protected in the Louisiana black bear HRPA since it was listed (Table 2, Figure 2, *http://www.regulations.gov* at Docket Number FWS–R4–ES–2015–0014; and see Factor A discussion).

TABLE 2—PRIVATE LANDS ENROLLED IN THE USDA NATURAL RESOURCES CONSERVATION SERVICE WETLAND RESERVE PROGRAM (PERMANENT EASEMENTS) SUPPORTING BREEDING HABITAT AND THOSE LANDS ENROLLED WITHIN THE LOUISIANA BLACK BEAR HABITAT RESTORATION PLANNING AREAS (HRPA), LA (ac [ha])

	Tensas River basin [1]	Upper Atchafalaya River basin	Lower Atchafalaya River basin	Total
Breeding Habitat [2]	90,198	6,500	0	96,698
	[36,502]	[2,630]	0	[39,132]
HRPA	136,870	11,530	0	148,400
	[55,389]	[4,666]	0	[60,055]

[1] Includes the TRC subpopulation.
[2] Breeding habitat is primarily contained within the HRPA, but has expanded beyond it in some areas.

Tensas River Basin (TRB) Subpopulation

Demographics: The TRB subpopulation is the largest Louisiana black bear breeding subpopulation and occurs in the TRB of Louisiana. It consists of groups of bears located on lands north (privately owned tracts formerly known as the Deltic subpopulation/tracts) and south (Tensas River NWR, Big Lake WMA, Buckhorn WMA, and adjacent private lands) of I–20 and U.S. Highway 80 (Hwy 80). Population numbers of the Louisiana black bear have steadily increased since its listing as described below. Nowak (1986, p. 7) speculated that the TRB subpopulation consisted of 40 to 50 bears at that time. Subsequent population studies by Beausoleil (1999, p. 51) and Boersen et al. (2003, p. 202) estimated 119 bears in the Tensas River NWR, and 24 to 72 bears in the adjacent Deltic tracts, respectively.

At the time of listing, there was no evidence that interchange was occurring between the two TRB subgroups. They were thought to be isolated and disjunct from each other (BBCC 1997, p. 99) until Anderson (1997, p. 82) reported one of the first instances of a bear moving between these two areas. Evidence of that historical separation in the recent genetic history of sampled bears was detected by Laufenberg and Clark (2014, p. 54). Though the two subgroups are separated by I–20 and Hwy 80, a significant amount of habitat between those subgroups has been restored primarily within the last 10 years. Increased sightings and vehicular mortality of bears in the vicinity of I–20 indicate that bears are attempting to disperse (Benson 2005, p. 97) and current radio-collar data and genetic evidence support some successful interchange (Laufenberg 2015, personal communication; Murphy and Davidson 2015, p. 13). Furthermore, the current genetic structure of Louisiana black bear subpopulations groups bears in those two areas into one subpopulation (Laufenberg and Clark 2014, p. 60).

Hooker (2010, p. 26) estimated a population abundance (for both genders averaged across years) of 294 bears (standard error [SE] = 31) for the combined Tensas River NWR and nearby Deltic and State-owned tracts with an apparent annual survival rate of 0.91 (SE = 0.08), which did not differ by gender. The pooled population annual growth rate for both genders was 1.04 (SE = 0.18), and the mean realized population growth estimate ranged from 0.99 to 1.06 (Hooker 2010, p. 26), indicating a stable to increasing population. Hooker (2010, p. 26) estimated density to be 0.66 bears per square kilometer (km^2) (SE = 0.07). Similar results were obtained by Laufenberg and Clark (2014, p. 45) with mean realized population growth estimates ranging from 0.97 to 1.02.

According to the most recent study results (Laufenberg and Clark 2014, p. 31), the estimated mean annual survival rate for radio-collared adult female bears in the TRB subpopulation was 0.99 (95 percent confidence interval [CI] 0.96–1.00) when data for bears with unknown fates were censored (assumed alive) and was 0.97 (95 percent CI = 0.93–0.99) when unknown fates were treated as mortalities. Detection heterogeneity (differences in detectability among individuals from such things as size, behavior, etc.) is a well-known issue in estimating black bear vital rates. Mathematical models can be used to account for those differences; however, it is impossible to identify the appropriate group of distributions (a distribution describes the numbers of times each possible outcome occurs in a sample) to use in a model because the same distribution could result from several different sets of circumstances (Laufenberg and Clark (2014, p. 18). Therefore, Laufenberg and Clark (2014, pp. 18–19) used two models to estimate population numbers. Model 1 assumed that detection heterogeneity followed a logistic-normal distribution, and Model 2 assumed a 2-point finite mixture distribution. We will report results for both models. The current estimated number of females from those two models ranged from 133 to 163 (Laufenberg and Clark 2014, p. 39). Assuming a one-to-one ratio of males to females and using the most conservative figures, we estimate that the current total population size ranges from 266 to 326 bears.

Mean cub and yearling litter size for the TRB subpopulation were an estimated 1.85 and 1.40 respectively, and fecundity and yearling recruitment for the TRB were 0.47 and 0.15, respectively (Laufenberg and Clark 2014, p. 35). Annual per-capita recruitment estimates ranged from 0.00 to 0.22, and estimates of female apparent survival rates (these included emigration) ranged from 0.87 to 0.93, based on capture-mark-recapture (CMR) data. The estimated mean of the population growth rate ranged from 0.97 (range = 0.88–1.06) to 1.02 (range = 0.98–1.09), depending on model assumptions (Laufenberg and Clark 2014, p. 45), which indicates a stable to increasing population.

Early studies suggested that the TRB subpopulation had low genetic diversity and low effective population size (N_e) as a result of isolation due to habitat fragmentation (Boersen et al. 2003, p. 204). They documented low genetic diversity and N_e to be as small as 32 individuals at that time, and recommended population augmentation be considered as a way to increase genetic diversity (Boersen et al. 2003, p. 204). Effective population size is ''the number of individuals that would result in the same loss of genetic diversity, inbreeding, or genetic drift if they behaved in the manner of an idealized population'' (Frankham et al. 2014, Appendix 1). It is frequently used to quantify how populations may be affected by genetic drift and generally is lower than the actual number of individuals in a population. Smaller breeding populations can be more susceptible to the effects of genetic drift, demographic stochasticity, and

environmental factors (*e.g.,* isolation) than larger ones. Effective population size is sometimes used instead of demographic viability criteria (such as used in our analyses) to assess population viability.

Murphy and Davidson (2015) analyzed DNA data collected between 2006 and 2012 to reevaluate the genetic characteristics of the TRB subpopulation. They found that the genetic diversity and effective population size had increased in the TRB subpopulation since the 1999 study (Murphy and Davidson 2015, p. 17). They also documented gene flow within the TRB subpopulation (between the Deltic and the Tensas River NWR portions). Combined with gene flow into the TRB from other bear populations (see below), genetic diversity and effective population size had increased by 17 and 50 percent, respectively (Murphy and Davidson 2015, p. 17). Based on Frankham et al.'s recommendation that an effective population size is 100 bears or greater (2014, p. 62), we do not believe that inbreeding represents a concern based on our current population estimates for the Louisiana black bear. Restored habitat (as discussed in Factor A), along with connectivity studies, evidence of physical movement of bears (from GPS data) among subpopulations, and genetic evidence, all indicate that interchange is occurring among subpopulations within and adjacent to Louisiana subpopulations. This situation supports our belief that long-term genetic viability is not a significant concern.

The recent study by Laufenberg and Clark (2014, pp. 84–85) indicates that genetic exchange with other subpopulations has occurred at a level substantial enough to increase genetic diversity at TRB (Murphy and Davidson 2015, p. 16), primarily as a result of bear emigration from the WRB subpopulation of Arkansas into the TRB subpopulation. The results of recent population structure analyses show evidence of bear emigration from the WRB subpopulation of Arkansas into the TRB subpopulation (Laufenberg and Clark 2014, p. 85). Nearly 30 bears sampled in the TRB had a probability greater than or equal to 0.10 of originating from the WRB subpopulation in Arkansas (6 bears were identified as WRB migrants), and one had a 0.48 probability of coming from the UARB (Laufenberg and Clark 2014, p. 63). Additionally, ten bears sampled in northwestern Mississippi were determined to have a probability greater than or equal to 0.90 of originating from the TRB. The analysis of genetic data identified five bears in the TRB as migrants from the WRB subpopulation (Laufenberg and Clark 2014, p. 67). Three males captured in the TRB had CMR histories that indicated they had dispersed from the TRC subpopulation, and an additional male was identified as a second generation migrant from the UARB subpopulation (Laufenberg and Clark 2014, p. 67). One male detected in the TRB subpopulation was subsequently live-captured in Mississippi (Laufenberg and Clark 2014, p. 67).

Laufenberg and Clark (2014, p. 85) suggested genetic interchange by bears from outside the range of the Louisiana black bear (that is, Arkansas) probably should be considered as a positive genetic and demographic contribution to the Louisiana black bear. Connectivity modeling analyses by Laufenberg and Clark (2014, p. 90) indicated that, without the presence of the TRC subpopulation, there was low potential for dispersal of either sex between TRB and UARB. Recent LDWF capture records (Davidson and Murphy 2015, pp. 13–14; USGS et al. 2014) have documented the presence of additional resident breeding females between the TRC and the TRB subpopulations, which may significantly increase the probabilities for interchange.

Laufenberg and Clark (2014, p. 90) suggested that the establishment of satellite populations of resident breeding bears between subpopulations may be a more effective measure to link populations than the establishment of continuous habitat corridors. Laufenberg and Clark 2014, pp. 22–24) developed a series of population persistence models to assess the long-term viability of Louisiana black bear subpopulations. Those models were developed using multiple methods to address the treatment of bears with unknown fates. Model 1 uses censored fates (assumed alive), and Model 2 assumes mortality occurred. In addition, because there is uncertainty (*i.e.,* variation) in various model parameters that may affect the outcome, three population projections were analyzed using Model 1 and Model 2, resulting in 6 separate population projections (Laufenberg and Clark 2014, pp. 22–23) developed as follows. The first projection accounted for environmental variation for survival and recruitment and also included density dependence (process-only model). Process-only models produced the least conservative (*i.e.,* protective) estimates. The second and third projection models (all-uncertainty projections and the most conservative) included the same sources of variation as the process-only projection, but also included an estimation of uncertainty for survival and recruitment; they differ only in the conservativeness (*i.e.,* worst-case scenario for maximum protection of bears, with the 50 percent confidence interval being less conservative than the 95 percent confidence interval projection). We will report the range of values obtained for all models in the following discussions. Based on CMR estimates from Model 1, the estimated probability of persistence over 100 years for the TRB subpopulation ranged from 1.00 and 0.96 for process-only and all-uncertainty projections, respectively (Laufenberg and Clark 2014, p. 46, Table 4). Similarly, based on the more conservative projections, the probability of persistence was 1.00 and 0.96 based on Model 2 estimates for process-only and all-uncertainty projections (Laufenberg and Clark 2014, p. 46, Table 4).

Habitat: We estimated there were approximately 400,000 to 500,000 ac (161,875 to 202,343 ha) of forested habitat in the TRB in the early 1990s (Service 2014, p. 33). Comparing the small-scale National Land Cover Database (NLCD) estimates of habitat for 2001 and 2011, there has been an increase of 1,312 ac (531 ha) of forested habitat in the TRB HRPA (see Table 8). Currently, based on ownership boundaries, there are 255,899 ac (103,559 ha) of State and Federal management areas, and approximately 136,870 ac (55,389 ha) of private lands that have been restored and permanently protected, in the TRB HRPA (Tables 2, 5). We estimated there were approximately 85,000 ac (34,398 ha) of forested habitat in the TRB HRPA at the time of listing (Service 2014, p. 74, Table 6). In 1993, we estimated that the breeding subpopulation occupied approximately 84,400 ac (34,156 ha). Today, an estimated 1,002,750 ac (405,798 ha) is occupied by the TRB breeding subpopulation, an increase of over 900,000 acres (see Table 1).

Upper Atchafalaya River Basin (UARB) Subpopulation

Demographics: Nowak (1986, p. 6) suggested that UARB population numbers were extremely low or bears in this location were believed to be nonexistent before the introduction of Minnesota bears to Louisiana in the 1960s (see the proposed rule (80 FR 29397, May 21, 2015) for more detail) and speculated that the population consisted of 30 to 40 individuals (based on a LDWF 1981 report). Pelton (1989, p. 9) speculated the UARB subpopulation size ranged from 30 to 50 bears. Triant et al. (2004, p. 653)

estimated 41 bears in the UARB population at that time. Lowe (2011, p. 28) estimated a UARB population of 56 bears with an annual survival rate of 0.91. More recently, O'Connell-Goode et al. (2014, p. 7) estimated a mean population abundance of 63 bears and mean average male and female survivorship to be 0.77 (SE = 0.08) and 0.89 (SE = 0.04), respectively. The most recent research (Laufenberg and Clark 2014, p. 46) estimated female abundance ranging from 25 to 44 during the study period (50 to 88 total population of males and females, combined), regardless of treatment of capture heterogeneity (or capture differences among individuals). Their estimated annual per-capita recruitment was between 0.00 and 0.41, and apparent female survival was between 0.88 and 0.99 during that time period (Laufenberg and Clark 2014, p. 46, Table 4). The estimated mean growth rate ranged from 1.08 (range = 0.93–1.29) to 1.09 (range = 0.90–1.35) indicating a stable to increasing population (Laufenberg and Clark 2014, p. 46). The estimated probabilities of the UARB subpopulation persistence (*i.e.,* viability) over 100 years were greater than 0.99 for all process-only projections, and greater than 0.96 for model 1 all-uncertainty projections. Persistence probabilities were lowest for the most conservative estimation methods (Model 2, all uncertainty projections) at 0.93 and 0.85, respectively (Laufenberg and Clark 2014, p. 46, Table 4).

As discussed previously, Laufenberg and Clark's connectivity models (2014, p. 90) indicated there was no potential for dispersal of either sex between the TRB and UARB subpopulations without the current presence of the TRC subpopulation. The modeled potential for natural interchange between the UARB and TRC subpopulations is high based on the genetic and capture data (Laufenberg and Clark 2014, p. 85), and genetics data show that gene flow has occurred. Twenty of the 35 TRC cubs showed evidence of having been sired by UARB males. A 2-year-old male tagged as a cub in the UARB was later captured at the TRC, and a second generation migrant from the UARB was later captured in the TRB subpopulation (Laufenberg and Clark 2014, p. 67). The step-selection model (see Barriers to Movement) predicted that dispersals between the LARB and UARB subpopulations were infrequent but possible for males, but nearly nonexistent for females (Laufenberg and Clark 2014, p. 85). Three cubs sampled in west central Mississippi, east of the TRC subpopulation, showed evidence of mixed ancestry between TRB and UARB (Laufenberg and Clark 2014, p. 63). No migrants from the UARB into the WRB or LARB were detected by Laufenberg and Clark (2014, p. 85). Recent LDWF capture records, however, verify the presence of at least one WRB migrant in the TRC subpopulation (M. Davidson, LDWF, undated, unpublished data). Finally, genetic diversity of the UARB subpopulation is the highest among the three original Louisiana black bear subpopulations, and second highest of all extant subpopulations. Results from Laufenberg and Clark (2014, pp. 53–54) indicated this increase may be the result of the persistence of genetic material from bears sourced from Minnesota during the 1960s.

Habitat: The Atchafalaya basin, located between the UARB and LARB, is currently believed to be too wet to support breeding females. Elevations within the Atchafalaya Basin are increasing due to sedimentation (Hupp et al. 2008, p. 139), and as a result, in the long term, habitat conditions between this subpopulation and the UARB subpopulation may improve over time (LeBlanc et al. 1981, p. 65). Historical reports do not break the Atchafalaya River Basin into the two areas that we use in terms of bear recovery and habitat restoration planning (*i.e.,* UARB and LARB) but make delineations based on the Corps' Atchafalaya Basin Floodway (Floodway) delineation. The Floodway is roughly equivalent to the UARB as we define it for bears. When the Louisiana black bear was listed, the estimated amount of forested habitat remaining north of U.S. 190 had been reduced 40 to 50 percent (100,000 to 128,000 ac [40,469–51,800 ha] (57 FR 588, January 7, 1992)). Based on the analyses used for listing, we estimated there were approximately 600,000 to 700,000 ac (242,812–283,280 ha) of forested habitat in the UARB area in the early 1990s (Service 2014, p. 33). Comparing small-scale NLCD estimates of habitat for 2001 and 2011, there has been an increase of 2,676 ac (1,083 ha) in the UARB HRPA (see Table 8). Currently, based on ownership boundaries, there are 226,037 ac (91,476 ha) of State and Federal management areas and approximately 11,530 ac (4,666 ha) of private lands that have been restored and permanently protected in the UARB HRPA (Tables 2, 5). We estimated that there were approximately 141,000 ac (57,060 ha) of protected lands in the UARB HRPA at the time of listing (Service 2014, p. 74, Table 6). Today, an estimated 130,839 ac (52,949 ha) is occupied by the UARB breeding subpopulation (see Table 1), an increase over the 111,275 ac (45,031 ha) estimated around the time of listing.

Lower Atchafalaya River Basin (LARB) Subpopulation

Demographics: In 1986, Nowak (1986, p. 7) speculated that there were approximately 30 bears in the LARB subpopulation. Until recently, the only quantitative estimate for this subpopulation was Triant et al.'s (2004, p. 653) population estimate of 77 bears (95 percent CI = 68–86). Similar to their UARB population estimate, the authors felt this may underestimate the actual population number (Triant et al. 2004, p. 655). Troxler (2013, p. 30) estimated a population of 138 bears (95 percent CI = 118.9–157.9) (which represents a substantial increase over Triant's estimate) and an estimated growth rate of 1.08 indicating that the subpopulation is growing. Laufenberg and Clark's (2014, p. 43) recent LARB population abundance estimate ranged between 78 (95 percent CI = 69–103) and 97 females (95 percent CI = 85–128) from 2010 to 2012 based on Model 1; and between 68 (95 percent CI = 64–80) and 84 (95 percent CI = 79–104) based on Model 2 (we estimate the total combined population of 156–194 or 136–168, respectively). Estimates of apparent female survival ranged from 0.81 to 0.84 (Laufenberg and Clark 2014, p. 43), which are the lowest of all the subpopulations. One reason for this situation is that this area is experiencing a high degree of mortality associated with vehicular collision and nuisance-related removals (Troxler 2013, pp. 37–38; Davidson et al. 2015, pp. 29–30). In spite of this relatively high rate of adult female mortality (which has persisted for decades), the LARB subpopulation remains the second largest Louisiana black bear subpopulation, and has approximately doubled in size in just the last 10 years. The overall size of that subpopulation, coupled with the current positive growth rate (Laufenberg and Clark 2014, p. 46), strongly suggests that anthropogenic and natural sources of LARB mortality, existing dispersal barriers, and other threats to the LARB have not resulted in long-term negative effects to that subpopulation.

Although the LARB subpopulation has occasionally been characterized as a genetically unique subpopulation, recent research (Csiki et al. 2003; Troxler 2013; Laufenberg and Clark 2014) has identified a genetic bottleneck (*i.e.,* isolation resulting in restricted gene flow and genetic drift) as a cause of that uniqueness rather than a true genetic difference. That genetic bottleneck likely resulted from low

immigration potential that is restricted by the poor habitat quality found along the northern periphery of the LARB subpopulation. U.S. Highway 90 serves as an additional barrier to movement. The genetic structure analyses found evidence of historical genetic isolation associated with Highway 317 within this subpopulation (Troxler 2013, p. 33; Laufenberg and Clark 2014, p. 54). However, recent data indicate that this has been alleviated and movement of individuals has been occurring within the LARB on both sides of Highway 317 (Troxler 2013, p. 39). As discussed previously, based on the step selection models, the current potential for interchange between this and other subpopulations is low (nonexistent for female bears), and immigration into this subpopulation has not been documented (Laufenberg and Clark 2014, p. 85).

Currently, bears have been observed on the higher portions (levees and ridges) of the Atchafalaya Basin (Figure 1 in Davidson et al. 2015, p. 23), between the UARB and LARB subpopulations, but the Basin is believed to be too wet to support breeding females. However, LeBlanc et al. (1981, p. 65) projected that by 2030, over 35,000 ac (14,000 ha) of lakes and cypress–tupelo (*Taxodium distichum*–Nyssa aquatic) swamps would be converted to cypress swamp and early successional hardwood; habitat types more suitable for black bear use. Studies by Hupp et al. (2008, p. 139) confirm the continued sedimentation (filling in) of wet areas within the Atchafalaya Basin. Such changes could ultimately expand the acreage of suitable habitat for the LARB and UARB subpopulations, and improve habitat linkages and genetic exchange between those groups.

Habitat: We were not able to estimate the amount of forested Louisiana black bear habitat in the LARB at the time of listing based on internal maps and reports, nor were we able to determine it from the above-mentioned studies. Nyland (1995, p. 58), based on his trapping data, estimated that bears occupied approximately 140,000 ac (56,656 ha) in Iberia and St. Mary Parishes. This is probably a slight underestimate of forested and occupied habitat at that time because it was based primarily on trapping data and did not include Avery Island to the west, a forested salt dome known to be used by bears (Service 2014, p. 34). Comparing NLCD estimates of habitat for 2001 and 2011, there has been an increase of 3,685 ac (1,491 ha) in the LARB HRPA (see Table 8). We estimated that there were approximately 9,921 ac (4,015 ha) of conservation lands (permanently protected) in the LARB HRPA at the time of listing (Service 2014, p. 73, Table 4). Currently, based on ownership boundaries, there are an estimated 11,573 ac (4,683 ha) of conservation lands in the LARB HRPA (Table 3).

In 1993, we estimated approximately 144,803 ac (58,600 ha) supported the LARB breeding population (see Table 1). Today, we estimate 130,839 ac (52,949 ha) are occupied by the LARB breeding subpopulation (see Table 1). The LARB breeding area appears to have decreased in acreage over time; however, the apparent decrease is due to more detailed mapping in 2014 that excluded many non-habitat areas that were included in the more general 1993 boundary. In fact, spatially, there is an apparent increase in distribution over time (see Figure 1, *http://www.regulations.gov* at Docket Number FWS–R4–ES–2015–0014)) because we did not have the data in 1993 to support the inclusion of breeding bears at the western edge on Avery Island, even though we knew bears were present. We now have the data and, therefore, included those bears in the 2014 mapping. Based on the inclusion of the Avery island area and exclusion of non-habitat, the actual area and spatial distribution of this breeding population has likely not changed significantly over time.

TABLE 3—TOTAL AREA (NWRS, WMAS, WRPS, CORPS LANDS, FARMERS HOME ADMINISTRATION [FMHA] EASEMENT TRACTS, AND WETLAND MITIGATION BANKS) WITHIN LOUISIANA BLACK BEAR BREEDING HABITAT AND THE LOUISIANA BLACK BEAR HRPA IN LOUISIANA (ac [ha])

	Tensas River Basin [1]	Upper Atchafalaya River Basin [3]	Lower Atchafalaya River Basin [3]	Total [3]
Louisiana black bear breeding habitat	1,002,750 [405,799]	290,263 [117,465]	130,839 [52,949]	1,423,853 [576,213]
Permanently protected Louisiana black bear breeding habitat [2]	493,639 [199,769]	91,880 [37,182]	7,614 [3,081]	593,133 [240,032]
Percent of Louisiana black bear breeding habitat that is permanently protected [2]	49.2	31.7	5.8	41.7
Louisiana black bear HRPA	2,054,811 [831,553]	1,200,844 [485,964]	366,001 [148,115]	3,621,656 [1,465,632]
Permanently protected habitat within the Louisiana black bear HRPA	408,400 [165,274]	217,936 [88,195]	11,573 [4,683]	637,909 [258,152]
Percent of the Louisiana black bear HRPA that is permanently protected	19.9	18.1	3.2	17.6

[1] Includes the TRC subpopulation.
[2] Breeding habitat is primarily contained within the HRPA but has expanded beyond it in some areas.
[3] Figures shown in this table are based on currently available spatial data and represent the most accurate estimates to date. Certain protected habitat estimations presented here are lower than the figures provided in the Louisiana black bear 5-year status review document due to improved data availability and associated methodology, and not to actual reductions in protected habitat.

Three Rivers Complex (TRC) Subpopulation

Demographics: A new breeding subpopulation, not present at the time of listing, currently exists in Louisiana as a result of reintroduction efforts (Benson and Chamberlain 2007, pp. 2,393–2,403; Davidson et al. 2015, pp. 27–28). The subpopulation occurs in the TRC located primarily on the Richard K. Yancey WMA. Until 2001, recovery actions had focused on habitat restoration and protections; reduction of illegal poaching; conflict management; research on Louisiana black bear biology and habitat requirements; and educating the public. No actions had been taken to expedite expansion into unoccupied habitats. Initiated in 2001, the objective of the reintroduction was to establish a new group of reproducing Louisiana black bears in east-central Louisiana (primarily in Avoyelles and Concordia Parishes) that would facilitate the

interchange of individuals between the subpopulations currently existing within the Tensas and Atchafalaya River Basins. This area of east-central Louisiana is within the historical range of the Louisiana black bear, but was not known to be occupied by reproducing females when this effort began.

Range expansion of breeding females is a slow process even when bear habitat is in large contiguous blocks because females typically disperse only very short distances. In 1995, when the recovery plan was written, translocations (*i.e.,* capture and release) of adult bears, termed a ''hard'' release, were not deemed to be effective, as evidenced with the wide dispersals of the Minnesota reintroductions (Taylor 1971, p. 79). The method of winter translocations of adult females and their young (termed ''soft'' release), however, proved to be successful in Arkansas and was recommended as the preferred method for translocations (Eastridge 2000, p. 100). The site chosen for the Louisiana releases was at the Richard K. Yancy WMA (formerly known as the Red River and Three Rivers WMAs), located about 80 miles south of the TRB and 30 to 40 miles north of the UARB. In addition to the geographic location, the amount of publicly owned land and potential habitat in that area (179,604 ac (72,714 ha)) encompassing several NWRs, WMAs, and more than 12,000 ac (4,858 ha) of privately owned land in WRP made it the logical site for establishment of an additional breeding subpopulation.

The success of those translocations in the formation of the TRC breeding subpopulation represents a significant improvement in Louisiana black bear population demographic conditions since listing. Abundance estimates for the TRC subpopulation are currently unknown. The mean annual estimated female survival rate (2002–2012) for the TRC subpopulation ranged from 0.93 (95 percent CI = 0.85–0.97) to 0.97 (95 percent CI = 0.91–0.99) (Laufenberg and Clark 2014, p. 31). Mean cub and yearling litter size for the same time period were 2.15 and 1.84 in the TRC subpopulation, respectively (Laufenberg and Clark 2014, p. 35). Fecundity and yearling recruitment for the TRC subpopulation were 0.37 and 0.18 (Laufenberg and Clark 2014, p. 31), low compared to the TRB subpopulation, but possibly an artifact of small sample size. The estimated asymptotic growth rates (growth rate estimates calculated from population matrix models) for the TRC ranged from 0.99 to 1.02, for Model 1 and Model 2 respectively (Laufenberg and Clark 204, p. 45). As male cubs born at TRC reach maturity and more males emigrate from the UARB, growth rates of this subpopulation may increase (Laufenberg ad Clark 2014, pp. 70–80). TRC persistence probabilities ranged from 0.295 to 0.999 depending on estimated carrying capacity, the strength of the density dependence, level of uncertainty, and the treatment of unresolved fates (*i.e.,* deaths or lost collars) (Laufenberg and Clark 2014, p. 47). Using the telemetry and reproductive data from the TRC, probabilities of persistence were greater than or equal to 0.95 only for projections based on the most optimistic set of assumptions (*i.e.,* Models 1 and 2, process only) and under the most conservative model (*i.e.,* unresolved fates were assumed dead and more uncertainty was included in model variable estimates), probabilities ranged from 0.34 to 0.90 (Laufenberg and Clark 2014, pp. 48–49, Tables 5 and 6).

Based on step selection function modeling, the least potential for interchange was between the TRB and TRC subpopulations, and the greatest proportion of successful projections was between the UARB and the TRC (Laufenberg and Clark 2014, p. 74). As discussed previously, the TRC has experienced and possibly facilitated gene flow with other subpopulations (Laufenberg and Clark 2014, p. 84). Three males were captured in the TRB that had dispersed from the TRC, and 20 of 35 cubs sampled in the TRC showed evidence of having been sired by UARB males (Laufenberg and Clark 2014, p. 67). One TRC female dispersed to a location southwest of the TRB subpopulation and apparently bred with an Arkansas bear (Laufenberg and Clark 2014, p. 63). Laufenberg and Clark (2014, p. 83) detected direct evidence of interchange by bears from the UARB to the TRB subpopulation via the TRC subpopulation; however, they did not have any direct evidence of reverse movements. A male bear with UARB ancestry (possibly a second generation migrant) was captured within the TRB, indicating gene flow likely facilitated by the presence of the TRC subpopulation (Laufenberg and Clark 2014, p. 84). Recent LDWF capture records verify the presence of at least one WRB migrant in the TRC subpopulation (Laufenberg and Clark 2014, p. 83).

Habitat: The TRC contains some of the largest contiguous blocks of publicly owned land in Louisiana. It encompasses approximately 179,600 ac (72,700 ha) of potential bear habitat and roughly 100,000 ac (40,500 ha) of publicly owned, forested land (Richard K. Yancey, Grassy Lake, Pomme de Terre and Spring Bayou WMAs, and Lake Ophelia NWR). The location of this population and its surrounding patchwork of habitat are essential in maintaining connectivity and movement of individuals between the existing TRB and UARB populations.

Mississippi Subpopulations

Demographics: Black bear numbers are increasing in Mississippi (Simek et al. 2012, p. 165). Shropshire indicated that the most reliable bear sighting reports occurred in nine Mississippi counties (Bolivar, Coahoma, Issaquena, Warren, Adams, Wilkinson, Hancock, Stone, and Jackson (Shropshire 1996, page 55, Table 4.1; see Figure 2, *http://www.regulations.gov* at Docket Number FWS–R4–ES–2015–0014)), and bear sightings are concentrated in three physiographic regions of Mississippi: Southern Mississippi Valley Alluvium [Delta], the Lower Coastal Plain, and the Coastal Flatwoods (Shropshire 1996, p. 57, Table 4.2). The Mississippi population is currently estimated to be about 120 bears, with approximately 75 percent occurring within Louisiana black bear range (Young 2013, personal communication). Most of the sightings occur along the Mississippi River and in the lower East Pearl River and lower Pascagoula River basins (Simek et al. 2012). Three new resident breeding populations have formed (first documented in 2005) in north west-central (Sharkey-Issaquena Counties), west-central (Warren County) and south west-central (Wilkinson County) Mississippi (Figure 1, *http://www.regulations.gov* at Docket Number FWS–R4–ES–2015–0014)). Genetic studies and LDWF CMR studies have documented bear immigration from the WRB and TRB to the northern Mississippi breeding subpopulation and from TRC to the southern Mississippi breeding subpopulation (Laufenberg and Clark 2014, p. 67). Six bears from northwestern Mississippi (sampled east of the TRB and across the Mississippi River) had mixed ancestry between WRB and TRB (Laufenberg and Clark 2014, p. 63). Genetic studies and LDWF CMR studies have documented bear emigration from the WRB and TRB to the Sharkey-Issaquena and Warren County, Mississippi, subpopulations and from TRC to the Wilkinson County, Mississippi, subpopulation (Laufenberg and Clark 2014, pp. 63–67).

Habitat: Shropshire (1996, p. 64) found that Adams County contained the most suitable habitat in Mississippi and that Delta National Forest was comparable in habitat quality to Tensas River NWR. Habitat suitability models based on landscape characteristics, human attitudes, and habitat quality

found the highest habitat suitability was in southern Mississippi and the lowest was in the Delta region (Bowman 1999, p. 180).

Similar to the trend for the TRB area, in the Lower Mississippi River Valley of Mississippi, the total forested area increased by 11 percent between 1987 and 1994, and reforestation of former agricultural lands accounted for nearly 40 percent of that increase (King and Keeland 1999, p. 350). Approximately 110,000 ac (41,000 ha) of private land in Mississippi counties adjacent to the Mississippi River have been enrolled in WRP 99-year and permanent easements within the Mississippi Alluvial Valley Black Bear Priority Units (MAVU). Combining WRP permanent easement lands with the habitat protected on Federal and State NWRs or WMAs, other Federal- and State-protected lands, and privately owned protected lands, approximately 868,000 ac (440,000 ha) have been permanently protected and/or restored within the MAVU in Mississippi. Although not permanently protected, approximately 328,000 ac (132,737 ha) were enrolled in the Conservation Reserve Program (CRP) within the MAVU. Approximately 68 percent of breeding habitat in the MAVU is under permanent protection.

East Texas

Demographics: At the time the bear was listed, populations had not been reported in east Texas for many years, with the exception of the occasional wandering animal (Nowak 1986, p. 7). Keul (2007, p. 1) reviewed historical literature on the black bear in East Texas and concluded that while habitat loss did occur, the primary reason for loss of bears was due to aggressive and uncontrolled sport hunting. The last known areas supporting bears in east Texas was the Big Thicket area of Hardin County and forested areas in Matagorda County, which may have supported a few individuals up to the mid-1940s (Barker et al. 2005, p. 6; Schmidley 1983. p. 1). There were black bear sightings in east Texas in the 1960s following the reintroduction of Minnesota bears into Louisiana, but by 1983 Schmidley (1983, p. 1) stated there were no resident bears remaining in east Texas. Sightings of bears in east Texas have gradually increased since 1977, when the Texas Parks and Wildlife Department (TPWD) started collecting data (Chappell 2011, p. 11). Most of those sightings were believed to be juvenile or sub-adult males that had wandered into the northeastern part of the listed range from expanding populations in Oklahoma, Arkansas, and Louisiana (Barker et al. 2005, p. 7). Observations in the 1990s indicate the return of a few black bears to the remote forests of east Texas, primarily transient, solitary males that are believed to be dispersing from Arkansas and Oklahoma (Holdermann 2014, personal communication). There is currently no evidence of a resident breeding population of black bears in east Texas. Kaminski (2011, entire document) conducted a region-wide hair snare survey in east and southeast Texas in areas assumed to have the highest likelihood of bear occurrence and where sightings had been reported. According to the genetic analysis and based on the estimated effectiveness of their sampling method, it was determined it was highly unlikely there were established black bear populations in the region (Kaminski 2011, p. 34). Since 1990, there have been 37 verified black bear sightings in 13 east Texas counties, and preliminary examination of these data suggest that some observations may represent duplicate sightings of individual bears (Holdermann 2014, personal communication).

Habitat: The TPWD field analyses of remaining potential black bear habitats within east Texas (using habitat suitability models) found that the Sulphur River Bottom, Middle and Lower Neches River Corridors, and Big Thicket National Preserve areas in east Texas were all suitable for black bears and that the Middle Neches River Corridor provided the most suitable location for any bear restoration or management efforts in east Texas (Garner and Willis 1998, p. 5). Kaminski (2011, p. 50) used Habitat Suitability Indices (HSI) for black bears in east and southeast Texas to identify 4 recovery units (ranging in size from 74,043 to 183,562 ac (31,583 to 74,285 ha)) capable of sustaining viable back bear populations. Estimated HSI scores for each were comparable to other estimates for the occupied range of black bears in the southeast, and the estimated acreage of suitable habitat for all units exceeded those estimated to support existing Louisiana black bear populations (Kaminski 2011). Approximately 11.8 million ac (477,530 ha) of the Pineywoods area of east Texas is classified as forest, of which approximately 61 percent is non-industrial private timberland (Barker et al. 2005, pp. 25–26). Recent studies by Kaminski and Comer (2013, p. 4), Kaminski et al. (2013, p. 10), and Siegmund (2104, pp. 1–2) have documented large, contiguous forested areas in East Texas capable of supporting viable black bear populations. Currently there are approximately 1,115,443 ac (451,404 ha) of Federal and State lands (NWRs, U.S. Forest Service and WMAs) within the historical range of the Louisiana black bear in east-central Texas. Black bear recovery and range expansion in bordering Louisiana, Arkansas, and Oklahoma may increase bear occurrence and activity in east Texas in future years.

Louisiana Black Bear Population Summary

Recent population studies for the Louisiana black bear have focused on vital statistics for individual subpopulations such as abundance, reproduction, and survival (*e.g.,* Hooker 2010; Lowe 2011, O'Connell 2013, Troxler 2013). Laufenberg and Clark (2014, entire document) expanded the results of those studies and also conducted genetic structure connectivity studies to examine the viability and connectivity of the Louisiana black bear.

In summary, considering Laufenberg and Clark's recent work (2014, entire document) and prior research, the following conditions exist for the Louisiana black bear population:

(1) The population sizes of the TRB, UARB, and LARB subpopulations have increased since listing, their average population growth rates are stable to increasing, and the probability of long-term persistence for the TRB and UARB subpopulations (except for one UARB modeling scenario) is greater than 95 percent. The probability of long-term persistence for the LARB is unknown.

(2) The habitat occupied by the TRB, UARB, and LARB breeding subpopulations has increased; there is a more scattered distribution of breeding females between the original TRB and UARB subpopulation areas; and new satellite breeding populations are forming in Louisiana (see Figure 1 in the supporting documents section, *http://www.regulations.gov* at Docket Number FWS–R4–ES–2015–0014)).

(3) A new breeding subpopulation, the TRC, that was not present at listing, now exists between the TRB and UARB subpopulations and facilitates interchange between those subpopulations.

(4) There is evidence that TRB and UARB bears have emigrated to Mississippi and have contributed to the formation of three resident breeding subpopulations that were not present at listing.

(5) There is evidence of interchange of bears between the TRB, UARB, TRC, WRB, and Mississippi subpopulations; however, the current potential for

interchange between the LARB and other subpopulations is low.

(6) The overall probability of persistence for the Louisiana black bear metapopulation comprised of the TRB, TRC, and UARB subpopulations is estimated to be 0.996, assuming dynamics of those subpopulations were independent and using the most conservative population-specific persistence probabilities (*i.e.,* 0.958, 0.295, and 0.849, respectively) (Laufenberg and Clark 2014, p. 47). If subpopulations are not independent (some environmental processes would affect all populations similarly), the long-term viability of the metapopulation could be reduced. However, the high persistence probabilities for the TRB and UARB subpopulations would offset that reduction because the probability that at least one subpopulation would persist would be as great as that for the subpopulation with the greater probability of persistence (which was greater than 95 percent) (Laufenberg and Clark 2014, p. 80).

Recovery and Recovery Plan Implementation

Background—Section 4(f) of the Act (16 U.S.C. 1531 *et seq.*) directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. Under section 4(f)(1)(B)(ii), recovery plans must, to the maximum extent practicable, include: ''Objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of [section 4 of the Act], that the species be removed from the list.'' However, revisions to the list (adding, removing, or reclassifying a species) must reflect determinations made in accordance with sections 4(a)(1) and 4(b) of the Act. Section 4(a)(1) requires that the Secretary determine whether a species is endangered or threatened (or not) because of one or more of five threat factors. Section 4(b) of the Act requires that the determination be made ''solely on the basis of the best scientific and commercial data available.'' Therefore, recovery criteria should help indicate when we would anticipate that an analysis of the five threat factors under section 4(a)(1) would result in a determination that the species is no longer an endangered species or threatened species because of any of the five statutory factors (see Summary of Factors Affecting the Species section).

While recovery plans provide important guidance to the Service, States, and other partners on methods of minimizing threats to listed species and measurable criteria against which to measure progress towards recovery, they are not regulatory documents and cannot substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. A decision to revise the status of or remove a species from the Federal List of Endangered and Threatened Wildlife (50 CFR 17.11) is ultimately based on an analysis of the best scientific and commercial data available to determine whether a species is no longer an endangered or threatened species, regardless of whether that information differs from the recovery plan.

Recovery plans may be revised to address continuing or new threats to the species, as new, substantive information becomes available. The recovery plan identifies site-specific management actions that will achieve recovery of the species, measurable criteria that set a trigger for review of the species' status, and methods for monitoring recovery progress. Recovery plans are intended to establish goals for long-term conservation of listed species and define criteria that are designed to indicate when the substantial threats facing a species have been removed or reduced to such an extent that the species may no longer need the protections of the Act.

There are many paths to accomplishing recovery of a species, and recovery may be achieved without all criteria being fully met. For example, one or more criteria may be exceeded while other criteria may not yet be accomplished. In that instance, we may determine that the threats are minimized sufficiently and the species is robust enough to delist. In other cases, recovery opportunities may be discovered that were not known when the recovery plan was finalized. These opportunities may be used instead of methods identified in the recovery plan. Likewise, information on the species may be discovered that was not known at the time the recovery plan was finalized. The new information may change the extent to which criteria need to be met for recognizing recovery of the species. Recovery of a species is a dynamic process requiring adaptive management that may, or may not, fully follow the guidance provided in a recovery plan.

Recovery Planning and Implementation—The Louisiana Black Bear Recovery Plan was approved by the Service on September 27, 1995 (Service 1995, 59 pp.). It was developed in coordination with the BBCC and its Black Bear Restoration Plan (BBCC 1997, entire document). The objective of the recovery plan is to sufficiently alleviate the threats to the Louisiana black bear metapopulation, and the habitat that supports it, so that the protection afforded by the Endangered Species Act is no longer warranted.

The four primary recovery actions outlined in the Louisiana black bear recovery plan are:

(1) Restoring and protecting bear habitat;

(2) developing and implementing information and education programs;

(3) protecting and managing bear populations; and

(4) conducting research on population viability, corridors, and bear biology. Significant accomplishments have been made on all of the primary actions for this subspecies (Service 2014, entire document). Below are examples:

Habitat Restoration and Protection: Habitat Restoration Planning Area maps have been used to focus our conservation efforts resulting in approximately 148,400 ac (60,055 ha) of privately owned lands being restored and protected under the Service's Partners for Fish and Wildlife program and the WRP program. Approximately 480,836 ac (194,588 ha) have been permanently protected, including 126,417 ac (51,159 ha) that have been purchased or put under non-development easements in the Atchafalaya Basin (see the Summary of the Factors below for additional details).

Information and Education Programs: The BBCC, which implemented the first public education efforts, developed a landowner habitat management guide and continues to present informational and educational materials about bears and how to live in areas where they occur. The Bear Education and Restoration (BEaR) group of Mississippi, and the East Texas Black Bear Task Force, are additional organizations that actively conduct public education activities through events such as workshops, public talks, and brochures. There are two annual black bear festivals, one each in Mississippi and Louisiana, to promote public education and awareness of bears. Louisiana, Mississippi, and Texas have all developed and are distributing public education and safety informational material. LDWF regularly sponsors hunter safety and teacher workshops.

Protecting and Managing Bear Populations: The BBCC developed the black bear restoration plan in 1994 and updated it in 1997. The 1995 Louisiana black bear recovery plan, prepared by the Service in coordination with the BBCC, relies heavily upon that restoration plan. The BBCC restoration

plan has additional goals focused on moving beyond recovery and into restoration throughout its range. All three States (LA, MS, TX) now have black bear management plans in place that guide their restoration and management activities. The LDWF and MDWFP have nuisance response protocols in place and actively manage human-bear conflicts in coordination with the U.S. Department of Agriculture's (USDA) Wildlife Services program. The LDWF initiated a program with St. Mary Parish to reduce bear-human conflict in the LARB by providing an employee dedicated to reduce bear access to anthropogenic food sources (*e.g.* garbage, pet foods) in conjunction with purchasing and deploying bear-resistant waste cans (Davidson et al. 2015, p. 51). The LDWF continues to provide financial support for the Parish to maintain this program and has worked with adjacent parishes to implement similar programs. The LDWF and Service have worked with the Louisiana Department of Transportation and Development (LDOTD) to provide bear crossing signs on Hwy 90 in the LARB subpopulation and to focus habitat restoration and protection efforts for future bear crossings (*i.e.,* underpasses). Similar efforts are underway to address the same concern along I–20 in the TRB subpopulation. The LDWF, in coordination with the Service and U.S. Geological Survey (USGS), has developed a database that is used to track bear occurrences, captures, and mortalities to better understand and manage subpopulations. A multi-partner effort to conduct a translocation program (based on new methodology of being able to use soft releases) from 2001 through 2009 resulted in the successful formation of the TRC breeding subpopulation.

Conduct Research on Population Viability, Corridors, and Bear Biology: More than 25 research studies on Louisiana black bear biology and habitat requirements, subpopulation vital statistics, taxonomy and genetics, and public attitudes in Louisiana, Mississippi, and Texas have been conducted (see Laufenberg and Clark 2014, p. 5 for a partial listing). The LDWF will continue monitoring (using hair snare and mark- recapture efforts) the TRB, UARB, TRC, and LARB subpopulations (Davidson et al. 2015, p. 33, Table 3.1). Data from these studies are being used to monitor and manage the bear population.

Additionally, all four of these recovery actions have been identified for continued implementation in the LDWF Black Bear Management Plan (LDWF Plan; Davidson et al. 2015), the Mississippi Conservation and Management of Black Bears in Mississippi Plan (Young 2006, Appendix A), and the East Texas Black Bear Conservation and Management Plan (Barker et al. 2005, pp. 30–41).

Substantial progress has been achieved in alleviating known threats to the Louisiana black bear through increased habitat protection and restoration, improved population demographics by reduction of habitat fragmentations, increased knowledge of key population attributes (*e.g.,* survival, fecundity, population growth rates, home ranges) necessary to manage this species, responsive conflict management, and increased public education. Many public and private partners have contributed to the current improved status of the Louisiana black bear population by implementing these recovery actions.

Recovery Criteria

Recovery Criterion 1: At least two viable subpopulations, one each in the Tensas and Atchafalaya River Basins. This criterion has been met. Based on Shaffer's discussion (1981, p. 133), the requirement for two viable Louisiana black bear subpopulations (one each in the Tensas and Atchafalaya River Basins) with exchange of individuals (see Criterion 2) to form a metapopulation would increase the likelihood of two or more subpopulations persisting for 100 years (BBCC 1997, p. 54). In terms of achieving recovery criteria, the UARB subpopulation is located approximately 110 miles south of the TRB and, thus, the Louisiana black bear breeding subpopulation nearest the one in Tensas River Basin. The LARB subpopulation is located approximately 70 miles south of the UARB (therefore, approximately 180 miles south of TRB). When these recovery criteria were developed, there were no successful methods for establishing new breeding subpopulations other than relying on habitat restoration and natural population expansion. Thus, habitat restoration was and still is focused on surrounding all breeding subpopulations. Currently, there is one new breeding subpopulation, the TRC (formed in Louisiana as a result of reintroductions), between the TRB and UARB. This location was chosen for reintroductions in order to facilitate movement of individuals between the UARB and TRB subpopulations. Recent documentation of bear movement between the TRC and UARB and between the UARB and TRB via the TRC subpopulation demonstrates the success of this effort. In addition, several smaller breeding areas indirectly resulting from those reintroductions are forming in Louisiana. Additionally, three naturally forming (and indirectly resulting from the Louisiana reintroductions) breeding populations are establishing themselves in Mississippi, all evidence of increased interchange of bears.

The estimated probability of persistence over 100 years for the TRB subpopulation was 1.00 and 0.96 for Model 1 process-only and 95 percent confidence interval estimates and was 1.00 and 0.96 for Model 2 process-only and 95 percent confidence interval estimates (Laufenberg and Clark 2014, p. 46). The probability of persistence of the UARB subpopulation met the 95 percent probability of long-term persistence except under the two most conservative sets of assumptions (Model 2, all uncertainty) (Laufenberg and Clark 2014. p. 82). The estimated asymptotic growth rates for the TRC ranged from 0.99 to 1.02, for Model 1 and Model 2, respectively (Laufenberg and Clark 2014, p. 45). TRC persistence probabilities ranged from 0.29 to 0.99 depending on carrying capacity, the strength of the density dependence, level of uncertainty, and the treatment of unresolved fates (*i.e.,* deaths or lost collars) (Laufenberg and Clark 2014, p. 47). Using the telemetry and reproductive data from the TRC, probabilities of persistence were greater than or equal to 0.95 only for projections based on the most optimistic set of assumptions (Laufenberg and Clark 2014, p. 47).

Estimates of long-term viability of the TRB and the UARB subpopulations were greater than 95 percent except for the two most conservative models for the UARB (long-term viability estimates of 85 percent and 92 percent). Taken together as a system, and assuming that those subpopulations were independent, the combined viability analysis of the TRB, UARB, and TRC (using the most conservative estimates obtained for all three subpopulations) indicated that the Louisiana black bear metapopulation (TRB, TRC, and UARB) has an overall long-term probability of persistence of approximately 100 percent (0.996) (Laufenberg and Clark 2014, p. 92). The current movement of individuals between the additional subpopulations elsewhere in Louisiana and Mississippi would only improve the metapopulation's chance for persistence (Laufenberg and Clark 2014, p. 94). The opportunity for movement of individuals between the TRB–TRC–UARB metapopulation and the LARB subpopulation is currently low;

however, the presence of the relatively large LARB subpopulation and projections for improving habitat conditions (refer to Factor A and D discussions) between it and the more northerly UARB subpopulation contributes to the persistence of the Louisiana black bear population as a whole.

This recovery criterion, as described in the recovery plan, calls for two viable subpopulations, one each in the Tensas and Atchafalaya River Basins. The overall goal of the recovery plan was to protect the Louisiana black bear metapopulation and the habitat that supports it so that the protection afforded by the Act is no longer warranted. Based on the above analysis, we believe the Tensas subpopulation is viable and we believe the UARB subpopulation is viable based on three model scenarios. We have high confidence in these three model scenarios. The long-term persistence of the Louisiana black bear metapopulation (TRB, TRC, and UARB) is estimated to be at least 0.996 under the most conservative (*i.e.,* using the lowest estimates of viability) model assumptions; therefore, we believe this criterion to be met. We believe that these conservative assumptions identified in these scenarios will likely be present post-delisting as the Louisiana black bear PDM plan is implemented. Additionally, we will pay close attention to UARB and LARB subpopulation parameters as post-delisting monitoring progresses. The TRC subpopulation located between TRB and UARB provides a mechanism for exchange between the TRB and UARB subpopulations. In addition, this recovery plan criterion did not include the possibility of other populations forming on the landscape because female range expansion is very slow and there was no acceptable methodology at the time to expedite that expansion (*e.g.,* soft release translocations). However, this assumption was proven wrong. In addition to the populations described above, we have documented new breeding populations established in Louisiana and Mississippi (Figure 1, *http://www.regulations.gov* at Docket Number FWS–R4–ES–2015–0014).

Recovery Criterion 2: Immigration and emigration corridors between the two viable subpopulations. This criterion has been met. To reach an accurate conclusion regarding the achievement of this criterion, it is essential to fully understand the term ''corridor'' in light of the advances in Louisiana black bear research methodology (and the knowledge gained regarding Louisiana black bear dispersal and interchange) that has occurred since the listing of the Louisiana black bear more than 20 years ago. Although the Louisiana black bear Recovery Plan does not specifically define the term ''corridor,'' it does present the future objective of developing corridor requirements and guidelines from available research studies and incorporating pertinent findings and knowledge into practical management guidelines (Service 1995, p. 18).

The BBCC Black Bear Restoration Plan states that little was known about Louisiana black bear corridor use and requirements at that time (BBCC 1997, p. 58). Research studies conducted near the time of the Louisiana black bear listing were primarily inconclusive regarding the identification and function of corridors. Weaver et al. (1990b, p. 347) determined that the Louisiana black bear will use tree-lined drainages in agricultural areas to travel between larger forested tracts. They also stated, however, that ''research is needed to document the characteristics a corridor must possess to make it suitable for use by bears as a habitat link.'' Marchinton (1995, pp. 53, 64) speculated that male Louisiana black bear movements, though influenced by habitat fragmentation patterns, were not inhibited by the level of fragmentation within his study area (which was typical of the landscape throughout the range of the Louisiana black bear). He also discussed anecdotal evidence which suggested that ''adult male bears would cross open fields'' (Marchinton 1995, p. 59). We believe those early studies not only challenged the continuous-habitat-linkage perception of a corridor, but also described the need for additional research to clearly characterize the qualities and functions of such corridors.

The Black Bear Restoration Plan states that ''the criteria for measuring corridor effectiveness should also consider corridor function'' and ''research is urgently needed to determine the corridor functions, their size and shape, and their actual effectiveness'' (BBCC 1997, p. 58). To assess the function and role of corridors in Louisiana black bear dispersal and genetic exchange, Laufenberg and Clark (2014, pp. 24–31) conducted a movement, or step selection, study throughout a large portion of the range of the Louisiana black bear. Their findings indicated that, while contiguous forested habitat linkages can be beneficial to bears moving through a fragmented landscape, hypothetical forested corridors ''were not more effective than the broken habitat matrix that surrounded many of the subpopulations'' (Laufenberg and Clark 2014, p. 85). Their study also documented interchange occurring ''from the UARB to the TRB by way of the TRC'' (Laufenberg and Clark 2014, pp. 2, 84). Such interchange supports the assertion by Laufenberg and Clark (2014, p. 90) that the presence of multiple satellite populations of breeding bears on the landscape may be more effective in establishing and/or maintaining connectivity between the larger subpopulations than the presence of contiguous forested linkages. Based on their results and that of other pertinent studies (Laufenberg and Clark 2014, p. 90; Hilty et al. 2006, p. 192–193; Stratman et al. 2001, p. 57; Hellgren and Vaughn 1994, p. 279; Maehr et al. 1988, p. 4), we define ''Louisiana black bear corridor'' as a landscape that consists of ''stepping stones'' of habitat such as large forested tracts that support reproducing subpopulations, smaller forested blocks that support one or more reproductive-aged females, and the matrix of riparian corridors, agricultural fields, and other undeveloped lands that are sufficiently permeable to allow interchange between the existing subpopulations.

Most satellite populations exist today as a result of the multi-agency project undertaken specifically to reduce demographic isolation of the existing TRB and UARB subpopulations (see discussion under TRC). That translocation project, initiated in 2001, was based on the assumptions that relocated females with cubs would remain at a new location (not currently supporting a Louisiana black bear subpopulation) and that adult females would be discovered by males traveling through the area. From 2001 through 2009, 48 females and 104 cubs were moved (primarily from the TRB) to a complex of public lands located between the TRB and the UARB subpopulations. Though most relocated females and their offspring remained within the vicinity of their release site (creating a new subpopulation that reduced the distance between existing subpopulations), a few dispersed to various habitat patches creating the satellite populations that now facilitate interchange between the larger subpopulations.

As part of the recovery process, HRPA maps were developed by a collaborative multi-agency and organization group (Federal, State, local government partners, and nonprofit organizations including but not limited to the Natural Resources Conservation Service (NRCS), LDWF, BBCC, Louisiana State University, the Louisiana Nature Conservancy, and the Service) to design

and create landscape features to support the habitat-block/satellite-population corridor concept that facilitates such interchange. The Louisiana black bear HRPA maps are regularly updated; the most recent update was in the spring of 2011. Those maps are designed for use with conservation programs administered by NRCS (*e.g.,* WRP) and the Service (*e.g.,* Partners for Fish and Wildlife (PFW)), which primarily encourage reforestation of marginal and nonproductive cropland in Louisiana. The maps, using a 3-tiered point system, establish higher point zones (indicating higher importance for bear recovery and thus providing landowners competing for this conservation funding with a higher ranking) around breeding bear habitat, large forested areas, and various habitat patches that may facilitate interchange between Louisiana black bear subpopulations. Areas that would benefit breeding subpopulations and corridors thus receive the highest priority, and landowners competing for WRP enrollment would receive higher rankings in those areas. Most WRP tracts are encumbered by permanent easements that protect the land from future conversion or development (refer to discussion in Factor D).

Similar conservation priority maps have been developed and are currently in use in Mississippi (Ginger et al. 2007). The TPWD and its partners have developed Land Conservation Priority Maps for East Texas and a Hardwood Habitat Cooperative that offers a cost-share program to landowners seeking to restore or enhance hardwood habitat on their lands. In East Texas, more than 500 ac (200 ha) have been restored and 1,550 ac (630 ha) were enhanced via the Hardwood Habitat Cooperative program between 2008 and 2011.

The Louisiana Black Bear Recovery Plan states that corridors providing cover may facilitate the movement of bears between highly fragmented forest tracts. It also states, however, that the Louisiana black bear has been known to cross open agricultural fields even when forested corridors were available, and that ''habitat blocks (large blocks of land) may provide more effective corridors'' (Service 1995, p. 6). This type of habitat-block/satellite-population corridor occurs throughout the range of the Louisiana black bear in the form of remnant forested patches and tracts of restored habitat (on private and public lands), and has been augmented by the relocation of bears into east-central Louisiana. Laufenberg and Clark (2014, p. 90) concluded, based on the result of their work, that a patchwork of natural land cover between Louisiana black bear breeding subpopulations may be sufficient for movement of individuals between subpopulations (at least for males).

Laufenberg and Clark (2014, p. 85) postulated that, while such corridors may be important, they were not more effective than the presence of a broken-habitat matrix such as what is surrounding current Louisiana black bear subpopulations. As described above, research supports this corridor concept and the documented evidence of interchange between the UARB and the TRB subpopulations (and additional interchange with subpopulations in Arkansas and Mississippi) provides further validation. The Louisiana Black Bear Recovery Plan indicates ''key corridors or habitat blocks need to be identified and will be required to ease fragmentation within and between occupied habitat for the Louisiana black bear.'' We have clearly documented evidence of interchange between the TRB and UARB subpopulations by way of the TRC, and, therefore, we have met this criterion.

Recovery Criterion 3: Long-term protection of the habitat and interconnecting corridors that support each of the two viable subpopulations used as justification for delisting. The recovery plan states that long-term protection is defined as having sufficient voluntary conservation agreements with private landowners and public land managers in the Tensas and Atchafalaya River Basins so that habitat degradation is unlikely to occur over 100 years (Service 1995, p. 14). Additionally, the Black Bear Restoration Plan states that criteria for determining whether long-term habitat and corridor protection has been achieved could include ''data projecting future habitat trend according to historical trend in acreage and habitat type/quality'' (BBCC 1997, p. 58). It further states that other metrics to consider may include the extent of cooperating private landowners and the nature of their respective conservation agreements, as well as ''federal legislation restricting agricultural conversion of wetlands, and the nature of conservation easements such as those being obtained from private landowners by the Corps in the Atchafalaya Floodway'' (BBCC 1997, p. 58). Employing those criteria, and based on the genetic and connectivity studies by Laufenberg and Clark (2014), it is evident that not only are corridors between the UARB and the TRB subpopulations present and functional, they are afforded long-term protection through a combination of conservation easements and environmental regulations.

Habitat Protection Through Ownership or Permanent Easements: An estimated 450,000 to 550,000 ac (182,000 to 222,000 ha) of BLH forest habitat were restored in the LMRAV within 12 years of the Louisiana black bear being listed as a threatened species (Haynes 2004, p. 173). Since 1992, more than 148,000 ac (60,000 ha) of land has been permanently protected and/or restored in the HRPA via the WRP program (mostly in the TRB and UARB areas) (Table 2). It should also be noted that, in Louisiana, there are approximately 480,000 ac (195,000 ha) of public lands within the HRPA that are managed or maintained in a manner that provides benefits to bears (Table 5). Approximately 460,000 ac (186,000 ha) of public lands in Louisiana and Mississippi directly support Louisiana black bear breeding populations (see Table 6, and Figure 2, *http://www.regulations.gov* at Docket Number FWS–R4–ES–2015–0014)).

Habitat Protection Through Regulations and Mitigation: A large proportion of the remaining forested habitat that is not encumbered by perpetual conservation servitudes or public ownership and management are occasionally to frequently flooded and would not be suitable for conversion to agriculture or development without the construction of significant flood control features. The construction of such features or similar activities that would eliminate or reduce existing wetland habitat (including forested wetlands) would be regulated via the Food Security Act of 1985 and/or section 404 of the CWA. Although the CWA was initially considered insufficient to ensure the long-term protection of Louisiana black bear corridors, significant changes have occurred in the legal interpretation and authoritative limits of the CWA (Houck 2012, pp. 1473–1525). As the result of multiple court cases and revised legal interpretations, the regulatory scope and enforcement authority of the Corps and the Environmental Protection Agency (EPA) under the CWA was substantially broadened (see Factor D for additional information). With the institution of those regulatory changes, BLH forest loss in the LMRAV has reversed. This trend reversal is heavily supported by published accounts (Haynes 2004, p. 173), natural resource management agency records (Table 2), and our analysis of classified imagery within the Louisiana black bear HRPA (Tables 7 and 8). The habitat loss trend reversal is further supported by an analysis of data obtained from the Corps' wetland regulatory program, which demonstrates

that substantially more forested habitat is restored through compensatory wetland mitigation than is eliminated via permitted wetland development projects (Table 10). Furthermore, the Corps' wetland regulatory program data indicate that the ratio of wetland habitat gains from compensatory mitigation to wetland habitat losses attributed to permitted projects is 6:1 (Stewart 2014, personal communication).

Based on our review of the Louisiana black bear recovery plan, we conclude that the status of the species has improved due to implementation of recovery activities and the criteria of the recovery plan have been met. Our analysis of whether the species has achieved recovery and thus no longer requires the protections of the Act because it is no longer an endangered or threatened species is based on the five statutory threat factors identified in section 4 of the Act, and is discussed below in the Summary of Factors Affecting the Species.

Summary of Changes From the Proposed Rule

We have not made any substantive changes in this final rule based on the comments that we received during the public comment period. We received some additional information, which has been incorporated, and text has been added to better present our decision. For example, State agencies provided additional updated data on mortalities that we have incorporated.

Summary of Comments and Recommendations

In the proposed rule published May 21, 2015 (80 FR 29394), we requested that all interested parties submit written comments on the proposal by July 20, 2015. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. Legal notices were published in the Advocate and News Star (Louisiana), Clarion Ledger (Mississippi), and Longview News Journal (Texas) newspapers. We held two public hearings, one in Tallulah, LA, on June 23, 2015, and one in Baton Rouge, LA, on June 25, 2015. Those hearings were announced with the proposed listing and legal notices, and again in a June 12, 2015, media advisory, shortly before the hearings.

During the comment period for the proposed rule, we received 126 comment letters or statements (some individuals commented more than once) directly addressing the proposed action. Three comments were received from peer reviewers, two from State agencies, and 114 from the public (including 54 form letters) posted on the Federal docket, and 7 were presented at the hearings. We did not receive any comments from Tribes. Three additional comment letters were submitted after the close of the comment period. We reviewed those three letters in accordance with the requirements of the Act and Administrative Procedure Act. They did not provide any significant new information but were similar to other comments received by the close of the comment period, and thus are addressed through our response to those comments that were received by the closing date.

We received several comments providing editorial corrections (*e.g.,* defining acronyms, adding additional tables) and suggestions regarding formatting, and requests for clarification. We have made those corrections and changes as appropriate. All substantive information provided during the comment period is either incorporated directly into this final determination or is addressed in our responses below. Several comments and questions were not explicitly addressed in the respective comment sections below because the information was already included in the proposed delisting rule and thus is carried forward in the body of this final rule (involving topics such as educational programs, increased sightings, nuisance bear protocols, habitat restoration and protection efforts, status of legal protection for bears, subpopulation-specific demographics, and the geographic extent of breeding subpopulations).

Several commenters simply expressed opposition to or support for the proposed delisting of the Louisiana black bear without providing any additional supporting information. We have noted those responses but, as stated in our proposed rule, submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that a determination as to whether any species is a threatened or endangered species must be made ''solely on the basis of the best scientific and commercial data available.''

State and Peer Review Comments

Section 4(b)(5)(A)(ii) of the Act states that the Secretary must give actual notice of a proposed regulation under section 4(a) to the State agency in each State in which the species is believed to occur, and invite the comments of such agency. Section 4(i) of the Act states, ''the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition.'' The Service submitted the proposed regulation to the States of Louisiana, Mississippi, and Texas. We received formal written comments from Louisiana, including a substantive comment addressed below. The State of Texas' Parks and Wildlife Department was supportive of our proposed rule and agreed with our findings; they did not have substantive comments. We appreciate the support from Texas for the action we are working on together and the State's ongoing commitment to protect black bears. The MDWFP provided support for this action in a telephone call and did not have substantive comments. Issues and information provided by the State agencies are summarized in the State Comments section, and where they overlap with similar issues identified by the public, they are included in the Public Comments section.

In accordance with our peer review policy, which was published on July 1, 1994 (59 FR 34270), we solicited expert opinion on the proposed rule and the draft post-delisting monitoring plan from three knowledgeable, independent individuals with scientific expertise that included familiarity with the Louisiana black bear (and other black bears) and its habitat, biological needs, threats, recovery efforts, and current research methodologies. We received responses from all three peer reviewers. Issues and information provided by the peer reviewers are summarized in the Peer Reviewer Comments section, and where they overlap with similar issues identified by the public, they are included in the Public Comments section. All peer reviewers supported our conclusions and provided additional information, clarifications, and suggestions to improve the final rule.

State Comments

Comment (1): The LDWF was supportive of our proposed rule and concurred with our findings. The LDWF added that it is ''prepared to accept full responsibility for the management of bears in Louisiana, and that regulations are in place that protect all bears, regardless of sub-specific designation within Louisiana.'' The LDWF also stated that its Black Bear Management Plan was presented to and reviewed by the Louisiana Wildlife and Fisheries Commission (LWFC), had undergone a 30-day public review and comment period, and was published on the LDWF

Web site (*www.wlf.louisiana.gov*) immediately thereafter. LDWF also provided supplementary information from a genetics study of the TRB Louisiana black bear subpopulation and asked us to contact the agency regarding additional data and reports on updated sightings and mortalities entered into its BearTrak database.

Our response: We appreciate LDWF's commitment to continued black bear conservation. We understand that, upon delisting, LDWF will accept full responsibility for the care, conservation, and management of the Louisiana black bear. We look forward to working together with LDWF on post-delisting monitoring and have incorporated the additional information provided by LDWF into this document and the PDM plan.

Peer Reviewer Comments

Comment (2): One reviewer suggested we add a discussion of effective population size (N_e) to our discussion of genetic diversity. The reviewer suggested this addition because estimates of effective population size are sometimes used in lieu of demographic viability criteria when discussing genetic diversity. In the reviewer's opinion, for this action, exclusive use of effective population size would be misguided. The reviewer also commented that, based on the data presented in the proposal and supporting documentation, there is no indication that genetic viability is a concern.

Our response: We have added a discussion of N_e to the rule (see Species Information section).

Comment (3): All peer reviewers stated that the PDM plan was sound, had no major deficiencies, and that the categories of response scenarios and corresponding triggers were appropriate. One peer reviewer suggested we use ''stable or positive growth rate'' as a metric in our post-delisting monitoring plan.

Our response: We appreciate the comments by all peer reviewers and their assessment of soundness of our approach. We agree that stable or positive growth rates are desirable goals; however, that metric can be affected by the carrying capacity of an area. For example, in areas where carrying capacity is being approached, has been met, or has been exceeded, the growth rates may not be increasing and that is not necessarily an indication that a population is experiencing stress. We believe the demographic monitoring parameters we have chosen (*e.g.,* adult survival and fecundity) allow us to accurately assess the status of bear subpopulations; those metrics and the other data we are collecting will give us the ability to examine population growth; however, for the reason stated above, we chose not to specifically use population growth rate as an identified monitoring parameter.

Comment (4): One reviewer suggested adding a component to the PDM [plan] that involves recording of public bear sightings as a means to examine changes in the overall area of occupation as well as possible changes in public sentiment.

Our response: We agree with the reviewer that maintaining and monitoring public sightings provide useful information regarding bear population distribution and public sentiment. The LDWF currently maintains a database of all significant bear sightings with geographic coordinates (*e.g.,* sightings, mortalities). Credible reports of bears outside of the current known range are recorded for the purpose recommended by the reviewer; public reports of bears within currently known areas are not always recorded unless the call is to report nuisance activity (Davidson et al. 2015, p. 32). The purposes of this database are to monitor bear range expansion and recolonization, monitor anthropogenic mortality locations and frequency, and human–bear conflict abatement (Davidson et al. 2015, p. 52). We have included a statement in the final PDM plan that indicates information in that database may be considered in post-delisting monitoring.

Comment (5): One reviewer stated that our use of ''no new or increasing threats'' as a criterion seemed to be vague.

Our response: In our review of the best available and commercial data, we did not identify any factors that are likely to reach a magnitude that threatens the continued existence of the species. The PDM is designed to monitor the threats that caused this species to be listed. We included the term ''new or increasing threats'' in our response category triggers to allow for consideration of any currently unknown factors we could not reasonably predict but that may appear during the post-delisting monitoring period (*e.g.,* a new disease that could affect the Louisiana black bear or its habitat). In that sense, we believe that this needs to be a general category. However, we agree with the reviewer that our use of the term ''no new or increasing threats'' in our Category I response trigger is vague in terms of defining what level of impact would require consideration. In Categories II and III, we used the term ''new and increasing threats that are considered to be of a magnitude and imminence that may threaten the continued existence of the Louisiana black bear within the foreseeable future.'' We added the language regarding magnitude and imminence to our Category I response triggers.

Comment (6): One reviewer suggested that using 2013 as a reference year for our PDM demographic monitoring, instead of 2006, was a more logical choice because 2006 may not have represented the current population conditions at delisting. In addition, using 2013 would be more comparable to the habitat data, which uses 2013 as a baseline.

Our response: We agree with the reviewer that the 2006 data do not represent the population's conditions at delisting. The latest demographic data used in Laufenberg and Clark were collected in 2012; therefore, we chose to use 2012, instead of 2013, to more accurately reflect a baseline or reference year.

Comment (7): One reviewer noted that it was unclear to what degree female survival and per-capita recruitment, as used in the triggers, would be calculated and assessed. He noted that assessment on an annual basis could create the risk of over-reaction and suggested incorporating a ''sliding scale,'' based on timeframes, into the three categories may help determine the level of response needed and thus increase the effectiveness of management responses.

Our response: We have clarified our explanation of the demographic measures to indicate our evaluation will be based on 3-year averages. We will still have the data collected and summarized annually in the event something unusual is detected within subpopulations.

Comment (8): One reviewer suggested a grammatical correction and that it was not clear whether a single condition or all conditions need to be met for each of the trigger criteria categories. He noted a particular concern with Trigger Category III but suggested clarifying the decisions for all three triggers.

Our response: We have re-worded our definitions (for all three Category triggers) to include the terms ''and'' and ''or'' after each condition so that the combination of conditions necessary to activate a trigger is clearly defined. We also re-worded our final paragraph for the Category II trigger to include the term ''If any of these conditions. . .'' in order to clarify the necessary conditions to address this reviewer's comments (see Post Delisting Monitoring Plan section).

Public Comments

Comment (9): Several commenters stated that the Service did a poor job in advertising public meetings. One commenter stated that time restrictions placed on public hearing speakers were improper. One commenter requested that the Service extend the comment period, citing the example of the Service extending the comment period for listing.

Our response: We proactively scheduled public hearings and published the dates, times, and locations for those public hearings in the proposal to delist the Louisiana black bear on May 21, 2015 (80 FR 29396), well before the hearing dates (June 23 and 25, 2015) in order to provide the public opportunities to provide comments. The dates, times, and locations for those public hearings were also included in news releases provided to appropriate Federal and State agencies, scientific experts and organizations, and other interested parties in Texas, Louisiana, and Mississippi at the time of the proposal. Additionally, the news releases were posted on the Service's national and regional Web sites. Legal notices for the hearings were published in the Advocate (Baton Rouge, LA) and News Star (Monroe, LA) on June 2, 2015, Clarion Ledger (Mississippi) on June 2, 2015, and Longview News Journal (Texas) on June 3, 2015. Finally, the Service issued a June 12, 2015, media advisory shortly before the hearings.

We conducted public hearings in a manner we believed would be productive and fair to all attendees, including placing time limits on speakers. We hold hearings to solicit public input; as such, they are organized in a way that allows us to hear as many comments as possible to help inform our decision. We included an open house before the hearings in order to provide time for participants to ask questions and have discussions regarding our proposal. We notified all hearing participants of the several ways to contribute any additional comments (*e.g.,* in writing at the public hearing, in writing via the U.S. postal service, and in writing on *www.regulations.gov*).

A 60-day comment period is the Service's standard comment period for substantive decisions. Based on the comments presented at the public hearings and during the comment period, we concluded that it was not necessary to reopen the comment period.

Comment (10): Several commenters noted that the BBCC has played a significant role in the recovery of the Louisiana black bear.

Our response: We agree that the BBCC and its large and varied membership (Federal and State agencies, landowners, and the public) have played an important role in Louisiana black bear recovery. BBCC provided a common forum from which to develop a path forward in recovery (*e.g.,* the Louisiana black bear recovery plan was a subset of the broader BBCC Restoration Plan) at listing and for subsequent recovery implementation. In addition to the numerous contributions by BBCC members, we acknowledge that many individuals and agencies have made substantial contributions to the recovery of this species. We celebrate all partners involved with this recovery success.

Comment (11): One commenter stated that we had never defined the term Lower Mississippi River Alluvial Valley (LMRAV) and requested we correct the statement indicating that Louisiana and Mississippi black bear breeding populations occur in the LMRAV.

Our response: We regret the confusion resulting from failing to describe the LMRAV as we used it. We have added a geographic description to better define our use of the term LMRAV.

Comment (12): One commenter disagreed with the Service's determination that to be considered a significant portion of the range, the portion of the range must be so important that the species cannot survive without it.

Our response: For our analysis, we followed the Service's final policy on ''Significant Portion of its Range'' (SPR) (79 FR 37578; July 1, 2014). Based on our evaluation of the biology and current and potential threats to the Louisiana black bear that have been sufficiently ameliorated, it is not reasonable to conclude that any portion of the range has a different status than any other portion. See the Significant Portion of the Range discussion.

Comment (13): One commenter, referencing several imperiled species on the Service's candidate list, questioned why the Service would pursue a complex action like delisting of the Louisiana black bear (an action apparently not planned until completion of the 5-year review and availability of Laufenberg and Clark's (2014) research) over listing more imperiled species. He asked if the Service is using funds appropriated by Congress for specifically delisting the Louisiana black bear and, if not, requested the Service to explain why we pursued delisting instead of providing protection to other species long known to be in imminent danger.

Our response: Both preventing extinction and achieving recovery have been and will continue to be among the Service's highest priorities. Activities providing protection for species on the Service's candidate list are funded from separate budget activities than those relating to recovery and delisting actions. In other words, not producing this rule would not have provided additional funding for efforts to list imperiled species. Recovery funds support efforts to protect and improve a listed species' status and also to remove a species from the list once we have determined a species no longer requires the protection provided by the Act. By promptly removing ''recovered'' species from no-longer-needed protection of the Act, we can then direct that funding to recover other listed species or improve their status.

Efforts for recovering and delisting the Louisiana black bear have been ongoing. Since the bear was listed in 1992, the Service and many partners have actively worked towards its recovery (see response to Comment 14).

Comment (14): Several commenters stated that the delisting proposal and draft post-delisting monitoring were ''fast-tracked'' as a result of political pressures. They also stated that, as a result, scientific evidence has been edited to show only documents supporting the delisting proposal.

Our response: Many partners have been actively working on Louisiana black bear recovery since its listing in 1992 (see Recovery Plan and Recovery Plan Implementation). Specifically, in August 2008, the Service, as part of the Service's Endangered Species Program Strategic Plan, designed a framework for achieving conservation of listed species and clearly articulating accomplishments (Service 2009c). As part of this plan, more than 100 Spotlight Species (including the Louisiana black bear) were identified across the United States to receive increased attention from the Endangered Species Program (including funding) and, based on a 5-Year Action Plan, demonstrate results toward species conservation goals. The goal of the 5-Year Action Plan (fiscal year 2009 through fiscal year 2013) for the Louisiana black bear was to improve the bear's status to the point where it no longer required protection of the Act (Service 2009d). The plan identified conservation actions including continued habitat protection, conflict management, and public education. It also prioritized population viability studies in the Tensas and Atchafalaya

River Basin studies of population interchange and corridor assessments. The work published by Laufenberg and Clark (2014) represents many years work and largely addresses those goals.

The development of a post-delisting monitoring (PDM) plan is typically an iterative process that is incorporated into recovery planning and refined during the later stages of recovery so that it is ready to be released at the time a species is proposed for delisting (Service 2008b, p. 3–1). Preliminary development of the PDM plan for the Louisiana black bear began in 2011 to ensure that it would be built upon established data sets collected during recovery in order to document ''baseline'' conditions prior to delisting so that changes post-delisting could be adequately assessed.

All of the available scientific data has been considered to evaluate the recovery progress of the Louisiana black bear. We did not edit documents to show only results favorable towards delisting. This final action was supported by the peer reviewers, who were all highly familiar with literature on the black bear in general and the Louisiana black bear as well.

Comment (15): Several commenters questioned the quality of the science that the Service used as a basis for our delisting proposal or stated that the research results were inconclusive. One commenter claimed that we had presented only the research that supported our proposal.

Our response: We believe that the data we used in our proposal to delist the Louisiana black bear are credible. We did not receive any data during the comment period that would change our determination. Peer review evaluation of our proposal by recognized experts in black bear biology and research confirmed our determination, finding our reliance on the analyses of Laufenberg and Clark (2014) to be appropriate because that work represents the best available science regarding Louisiana black bear population dynamics (see Peer Review Comments). Peer reviewers did not note any major oversights, omissions, or inconsistencies in our proposed rule, but agreed that our proposal accurately reflected the interpretation of current science.

Comment (16): One commenter stated that the Service and the public did not have access to the best available scientific and commercial data because we had eliminated significant and substantial data by failing to conduct section 7(a)(1) consultations for the section 4(d) rule providing protection of den or candidate den trees.

Our response: We have used the best available and pertinent scientific data in our decision to delist the Louisiana black bear. We also requested that the public submit relevant data and information during the 60-day comment period that followed our delisting proposal (80 FR 29394). Section 7(a)(1) of the Act states that all Federal agencies shall proactively utilize their authorities, in consultation with the Secretary (Service), to develop and carry out programs to conserve species listed under the Act; as such, there is no consultation. Section 7(a)(2) states that Federal agencies shall ensure that their actions are not likely to jeopardize the continued existence of listed species and/or destroy or adverse modify their designated critical habitat while implementing their actions. That latter section authorizes the Service to consult with Federal agencies on proposed actions that may affect federally listed species; for the Louisiana black bear, this authority includes those actions potentially impacting actual and candidate Louisiana black bear den trees (57 FR 588, January 7, 1992). Since listing in 1992, we have consulted on all projects within our regulatory authority (*i.e.,* with a Federal nexus) that could have potentially impacted such trees, including a federally authorized timber harvest.

Comment (17): One commenter stated that the public did not have access to the best available data because the Service eliminated significant and substantial data for several reasons addressed here (*e.g.,* failure to conduct required 5-, 10-, and 15-year reviews and failure to include long-time partners in the 2014 5-year review, halting a black bear vulnerability analysis by the Gulf Coastal Plain and Ozarks Landscape Conservation Cooperative (GCPO LCC) and excluding long-time partners from the development of the post-delisting monitoring plan (see response to Comment 56). The commenter further asserts that the Service conducted non-public revisions of the recovery plan based on the Service's failure to produce a map of occupied and potential bear habitat (see response to Comment 40), eliminating the multi-State, multi-agency conflict resolution plan and team, eliminating the use and support for the BBCC Black Bear Management Handbook, eliminating the multi-agency, multi-State USGS-generated mortality database, and the Service's determining that the recovery actions, 3.4–3.6, directed at developing and implementing Bear Management Units (BMUs), are obsolete. The commenter stated that, prior to making a final decision on whether to delist the Louisiana black bear, the Service should: (1) Complete a new 5-year review following notice and opportunity for public comment; (2) complete a formal public revision of the Louisiana black bear recovery plan and provide public notice and an opportunity for public review; and (3) complete a new draft post-delisting monitoring plan in accordance with the 2008 Service guidance.

Our response: The Service is required under section 4(c)(2) of the Act to conduct reviews of each federally listed species every 5 years. These 5-year reviews are conducted to evaluate the status of a federally listed species and determine if the species should be delisted, reclassified from endangered to threatened status or from threatened to endangered status, or the status of the species should remain the same. The public notice initiating the first Louisiana black bear 5-year review was published in 2007 (72 FR 42425, August 2, 2007); stakeholders and the public were also notified via press releases and individual letters via the U.S. postal service, and the review was completed in 2014. Prior to that time, because of budget constraints and higher priority workload issues (*e.g.,* Deepwater Horizon), the Service had not been able to complete a review for the bear. We did not receive any information from the public for that review. Even though delayed, the 5-year review was comprehensive and included all research and recovery activities for the Louisiana black bear since its listing in 1992 through early 2014. In that review, we stated that we anticipated making additional progress with partners and we believed delisting could be considered for this subspecies in the near future. In December 2014, we received a final report from Laufenberg and Clark regarding long-term population viability for the Louisiana black bear and, based on our assessment of those results and our studies of habitat trends, we began to work on a delisting proposal.

The Service did not halt a GCPO LCC black bear vulnerability analysis; however, we did participate in a BBCC meeting where that analysis was presented and discussed. The GCPO LCC functions as a self-directed applied conservation partnership among Federal, State, university, and nongovernmental organizations who are collaboratively seeking to understand and improve conservation actions at the very large or landscape, scale. It spans 12 States in the south central United States. The Service provides funding to

help support the coordination of science staff of the GCPO LCC partnerships and some science projects. The Service is represented on the Steering Committee and other GCPO LCC subteams (science teams, working groups, etc.) as an equal partner—one voice and one vote. Our participation as a partner is to identify shared conservation priorities.

With regard to the commenter's assertion that we have conducted non-public revisions of the Louisiana black bear recovery plan, all tracking of implementation of the recovery plan is reported annually in the Service's publicly available Recovery Plans module. Additionally, no changes were made to the approach outlined in the original recovery plan, but some implementation methods did differ from what was originally planned.

When the commenter states the Service eliminated the USGS database, he is referring to Recovery Plan Task 3.2 related to Coordination of Record Keeping for bear deaths. No USGS database existed until 2010, at which time the Service provided USGS 3 years of funding to develop a digital bear reporting database. That database, referred to as BearTrak, is still in use and is regularly updated.

When the commenter asserts that the Service eliminated the Conflict Resolution Team, he is referring to recovery Task 2.3. That Team originally functioned within the framework of the BBCC according to a 1994 Contingency Plan and voluntarily provided much-needed rapid responses to the limited number of bear–human conflicts that occurred shortly after the bear's listing. In 1999, as the number of human–bear conflicts increased, State agencies such as the LDWF and the MDWFP took the lead for conflict management and had appropriately trained staff assigned to regularly respond to those situations. The Service did not eliminate the Conflict Resolution team; instead, the State agencies assumed responsibility for those actions as the bears' numbers and resulting conflicts increased, which required the skills of the State agencies. The task identified in the Recovery Plan is still being implemented, just in a different manner than originally conceived.

When the commenter asserts that the Service had declared certain recovery tasks as obsolete, we believe that he is referring to recovery tasks 3.4 through 3.6 to develop, implement, and monitor Bear Management Units (BMUs). The Service had noted in the Recovery Plans module that these tasks were obsolete. We made that assessment based on the 2006 revision to the 1997 BBCC Restoration Plan (BBCC 2006), which stated ''*The BMU concept met with little success [and] will not be pursued further. As with many volunteer organizations, this became a daunting task that ultimately led to state agencies taking the lead in bear restoration activities for their respective states. Those restoration activities include many of the actions contained in the Bear Management Unit Plan Outline (Table 4) with a focus on habitat restoration, population monitoring, and reintroduction''* BBCC (2006, p. 2). The commenter asserts that the changes in BBCC Restoration do not apply to the recovery plan; however, the responsible parties for those tasks include the Service, BBCC, and State agencies. Based on the restoration plan revisions, it was logical to assume that those tasks were obsolete. Recovery plans are guidance documents. As such, some methods originally identified in plans may not work, just as other methods, not available at the plan's initial development may become available based on best available information or partnerships. The Service did not actively eliminate BMUs; we merely reported the status of those efforts in the Recovery Plans module. The assumption by State agencies of the recovery activities (*e.g.,* population and habitat conditions, conflict management) addresses the recovery plan tasks intended by BMUs (BBCC 1997, pp. 73–90).

The commenter incorrectly asserts that the Service eliminated the use of and support for the BBCC Black Bear Management Handbook. We continue to support its use as evidenced in the Service's 2015 update to Recovery Task 1.23, in ROAR, ''this task is accomplished . . . through the use of the BBCC Black Bear Management Handbook (completed in 1992 and periodically updated) as a guide for private landowners.''

As discussed in our Response to Comment 56, we believe we correctly followed Service guidance when we developed the post-delisting monitoring plan.

Therefore, we believe that we have based this decision on the best available data and have made those data available to the public for comment and review. Given the status review conducted as part of the proposed rule, we do not believe conducting a formal update of the recovery plan or re-drafting the post-delisting monitoring plan would provide any new significant information or data that would affect our assessment of the Louisiana black bear's recovery.

Comment (18): One commenter questioned the scientific criteria for designation of main and satellite subpopulations.

Our response: The term ''satellite population'' was taken from a Louisiana black bear population viability and connectivity study by Laufenberg and Clark (2014). Though not explicitly defined, satellite populations were generally described as ''populations of resident breeding bears between the subpopulations to be linked.'' (Laufenberg and Clark 2014, p. 90). The subpopulations referenced (which may also be termed ''main'' or ''core'' populations) in that statement include those that were present at the time of listing, as well as the one more recently established through the relocation of bears on, and in the vicinity of, the Richard K. Yancey WMA. We refer to the isolated individuals or small groups of bears residing in habitat patches between those larger subpopulations as satellite populations, which is consistent with the description provided by Laufenberg and Clark (2014).

Comment (19): Several commenters stated that the public was not provided access to Louisiana black bear mortality data. In addition, they felt the data we cited regarding black bear mortality were erroneous.

Our response: We stated in our proposed rule that all data and reports used for the proposed rule were available for inspection at the Service's Lafayette Louisiana Office; however, no one requested to see that data. This included bear mortality data for Louisiana from the LDWF and for Mississippi from the MDWFP. In its comments on the proposed rule, the LDWF stated it had updated mortality data and could provide them to the Service. Based on concerns raised at the public hearing and during the comment period, we contacted the LDWF for that data and have revised the mortality estimates cited in this rule to reflect this most recent data (see Summary of Factors Affecting the Species). As with the proposed rule, we will also provide this information to anyone who requests it.

Comment (20): One group stated that bears play an important role in the ecology of forests, and they must continue to be protected. Another commenter stated we should give consideration to the effect that delisting the black bear will have on wildlife and education.

Our response: The Service is delisting the Louisiana black bear because threats present at the time of listing no longer exist or have been reduced to a point where the Louisiana black bear no longer requires protection under the

Act. The Act specifically requires that the status of a species is determined based the five factors described in the Summary of Factors Affecting the Species section.

After delisting, the LDWF will continue to monitor and actively manage the Louisiana black bear. The LDWF Plan has the stated objective of maintaining a sustainable black bear population in suitable habitat even after the bear is delisted. Additionally, Louisiana, Mississippi, and Texas have developed and are distributing public education and bear safety informational material. LDWF regularly sponsors and will continue to provide public education and outreach as described in the Plan.

Comment (21): One commenter questioned whether the genetic analyses presented by Laufenberg and Clark (2014) require the Service to revisit the current Louisiana black bear taxonomy.

Our response: Laufenberg and Clark (2014, p. 85), in discussing the results of the population structure and migrant analyses and affinities of Louisiana bears to Minnesota and WRB bears, stated that they did not believe that the level of genetic affinity or differentiation they detected between populations was sufficient to determine taxonomic status. Numerous other studies of both morphometric and genetic characters have also found evidence of affinities among bears in Louisiana, Arkansas, and Minnesota producing differing interpretations of the taxonomy and distribution of bears in Louisiana with no definitive determination or conclusion that has been widely accepted. Therefore, although we recognize that there are still questions around the taxonomy, we still consider the Louisiana black bear to be a distinct subspecies described by Hall (1981, pp. 948–951).

Comment (22): One commenter questioned the process by which the Service evaluates the validity of the scientific research used in the rule. One commenter wanted to know if the peer reviewers would receive copies of public comments to consider prior to submission of their comments and whether the names of peer reviewers would be made available to the public.

Our response: The research presented by Laufenberg and Clark (2014) was peer reviewed before the final publication was released to the Service in 2014. Additionally, in accordance with our 1994 peer review policy, we solicited independent scientific peer review of our delisting proposal, which included a review of the data we used and our interpretation and use of that data. Peer review was conducted by recognized experts in black bear biology. All peer reviewers indicated that we had correctly interpreted the results (see Peer Review Comments). All public comments and peer review comments (including commenter names for both public comments and peer reviewers) were made available for public review in the docket (*http://www.regulations.gov* at Docket Number FWS–R4–ES–2015–0014). Although peer reviewers were able to look at comments on the docket, the Service did not provide them with copies prior to completion of their peer review.

Comment (23): One commenter questioned whether our reliance on the research by Laufenberg and Clark (2014) set a precedent for a methodology to be used under the Act regarding continued viability analyses.

Our response: There are several approaches that can be used to assess a population's viability, and the availability of the best available data and subsequent analyses will vary by species. In the case of the Louisiana black bear, the demographic, viability, and connectivity analyses conducted by Laufenberg and Clark (2014) represent the best available science (based on extensive data) and, as noted by a peer reviewer, are the currently most advanced or sophisticated analyses for the Louisiana black bear. We do not view use of this methodology as precedent setting for viability analyses in general, but consider our approach to satisfy section 4(b) of the Act, which requires that the determination to add or remove a species from the list be made ''solely on the basis of the best scientific and commercial data available.'' This determination is made on a species-by-species basis.

Comment (24): One group suggested we should structure our delisting decision and the post-delisting monitoring plan on the basis of Louisiana black bear subpopulations and not on a ''one size fits all'' metapopulation approach.

Our response: We do not believe that our approach to this rule is ''one size fits all.'' As described in the Recovery and Recovery Plan Implementation section of the proposed rule, the metapopulation analysis was only one aspect of our assessment of Louisiana black bear recovery. We began by looking at individual subpopulation numbers and habitat conditions, and then we examined recovery criteria for TRB and UARB subpopulation viabilities. Finally, based on the overall objective of the recovery plan (*i.e.,* ''sufficiently alleviate threats to the metapopulation''), we assessed metapopulation viability. Although the recovery plan addresses metapopulations, the decision to revise the status of or remove a species from the Federal List of Endangered and Threatened Wildlife (50 CFR 17.11) is ultimately based on an analysis of the best scientific and commercial data that are available to determine whether a species is no longer an endangered species or a threatened species based on the evaluation of the five factors in section 4 of the Act.

The purpose of the PDM plan is to detect any declines in Louisiana black bear populations (at extremely early stages) upon delisting, and the PDM plan includes threshold triggers that would allow for corrective actions to be taken before the species would require protection of the Act. The PDM plan focuses on the subpopulations and habitat features that we relied on to demonstrate the black bear's recovery. Only in Category III of the PDM plan's ''Definition of Response Triggers for Potential Monitoring Outcomes'' (Service 2016c, p. 33) is metapopulation reassessed, in the event of individual subpopulation declines or habitat loss, as part of a decision to reassess the bear's status.

Comment (25): Several commenters stated that they did not believe the data we presented indicated that the species had recovered, and requested we ensure that all delisting criteria had been met and that a long-range conservation plan had been established. Other commenters claimed that the Service had not followed the recovery plan, and requested that protection be maintained for American black bears (due to similarity of appearance) within the range of *U. a. luteolus* because the Louisiana black bear was not recovered.

Our response: Recovery plans include criteria to assist in evaluating the status of a listed species; recovery plans are not regulatory documents. Species recovery may be accomplished via multiple avenues and may be achieved without all criteria being fully met. For the Louisiana black bear, however, the Service has determined that all recovery criteria have been met (see the discussion for Recovery Criteria). Additionally, our analysis of pertinent data and best available science confirms that the Louisiana black bear is fully recovered based on the absence of threats that were present at listing and the lack of new threats. Providing protection of the Act for this subspecies or other American black bear subspecies within its range based on similarity of appearance is, therefore, no longer warranted. The Service is not required under the Act to establish a long-range conservation plan. However, as we have

discussed in our rule, all three States within Louisiana black bear range have management plans that we have evaluated and have determined provide for the long-term conservation of this species (see the discussion in Factor D). Additionally, we did get valuable comments on our post-delisting monitoring plan to ensure it is protective of the Louisiana black bear.

Comment (26): Numerous commenters asserted that there are still active threats to the Louisiana black bear population, such as habitat loss, pollution, and human-induced mortality, and cited a lack of adequate regulatory mechanisms to prevent such occurrences. Numerous commenters identified vehicular collisions as an important source of mortality that should be addressed before delisting.

Our response: The Service reviews the best scientific and commercial information available when conducting a threats analysis. In considering what factors might constitute a threat, we must look beyond the mere exposure of individuals of the species to the factor to determine whether the exposure causes actual impacts to the entire species. The mere identification of factors that could negatively impact a species is not sufficient to compel a finding that listing (or maintaining a currently listed species on the Federal Lists of Endangered and Threatened Wildlife and Plants) is appropriate. We require evidence that these factors are operative threats currently acting on the species to the point that the species meets the definition of endangered or of threatened under the Act. In this case, we reviewed all known activities that could potentially threaten the Louisiana black bear (see Factors A–E discussion). While many of the anthropogenic sources of mortality (*e.g.,* poaching, vehicle strikes, and nuisance bear management) have impacted individual animals, we determined that, based on the analyses of population viabilities and the level of occurrences, they do not represent significant threats to the Louisiana black bear population (see Summary of Factor E).

Comment (27): One commenter suggested that the evaluation of future trends in human population growth should not be compared to data from 2015. Rather, data from 1900 should be considered baseline.

Our response: While historical population trends may provide an opportunity to track the effect of human population growth on Louisiana black bear habitat and demographics throughout history, we question the relevance of such data for assessing future threats to that species. Nonetheless, to ensure that we have fully considered potential threats associated with future human population growth, we evaluated the data referenced by the commenter. We found that, from 1900 to 2010 (using known population figures rather than projections), only 4 of the 17 parishes evaluated (which are those included within the Louisiana black bear HRPA) had their peak human population at the end of that evaluation period (*i.e.,* 2010). In contrast, the 13 remaining parishes experienced their highest populations prior to 2010, including 9 that peaked prior to 1950, and 4 that experienced a peak population in 1900 (*http://louisiana.gov/Explore/Historical_Census/*; downloaded on December 3, 2015). Such figures are not unexpected as population-influencing factors of the early 1900s may no longer exist, or may have changed dramatically over the last century (*e.g.,* educational opportunities, employment prospects, and discovery/utilization of natural resources such as hydrocarbons or agricultural crops). Accordingly, we defer to expert analysts at the Louisiana State Census Data Center to properly account for historical and current trends (and associated influences) in developing human population projections for the State. Therefore, we anticipate minimal threats to the Louisiana black bear from future population growth based on projections provided by that agency (using the longest-range population forecast data currently available, which predict population declines from current levels in 15 of the 17 parishes within the Louisiana black bear HRPA).

Comment (28): One commenter mentioned recent bear mortalities resulting from incidental capture in snares and asserted that this new source of mortality constituted a demonstrable threat.

Our response: Available data demonstrate that the extent of Louisiana black bear mortality attributable to incidental capture in snares (intended for such species as feral hogs or coyotes) is minimal. In their comprehensive review of mortality data collected over the 23-year period since the bear was listed, Davidson and Murphy (2015, p. 9) found that a total of four bears have been killed in Louisiana from incidental capture in snares. This equates to approximately one percent of all known bear mortalities in the State. To our knowledge, the most comprehensive snaring effort within the range of the Louisiana black bear is associated with the feral swine damage management program administered by USDA-Wildlife Services. According to their data (USDA 2013, p. B–1), in approximately 6,000 snare days spanning over 8 years, no Louisiana black bears have been caught by their personnel. Accordingly, based on the best available scientific data, we do not believe that the incidental snaring of Louisiana black bears constitutes a threat to the subspecies.

Comment (29): Several public commenters asserted that the effects of climate change and the potential reduction in habitat resulting from changes in sea level posed a threat to the LARB subpopulation.

Our response: As stated in our response to Comment 26, simply identifying factors that could negatively impact a species is not sufficient to compel a finding that protection under the Act is necessary; we require evidence that these factors are operative threats that act on the species to the point that the species meets the definition of endangered or threatened under the Act. In the case of the effects of climate change, we reviewed the best available scientific and commercial information available that examined its potential effects (*e.g.,* tropical storms, sea level rise, increased flooding) on black bear habitat, including research on the habitat needs of Louisiana black bears and their ability to adapt to potential habitat changes. Regarding sea level rise threats, more than 90 percent of Louisiana black bear breeding habitat and 70 percent of the Louisiana black bear population occur outside of the Louisiana Coastal Zone. Furthermore, the Louisiana black bear is extremely adaptable, highly mobile, and has the ability to successfully traverse large expanses of terrain that may include unsuitable or hostile landscape features. A recent study of the effects of the 2011 emergency opening of the Morganza Flood Control Structure verified the resiliency of the Louisiana black bear when faced with extreme environmental challenges, and concluded that adult Louisiana black bears experienced no negative biological effects from the extensive flooding that occurred during the operation of that structure (O'Connell-Goode et al. 2014, p. 483). Therefore, we continue to believe that it is highly unlikely that currently projected effects of climate change would impact Louisiana black bear habitat to the extent that it would represent a substantial threat to this species. A more detailed discussion of the ability of the Louisiana black bear (including the LARB subpopulation) to survive the effects of global climate change and sea level rise is presented under Factor E.

Comment (30): One group recommended that we consider social tolerance, as was discussed in the proposed rule and PDM for the gray wolf populations. They provided several references for us to consider.

Our response: The Act specifically requires that the status of a species is determined based on the five factors as described in the Summary of Factors Affecting the Species section. The lack of social tolerance for listed species that may cause property damage (such as black bears) may translate into a lack of public support or even opposition to the recovery of such species. We considered social tolerance in the sense that it may also result in increased mortality via illegal killings. These concerns have been recognized since the black bear was listed and have been and will continue to be addressed and managed through rapid State agency responses to human-bear conflicts (see Recovery Implementation—Protecting and Managing Bear Populations). We have added information to the rule explaining the need for rapid response to potential conflict situations in order to maintain social tolerance. Part of the post-delisting monitoring activities and the ongoing management efforts by the LDWF is the maintenance of the existing database of reliable public sightings to aid research and management, to monitor bear range expansion and recolonization, to monitor anthropogenic mortality locations and frequency, and to help with human-bear conflict abatement. We have included a statement in the final PDM plan that information in the LDWF database may be considered in post-delisting monitoring.

Comment (31): One commenter made reference to Murrow and Clark's (2012) statements that the Louisiana black bear comprises three small, geographically isolated subpopulations that are vulnerable to extinction.

Our response: Murrow and Clark made the referenced statement in the abstract of their paper and also in discussing the small population size and vulnerability as reason the Louisiana black bear was listed as a threatened species under the Act in 1992, but the statement was not in reference to its current status (Murrow and Clark 2012 p. 192). Our reliance on the more recent and best available research by Laufenberg and Clark (2014) is appropriate.

Comment (32): Several commenters stated that the estimated total number of Louisiana black bears was too small, the populations not stable enough, or we lacked sufficient information about populations to support delisting. Another commenter referenced the discussion regarding minimum population sizes needed for viability in the BBCC Restoration Plan (1997). This commenter also questioned our statement that the recovery criteria had been met for the Louisiana black bear based on the Lowe (2011) UARB population size estimates. One commenter indicated that we should not proceed with delisting until there is a self-sustaining population.

Our response: The best available information supports delisting the Louisiana black bear. Population size, while an important component in a species' status, is not the only factor that should be assessed when evaluating a species' long-term survival. Environmental and other species-specific factors (*e.g.,* mortality, fecundity, genetic diversity, isolation) must also be considered. Estimating a ''minimum viable population size'' is one way to estimate a species' probability for long-term persistence. Another approach is to utilize existing data to conduct stochastic population modeling and extinction risk assessment, such as that conducted by Laufenberg and Clark (2014). Laufenberg and Clark's (2014) approach represents the best science and provides sound estimates of Louisiana black bear numbers and long-term viability over the next 100 years. Our peer reviewers agreed with our assessment, stating the data and analyses methods of Laufenberg and Clark (2014) were extensive and rigorous and the results highly credible (see Peer Review Comments).

Comment (33): One commenter, using multiple data sources, provided an estimate of historical population numbers of Louisiana black bears in order to assess the degree of ''recovery.'' This commenter estimated 80,000 individual *U.a. luteolus* bears within this species' range prior to human colonization. The comment questions whether this subspecies can be considered to have recovered in light of these estimates.

Our response: The assumption that historical habitats would have supported a density of bears comparable to that currently observed under existing landscape conditions is not well supported. The relatively recent creation of a forest-patch/agriculture-field habitat matrix within the historical range of the Louisiana black bear, although partly responsible for an overall population decline, may be directly responsible for formation of multiple high-density subpopulations. Because the extent of reduced and highly fragmented habitat was likely not the case historically, it is unlikely that subpopulations occurred at these high densities and use of these numbers to extrapolate back to historically population numbers is unreliable. We believe that it is probable, therefore, that the historical Louisiana black bear population density and overall abundance was significantly lower than the estimates provided by the commenter.

Regardless of the method used to estimate historical population numbers, it is important to note that the recovery status of the Louisiana black bear is not contingent upon such figures. We determined that the Louisiana black bear has reached recovery because its metapopulation has long-term viability, there is adequate long-term protection of its habitat; and it no longer faces long-term threats to its viability.

Comment (34): One commenter questions the recovery criterion that a population should have a probability of persistence for only 100 years.

Our response: The criterion describing viable subpopulations as those that have a 95 percent or better chance of persistence over 100 years was developed for the 1995 Louisiana Black Bear Recovery Plan (Service 1995, p. 14). At that time, data were insufficient to reliably extend persistence probabilities beyond 100 years. That said, we continue to believe that a population capable of maintaining viability for 100 years (where significant threats to the species have been removed, as in the present case) is considered recovered and no longer requires the protections of the Act. Although current Louisiana black bear population data far exceed that available in 1995, and modeling techniques have become much more sophisticated, the reliability of Louisiana black bear population models that extend beyond 100 years remains highly questionable in light of the long-term effects of, and prediction uncertainty for, potential stochastic influences (environmental, demographic, genetic, and/or natural unknowns). For that reason, we do not believe that extending the timeline of such analyses would prove beneficial given the reduction in confidence in the outcome.

Comment (35): One commenter, though supportive of the delisting overall, raised concerns regarding the LARB stating it should remain listed as a threatened ''Unique Population Segment'' due to: Unknown long-term viability, the relatively high rate of adult female mortality, its genetic uniqueness (*i.e.,* more representative of the Louisiana black bear subspecies), and vulnerability of habitat supporting this

subpopulation due to the effects of climate change. Another commenter asserted the LARB is the most isolated population and that it faces an additional risk from hybridization with UARB (Minnesota) bears (if the Atchafalaya River Basin, as projected, becomes more suitable as bear habitat and facilitates exchange between those subpopulations).

Our response: We will first address the perceived threats raised by the commenter. We do not currently have an estimate on the long-term viability of the LARB; however, in spite of the relatively high female mortality, population numbers in the LARB subpopulation have nearly doubled since the Louisiana black bear was listed. We discussed the potential effects of climate change on the LARB (see Factor E) and determined they do not pose a threat based on the Louisiana black bears' adaptability, mobility, and demonstrated resiliency to extreme climatic events. We agree with the commenters that LARB is the most isolated subpopulation; however we also presented evidence that the intervening habitat between the LARB and the UARB (currently too wet to support breeding populations) is projected to convert to cypress swamp and early successional hardwood; habitat types more suitable for black bear use by 2030 (LeBlanc et al. 1981, pp. 55–57). Such changes could ultimately expand the acreage of suitable habitat for the LARB and UARB subpopulations, and improve habitat linkages and genetic exchange between those groups. In response to the comment that the resulting exchange would cause hybridization between the UARB and LARB and threaten this subpopulation, we do not agree with the assertion that the UARB consists primarily of bears descended from Minnesota bears (see Comment 37). We have addressed this point in the Summary of Factors (see revised discussion under Factor E). Finally, although the LARB subpopulation has occasionally been characterized by some as a genetically unique subpopulation, recent research (Csiki et al. 2003; Troxler 2013; Laufenberg and Clark 2014) has identified a genetic bottleneck (*i.e.,* isolation resulting in restricted gene flow and genetic drift) as a cause of that uniqueness rather than a true genetic difference. In that sense, exchange of genetic material between the two subpopulations would likely be beneficial for the LARB subpopulation.

We believe that the commenter intended to recommend that the LARB subpopulation be listed as a ''Distinct Population Segment (DPS).'' Under the Act, a listable entity is a species, subspecies, or a DPS of a vertebrate species. The DPS Policy (61 FR 4722, February 7, 1996), requires the Service first to determine whether a vertebrate population is discrete and, if the population is discrete, then to determine whether the population is significant. Lastly, if the population is determined to be both discrete and significant, then the DPS Policy requires the Service to evaluate the conservation status of the population to determine whether or not the DPS falls within the Act's definition of an ''endangered species'' or a ''threatened species.'' Due to the mobility of Louisiana black bears, their ability to disperse long distances, and existing genetic and GPS studies (Laufenberg and Clark 2014), we do not believe this factor is met. As such, the LARB does not qualify as a DPS.

Comment (36): One commenter questioned why the Service had not discussed the population studies of the Upper Atchafalaya River Basin subpopulations conducted by Lowe (2011), in particular the statement ''*the ARB population remains vulnerable to environmental and demographic stochasticity because of its small size and isolation*'' and suggested that omission affected the scientific accuracy of our statements regarding that subpopulation.

Our response: We presented Lowe's (2011) population annual survival rate estimates in our proposal (80 FR 29394, May 21, 2015, p. 29400). The long-term viability of the ARB had not been determined in 2011. That work was subsequently updated with additional field studies in order to obtain better estimates of the effects of environmental variation on population vital rates (O'Connell 2013, p. 5; Laufenberg and Clark 2014, p. 46) to provide more current estimates of population parameters, and to ultimately provide data for use by Laufenberg and Clark (2014) in estimating that population's long-term viability. Therefore, because we based our analyses on the Laufenberg and Clark (2014) research results, we believe our presentation of data regarding that subpopulation and our statements about it are accurate.

Comment (37): One commenter (supported by two other commenters who re-submitted a letter) does not believe the UARB subpopulation consists of true Louisiana black bears and, therefore, cannot be used to assess Louisiana black bear recovery. The commenter, in referencing the 1960s reintroduction of American black bears from Minnesota into the area now occupied by the UARB breeding subpopulation, described that area as a ''*bear free*'' zone at the time of the introductions and contended that the UARB bears do not represent a population that has been influenced by admixture (populations that were previously isolated begin interbreeding) but consists ''*largely, probably, entirely*'' from the introduced Minnesota bears (*U.a. americanus*). In addition, the commenter stated that the Louisiana black bear should retain its classification as threatened or possibly be reclassified as endangered under the Act, because we should not include the UARB subpopulation in our assessment of recovery. This commenter also asserted that the subsequent reintroduction of bears resulting in the formation of the TRC breeding subpopulation between the TRB and UARB subpopulations now facilitates introgression (gene flow from one species into the gene pool of another) of genetic material from the American black bears in the UARB subpopulation into the TRB subpopulation. The commenter stated that the TRB subpopulation may have been the population that best maintained the genetic purity of the Louisiana black bear (*U.a. luteolus*) and should not be considered for any change in legal status except for reclassification as endangered. The commenter also suggested that the way to recover and preserve the Louisiana black bear is to continue protection for the TRB and LARB subpopulations, allow hunting to proceed on the UARB subpopulation, and remove bears in the TRC.

Our response: We disagree with the commenter's statement that the UARB subpopulation consists primarily or entirely of Minnesota bears. The commenter raised one of the same questions that we had considered before the Louisiana black bear was listed. At listing, we stated that expecting to preserve *U.a. luteolus* as is presupposed a static condition that does not exist. The greatest likelihood was that the bears inhabiting the Tensas and Atchafalaya River Basins were probably interspecifically hybridized and that, biologically, hybridization at this taxonomic level would not be a significant cause for concern (Service 1992, p. 592). At that time, the genetic studies did not show significant differences between the subspecies. However, because it is difficult to distinguish between the two black bear subspecies based on outward appearance, we listed the Louisiana black bear as a ''practical means available for protecting any possibly remaining unique genetic material

belonging to *U.a. luteolus*'' (Service 1992, p. 592).

The commenter referenced Figure 15A in Laufenberg and Clark (2014, p. 54) as providing evidence that the UARB subpopulation is largely or entirely descended from Minnesota bears. We agree that these data indicate an affinity of UARB bears with Minnesota bears; however, the commenter did not acknowledge the additional all-population and the WRB–TRB clustering analyses that indicated at least five genetically distinct subpopulations (Laufenberg and Clark 2014, pp. 60–63). Under that scenario, the UARB subpopulation is distinguishable from the Minnesota population. The commenter describes the UARB area as a bear-free zone at the time of the Minnesota releases (all released bears were tagged) but Taylor (1971, p. 66) observed a large untagged male bear in that area after the releases. The commenter contends that this individual was an offspring of a released bear; however, the presence of suitable bear habitat in the area, and the documented wide-ranging habits of male black bears support the possibility that this was a bear ''native'' to the area.

Prior to listing, Pelton (1989, p. 5) argued there was considerable evidence that a pure strain of *U. a. luteolus* subspecies no longer existed because: (1) There was a broad continuum of habitat between the TRB and UARB populations (based on Weaver's [1990] maps) of Minnesota bears; (2) habitat corridors still existed [1989] between those areas allowing for continued dispersal; (3) bear releases in Arkansas resulted in widespread dispersals; (4) the presence of narrow dispersal corridors through Arkansas following such rivers as the Ouachita and Saline Rivers were still being used by transplant offspring and evidence of use had been observed all the way to the Louisiana border; and (5) long-distance natural movements of bears had been documented. Based on historical descriptions of the UARB release area, we believe it is very likely there was no known breeding population in that area at the time of the releases; however, it is not determinable whether that area was ''bear-free'' as supposed by the commenter. Our knowledge of bear behavior coupled with the habitat in existence at that time would support the presence of males in or traveling through that area. This, in combination with the findings presented by Laufenberg and Clark (2014, pp. 60–63), would support our assumption that the UARB is not strictly composed of Minnesota bears and our inclusion of that subpopulation in our recovery assessment.

The commenter suggested that the TRB subpopulation maintained the best genetic purity of the Louisiana black bear and is at risk from genetic introgression; however, the data shows that this subpopulation was experiencing immigration of Arkansas bears at the time of listing. At that time, questions regarding interchange between WRB bears and the TRB subpopulation generated considerable discussion about whether or not the WRB bears should be considered Louisiana black bears. Subsequently, Miller et al. (1998, p. 337) found a high level of genetic similarity between WRB and TRB populations and suggested it indicated gene flow had occurred between those populations. Most recently, Laufenberg and Clark (2014, p. 63) documented numerous bears with evidence of WRB ancestry in the TRB subpopulation and some Mississippi populations. Therefore, we stand by our assertion that the introduction of gene flow among the TRB, WRB, TRC, and UARB subpopulations benefits the Louisiana black bear and has improved its population health. This assertion is supported by our peer reviewers. However, this position does not mean that we have dismissed concerns regarding the matter of hybridization and the Louisiana black bear as suggested by the commenter.

In the final listing rule (57 FR 588, January 7, 1992), we acknowledged that the Louisiana black bear was not a geographic isolate. Numerous studies (many funded by the Service) have produced differing and sometime conflicting results with no definitive, widely accepted conclusion. We listed the taxonomic entity defined as the Louisiana black bear in 1992 to be protective of the subspecies in recognition of those concerns, and we and our many partners have worked to recover this entity. We have determined that the threats to the taxonomic entity currently classified as Louisiana black bear have been eliminated or reduced. In acknowledgment of interchange that is occurring at the contact zone between the Louisiana and American black bear subspecies, we are not aware of threats to the American black bear population. Interest in the correct classification of black bear subspecies continues. Recent analyses by Puckett et al. (2015 p. 9) provide yet another interpretation and suggest that previously identified American black bear (*Ursus americanus*) subspecies differentiation may be the result of genetic drift due to population size (Puckett et al. 2015, pp. 2343–2346). The authors used both nuclear and mitochondrial range-wide data from 94 black bear samples in order to study genetic lineages and species divergence patterns of the American black bear. The results of their study suggests the three subspecies in the southeast (*U.a. americanus, U.a. floridanus,* and *U.a. luteolus*) represent a single genetic cluster. Combined with the results for other geographic areas, they suggest that *U.a. americanus* may be the most accurate subspecies designation for bears in the eastern range of black bears. This would support our original supposition at the time of listing that hybridization at this taxonomic level would not be a significant cause for concern.

Comment (38): One commenter raised multiple questions regarding our treatment of several breeding bear subpopulations located in Mississippi, northern Louisiana (west of the TRB subpopulation), and southern Arkansas. Specific questions raised by the commenter included why the Service did not: (1) Extend protection of the Act to Arkansas bears located within the historical range as described by Hall (1981); (2) conduct research on the Arkansas reintroductions; (3) include the Felsenthal NWR (FNWR), Upper Ouachita National Wildlife Refuge (UONWR), and the TRC populations in the original population research that included only TRB, UARB, and LARB subpopulations, and revise the Louisiana black bear recovery plan to include the FNWR, UONWR, and TRC bears in the metapopulation and recovery criteria; and (4) include all subpopulations in the metapopulation (including FNWR and UONWR subpopulations) on the basis of documented interchange.

Our response: As background, when the Service listed the Louisiana black bear, it primarily relied on Hall's (1981) depiction of the historical distribution; however, Hall (1981) included the southernmost counties of Arkansas as part of the historical range. The Service, while acknowledging that the Louisiana black bear was not a geographic isolate, did not include those Arkansas counties as part of the historical range for protection under the Act because there were no specimens to support doing so (57 FR 588, January 7, 1992). Since listing, there have been numerous studies relevant to the subspecies, many focusing on the relationship of the southern Arkansas WRB black bear subpopulation (*U.a. americanus*) to the Louisiana black bear. For a more detailed summary of those studies, see the 5-year review (Service 2014, pp. 21–27). Those studies (both morphometric and genetic) have produced differing

interpretations of the subspecies distribution; however, no all-inclusive, generally accepted, definitive determination or conclusion has been reached.

Current observations support the fact that the Louisiana black bear is not geographically isolated from the American black bear (see Comment 37). Kennedy (2006, p. 23) suggested that WRB bears probably consisted of individuals with some genetic and morphometric combination of both subspecies as well as some individuals sharing similarities in those characters with both subspecies. He suggested this finding could be taken to support Hall's (1981) delineation of southern Arkansas as a zone of contact between the two subspecies. Kennedy was reluctant to assign the WRB bears to a subspecific status, suggesting they occur in a zone of intergradation between the two subspecies where populations may contain characteristics of both subspecies (2006, pp. 26–27). Given the difficulties in determining subspecific status where two subspecies meet (Pelton 1989, p. 23; Hall 1981, pp. viii–vix), documentation of intergradation between the two subspecies, and the amount of uncertainty remaining regarding taxonomy of bears in this zone, we continued to base our delineation of Louisiana black bear range as described by Hall (1981). We have determined that the threats to the taxonomic entity currently classified as Louisiana black bear have been eliminated or reduced.

With respect to the FNWR, it is located in southern Arkansas just north of the Louisiana border and the UONWR is located directly south, in Louisiana. From 2000 through 2003, the Arkansas Fish and Game Commission (AFGC) in cooperation with FNWR staff reintroduced 46 adult black bear females and 112 cubs from the native population at WRB to the FNWR (Wear et al. 2005, p. 1,367) in order to restore black bears to that area. Additional bears were moved through 2007, resulting in a total of 55 adult females and 116 cubs being released at the FNWR (Service 2015, p. 71). Research was conducted on the factors related to the population establishment of black bears on FNWR and reported by Wear et al. (2005).

Numerous bears were documented as moving from FNWR into Louisiana. For example, females were known to move to the UONWR and elsewhere and establish recently documented breeding subpopulations referred to here as satellite subpopulations (it is unknown if these bears bred with bears from Arkansas, Louisiana, or Mississippi). One male bear, released as a cub at FNWR, was subsequently recaptured in the WRB population in Arkansas, and one year later was documented as traveling to Lake Ophelia NWR in central Louisiana. Due to the logistical difficulty in conducting detailed long-term population studies on a species with individuals with large home ranges that have the potential to disperse long distances, such studies have focused on the original subpopulations identified in the recovery plan as important to recovery. This circumstance does not mean that other subpopulations were not protected by the Act; and research and habitat restoration efforts were focused on the Louisiana black bear within its entire listed range.

We have not included the Arkansas FNWR subpopulations in the Louisiana Black Bear Recovery Plan for the reasons described above, nor did we feel it necessary to modify the recovery plan to specifically include the TRC subpopulation. Recovery opportunities not available when a recovery plan is finalized can contribute significantly to recovery without necessitating plan revisions. This situation is the case for the efforts that established the TRC subpopulation, using a ''soft release'' methodology not previously tested. The exchange between existing subpopulations fostered by the TRC subpopulation contributes directly to achieving the recovery criteria. We mention other satellite populations in Louisiana and Mississippi for which we have known but limited data (*i.e.,* telemetry or captures of a few individuals) as evidence supporting the overall recovery of the Louisiana black bear (*e.g.,* breeding range expansion, improved demographics among subpopulations); however, in order to be conservative, we have based our assessment of recovery primarily on the extensive studies of the TRB and UARB subpopulations.

Comment (39): One commenter noted that our statement ''*The habitat occupied by the TRB, UARB, and LARB breeding subpopulations has increased*'' (80 FR 29394, p. 29400) contradicts the following statement we made ''*Based on the inclusion of the Avery island area and exclusion of non-habitat, the actual area and spatial distribution of this breeding population has likely not changed significantly over time*'' (80 FR 29394, p. 29404).

Our response: We do not find these two statements to be contradictory. The first statement accurately references the overall increase in habitat occupied by all three breeding subpopulations whereas the latter statement (which is also accurate) is specific to the LARB subpopulation.

Comment (40): One commenter alleged the Service has refused to produce a map of occupied and potential habitat as required in the Louisiana Black Bear Recovery Plan (Service 1995, p. 14) or if produced, the Service has refused to provide the maps upon request.

Our response: The maps we refer to as the Habitat Restoration and Planning Area (HRPA) maps depict ''occupied'' (we now use the term ''breeding'') and potential habitat for the Louisiana black bear. The first versions of those maps were developed in the early to mid-1990s (almost concurrent with the bear's listing) by the Service, LDWF, The Nature Conservancy (TNC), and BBCC working with USDA NRCS State Technical Committees to establish ranking systems for most Farm Bill conservation programs. In 1999, the initial planning group expanded into a multi-agency collaboration to produce the ''Louisiana Black Bear Habitat Restoration and Planning Area Maps.'' The result was a version of the HRPA maps in use today consisting of delineation of breeding and potential habitat and overlain with the ranking criteria zones (including a new ranking for potential corridor habitat). The HRPA maps were revised in 2005, 2011, and 2015 to incorporate updated conservation program databases, to account for the expansion of occupied bear habitat, and to consider new bear telemetry data (see Figure 2, *http://www.regulations.gov* at Docket Number FWS–R4–ES–2015–0014 which is a simplified version of those maps). We regularly provide copies of these maps upon request.

Comment (41): Several commenters claimed that the Service did not provide a clear definition of a corridor.

Our response: Various definitions of the term ''corridor'' have been proposed over time (Hilty et al. 2006, p. 89), and the physical attributes of functional corridors vary by species. Defining those attributes for a particular species is challenging due to the fact that humans perceive connectivity differently than the organisms that use them (Hilty et al. 2006, p. 190). We are aware of the sentiment held by some that corridors must always consist of a contiguous, linear vegetative landscape feature that connects larger vegetated tracts. Hellgren and Vaughn (1994, p. 279) stated that maintaining such large, contiguous forested tracts, however, ''is difficult to impossible, especially in areas with human densities as high as the southeastern United States.'' Regarding black bears in the

southeastern United States, they also state that ''disjunct populations may not be as effectively isolated as previously believed'' (Hellgren and Vaughn 1994, p. 283). Further, Maehr et al. (1988, p. 4) argued that ''for black bears, well-defined travel corridors are not necessary so long as the areas separating population fragments do not impede movements'' and ''that low levels of human habitation or disturbance may not be a hindrance for dispersing or wide ranging bears.'' Stratman et al. (2001, p. 57) state that their study of long-distance movements of black bears in the southeastern United States ''may raise questions about the need for connective corridors between disjunct populations.'' Additionally, Laufenberg and Clark (2014, p. 85) found in their study documenting interchange among Louisiana black bear subpopulations, that hypothetical forested corridors ''were not more effective than the broken habitat matrix that surrounded many of the subpopulations.'' Because of that documented interchange, Laufenberg and Clark (2014, p. 90) assert that the presence of multiple satellite populations of breeding bears on the landscape may be more effective in establishing and/or maintaining connectivity between the larger subpopulations than the presence of contiguous forested linkages.

Consistent with this published research, we define ''Louisiana black bear corridor'' as a landscape that consists of ''stepping stones'' of habitat such as large forested tracts that support reproducing subpopulations, smaller forested blocks that support one or more reproductive-aged females, and the matrix of riparian corridors, agricultural fields, and other undeveloped lands that are located to allow interchange between the existing subpopulations. In addition to all of the above-referenced research findings, Hilty et al. (2006, pp. 192–193), in their book on corridor ecology, support this definition stating that ''functional connectivity for some biota may not require a connection of relatively intact natural habitat but could involve stepping stones of habitat or protected areas that are not physically connected'' and that ''stepping-stone connectivity might be better than continuous corridors given the life history of some species.'' Additional discussion of corridors is provided in the section entitled Delisting Criterion 2.

Comment (42): Several commenters provided recent reports on black bear habitat studies in East Texas (which we had not included in our proposed rule or draft post-delisting monitoring plan) and requested we acknowledge that East Texas currently has enough forested bear habitat to support a viable black bear population in the future.

Our response: We have reviewed the information provided by the commenters and have included it in this rule along with a brief discussion of bear habitat in East Texas. We agree with the commenters that there appears to be sufficient habitat in East Texas to support a Louisiana black bear population as this population continues to grow and disperse.

Comment (43): Several commenters questioned whether there is enough habitat to support delisting the Louisiana black bear, including one group that stated that the Louisiana black bear continues to be threatened by habitat loss. One commenter questioned the information we presented on the threat of future habitat loss in light of continuing development, suggesting that more protection is needed for den sites, and that reproduction monitoring and viability analyses are needed to ensure that the Louisiana black bear subpopulations are self-sustaining.

Our response: Louisiana black bear breeding range in Louisiana and Mississippi has increased by over 500 percent since the time of listing (see Table 1 and Figure 1, *http://www.regulations.gov* at Docket Number FWS–R4–ES–2015–0014), as described in the section *Habitat Protection Through Ownership or Permanent Easements.* Within the last 15 years, the extent of forested habitat coverage has increased within the Louisiana black bear HRPA by 7.5 to 11.4 percent depending on geographic region (see Table 7), and within that HRPA there are currently more than a half-million acres of permanently protected lands. Nearly 90 percent of the parishes included within our Louisiana black bear HRPA were projected to experience human population declines, including several that may experience substantial reductions (population declines of 10–23 percent). These data support our finding that habitat loss threats that were present at the time of listing for the Louisiana black bear no longer exist, and habitat loss trends that contributed to that listing have been reversed. Therefore, the legal protection to candidate and actual den trees in breeding habitat provided in the final Louisiana black bear listing rule (57 FR 588, January 7, 1992) are no longer necessary.

With respect to the second issue, overall, the Louisiana black bear metapopulation (TRB, UARB, and TRC) has an estimated probability of long-term persistence (more than 100 years) of 0.996 under even the most conservative scenario (Laufenberg and Clark 2014, p. 82). There is evidence of interchange of bears between the TRB, UARB, TRC, WRB, and Mississippi subpopulations including documented interchange occurring ''from the UARB to the TRB by way of the TRC'' (Laufenberg and Clark 2014, pp. 2, 84). The stability of the Louisiana black bear metapopulation coupled with recent and significant habitat gains since the time of listing indicates that the Louisiana black bear has recovered and is no longer threatened by habitat loss (from any source including development and conversion to agriculture). Furthermore, we will be monitoring these subpopulations closely as described in our PDM plan. A more detailed discussion of Louisiana black bear population dynamics and habitat trends is presented in this rule (see Factors A and D).

Comment (44): Several commenters expressed concerns about the apparent lack of sufficient habitat, corridor, and den tree protections, and they cited actions (such as clearcuts in the Atchafalaya Basin, residential and commercial development, and the lack of enforcement of Corps easements and Clean Water Act regulations) as evidence for concerns. One commenter suggested that new threats to the Louisiana black bear such as wood pellet mills could result in habitat destruction from forest clear-cutting and a resultant expansion of feral hog populations.

Our response: Although one group submitted select photographs to better demonstrate their concerns, they did not provide specific data regarding the effect of various timber management practices on bottomland hardwood habitats in Louisiana or their associated long-term effects on forest health. We acknowledge that forestry management within the range of the Louisiana black bear has occasionally included clear-cutting on particular tracts. However, during field studies and management activities within known bear habitat, we have rarely, if ever, encountered large-scale clearing-cutting of BLH forest habitat in a manner that would have long-term detrimental impacts to the Louisiana black bear. Rather, our field experiences suggest that a relatively minimal amount of BLH forests within the range of the Louisiana black bear have undergone such treatment. In any case, Louisiana black bears are habitat generalists that benefit from sustainable timber management and the habitat features of early successional forests (BBCC 2015, p. 28). For that reason, a forestry exemption was included in the 1992 final rule listing the Louisiana

black bear as a threatened subspecies (57 FR 588, January 7, 1992). In our 2009 final rule that designated critical habitat for the Louisiana black bear, we specifically stated that research supports our conclusion that normal silviculture is compatible with Louisiana black bear management and we upheld that special forestry exemption. Moreover, because normal silvicultural activities conducted as part of ''established, ongoing'' silvicultural operations are exempt from Corps of Engineers permit requirements under section 404 of the Clean Water Act (LDAF et al. 1998, p. 31), we would lack a Federal nexus for consulting on virtually all silvicultural activity regardless of whether or not the Louisiana black bear remains listed. Also, we are not aware of any data that demonstrate that clear-cutting specific forested tracts would constitute a threat to bears by enhancing feral hog habitat.

Although no specific data were provided regarding the extent of bald cypress removal within portions of the Atchafalaya Basin that have been designated as Louisiana black bear critical habitat, we acknowledge that timber is routinely harvested from its swamps and BLH forests. We also recognize that large trees with cavities often provide high-quality den sites for bears (particularly females with young-of-the-year cubs). In fact, to afford additional protection to denning bears, the Service through the final Louisiana black bear listing rule had extended legal protection to candidate and actual den trees in breeding habitat (57 FR 588, January 7, 1992). Because of generally low elevations and frequent riverine flooding, there is no breeding habitat (*i.e.,* habitat that has been conclusively determined to support resident reproductive-aged female Louisiana black bears) within the Atchafalaya Basin between U.S. Interstate 10 and U.S. Highway 90. Therefore, the harvesting of large-diameter trees in that area would not constitute a violation of the Act.

Regarding the loss and/or conversion of habitat within the Atchafalaya Basin, it has been documented that there has been increased and substantial sedimentation within the Atchafalaya Basin with certain areas exhibiting ''the highest documented sedimentation rates in forested wetlands of the United States'' (Hupp et al. 2008, p. 139). Sedimentation increases elevation, and areas that were once wet will be naturally colonized with vegetation that will ultimately result in upland forests (Hupp et al. 2008, p. 127) that are more suitable for bear foraging and habitation. LeBlanc et al. (1981, p. 65) estimate that more than 35,000 ac (14,000 ha) of lakes and cypress may convert to higher elevation forests within the Basin by the year 2030. For these reasons, we believe that the extent of higher quality forested land within the Atchafalaya Basin will continue to increase over time. In the more than two decades since the bear was listed, we have not seen any scientific evidence demonstrating the need to regulate timber harvests for Louisiana black bear conservation purposes. In fact, timber management often provides or enhances black bear habitat by leaving downed tree tops and creating openings that provide cover and foraging opportunities (Weaver 1999, pp. 126–128; Hightower et al. 2002, p. 14; Weaver et al. 1990b, p. 344; Lindzey and Meslow 1977, p. 424).

We acknowledge that relatively small-scale developments have impacted forests within the range of the Louisiana black bear. However, there are multiple legal mechanisms currently in place to protect much of the habitat that currently supports the Louisiana black bear breeding subpopulations or that serves as corridors between those subpopulations. All available data suggest that those mechanisms (such as the Food Security Act of 1985 and the Federal Water Pollution Control Act Amendments of 1972 [a.k.a, the Clean Water Act]) have afforded sufficient protections to Louisiana black bear habitat. In fact, an analysis of data obtained from the Corps' wetland regulatory program demonstrates that substantially more forested habitat is restored through compensatory wetland mitigation than is eliminated via permitted wetland development projects (Table 10). While we acknowledge that consultation under section 7 of the Act will no longer be required for the Louisiana black bear, the Service will continue to provide comments to the Corps on proposed Clean Water Act permit authorizations throughout the range of the Louisiana black bear through our authorities under the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.). The Service reviews all individual permit applications advertised by the Corps, and we will continue to provide specific comments and recommendations to reduce negative effects to fish and wildlife, including species that are not protected by the Act. Finally, it should be noted that there are over 637,000 ac (257,784 ha) of permanently protected lands within the Louisiana black bear HRPA. Those lands are protected via ownership by a State or Federal government agency or by a permanent easement. All such voluntary permanent easements will be maintained regardless of whether the bear is delisted. A more detailed discussion and associated data regarding Louisiana black bear habitat protection is presented in the sections entitled Recovery Criteria: Criterion (3), and Factors A and D (including Figure 2, *http://www.regulations.gov* at Docket Number FWS–R4–ES–2015–0014) and Tables 2, 3, 5, 6, and 10).

Comment (45): One commenter mentioned that there is no discussion of the effects of removal of protection afforded by critical habitat after the species is delisted and asked for a further assessment and explanation of why such protection is no longer needed.

Our response: Our analysis of Louisiana black bear habitat clearly demonstrates a reversal in historical habitat loss since the time of listing, with habitat gains being realized throughout our analysis area (*i.e.,* the Louisiana black bear HRPA) (see Comment 44). Louisiana black bear critical habitat is completely contained by, and includes a substantial proportion of the forested land within, that HRPA. The habitat gain trend confirmed by our analysis would, therefore, apply not only to the HRPA, but also to Louisiana black bear critical habitat. A detailed discussion of those analyses and results are presented in the section entitled Recovery Criteria and in the section entitled Factor A: The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range. We have also documented that the management efforts of governmental agencies and nongovernmental groups, as well as existing regulatory mechanisms, currently and will continue to provide long-term and adequate protection to Louisiana black bear habitat (see Recovery Criteria section and Factor D: The Inadequacy of Existing Regulatory Mechanisms for additional discussion). Furthermore, available scientific data confirm that the Louisiana black bear has reached recovery in part due to the lack of significant threats to that subspecies and its habitat. Because the Louisiana black bear is recovered and no longer listed under the Act, due in large part to the fact that suitable habitat is adequately protected and increasing in geographic extent, designation of any bear habitat as ''critical'' is no longer warranted.

Comment (46): One commenter stated that the Service failed to follow through on its commitments to establish a black bear preserve and restore 5,000 ac (2,000 ha) of agricultural land that is currently in sugarcane production. The commenter also stated that the Service

rejected an occupied bear habitat donation offer.

Our response: We were unable to verify whether the Service ever made any official commitment to establish a black bear preserve or to revert 5,000 ac (2,000 ha) of sugarcane-producing agricultural land to forested habitat. It should be noted, however, that the Service and its partners have expended a substantial amount of effort and funding for, and have been highly successful in, the restoration and protection of Louisiana black bear habitat as described in the section entitled: *Habitat Protection Through Ownership or Permanent Easements.* Through our partnering with NRCS in the implementation of the WRP program, over 148,000 ac (60,000 ha) of habitat have been permanently protected within the Louisiana black bear HRPA since 1992 (see Table 2). Additionally, the Service established the 9,028-ac (3653-ha) Bayou Teche National Wildlife Refuge in St. Mary Parish in 2001 for the primary purpose of preserving and managing habitat for the Louisiana black bear. There are also over 450,000 ac (180,000 ha) of Federal and State Natural Resource Management Areas (''preserves'') that support Louisiana black bear breeding subpopulations (see Table 6).

We could find no records documenting the Service's rejection of any formal land donation offers of occupied Louisiana black bear habitat. We do acknowledge, however, that the Service does not accept all land donation offers. We evaluate numerous factors, in addition to suitability of the habitat for listed species, in deciding whether to accept a land donation (*e.g.,* management challenges associated with the site's proximity to other Service facilities; the presence of contaminants on the site; operation and maintenance costs; and benefit to Federal trust resources).

Comment (47): Several commenters asserted that the Service and LDWF had failed to protect the Lower Atchafalaya subpopulation by not creating crossings and corridors across U.S. Highway 90 (Hwy. 90), and noted that installing wildlife crossings there and along U.S. Interstate 20 (I–20) in Madison Parish would help to mitigate road mortalities.

Our response: We agree that Hwy. 90 through St. Mary Parish, LA, has been a source of mortality for the Lower Atchafalaya River Basin subpopulation of the Louisiana black bear and is likely a partial obstacle to intra- and inter-subpopulation movement. The Service has organized numerous site inspections and meetings involving biologists from both the Refuge and Ecological Services programs of the Service, LDWF, Louisiana Department of Transportation and Development (LDOTD), Federal Highway Administration (FHWA), private environmental and engineering firms, and the BBCC to address issues with highway-associated impacts to bears in this region. We have completed a biological opinion on the effects of a proposed upgrade of Hwy. 90 on the Louisiana black bear, which included a conservation recommendation that FHWA ''install large mammal/bear crossings at suitable locations along the subject reach of Hwy. 90.'' We have worked collaboratively with a diverse group of environmental interests (*e.g.,* the BBCC, LDWF, nongovernmental environmental organizations, and major local landowners) that assembled for the purpose of developing and implementing a large-scale habitat restoration and protection plan to address both habitat issues and highway-associated limitations on bear conservation in this region of the State. Based on the interest level of the other involved parties, we strongly anticipate that this initiative will move forward regardless of Service involvement or the listing status of the Louisiana black bear.

Similarly, we acknowledge that I–20 through Madison Parish has also been both a source of mortality and a partial obstacle to Louisiana black bear movement in northeast Louisiana. To improve the ability of bears to cross and transverse that roadway and the surrounding landscape, we developed and successfully implemented a large-scale habitat restoration project, which was accomplished through a cooperative effort with the NRCS and resulted in the designation of a WRP Special Project Area for this region. Although that area of I–20 has numerous large bridges over river and stream crossings that provide safe passage opportunities for bears, we have also developed plans in coordination with several partners (*e.g.,* the BBCC, LDWF, FHWA, and the LDOTD) to improve the functionality of those crossings by instituting a modified mowing/maintenance regime (in which the area beneath those bridge crossings would be mowed less frequently). Again, based on the interest level of our partners, we anticipate a continuation of this effort regardless of Service involvement or the listing status of the Louisiana black bear. Furthermore, the tracts restored via the WRP Special Project will remain as functional Louisiana black bear habitat in perpetuity as legally required by the respective WRP easements.

That said, we do not believe any road mortalities in either of these areas would be at a level that would cause this animal to be threatened in the foreseeable future (see Summary of Factors Affecting the Species).

Comment (48): One commenter stated that the Service should work to provide ''refugia'' to protect breeding females and provided references suggesting that a bear reserve should protect, at a minimum, 12 percent of the population, or 5 percent of the total land mass for that population.

Our response: We agree that providing habitat protection for breeding female Louisiana black bears is important to ensure long-term population viability. To that end, the Service and its partners (various State and Federal agencies, nongovernmental environmental organizations, and private landowners) developed a strategy to position and implement habitat restoration and protection projects in a manner that maximizes benefits to this subspecies (additional discussion in Recovery Criteria—Criterion (1) regarding that strategy). We address this in the section entitled: *Habitat Protection Through Ownership or Permanent Easements.* Since 1992 through the WRP program, over 148,000 ac (60,000 ha) of habitat has been permanently protected within the Louisiana black bear HRPA, including almost 100,000 ac (40,000 ha) of breeding habitat (*i.e.,* habitat that supports breeding females). Currently, more than 5 percent of the breeding habitat within each of the three Louisiana river basins that supports bears (TRB, UARB, and LARB), including a total of 40 percent of all Louisiana black bear breeding habitat within those basins, is permanently protected (see Table 3).

Comment (49): One commenter requested that we consider bear habitat that would be provided by the additional mitigation banks planned in the Lower Atchafalaya River Basin, and the many landowners who receive revenue from hunting leases, particularly in bottomland hardwood forests, which would help ensure retention of those lands as working forests.

Our response: We are encouraged that additional planning for habitat restoration and protection is occurring within the Lower Atchafalaya River Basin. We are also aware of the importance of hunting leases in maintaining forested habitat for many landowners within Louisiana black bear range and believe such areas have likely contributed to the bear's recovery. We have made note of both of these facts in our final rule; however, in making our

determination regarding whether Louisiana black bears require protection under the Act, we relied on habitat currently known to be under permanent protection.

Comment (50): Multiple bear management organizations, though they stated their support for delisting the Louisiana black bear due to recovery criteria being met, expressed concern over the amount of suitable but unoccupied bear habitat in Louisiana (*e.g.,* Kisatchie National Forest). Other groups and individual commenters stated similar concerns, specifically that:

(1) We should not delist the Louisiana black bear because of the failure of the Service and LDWF to relocate bear populations to areas that could support them (specifically Kisatchie National Forest, the Pearl River Swamp, the Big Thicket area of Texas, and forests in western Mississippi);

(2) We consider establishing an east-west corridor (perhaps in the vicinity of the coast) to complement the current north-south distribution of bears and habitat;

(3) Bears in the TRC and north-central Louisiana [should] be considered separately from the TRB subpopulation, and should have their status maintained as listed regardless of whether the TRB subpopulation is delisted;

(4) The Louisiana black bear has not recovered within a significant portion of its range and the status of subpopulations in Arkansas and Mississippi should be considered in our decision to delist this subspecies.

Our response: The recovery status of the Louisiana black bear is not contingent upon it occupying a particular portion of suitable habitat within its historical range, nor is it dependent upon the status of subpopulations in Arkansas and Mississippi. Documented interchange is occurring among most satellite populations and subpopulations throughout the Louisiana black bear's range, and we consider all such bears *U.a. luteolus* (Laufenberg and Clark 2014, p. 93). This subspecies, as a whole, has reached recovery because its metapopulation (including the TRB, TRC, and UARB subpopulations) has long-term viability, there is adequate long-term protection of its habitat, and there are no longer significant threats to the Louisiana black bear or its habitat. Recent field data demonstrate a significant range expansion by the Louisiana black bear into areas that were unoccupied at the time of listing. It is true that, as data suggest, minimal expansion is occurring within coastal Louisiana for several reasons including: (1) Much of the area has poor-quality bear habitat (*e.g.,* open water, marsh, and heavily inundated swamps); (2) bear dispersal is restricted by development (particularly along existing highways); and (3) minimal habitat restoration has occurred due to a lack of landowner interest in incentive-based programs (presumably due to the high productivity and associated value of agricultural land in this region). However, significant range expansion is occurring westward of the current breeding subpopulations in the UARB and TRB, toward Kisatchie National Forest and other large forested tracts that are currently unoccupied. Most of these areas are remote and expansive, and they are well positioned to accommodate the growing Louisiana black bear population.

Comment (51): Numerous commenters expressed opposition to delisting the Louisiana black bear because they were opposed to potential hunting of the bear after delisting (viewing it as inhumane and contrary to a perceived public opposition of hunting) or believed that overutilization due to recreation posed a threat to this species. Others stated there were insufficient data to set a hunting quota at this time, that more data are needed on mortality, and that all sources of mortality should be considered with annual thresholds established to determine the hunting quota. Another commenter suggested there should be a period of time specified in the PDM in which it is determined that the bear is doing well before hunting is allowed.

Our response: Some commenters assumed that because the LDWF Plan included hunting as a management option, hunting would commence immediately post-delisting and pose a threat to the long-term survival of the Louisiana black bear; however, that LDWF Plan did not state when hunting would commence. The LDWF Plan describes the multiple factors that would be considered (*e.g.,* demographics, reproductive vital rates, genetic characteristics, magnitude of anthropogenic mortalities) as well as the modeling techniques and types of data to be collected on subpopulations (Davidson et al. 2015, pp. 55–56). The demographic analyses conducted by Laufenberg and Clark (2014) are the data that would be used to establish baseline subpopulation information, and additional data would be collected to monitor those subpopulations.

Specifically regarding any future harvest of the Louisiana black bear, the LDWF Plan stated that ''at no time would harvest be allowed if existing data and simulated population dynamics models indicate harvest could potentially compromise Louisiana black bear sustainability'' (Davidson et al. 2015, p. 55). Additionally, the Black Bear management plans for Mississippi and Texas (see Factor D below) are protective of bear populations. Regarding the comment to modify the PDM plan to specify a specific time period before hunting would be allowed, we prefer to rely on scientific data to make such decisions. Post-delisting monitoring is designed to ensure Louisiana black bear status does not deteriorate and if a substantial decline in the species (numbers of individuals or populations) or an increase in threats is identified, to enact measures to halt the decline so that reproposing the species as threatened or endangered is not needed. Monitoring activities are focused on trends and populations' vital statistics (*e.g.,* recruitment, survival, genetic exchange, and cause-specific mortality). Therefore, we have determined that there are adequate safeguards in place to maintain Louisiana black bear populations into the future should the LDWF decide to conduct a regulated harvest.

Comment (52): One group, referencing the LDWF Plan, stated that proven standards are needed by which all proposed hunting programs should be measured in relation to wildlife sustainability should hunting be implemented.

Our response: We believe the methods described in the LDWF Plan are based on sound scientific data. Before harvest would occur, multiple factors that may affect population sustainability would be considered such as: subpopulation demographics, reproductive vital rates, genetic characteristics, and the magnitude of anthropogenic causes of mortality (Davidson et al. 2015, p. 55). Baseline demographic data would be established from mortality and survival data, and previous demographic research including Laufenberg and Clark (2014) (see Peer Review section). Many states in the southeastern United States conduct regulated harvest of their black bear populations and continue to maintain stable populations.

Comment (53): One commenter stated that the Service should have management agreements with the state agencies before the bear is delisted.

Our response: We reviewed Louisiana black bear management plans for Louisiana, Mississippi, and Texas for the protection offered to the species and its habitat (see Factor D). We have determined that these and other existing regulatory mechanisms are, and will continue to be, adequate to protect

Louisiana black bears from taking, possession, and trade by State laws throughout their historical range. Similarly, we find the existing regulatory mechanisms that currently protect Louisiana black bear habitat on State-owned lands are adequate to address the threats to the Louisiana black bear posed by the original listing factors. Therefore, we have determined no additional management agreements are necessary.

Comment (54): Some commenters may have confused the LDWF Plan with the PDM plan. They offered comments regarding public involvement and private landowner involvement, the lack of transparency, and the Service's apparent granting to LDWF the unsupervised development of post-delisting management; it was difficult for us to discern to which document the comments referred. Another commenter stated that the Service had excluded the BBCC from the PDM and had not operated in accordance with our guidance.

Our response: We regret that there was confusion regarding the two plans. To clarify, the PDM plan is a Service document developed in coordination with the LDWF as required under section 4(g)(1) of the Act, while the LDWF Plan was developed independently by LDWF. The PDM plan covers a period of 7 years, while the LDWF Plan is a more long-term plan.

The LDWF Plan was developed by the LDWF under their State management authorities, not under Federal authority; the State will assume long-term management of Louisiana black bears upon delisting. Upon delisting, as stated in the LDWF Plan: ''it is the responsibility of LDWF to ensure Louisiana black bear subpopulations persist into the future.'' The LDWF Plan details current and future courses of action for promoting the continued persistence and long-term sustainability of the Louisiana black bear within Louisiana. Individuals having questions or concerns with the LDWF Plan may contact the LDWF.

Comment (55): We received several comments on the LDWF Plan. Some commenters stated the LDWF Plan could not be reasonably expected to maintain the Louisiana black bear from returning to a ''threatened'' status again; others expressed concern that management would be turned over to the State agency. One believed the LDWF Plan was lacking in protection because it did not include a good method to identify females. Another commenter stated that the LDWF Plan is not a statewide plan but limited to the populations monitored in the PDM and excludes all bears except the Louisiana black bear leaving those other subpopulations with no regulatory protection.

Our response: The LDWF Plan includes conservation and management actions to conserve this species into the future (see our response to Comment 51), and it applies to all bears, regardless of taxonomic status occurring within the State of Louisiana. The LDWF submitted a formal comment stating ''LDWF is prepared to accept full responsibility for the management of bears in Louisiana, and regulations are in place that protects all bears—regardless of subspecific designation—within the state of Louisiana'' (see the State Comments section).

The LDWF Plan was available for public review (see the State Comments section). In our proposed rule, we stated that the LDWF Plan, and all literature referenced in our proposed rule, was available from our office upon request. In addition, the LDWF Plan was presented to and reviewed by the LWFC in February 2015, subsequently subjected to a 30-day public review and comment period, and published on the LDWF Web site (*www.wlf.louisiana.gov*) immediately thereafter. Finally, this is not a Service plan, rather it is the LDWF's plan. The Service will work with the LDWF via the PDM to monitor threats.

Comment (56): Two commenters expressed concern that the PDM plan was limited only to Louisiana. One commenter questioned why post-delisting monitoring was limited to only three of the Louisiana subpopulations. One asserted that the lack of plans for future reintroductions was a glaring deficiency in the PDM plan. Another questioned whether the LDWF had the resources to implement their part of the PDM plan without outside assistance. One commenter expressed concern that the PDM plan was in draft form and believed the Service should not go forward with delisting until the PDM plan was finalized. One commenter stated that there was no public input or input from long-time partners in the development of the PDM plan and the Service should re-draft the PDM plan to include such.

Our response: The purpose of the PDM plan is to detect any declines in Louisiana black bear populations (at extremely early stages) upon delisting, and it includes threshold triggers that would allow for corrective actions to be taken before the species would require protection under the Act. It focuses on the populations and habitat features that we relied on to demonstrate the black bear's recovery (*e.g.,* the three subpopulations and habitat in Louisiana). The PDM plan is not a plan for continued restoration efforts (unless, as identified during the post-delisting monitoring period, corrective actions are needed); it is a plan to monitor the status of the Louisiana black bear upon delisting to ensure the subspecies remains secure. Upon delisting, the States will be responsible for Louisiana black bear management. When we developed the PDM plan, implementation costs were considered to ensure the plan could be implemented as designed. We will stay in close contact with the LDWF as the PDM plan moves forward.

We published the draft PDM plan with the proposed rule in order to allow for public input and scientific peer review before it is finalized. The Service encouraged all partners to use the public comment period to submit comments on the PDM plan. Comments addressing the PDM plan have been addressed where appropriate, and the final PDM plan is available with this delisting action.

Comment (57): One commenter mentioned the need for forest management guidelines and would like to see them discussed in the PDM plan—similar to the current ''4(d)'' rule, recognizing that habitat management is critical for the sustainability of the bear.

Our response: In our evaluation of adequate regulatory mechanisms for protected lands (*e.g.,* State and Federal-owned lands, permanent easements), we reviewed the management plans and guidelines for those habitats to ensure those areas are managed in a way to sustain black bears (see Factor D). We have added statements to the PDM plan emphasizing that proper management is an important part of maintaining a black bear population.

Summary of Factors Affecting the Species

This section contains updated information and associated analysis from that presented in the proposed rule (80 FR 29394, May 21, 2015). Updated information includes data provided as part of public comments received, recent publications (Puckett et al. 2015), and additional information received by peer reviewers.

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing species, reclassifying species, or removing species from listed status. ''Species'' is defined by the Act as including any species or subspecies of fish or wildlife or plants, and any distinct vertebrate population segment of fish or wildlife that interbreeds when

mature (16 U.S.C. 1532(16)). We may determine that a species is an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) overutilization for commercial, recreational, scientific, or educational purposes;

(C) disease or predation;

(D) the inadequacy of existing regulatory mechanisms; or

(E) other natural or manmade factors affecting its continued existence.

We must consider these same five factors in delisting a species.

A recovered species is one that no longer meets the Act's definition of endangered or threatened. Determining whether the status of a species has improved to the point that it can be delisted or downlisted requires consideration of whether the species is endangered or threatened because of the five categories of threats specified in section 4(a)(1) of the Act identified above. For species that are already listed as endangered or threatened, this analysis of threats is an evaluation of both the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future following the delisting and the removal of the Act's protections.

A species is an ''endangered species'' for purposes of the Act if it is in danger of extinction throughout all or a significant portion of its range and is a ''threatened species'' if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. The word ''range'' in the *significant portion of its range* phrase refers to the range in which the species currently exists. For the purposes of this analysis, we first evaluated whether the currently listed species, the Louisiana black bear, should be considered endangered or threatened throughout all its range. Then we considered whether there are any significant portions of the Louisiana black bear's range where the species is in danger of extinction or likely to become so within the foreseeable future.

The Act does not define the term ''foreseeable future.'' For the purpose of this rule, we define the ''foreseeable future'' to be the extent to which, given the amount and substance of available data, we can reasonably anticipate events or effects, or reliably extrapolate threat trends, such that we believe that reliable predictions can be made concerning the future as it relates to the status of the Louisiana black bear. In considering the foreseeable future as it relates to the status of the Louisiana black bear, we considered the factors affecting the Louisiana black bear, historical abundance trends, and ongoing conservation efforts.

The following analysis examines all five factors currently affecting, or that are likely to affect, the Louisiana black bear within the foreseeable future.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The final rule that listed the Louisiana black bear as a threatened subspecies stated that it ''meets the criteria for protection under the Act on the basis of past habitat loss alone'' (57 FR 588, January 7, 1992). It also identified the threat of further loss of occupied habitats due to conversion to agriculture or other non-timber uses on top of past severe losses that occurred (historical modification and reduction and reduced quality of habitat, primarily as a result of conversion to agriculture), the lack of protection of privately owned woodlands in the north Atchafalaya and Tensas River Basins, and inadequacy of existing regulatory protections to protect Louisiana black bear habitat (see Factor D below for regulatory mechanism discussion).

We present multiple habitat assessment metrics to establish trends within the LMRAV and the Louisiana black bear HRPA. This relatively high level of redundancy is provided to demonstrate that habitat trends have been accurately identified, and to compensate for the limitations in geographic information system (GIS) technology at the time of listing of the Louisiana black bear. GIS technology was in its infancy in the 1990s, so our ability to accurately delineate the extent and distribution of Louisiana black bear habitat at the time of listing was determined from a best professional estimate based on hand-drawn maps. In addition, the geographic areas used for those initial estimates were not often well described; and varied by study, making successive temporal comparisons difficult. Advances in technology, including GIS and remotely sensed data (*e.g.,* aerial and satellite imagery), currently allow for highly accurate identification and delineation of habitat based on specified characteristics. This capability subsequently provides for a more consistent and reproducible estimate of Louisiana black bear habitat distribution and trend.

According to Haynes (2004, p. 172), the forested wetlands of the LMRAV have been reduced from historical estimates of 21 to 25 million acres (8.5 to 10 million ha) to a remnant 5 to 6.5 million acres (2 to 2.6 million ha). Significant increases in soybean prices in the late 1960s and early 1970s provided the impetus for the large-scale conversion of forested habitat to agriculture, which was facilitated by improved flood control, drainage, and technology (Wilson et al. 2007, pp. 7–8). Allen et al. (2004, p. 4) concurred that the primary cause of BLH forest loss has been conversion to agricultural production. According to Creasman et al. (1992) as cited by Haynes (2004, p. 170), approximately 78 percent of the bottomland forests in Arkansas, Louisiana, and Mississippi had been lost to conversion at the time of listing. When the bear was listed in 1992, the Service recognized that the rate of loss of bear habitat had leveled off (Service 1992, p. 592). Since that time (1990–2010), forested habitat within the LMRAV has increased (Oswalt 2013, p. 4).

The BBCC Black Bear Restoration Plan states that the recovery criteria standard of long-term habitat and corridor protection could involve a projection of future habitat trend based on historical trends in acreage and habitat type/quality (BBCC 1997, p. 58). In that regard, Schoenholtz et al. (2001, p. 612; 2005, p. 413) described a ''promising or encouraging'' trend in the annual increase of afforestation (planting of trees to create forested habitat) in the LMRAV. Available data indicate that, over the past three decades, forest restoration in the LMRAV portions of Louisiana, Mississippi, and Arkansas has increased dramatically, and has led to a significant removal of land from agricultural production for the purpose of hardwood forest establishment (Gardiner and Oliver 2005, p. 243; and Oswalt 2013, p. 6). In some areas, these gains have been especially noteworthy. For example, West Carroll Parish, Louisiana, experienced a 92 percent loss of forested area from 1950 (45 percent forest) to 1980 (8 percent forest), but by 2013, the parish was approximately 18 percent forested (Oswalt 2013, p. 4).

As stated in Table 1, occupied breeding habitat for the bear at the time of listing was roughly 340,400 acres (138,000 ha). The current occupied breeding habitat has grown based on implementation of recovery actions by the Service and numerous partners to more than 1,800,000 acres (728,435 ha)—more than five times larger—by the end of 2014. Examples of actions that have helped reduce habitat loss or improve suitable habitat for the

Louisiana black bear are discussed below.

A major factor in this positive habitat trend is the success of incentive-based private land restoration programs, such as WRP, which was established by the Food Security Act of 1990. The WRP has been ''perhaps the most significant and effective wetland restoration program in the world'' (Haynes 2004, p. 173). According to Haynes (2004, p. 173), within 12 years of the Louisiana black bear being listed as a threatened species, an estimated 450,000 to 550,000 ac (182,000 to 222,000 ha) of BLH forest had been restored in the LMRAV. Since 1992, more than 148,000 ac (60,000 ha) of land has been permanently protected and/or restored in the HRPA via the WRP program (mostly in the TRB and UARB areas) (see Table 2). The entire 148,000 ac (60,000 ha) of restored land benefits movement between bear populations, with approximately 97,000 ac (39,000 ha) directly benefitting breeding populations (see Table 2). The use of the Louisiana Black Bear Habitat Restoration Planning Maps in conjunction with the WRP has not only increased the total amount of available Louisiana black bear habitat, but has also allowed us and our partners to directly focus on addressing the recovery criteria. When WRP permanent easement lands are added to the habitat protected on Federal and State NWRs or WMAs, mitigation banks, and the numerous Corps fee title and easements (as discussed in detail in the Factor D section), approximately 638,000 ac (258,000 ha) have been permanently protected and/or restored within the HRPA in Louisiana (see Table 3) versus the 227,200 ac (91,945 ha) estimated to exist in 1991 (Service 2014, p. 74, Table 6), an estimated increase of more than 280 percent in protected habitat status.

Although not permanently protected, an additional 122,000 ac (49,000 ha) of lands currently enrolled in 10- to 15-year agreements via the CRP program of the Farm Service Agency (FSA) within the HRPA (Table 4) provide short-term habitat that can be used by bears for foraging/denning and travel.

Many of the remaining forested wetland areas have been protected within the Service's NWRs, in National Forests, in State WMAs, and on USDA WRP or other conservation easement sites (King et al. 2006). The Partners for Fish and Wildlife Program provides conservation delivery adjacent to or nearby such protected areas to help meet our strategy of expanding main conservation areas and linking habitat by reducing fragmentation. Numerous projects administered through this program have provided direct habitat benefits for the Louisiana black bear. Additional details regarding the effectiveness of this program can be found in the Factor D section, titled Partners for Fish and Wildlife Act Regulations.

TABLE 4—CRP WITHIN THE LOUISIANA BLACK BEAR BREEDING HABITAT AND LOUISIANA BLACK BEAR HRPAS, LA (ac [ha])

[Numbers may not total due to rounding]

	Tensas River Basin [1]	Upper Atchafalaya River Basin	Lower Atchafalaya River Basin	Total
Breeding Habitat [2 3]	44,766	21,770	0	66,536
	[18,116]	[8,810]	[0]	[26,926]
HRPA	120,793	1,344	11	122,149
	[48,883]	[544]	[5]	[49,432]

[1] Includes the TRC subpopulation.
[2] Breeding habitat area is largely a subset of (*i.e.,* contained within) the total HRPA.
[3] Breeding habitat areas have expanded beyond the HRPA boundary.

It should also be noted that in Louisiana there are approximately 480,000 ac (195,000 ha) of public lands (*e.g.,* NWRs, WMAs, and Corps lands) that are managed or maintained in a way to benefit wildlife (including bears) in the HRPA (see Table 5). A description of the formal guidance and/or legal documents that direct those management actions is provided in Factor D. Several of these public lands did not exist or were not as large in the early 1990s as they are today (*e.g.,* Bayou Teche NWR, Tensas River NWR, Buckhorn WMA). Approximately 460,000 ac (186,000 ha) of public lands (inside and outside of the HRPA) in Louisiana and Mississippi directly support Louisiana black bear breeding populations (see Table 6).

TABLE 5—STATE AND FEDERAL MANAGEMENT AREAS WITHIN THE LOUISIANA BLACK BEAR HABITAT RESTORATION PLANNING AREAS, LA (ac [ha])

[Numbers may not total due to rounding]

	Tensas River Basin [1 2]	Upper Atchafalaya River Basin [2]	Lower Atchafalaya River Basin [2]	Total [2]
NWRs	111,966	17,614	7,426	137,006
	[45,311]	[7,128]	[3,005]	[55,444]
WMAs	143,933	59,423	1,474	204,830
	[58,248]	[24,048]	[597]	[82,892]
Atchafalaya Basin Floodway Master Plan Easements and Acquisitions [3]	.....	126,417	.....	126,417
		[51,159]		[51,159]
Total	255,899	226,037	8,900	480,836
	[103,559]	[91,476]	[3,602]	[194,588]

[1] Includes the TRC subpopulation.

[2] Some acreage figures are less than that presented in the Louisiana Black Bear 5-Year Status Review due to property boundary refinements and corrections for certain NWRs and WMAs.

[3] This acreage (126,417) does not equal the 141,400 ac estimated by the Corps (Lacoste 2014). The reason for the apparent discrepancy is that the LDWF has been granted management authority over portions of the 141,400 ac (which include both fee title and easement properties). In our analysis, the management-transfer acreage was credited to LDWF (in the form of WMA acreage) rather than to the Corps. However, the total calculated protected-habitat acreage remains consistent (and accurate) regardless of that management authority reassignment.

Barriers to movement—Habitat fragmentation can create barriers to immigration and emigration that can affect population demographics and genetic integrity (Clark et al. 2006, p. 12). Fragmentation was identified as a threat to the Louisiana black bear at the time of its listing because it limits the potential for the existing Louisiana black bear subpopulations to expand their breeding range (Service 1995, p. 8). Habitat fragmentation can restrict bear movements both within and between populations (Marchinton 1995, p. 53: Beausoleil et al. 2005, p. 403). Even though Louisiana black bears are capable of traveling long distances, including swimming across rivers, traversing open areas, roads, large waterways, development, and large expanses of agricultural land, these features may affect habitat contiguity, and such features tend to impede the movement of bears (Clark 1999, p. 107). Laufenberg and Clark (2014, p. 84) detected evidence of possible gene flow restriction in the TRB associated with U.S. Interstate 20 (I–20). Such barriers can result in increased mortality as bears are forced to forage on less protected sites, travel farther to forage, or cross roads (Hellgren and Maehr 1992, pp. 154–156, Pelton 2003, p. 549; Laufenberg and Clark 2014, p. 84).

TABLE 6—FEDERAL AND STATE NATURAL RESOURCE MANAGEMENT AREAS THAT SUPPORT LOUISIANA BLACK BEAR BREEDING SUBPOPULATIONS (ac [ha])

	Tensas River Basin [1]	Upper Atchafalaya River Basin [2 3]	Lower Atchafalaya River Basin	Louisiana total	Mississippi total [4]	Total
NWRs	160,815 [65,079]	16,030 [6,487]	7,355 [2,976]	184,199 [74,543]	4,383 [1,774]	188,582 [76,316]
WMAs	223,926 [90,620]	49,042 [19,846]	0	272,968 [110,466]	0	272,968 [110,466]
Total	384,741 [155,699]	65,071 [26,333]	7,355 [2,976]	457,167 [185,009]	4,383 [1,774]	461,550 [186,783]

[1] Includes the TRC subpopulation and the Louisiana black bear subpopulation in north-central Louisiana near the Arkansas State line.

[2] Includes the Louisiana black bear subpopulation found in the Florida parishes of Louisiana (east of the Mississippi River).

[3] These figures do not include Atchafalaya Basin Floodway Master Plan easements and acquisitions purchased by the Corps, or lands not managed as part of a Federal or State natural resource management area.

[4] Although there are Louisiana black bear breeding subpopulations in Warren, Wilkinson, Issaqueena, and Sharkey Counties, only the Issaqueena/Sharkey subpopulation is currently located by State and Federal lands.

Even bear populations in a relatively large habitat patch are not necessarily ensured long-term survival without recolonization by bears from adjacent patches (Clark 1999, p. 111). Anderson (1997, p. 73) observed that males may not be as affected by fragmentation as females. Louisiana black bears have been observed to occur in open areas such as fields (Anderson 1997, p. 45). Tracking the dispersal of translocated females demonstrated that bears can disperse through fragmented landscapes (Benson 2005, p. 98). The results of genetic analyses indicated differentiation between the three Louisiana subpopulations present at listing (TRB, UARB, and LARB) partially as the result of restricted gene flow (Laufenberg and Clark 2014, p. 84). Laufenberg and Clark (2014, p. 24) analyzed connectivity between Louisiana black bear subpopulations using a combination of genetic markers (differentiating resident from immigrant bears and within-population genetic structure) and actual bear movements as recorded by global positioning system (GPS) data and step-selection function (SSF) models. Tools like SSF models are relatively new powerful models used to quantify and to simulate the routes and rates of interchange selected by animals moving through the landscape. The SSF models can be used to identify landscape features that may facilitate or impede interchange or dispersal. The results of connectivity modeling indicated that, in general, the bears selected a movement direction as distance to natural cover and agriculture decreased and distance to roads increased (Laufenberg and Clark 2014, pp. 70–71). Those models also predicted occasional crossing of habitat gaps (even large ones) by both males and females.

When Laufenberg and Clark (2014, p. 85) examined the potential effect of continuous corridors on bear dispersal, they concluded that, while such corridors may be important, they were not more effective than the presence of a broken habitat matrix such as that currently surrounding Louisiana black bear subpopulations. The genetic and GPS data used in Laufenberg and Clark's study (2014, p. 86) generally agreed with the connectivity model results, which indicated interchange was occurring between some Louisiana black bear subpopulations and unlikely to occur between others (see Recovery Criteria discussion). Laufenberg and Clark (2014, p. 90) concluded that a patchwork of natural land cover between Louisiana black bear breeding subpopulations may be sufficient for movement of individuals to occur between subpopulations (at least for males).

In east Texas, habitat fragmentation may become a concern as timberland owners dissolve their holdings over much of southeast Texas lands (Barker et al. 2005, p. 26). Future water reservoir developments further threaten the highest quality habitat remaining in East Texas (Barker et al. 2005, p. 26). However, this area is not currently supporting breeding populations, and habitat restoration activities continue in Texas. Between 2008 and 2011, more than 500 ac (200 ha) have been restored and 1,550 ac (630 ha) have been enhanced in east Texas via the Hardwood Habitat Cooperative program.

In summary, there are about 460,000 ac (186,000 ha) of Federal- and State-owned conservation lands managed for wildlife in Louisiana and Mississippi that directly support the Louisiana black bear. Those areas will continue to remain permanently protected following publication of this final rule. Since listing, more than 4,000 ac (1,600 ha) of Federal land that benefits bears has been acquired, including new NWRs (such as Bayou Teche NWR in Louisiana in 2001) and other areas. In addition to the permanently protected habitat in public ownership, we have worked with States and landowners to secure 148,000 ac (60,000 ha) of permanent WRP easements. Regardless of whether the protections of the Act are removed for the bear, these voluntary permanent easements protect wetlands and ensure that habitat will be maintained (see Factor D for associated regulatory protections). In addition to the approximately 638,000 ac (258,000 ha) of permanently protected habitat (refer to Table 3), there are roughly 122,000 ac (49,000 ha) of habitat enrolled in CRP (with 10- to 15-year contracts), which also provides benefits to the Louisiana black bear.

TABLE 7—CHANGES IN THE EXTENT OF FORESTED HABITAT COVERAGE WITHIN THE LOUISIANA BLACK BEAR HRPA BETWEEN 1998 AND 2013 [1]

	Northern zone [2] (%)	Central zone [2] ($)	Southern zone [2] ($)
Percent Increase in Forested Landscape [3]	11.4	7.6	7.5

[1] Data were obtained through image classification of digital orthophoto quarter quadrangles (DOQQs; digital orthorectified aerial photography produced at a spatial resolution of 1 meter by the U.S. Geological Survey). Analysis sites were selected to avoid potential bias against landscape features that could result in an underestimation of, or failure to detect, forested habitat losses (*e.g.,* sites with a relatively high proportion of open water, agricultural fields, publicly owned properties, or perpetual conservation easements).

[2] These zones correspond to the general geographic location of our habitat assessment sites within the large-scale monitoring grid presented in the Service's *Post-Delisting Monitoring Plan for the Louisiana Black Bear* (Service 2016, p. 62, Figure 4).

[3] Percentages rather than acreages are provided because only a portion of the overall landscape was evaluated. The intent of this assessment is to evaluate habitat trends and not to calculate absolute habitat values.

TABLE 8—FORESTED HABITAT CHANGES IN ACRES [AND HECTARES] BETWEEN 2001 AND 2011 [1] [2]

2001–2011 Changes in Landcover within the Louisiana Black Bear Habitat Restoration planning area	Tensas River Basin	Upper Atchafalaya River Basin	Lower Atchafalaya River Basin	Total
Crops/Open Water/Other Non-Habitat	−1,833.78 [−742.11]	−2,857.42 [−1,156.36]	−4,047.68 [1,638.04]	−8,738.88 [−3,536.51]
Development	521.93 [211.22]	181.44 [73.43]	362.91 [146.86]	1,066.28 [431.51]
Potential Louisiana Black Bear Habitat	1,311.85 [530.89]	2,675.99 [1,082.94]	3,684.77 [1,491.18]	7,672.61 [3,105.00]

[1] As detected through satellite-based image classification produced at a spatial resolution of 30 meters within the Louisiana Black Bear Habitat Restoration Planning Area (ac[ha]). The classified image data are formally termed NLCD and are a national land cover product created by the Multi-Resolution Land Characteristics Consortium.

[2] NLCD habitat classes considered potentially suitable for the Louisiana black bear include: Deciduous forest, woody wetlands, mixed forest, evergreen forest, shrub/scrub, emergent herbaceous wetlands, and grassland/herbaceous.

Forested wetlands throughout the range of the Louisiana black bear habitat that are not protected through direct public ownership or easements on private lands will continue to receive protection through section 404 of the CWA and the ''Swampbuster'' provisions of the Food Security Act of 1985 as described in Factor D. Forested habitat trends in the LMRAV indicate that those regulations have provided adequate long-term protection of Louisiana black bear habitat since the listing of the Louisiana black bear in 1992. BLH forest loss in the LMRAV has been reversed with substantial gains in forested habitat being realized within both the LMRAV and the more restrictive HRPA.

To further evaluate forested wetland habitat trends within the HRPA, we employed a GIS analysis of landscape changes in which classified habitat types were monitored over time. To increase the confidence level of that analysis, we evaluated two independent sets of imagery (image dates were based on availability). The results of both methodologies (shown in Tables 7 and 8) demonstrate significant gains in potential bear habitat within the Louisiana black bear HRPA in recent decades. Those results are consistent with government agency records for forested habitat restoration through programs such as WRP, CRP, and wetland mitigation banking.

In 1992, when the Louisiana black bear was listed, the lack of habitat protection within the Atchafalaya River Basin was considered a significant component of the overall habitat loss threat to Louisiana black bears. The final rule that listed the Louisiana black bear as a threatened subspecies states that ''privately owned lands of the Atchafalaya River Basin south of U.S. 190 may remain exposed to threat from clearing and conversion to agricultural uses'' (Service 1992, p. 591). It further states that approximately one-half of the forests in the northern Atchafalaya River Basin and the Tensas River Basin are ''privately owned and under no protection through conservation easements or acquisition'' (Service 1992, p. 591). The Corps' Feasibility Study for the Atchafalaya Basin Floodway System projected the ''conversion of about 200,000 ac [81,000 ha] of forestland to agricultural land'' within the Lower Atchafalaya Basin Floodway (Corps 1982, p. 29). Partly in response to the threat of land-use conversion and the potential to affect its potential use as a floodway, the Corps' Atchafalaya Basin Multi-Purpose Plant authorized the acquisition of more than 300,000 ac (121,000 ha) of non-developmental easements on private lands and the fee-title purchase of more than 50,000 ac (20,000 ha) of land for conservation

purposes within the Atchafalaya Basin covering a substantial amount of land between the UARB and the LARB subpopulations (Corps 1983, p. 3). According to the most current Corps' data, approximately 94,000 ac (38,000 ha) of environmental easements have been purchased and 47,400 ac (19,000 ha) of land have been purchased in fee title for conservation purposes within the Basin (Lacoste 2014).

Developmental and environmental provisions of those easements prohibit the conversion of these lands from existing uses (*e.g.,* conversion of forested lands to cropland). Hunting and fishing camp development as well as timber harvests within the easement area must be conducted in compliance with associated easement restrictions. The current and future acquisition of land (via easement and fee-title purchase) for environmental purposes within the Basin have substantially reduced, and will continue to substantially reduce, the threat of habitat loss within this region of the State. In addition to those protections afforded to existing forested lands, the Service estimated that more than 35,000 ac (14,000 ha) of lakes and cypress-tupelo swamps would convert to higher elevation forests within the Basin by the year 2030 (LeBlanc et al. 1981, p. 65). This prediction is supported by more recent studies documenting increased and ''substantial'' sedimentation within the Basin, to the extent that certain areas exhibit ''the highest documented sedimentation rates in forested wetlands of the United States'' (Hupp et al. 2008, p. 139). Sedimentation results in increased forest floor elevation, and areas currently subject to frequent inundation will eventually reach elevations that are significantly less prone to flooding. Such elevation and hydrology changes are typically accompanied by a shift in vegetative community (reflective of the hydrologic conditions) resulting in habitats that are more suitable for bear foraging and habitation. These changes could ultimately expand the amount of suitable habitat for the UARB and LARB subpopulations, and improve the habitat linkage and genetic exchange between those subpopulations.

Although trends related to agricultural conversion of forested land have been reversed since the listing of the Louisiana black bear, another possible source of future habitat loss may be development associated with increased urbanization. To assess potential future habitat losses associated with development, we acquired population trend projections for all of the parishes within the Louisiana black bear HRPA. Population projections are available through year 2030; see Table 9. The Louisiana Parish Population Projections Series (2010–2030) were developed by Louisiana State University—Department of Sociology for the State of Louisiana, Office of Information Technology, Division of Administration (*http://louisiana.gov/Explore/Population_Projections/*).

TABLE 9—HUMAN POPULATION PROJECTIONS FOR LOUISIANA PARISHES WITHIN THE LOUISIANA BLACK BEAR HABITAT RESTORATION PLANNING AREA [1]

Parish	Population projection for 2015	Population projection for 2030	Number population change	Percent population change
Avoyelles	42,550	42,380	−170	−0.40
Catahoula	9,400	7,720	−1,680	−17.87
Concordia	17,160	13,930	−3,230	−18.82
East Carroll	7,600	5,960	−1,640	−21.58
Franklin	18,450	15,460	−2,990	−16.21
Iberia	75,990	75,450	−540	−0.71
Iberville	29,350	24,640	−4,710	−16.05
Madison	10,470	8,230	−2,240	−21.39
Pointe Coupee	21,560	19,380	−2,180	−10.11
Richland	19,260	17,460	−1,800	−9.35
St. Landry	94,420	98,080	3,660	3.88
St. Martin	54,250	57,000	2,750	5.07
St. Mary	47,410	40,390	−7,020	−14.81
Tensas	5,200	3,990	−1,210	−23.27
West Baton Rouge	22,540	21,070	−1,470	−6.52
West Carroll	10,750	9,190	−1,560	−14.51
West Feliciana	15,250	14,260	−990	−6.49
Total Projected Population Change over the Next 15 Years in the 17 Parishes Included in the Louisiana Black Bear HRPA			−27,020	
Average Percent Projected Population Change over the Next 15 Years in the 17 Parishes Included in the Louisiana Black Bear HRPA			−11.13%	

[1] The effects of Hurricanes Katrina and Rita were considered in all projections. Data represent the ''Middle Series'' scenario provided by the State of Louisiana, Office of Information Technology, Division of Administration (*http://louisiana.gov/Explore/Population_Projections*; downloaded on December 4, 2014).

Of the 17 parishes included within our Louisiana Black Bear Habitat Restoration Planning Area, 15 were projected to experience human population declines, including several that may experience substantial reductions (population declines of 10–23 percent). St. Landry and St. Martin Parishes were the only parishes within our analysis polygon with projected population growth over the next 15 years (though increases of only 3.88 and 5.07 percent, respectively, are expected). Significant portions of those parishes, including their largest urban areas where most future population growth and associated development would be expected, occur outside of the HRPA. In summary, based on our review of the available human population projections, it appears that there is an extremely low threat of future Louisiana black bear habitat loss from urban expansion or other types of development.

Summary of Factor A

Under current landscape conditions and forested habitat extent, the subpopulations within the Tensas and Upper Atchafalaya River Basins (specifically the TRB, UARB, and TRC) have an overall probability of persistence of approximately 100 percent (0.996; Laufenberg and Clark 2014, p. 2). This indicates that current available habitat is sufficient in quality and quantity to meet long-term survival requirements of the Louisiana black bear. Much of that habitat is protected and the extent of protected habitat continues to increase. Since the listing of the Louisiana black bear in 1992, voluntary landowner-incentive based programs and environmental regulations have not only stopped the net loss of forested lands in the LMRAV, but have resulted in significant habitat gains within both the LMRAV and the Louisiana black bear HRPA. We do not have any data indicating that future enrollment in voluntary landowner-incentive based programs would deviate significantly from recent historical trends.

A substantial amount of private land that supports Louisiana black bears is not encumbered by conservation easements. To conservatively estimate long-term habitat availability for the Louisiana black bear, those lands were excluded from much of our analyses (Tables 2, 3, 5, and 6). Those lands largely consist of forested habitats that are occasionally to frequently flooded and would not be suitable for conversion to agriculture or development without the construction of significant flood control features. The construction of such features or other activities would eliminate or reduce existing wetland habitat (including forested wetlands) and would be regulated via the Food Security Act of 1985 and/or section 404 of the CWA (refer to the Factor D section for further discussions on long-term protections afforded to private land through existing regulatory mechanisms). Following the listing of the Louisiana black bear, more than 460,000 ac (186,000 ha) of available and restored habitat is now held in Federal and State ownership, and a substantial portion of restored habitats are protected with perpetual non-developmental easements (through the WRP or wetland mitigation banking programs). Additionally, remnant and restored forested wetlands are protected through applicable conservation regulations (*e.g.,* section 404 of the CWA). We conclude that the present or threatened destruction, modification, or curtailment of its habitat or range does not constitute a substantial threat to the Louisiana black bear now and is not expected to in the foreseeable future.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Hunting During the Past 23 Years: In addition to habitat loss, prior to listing, Louisiana black bear numbers had been reduced throughout its range due to historical overexploitation (Barker et al. 2005, p. 3; Davidson et al. 2015, p. 3; St. Amant 1959, p. 42; Shropshire 1996, p. 20). For example, Keul (2007, p. i) reviewed historical literature on the black bear in East Texas and concluded the primary reason for loss of bears was due to aggressive and uncontrolled sport hunting. Currently, there are no legal commercial or recreational consumptive uses of Louisiana black bears. In the mid-1950s, the bear hunting season in Louisiana was temporarily closed due to low bear numbers (Davidson et al. 2015, p. 5). In spite of low numbers, bear hunting remained legal for short time periods in restricted areas of Louisiana until 1988, when the season was once again closed; it has not since reopened (Davidson et al. 2015, p. 5; Murphy 2015 personal communication). Additional protection was provided by the State listing of the Louisiana black bear (listed as threatened in Louisiana in 1992, endangered in Mississippi in 1984, and threatened in Texas in 1987) (refer to the Factor D section for further discussions on regulatory mechanisms).

Hunting in the Future: When this final rule goes into effect, the Louisiana black bear will be delisted and the protection afforded under the Act removed; however, the bear will remain protected under State laws within its range, and the State penalties for poaching or harming a bear will remain in place (see Factor D discussion) (Davidson et al. 2015, p. 57). These provisions include protections that would remain in place for all bear species. However, the legal harvest of bears, with approval from the LWFC, could occur in Louisiana based on demographic monitoring data (Davidson et al. 2015, p. 55). Based on the 2015 Louisiana black bear management plan, LDWF has the authority, capability, and biological data to implement careful hunting restrictions and population management (Davidson et al. 2015, p. 55). The LDWF will consider the possibility of a limited hunt only through a quota system allocated by management area, based on harvest models accounting for such things as demographics, reproductive vital rates, genetic characteristics, and the magnitude of human-caused mortality if those models that indicate a harvest would not compromise Louisiana black bear sustainability (Davidson et al. 2015, pp. 55–56). Baseline estimates would be established for every Louisiana black bear subpopulation, and population monitoring would be conducted (Davidson et al. 2015, p. 55). The baseline estimates and population monitoring will be based on the extensive data and monitoring methods developed by LDWF and described in the PDM plan. The LDWF Plan states that no regulated hunt would be allowed if it compromises Louisiana black bear sustainability (Davidson et al. 2015, p. 55). Harvest seasons cannot be set without LWFC approval and a public review and comment period. If approved, the harvest would be monitored by the LDWF, who would also reserve the right to revoke tags and/or cancel harvest seasons at any time (Davidson et al. 2015, p. 55).

Scientific Research and Public Safety: Bears are routinely captured and monitored for scientific and public safety purposes. During scientific research activities, there is a rare chance a bear could be accidentally killed during the capture process, but these activities are conducted via State permits and closely monitored by the State agencies to reduce the likelihood of such events. Since listing in 1992, in Louisiana there have been at least seven documented mortalities incidental to research activities (Davidson and Murphy 2015, pp. 1–2) and eight euthanizations due to management actions (*e.g.,* conditioning to anthropogenic food sources and subsequent human habitation; Davidson and Murphy 2015, p. 1). In Mississippi, two research-related deaths have occurred since listing (Rummel 2015, personal communication). However, this small number of mortalities occurring from research activities or removal due to public safety concerns does not represent a threat to the Louisiana black bear population.

Summary of Factor B

Recreational hunting is not a threat because there has been no existing functional mechanism to hunt or take bears in the States in their range since 1984 (refer to Factor E discussion for a discussion of mortality due to poaching). Also, when this rule goes into effect as specified above in **DATES**, bear species would remain protected in the States where the Louisiana black bear occurs through State regulations so there is no identified threat to the Louisiana black bear (refer to Factor D discussion for a discussion of regulations that will remain in place).

Therefore, the associated protections afforded to the American black bear due to similarity of appearance with the Louisiana black bear will no longer be necessary. The potential for a regulated restricted harvest of the Louisiana black bear population exists. The LDWF would not consider a harvest if existing data and simulated population dynamics models indicate a restricted hunt could potentially compromise Louisiana black bear sustainability. Louisiana's State management plan has measures in place to ensure the Louisiana black bear population would not be impacted. Based on these provisions, we do not have any evidence to suggest that overutilization is a threat to the Louisiana black bear.

C. Disease or Predation

When we listed the Louisiana black bear in 1992, we did not consider disease or predation to be limiting or threatening to the Louisiana black bear (57 FR 588, January 7, 1992). Several diseases and parasites have been reported for black bears but are not considered to have significant population impacts (Pelton 2003, p. 552). Limited information has been collected in the wild on diseases or parasites of black bears and causes of cub mortality (LeCount 1987, p. 75). Natural predation has been documented as a result of cannibalism by other bears and cub predation by other animals (LeCount 1987, pp. 77–78; Rogers 1987, p. 54; Pelton 2003, p. 552). Rogers (1987, pp. 53–54) documented four yearling bears that had been eaten (including one that had been eaten by its mother) but could not determine if they had been killed or scavenged and noted that small bears in poor condition would be more susceptible to predation. Cannibalism rates are not likely to regulate population growth (Rogers 1987, p. 55). It is unknown how many juvenile males are killed (rather than dispersed from the area) by adults, but that mortality probably has little effect on population growth due to the polygamous (having more than one mate) mating system of bears (Rogers 1987, p. 55). O'Brien's (2010, p. 17) literature review of black bear disease indicated bears may be susceptible to a number of parasitic, bacterial, and viral diseases but none are likely to cause high morbidity or mortality. Similarly, Pelton (1982, p. 511) listed the following diseases of black bears—liposarcoma and unidentified tumors, Elokomin fluke, rabies, and several bacterial and parasitic infestations—noting that none appeared to have significant effects on population regulation and LeCount (1987, p. 79) did not believe disease represented a substantial mortality factor for bear populations. Disease vectors are monitored by the LDWF whenever bears are handled. During the period extending from 1992 through 2014, researchers documented 11 black bear mortalities as a result of sickness or injury (Davidson and Murphy 2015, p. 1).

Summary of Factor C

We have no evidence or data indicating that disease or predation present a threat to the Louisiana black bear population.

D. The Inadequacy of Existing Regulatory Mechanisms

Overharvest was identified as one of the factors that resulted in low Louisiana black bear numbers. When this rule goes into effect, protections afforded by the Act will be removed; however, Louisiana black bears will remain protected from take by State laws throughout its historical range (Louisiana: Title 56, Chapter 8, Part IV. Threatened or Endangered Species; Mississippi: Title 49, Chapter 5–Fish, Game and Bird Protections and Refuges, Nongame Endangered Species Conservation; Texas: Title 5. Wildlife and Plant Conservation, Subtitle B. Hunting and Fishing, Chapter 68. Endangered Species).

Louisiana: As stated above, when this rule goes into effect, Louisiana black bears will remain protected from take (''take'' is defined in Louisiana law at Title 56:8(131): In its different tenses, as the attempt or act of hooking, pursuing, netting, capturing, snaring, trapping, shooting, hunting, wounding, or killing by any means or device), possession, and trade. The LDWF will be the sole agency responsible for Louisiana black bear management in Louisiana when the bear is delisted with publication of this final rule. The removal of the Louisiana black bear from protections under the Act will not alter or negate State laws or lessen penalties protecting the bear. In Louisiana, there are nine laws and regulations authorized under Louisiana Title 56 and Louisiana Title 76 regulating and setting violation classes for such actions as taking, possessing, and feeding fish and wildlife under their protection (Davidson et al. 2015, pp. 57–59). The LDWF Law Enforcement Division (LED) is responsible for enforcing State and Federal laws relative to fish and wildlife resources. In fiscal year 2012–2013, the LED conducted 226,427 patrol hours on land and made 730,942 contacts with the public, the majority of whom were in compliance with State and Federal wildlife and fisheries regulations (LDWF 2014a, p. 2). Agents issued more than 20,000 criminal citations and 5,700 warnings during this period, with the most common related to actions like fishing without a license, or not abiding by rules and regulations on wildlife management areas (see Factor E for a discussion of documented illegal poaching). In the last 10 years, the LDWF enforcement division has prosecuted seven black bear cases (Davidson 2015, personal communication; note—these represent prosecutions that are a different number from enforcement actions that they were not able to carry out to full prosecution). Operation Game Thief (OGT) is a nonprofit corporation program that provides cash awards to individuals who provided LDWF with information regarding a wildlife violation that result in an arrest. Since its inception in 1984, over 700 violators, convicted of numerous State and Federal charges, have been apprehended as a result of information provided by OGT informants (LDWF 2015, *http://www.wlf.louisiana.gov/enforcement/operation-game-thief*).

The LDWF Plan was finalized in 2015 (Davidson et al. 2015). The management objective for that Plan is to maintain a sustainable black bear population in suitable habitat and has the following key requirements: sufficient habitat available within dispersal distance, maintaining connectivity among subpopulations, and continued monitoring of subpopulation demographics (Davidson et al. 2015, p. 2). The LDWF identified three bear management actions it will implement: (1) Continued public education and outreach; (2) minimizing human–bear conflicts; and (3) bear harvest as a management action if such actions do not impede sustainability of bears (as determined by the ongoing population monitoring program as described in the LDWF Plan (Davidson et al. 2015, pp. 32–33, 55–56).

Mississippi: The Mississippi Department of Wildlife, Fisheries, and Parks will be the agency responsible for black bear management in Mississippi when this rule goes into effect. MDWFP developed a management plan entitled ''Conservation and Management of Black Bears in Mississippi'' in 2006 (Young 2006). The purpose of that plan was to: (1) Serve as a basis for information about black bears in Mississippi and (2) outline protocols and guidelines for dealing with the continued growth of black bear populations in Mississippi (Young 2006, p. 6). That plan covers black bear habitat management and restoration needs,

public education, conflict management, and research needs (Young 2006, pp. 25–36).

Texas: The TPWD will be the agency responsible for black bear management in Texas when this rule goes into effect. An East Texas Black Bear Conservation and Management Plan was developed in 2005 (Barker et al. 2005). Its purpose is to facilitate the conservation and management of black bears in East Texas through cooperative efforts. Broadly described components of the plan include: Habitat management and enhancement, public education, conflict management, and research needs (Barker 2005, pp. 31–41). No Louisiana black bear breeding populations are believed to currently exist in Texas; however, this Plan contains a framework to improve habitat and provide possibilities for future bear conservation in the State.

State-owned Lands: The LDWF is responsible for administering the many State-owned wildlife management areas (WMAs) in Louisiana. The WMAs within the HRPA include Big Lake WMA (19,587 ac (7,927 ha)), Buckhorn WMA (11,238 ac (4,548 ha)), Richard K. Yancy WMA (73,433 ac (29,717 ha)), and Grassy Lake WMA (13,214 ac (5,348 ha)), Sherburne WMA and the adjacent (State-managed) Corps-owned Bayou Des Ourses Area (29,883 ac (12,093 ha)), and Attakapas Island WMA (26,819 ac (10,854 ha)). Those areas are managed according to the LDWF Master Plan for Wildlife Areas and Refuges (LDWF 2014b). The vision identified is to build an interconnected system of natural areas and open spaces (a green infrastructure) consisting of core areas (*e.g.,* NWRs and WMAs), and corridors to provide essential habitat to state and federally listed endangered and threatened species as well as other species important to ecosystem function (LDWF 2014b, p. 18). Implementation of the strategic plan includes potential land acquisition in support of threatened and endangered species, cooperating with the Service in the recovery of listed species, and restoration of BLH forest habitat (LDWF 2014b, p. 16).

The MDWFP is responsible for administering the many State-owned wildlife management areas in Mississippi. The WMAs within the MAVU include Leroy Percy WMA (2,664 ac (1,078 ha)), Shipland WMA (4,269 ac (1,728 ha)), Copiah County WMA (6,830 ac (2,764 ha)), and O'Keefe WMA (5,918 ac (2,395 ha)). Those areas are managed according to the MDWFP Strategic Plan (MDWFP undated, p. 17) and are actively managed to provide for a diversity of wildlife species. The management goals are to manage agency-owned lands for the long-term conservation of wildlife habitat and for multiple user groups to enjoy diverse outdoor recreational opportunities that are consistent with natural resource management goals.

National Wildlife Refuges: The NWRs shown in Table 10 occur within the Louisiana HRPA and the Mississippi MAVU. The National Wildlife Refuge System Improvement Act of 1997 requires that every refuge develop a Comprehensive Conservation Plan (CCP) and revise it every 15 years, as needed. CCPs identify management actions necessary to fulfill the purpose for which a NWR was enacted. CCPs allow refuge managers to take actions that support State Wildlife Action Plans, improve the condition of habitats, and benefit wildlife. The current generation of CCPs will focus on individual refuge actions that contribute to larger, landscape-level goals identified through the Landscape Conservation Design process. CCPs address conservation of fish, wildlife, and plant resources and their related habitats, while providing opportunities for compatible wildlife-dependent recreation uses.

An overriding consideration reflected in these plans is that fish and wildlife conservation has first priority in refuge management, and that public use be allowed and encouraged as long as it is compatible with, or does not detract from, the Refuge System mission and refuge purpose(s).

Each NWR within the Louisiana black bear range addresses management actions for maintaining appropriate bear habitat on their lands and are listed below: Tensas River NWR (Service 2009a, pp. 77–78); Bayou Teche NWR (Service 2009b, p. 34); Atchafalaya NWR (Service 2011, pp. 68–75); Grand Cote NWR (Service 2006a, p. 54); Upper Ouachita NWR (Service 2008a, pp. 85–86); Lake Ophelia NWR (Service 2005a, pp. 49–50); Bayou Cocodrie NWR (Service 2004, p. 40); Hillside, Matthews Brake, Morgan Brake, Panther Swamp, Theodore Roosevelt, and Yazoo NWRs (Service 2006c, pp. 92–93); Coldwater and Tallahatchie NWRs (Service 2005b, pp. 78–79); and St. Catherine Creek NWR (Service 2006b, p. 58).

TABLE 10—EXTENT OF NWR LANDS OCCURRING WITHIN THE LA HRPA AND THE MS MAVU

	Acres	Hectares
Louisiana NWRs		
Atchafalaya NWR	15,764	6,379
Bayou Cocodrie NWR	15,149	6,131
Bayou Teche NWR	9,004	3,644
Tensas River NWR	77,956	31,548
Lake Ophelia NWR	17,427	7,052
Louisiana Total	*135,300*	*54,754*
Mississippi NWRs		
Coldwater River NWR	283	115
Hillside NWR	15,498	6,272
Matthews Brake NWR	2,393	968
Morgan Brake NWR	7,585	3,070
Panther Swamp NWR	40,859	16,535
St. Catherine Creek NWR	25,384	10,273
Tallahatchie NWR	24	10
Theodore Roosevelt NWR	6,019	2,436
Yazoo NWR	13,050	5,281
Mississippi Total	*111,095*	*44,959*
TOTAL FOR BOTH STATES	246,395	99,713

Morganza and Atchafalaya Basins: The lands in the Atchafalaya Basin and Morganza Floodway are prominent features of the Mississippi River and tributaries flood control project authorized by the Flood Control Act of May 15, 1928. In 1985, the Corps enacted the Atchafalaya Basin Multipurpose Plan with the purpose of protecting south Louisiana from Mississippi River floods and retaining and restoring the unique environmental features and long-term productivity of the Basin. The purpose of the Morganza Floodway is to provide a controlled floodway to divert Mississippi River flood waters into the Atchafalaya basin during major floods on the Mississippi River. The Corps has acquired fee title ownership and permanent easements of approximately 600,000 ac (200,000 ha) for perpetual flowage, developmental control and environmental protection rights. The developmental control, and environmental protection easement prohibits conversion of land from existing uses (*e.g.,* conversion of forested lands to cropland). Landowners may harvest timber only in compliance with specified diameter-limit and species restrictions. The construction or placement of new, permanently habitable dwellings or other new structures, including camps, except as approved by a Corps real estate camp consent and in accordance with Corps restrictions, is prohibited on the easement lands in the Atchafalaya Basin.

NRCS Administered Permanent Conservation Easements on Private Lands: The WRP is a voluntary program that provides eligible landowners the opportunity to address wetland, wildlife habitat, soil, water, and related natural resource concerns on private lands in an environmentally beneficial and cost-effective manner. The WRP is authorized by 16 U.S.C. 3837 *et seq.,* and the implementing regulations are found at 7 CFR part 1467. The first and foremost emphasis of the WRP is to protect, restore, and enhance the functions and values of wetland ecosystems to attain habitat for migratory birds and wetland-dependent wildlife, including federally listed threatened and endangered species. The WRP is administered by the NRCS (in agreement with the Farm Service Agency) and in consultation with the Service and other cooperating agencies and organizations. The Service participates in several ways, including assisting NRCS with land eligibility determinations; providing the biological information for determining environmental benefits; assisting in restoration planning such that easement lands achieve maximum wildlife benefits and wetland values and functions; and providing recommendations regarding the timing, duration, and intensity of landowner-requested compatible uses.

Participating landowners may request other prohibited uses such as haying, grazing, or harvesting timber. When evaluating compatible uses, the NRCS evaluates whether the proposed use is consistent with the long-term protection and enhancement of the wetland resources for which the easement was established and Federal funds expended. Requests may be approved if the NRCS determines that the activity both enhances and protects the purposes for which the easement was acquired and would not adversely affect habitat for migratory birds and threatened and endangered species. NRCS retains the right to cancel an approved compatible use authorization at any time if it is deemed necessary to protect the functions and values of the easement. According to the authorizing language (16 U.S.C. 3837a(d)), compatible economic uses, including forest management, are permitted if they are consistent with the long-term protection and enhancement of the wetland resources for which the easement was established. Should such a modification be considered, NRCS would consult with the Service prior to making any changes.

According to the WRP Manual, prior to making a decision regarding easement modification, the NRCS must:

(1) Consult with the Service;

(2) evaluate any modification request under the National Environmental Policy Act (NEPA);

(3) investigate whether reasonable alternatives to the proposed action exist; and

(4) determine whether the easement modification is appropriate considering the purposes of WRP and the facts surrounding the request for easement modification or termination.

Any WRP easement modification, must:

(1) Be approved by the Director of the NRCS in consultation with the Service (the National WRP Program Manager must coordinate the consultation with the Service at the national level);

(2) not adversely affect the wetland functions and values for which the easement was acquired;

(3) offset any adverse impacts by enrolling and restoring other lands that provide greater wetland functions and values at no additional cost to the government;

(4) result in equal or greater ecological (and economic) values to the U.S. Government;

(5) further the purposes of the program and address a compelling public need; and

(6) comply with applicable Federal requirements, including the Act, NEPA (42 U.S.C. 4321 *et seq.*), Executive Order 11990 (Protection of Wetlands), and related requirements.

The WRP manual states that ''NRCS will not terminate any of its easements, except for a partial termination that may be authorized as part of an easement modification request . . . in which additional land will be enrolled in the program in exchange for the partial termination.'' Therefore, based on our assessment of these requirements, the termination of an entire WRP easement, or a reduction in the total acreage of WRP lands via authorized modifications, appears highly improbable. In addition, we have partnered with NRCS to administer WRP in Louisiana since the inception of that program in 1992. Following a comprehensive review of our local files and a search of national WRP records, we have been unable to find a single instance of a WRP easement being terminated in the history of that program (which includes nearly 10,000 projects on approximately 2 million ac (800,000 ha) of land nationwide).

Food Security Act Regulations: The Food Security Act of 1985 included Highly Erodible Land Conservation and Wetland Conservation Compliance (*i.e.,* ''Swampbuster'') provisions to deter forested wetland loss by withholding many Federal farm program benefits from producers who convert wetland areas to agricultural purposes. Persons who convert a wetland and make the production of an agricultural commodity possible are ineligible for NRCS program benefits until the functions of that wetland were restored or mitigated. According to the NRCS, those wetland conservation provisions have sharply reduced wetland conversion for agricultural uses (*http://www.nrcs.usda.gov/wps/portal/nrcs/detailfull/national/programs/alphabetical/camr/?cid=stelprdb1043554*).

Partners for Fish and Wildlife Act (PFWA) Regulations: The PFWA of 2006 provides for the restoration, enhancement, and management of fish and wildlife habitats on private land through the Partners for Fish and Wildlife Program, a program that works with private landowners to conduct cost-effective habitat projects for the benefit of fish and wildlife resources in the United States. This program

provides technical and financial assistance to private landowners to conduct voluntary projects to benefit Federal trust species by promoting habitat improvement, habitat restoration, habitat enhancement, and habitat establishment, as well as technical assistance to other public and private entities regarding fish and wildlife habitat restoration on private lands. Numerous projects providing direct habitat benefits for the Louisiana black bear have been accomplished via the Partners for Fish and Wildlife Program. One such example involves a 120-ac (49-ha) site within Louisiana black bear breeding and critical habitat. Because it is also located within the Morganza Floodway (which is encumbered with a Corps flowage easement), the site was ineligible for most other habitat restoration programs such as WRP. Prior to enrollment into the Partners for Fish and Wildlife Program, that site was maintained as a marginally productive agricultural field. In 2002, through the planting of a diverse mixture of over 36,000 native seedlings, the entire site was restored to a bottomland hardwood forest, reducing fragmentation and providing habitat benefits for a variety of species including the Louisiana black bear.

Clean Water Act Regulations: For the first several years following the passage of the CWA (enacted as the Federal Water Pollution Control Act Amendments of 1972), the Corps regulated only activities that clearly constituted a deposition of dredge and fill material in wetlands or other waters of the United States. Subsequently, large-scale clearing of BLH wetlands was largely unregulated during this era (Houck 2012, pp. 1495–1503).

In response to the considerable wetland habitat conversion throughout the LMRAV, and fueled by the ongoing clearing of the Lake Long tract, the Avoyelles Sportsmen's League and partnering organizations sued the Corps and EPA for allegedly failing to properly enforce section 404 of the CWA. On March 12, 1981, a U.S. District Court (Western District of Louisiana—Alexandria Division) ruled in favor of the plaintiffs with a decision that would substantially alter the regulatory scope and enforcement authority of the Corps and EPA under the CWA. The decision noted: (1) The term ''wetland vegetation'' was more broadly defined, which would ultimately result in the reclassification of many areas that were previously considered non-wetland (such as the Lake Long tract), and (2) the Corps' and EPA's jurisdiction were expanded beyond the limited scope of dredge and fill regulation to include all activities that may result in the placement or redistribution of earthen material, such as mechanized land clearing (*Avoyelles Sportsmen's League, Inc.* v. *Alexander,* 511 F. Supp. 278, (W.D. La. 1981)).

To summarize, though the CWA was enacted in 1972, it was a full decade later before the authority and associated protection that it affords to forested wetlands was legally recognized. In the interim, and in the decade prior, the BLH forests of the LMRAV were decimated (Creasman et al. 1992; Haynes 2004, pp. 170, 172) ultimately constituting the primary threat that warranted the listing of the Louisiana black bear (Service 1992, p. 592). After the new legal protection of forested wetlands defined via the Avoyelles Sportsmen's League rulings on CWA authority, the trend of BLH forest loss in the LMRAV was reversed. Available data regarding the extent of forested wetlands in the LMRAV (*e.g.,* image classification of digital orthophoto quarter quadrangles [DOQQs], analysis of NLCD data, and government agency records for forested habitat restoration in the LMRAV [via programs such as WRP, CRP, and wetland mitigation banking (see below)] clearly demonstrate that trend reversal and suggest that the long-term protection of forested wetlands (largely absent prior to the Avoyelles Sportsmen's League rulings of the early 1980s) are now being realized (See discussion under Factor A).

Mitigation banking has been an additional factor responsible for alleviating wetland losses associated with the Corps' wetland regulatory program. Persons obtaining a wetland development permit from the Corps (pursuant to section 404 of the CWA and/or section 10 of the Rivers and Harbors Act) that authorizes impacts to waters of the United States, including wetlands, are typically required to compensate for wetland losses in a manner that ensures project implementation would result in no net loss of wetlands. Mitigation banks are intended to provide a mechanism to assist permit applicants, who may be unable or unwilling to implement an individual compensatory mitigation project, in complying with those mitigation requirements. The design and implementation of compensatory wetland mitigation projects (particularly wetland mitigation banks) are accomplished through a coordinated effort among the Corps, the Service, and other State and Federal environmental resource management agencies, and are individually authorized by a mitigation banking instrument (MBI). With a high degree of specificity, MBIs mandate restoration practices, contingencies and remedial actions, long-term monitoring and maintenance, adherence to performance standards, financial assurances, and the establishment of perpetual conservation servitudes. Without exception, wetland mitigation banks are restored and managed with the intent of providing the full array of wetland functions and values (such as providing habitat for a multitude of wildlife species, which typically includes the Louisiana black bear).

For permitted projects that would impact Louisiana black bear habitat, the Service routinely requests that any associated wetland mitigation project (or wetland mitigation bank option) be sited in a location, and conducted in a manner, that would result in the restoration of suitable Louisiana black bear habitat including all of the various functions that would be potentially impacted by the corresponding development project (*e.g.,* travel corridors or breeding habitat). The quality/functionality of habitat restored through such conservation efforts, coupled with typical compensatory mitigation ratios, outweighs any loss resulting from individual development projects.

Our analysis of impacts and mitigation associated with the Corps' wetland regulatory program suggests that substantially more forested habitat is restored through compensatory wetland mitigation than is eliminated via permitted wetland development projects (see Table 11). That analysis was conducted over a 5-year period spanning July 1, 2009, through July 31, 2014. According to personnel within the Corps' wetland regulatory program, a standardized electronic database to track permitted projects was not developed until 2004, and was not reliably used by permit analysts until 2009. Therefore, there is no reliable database to query such records prior to that time. Note that the corresponding table displays permitted wetland losses and approved wetland mitigation banks that would be available to offset those losses. We were unable to obtain the baseline data necessary to calculate a loss-to-gain wetland habitat ratio. However, personnel within the Corps' wetland regulatory program evaluated their records for specific mitigation requirements associated with each permitted activity and estimated that the ratio of wetland habitat gains from compensatory mitigation to wetland habitat losses attributed to permitted projects is 6:1 (Stewart 2014).

TABLE 11—IMPACTS (POSITIVE/NEGATIVE) TO POTENTIALLY SUITABLE LOUISIANA BLACK BEAR HABITAT RESULTING FROM PERMITTED LOSSES AND MITIGATION GAINS THROUGH THE CORPS' WETLAND REGULATORY PROGRAM [1]

Impacts	New Orleans District	Vicksburg District	Total
Number of Permits Issued via the Corps' Wetland Regulatory Program for Projects in Potentially Suitable Bear Habitat Within the Louisiana Black Bear Habitat Restoration Planning Area			
Projects Resulting in Permanent Impacts	137	79	216
Projects Resulting in Temporary Impacts	411	32	443
Total	548	111	659
Acres of Potentially Suitable Bear Habitat within the Louisiana Black Bear Habitat Restoration Planning Area Impacted/Lost by Projects Permitted via the Corps' Wetland Regulatory Program			
Permanent Impacts	221.8	37.8	259.6
Temporary Impacts	262.7	10.0	272.7
Total	484.5	47.8	532.3
Mitigation	New Orleans District	Vicksburg	Total
Number of Compensatory Wetland Mitigation Banks Approved by the Corps within the Louisiana Black Bear Habitat Restoration Planning Area	7	7	14
Acres of All Habitats Restored, Enhanced, and Preserved via Wetland Mitigation Banking within the Louisiana Black Bear Habitat Restoration Planning Area	2,633.8 [1,065.86]	2,630.7 [1,064.61]	5,264.5 [2,130.47]
Acres of Forested Habitat Restored via Wetland Mitigation Banking within the Louisiana Black Bear Habitat Restoration Planning Area	2,323.3 [940.2]	2,538.7 [1,027.3]	4,862.0 [1,967.6]
Net Acres of Forested Habitat Gained	1,838.8 [744.2]	2,490.9 [1,008.0]	*4,329.7 [1752.2]*

[1] Analysis conducted by the Service's Louisiana Field Office based on regulatory program data (from a 5-year period spanning July 1, 2009 through July 31, 2014) provided by the New Orleans and Vicksburg Corps Districts.

The results of our GIS landscape analysis indicate that the recent (post 1990) positive trends in forested habitat extent within the LMRAV (as documented above) have also been realized within our more focused HRPA. Regardless of our methodology (1-meter DOQQ analysis or 30-meter NLCD analysis), the analyses yielded similar results. There has been a significant gain in the acreage of potential Louisiana black bear habitat within the HRPA since the 1992 listing of the Louisiana black bear (see Tables 7 and 8). Our review of available literature and research, in conjunction with our own analyses, suggest that those gains are the result of both voluntary private land restoration programs (mainly CRP and WRP) and wetland regulatory mechanisms (primarily section 404 of the CWA).

The documented trends in Louisiana black bear population growth and population viability validate the assertion that existing environmental regulatory mechanisms and conservation measures are sufficient for the Louisiana black bear. We do not have any other data indicating that current regulatory mechanisms are inadequate to provide long-term protection of the Louisiana black bear and its habitat. Accordingly, we conclude that existing regulatory mechanisms are adequate to address the threats to the Louisiana black bear posed by the other listing factors, especially habitat loss.

Summary of Factor D

Louisiana black bears are currently, and will continue to be, protected from taking, possession, and trade by State laws throughout their historical range. Regulatory mechanisms that currently protect Louisiana black bear habitat through conservation easements or ownership by State and Federal agencies will remain in place (*e.g.,* WRP tracts, WMAs, NWRs, FmHAs, and Corps easements in the Atchafalaya and Morganza Floodways). Forested wetlands throughout the range of the Louisiana black bear habitat that are not publicly owned or encumbered by conservation easements will continue to receive protection through section 404 of the CWA and the Swampbuster provisions of the Food Security Act of 1985. Forested habitat trends in the LMRAV indicate that those regulations have provided adequate long-term protection of Louisiana black bear habitat since the listing of the Louisiana black bear in 1992. Specifically, the trajectory of BLH forest loss in the LMRAV has not only improved, but has been reversed with substantial gains in forested habitat being realized within both the LMRAV and the more restrictive HRPA. Therefore, we find that existing regulatory mechanisms are adequate to address the threats to the Louisiana black bear posed by the other listing factors.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Hybridization: At the time the Service listed the Louisiana black bear, we discussed what appeared to be a threat from hybridization resulting from the introduction of bears from Minnesota (57 FR 588, January 7, 1992). We noted that the threat from hybridization at the subspecies level might not be a cause for significant concern and acknowledged that the subpopulations in the TRB and UARB were possibly intraspecifically hybridized and mostly unchanged (genetically) because of the low probability of reproductive isolation since they were relatively close geographically. Reproductive isolation is required for an extended period for

the evolutionary process of differentiation to operate (57 FR 588, January 7, 1992). Prior to listing, Pelton (1989, p. 5) argued there was considerable evidence that a pure strain of *U. a. luteolus* subspecies no longer existed because: (1) There was a broad continuum of habitat between the TRB and UARB populations (based on Weaver's [1990] maps); (2) habitat corridors still existed [1989] between those areas allowing for continued dispersal; (3) bear releases in Arkansas resulted in widespread dispersals; (4) the presence of narrow dispersal corridors through Arkansas following such rivers as the Ouachita and Saline Rivers were still being used by transplant offspring and evidence of use had been observed all the way to the Louisiana border; and (5) long-distance natural movements of bears had been documented. Based on historical descriptions of the UARB release area, we believe it is very likely there was no known breeding population in that area at the time of the releases; however, it is not determinable whether that area was ''bear-free'' as supposed by the commenter. Subsequent taxonomic studies conducted since listing have revealed differing results on the extent of hybridization.

Our knowledge of bear behavior coupled with the habitat in existence at that time would support the presence of males in or traveling through that area. This, in combination with the findings presented by Laufenberg and Clark (2014, pp. 60–63), would support our assumption that the UARB is not strictly composed of Minnesota bears and our inclusion of that subpopulation in our recovery assessment.

The most recent unified analyses of genetic data by Laufenberg and Clark (2014, pp. 50–58) found varying levels of genetic structure among pairs of subpopulations and identified five genetically distinct groups (Laufenberg and Clark 2014, p. 60) and an affinity between Minnesota and UARB subpopulations (Laufenberg and Clark 2014, p. 84).

The analyses concluded that differentiation between the Louisiana black bear subpopulations within the LMRAV can be explained as the result of restricted gene flow, accelerated genetic drift, and differing levels of genetic introgression as a result of the Minnesota introductions (Laufenberg and Clark 2014, p. 84). The results also show some interchange of Louisiana black bear subpopulations with Arkansas populations and found affinities to the WRB subpopulation and Minnesota bears. The level of genetic affinity or differentiation between the Louisiana black bear subpopulations and the WRB subpopulation and Minnesota bears is not sufficient evidence for determining taxonomic status (Laufenberg and Clark 2014, p. 85). Thus, while recent genetic analyses results did indicate the existence of some effects of the Minnesota reintroductions (as postulated at listing; the data do not indicate that the UARB subpopulation is completely composed of Minnesota bears), those effects do not seem to be great enough to pose a significant threat to this subspecies' genetic integrity by hybridization as speculated at listing. In fact, genetic exchange that is occurring among bears from Louisiana, Mississippi, and Arkansas can be considered a positive genetic and demographic contribution to the Louisiana black bear (Laufenberg and Clark 2014, p. 85) (see the Distribution and Taxonomy section).

Human-Related Mortality: Davidson et al. (2015, p. 15) described the Louisiana black bear as susceptible to drowning, maternal abandonment of cubs, and climbing accidents, but the remaining leading cause of black bear mortalities is human-related (Pelton 2003, p. 552; Simek et al. 2012, p. 164; Laufenberg and Clark 2014, p. 76). Increased movement during food shortages substantially increases their chances for human encounters and human-related mortality (Rogers 1987, p. 436; Pelton 2003, p. 549). These mortality rates are suspected to be greater for yearling and subadult black bear males dispersing from the family unit, and are probably the result of starvation, accidents (*e.g.,* vehicular collisions), and poaching.

Vehicular Collisions/Deaths and Bears Taken for Management Reasons: Since listing in 1992, at least 239 black bears have been documented as killed in vehicular collisions in Louisiana (USGS et al. 2014) and 11 bears have been killed in Mississippi (Rummel 2015, personal communication), making this the leading known cause of death for Louisiana black bears (Davidson et al. 2015, p. 15). In spite of these numbers, black bear populations have increased over this same time period. Black bear population growth in conjunction with urban expansion and habitat fragmentation has resulted in the increased availability of anthropogenic food sources (Davidson et al. 2015, p. 15). Since listing, the LDWF and Service have recognized the need for rapid response to human-bear conflicts in order to maintain social tolerance by the communities where bears and people coexist and to prevent habituation of nuisance behavior by bears. However, conflict management of black bears exhibiting nuisance behavior can result in mortality and, in the rare case where a bear cannot be left in the wild (as a result of nuisance behavior resulting in a demonstrable threat to human safety), it may be captured and placed into permanent captivity by management agencies or humanely euthanized. LDWF personnel have euthanized 15 black bears since 1992 (Davidson et al. 2015, p. 15).

Illegal Killing: The listing rule for the Louisiana black bear (57 FR 588, January 7, 1992) identified illegal killing as a potential threat to this species that could not be ruled out until better data could be obtained. The majority of illegal killings have been the result of direct poaching; however, there have been 4 documented mortalities incidental to the use of snares in Louisiana for nuisance animal control (Davidson and Murphy 2015, p. 1). Since 1992, there have been 33 documented illegal bear killings in Louisiana (Davidson and Murphy 2015, p. 1) and 9 documented in Mississippi (Rummel 2015, personal communication). If all other documented deaths of unknown causes (40) are assumed to be the result of illegal taking, a total of 75 bears have been documented as killed since listing (Davidson and Murphy 2015, p. 1). Taken altogether, since Federal listing, approximately 350 individual Louisiana black bears are known to have been killed as a result of anthropogenic conflicts in Louisiana (USGS et al. 2014). In Mississippi, 22 bears have been reported killed (Rummel 2015, personal communication). In summary, an average of approximately 15 bears per year have succumbed to anthropogenic causes of mortality since 1992 in Louisiana (Davidson and Murphy 2015, p. 1) and approximately 1 bear per year in Mississippi (Rummel 2015, personal communication). The total annual documented non-road kill mortality of black bears in Louisiana has remained at a low level from 1991 through 2014 (Davidson and Murphy 2015, p. 2). Documented annual road kill mortalities began increasing about 2009 and have remained relatively high, primarily along the I–20 corridor (Davidson and Murphy 2015, pp. 2–3), coinciding with the time when the TRB bear population was increasing.

Hurricanes and Tropical Storms: Hurricanes and tropical storms can affect forested habitat throughout the LMARV. The potential effects of any tropical storm event will depend on where it makes landfall and what area is receiving the brunt of the wind and force of the cyclone. These storms can also have additional negative effects to

the LARB subpopulation due to its proximity to the coast; however, these effects are deemed to be a low magnitude because of the Louisiana black bear's ability to quickly adapt and move while using a variety of habitats. Murrow and Clark (2012) studied the impacts of Hurricanes Katrina and Rita on habitat of the LARB subpopulation. They did not detect in their research any significant direct impacts to forested habitat. For example, suitable bear habitat was found to have decreased only by 0.9 percent (from 348 to 345 square kilometers (km^2)) within the occupied study area and only 1.4 percent (from 34,383 to 33,891 km^2) in the unoccupied study area following the hurricanes. The analysis showed that bear habitat was not significantly degraded by the hurricanes and the effects of wind and storm surge that came with them. Hurricane Katrina represents the highest recorded storm surge in the Southeast. If hurricane events occur during the 7-year PDM period, we will assist our State partners in monitoring the possible effects of these hurricanes (*e.g.,* vegetation changes from flooding).

Climate Change: The Intergovernmental Panel on Climate Change (IPCC) concluded that warming of the climate system is unequivocal (IPCC 2014, p. 3). The more extreme impacts from recent effects of climate change include heat waves, droughts, accelerated snow and ice melt including permafrost warming and thawing, floods, cyclones, wildfires, and widespread changes in precipitation amounts (IPCC 2014, pp. 4, 6). Due to projected climate change-associated sea level rise, coastal systems and low-lying areas will increasingly experience adverse impacts such as submergence, coastal flooding, and coastal erosion (IPCC 2014, p. 17). In response to the ongoing effects of climate change, many terrestrial, freshwater, and marine species have shifted their geographic ranges, seasonal activities, and migration patterns (IPCC 2014, p. 4). Species that are dependent on specialized habitat types or are limited in distribution will be most susceptible to future impacts of the effects of climate change. Many species will be unable to relocate rapidly enough to keep up with their climate niche under the effects of mid- and high-range rates of climate change. The climate velocity (the rate of movement of the climate across the landscape) will exceed the maximum velocity at which many groups of organisms, in many situations, can disperse or migrate, under certain climate scenarios. Populations of species that cannot migrate at effective speeds will find themselves in unfavorable climates, unable to reach areas of potentially suitable climate. Species with low dispersal capacity (such as plants, amphibians, and some small mammals) could be especially vulnerable (IPCC 2014, p. 275).

Biological and historical evidence suggests that the Louisiana black bear is well-adapted to endure the projected effects of climate change throughout its range. As stated above, Louisiana black bears inhabit more than 1.4 million ac (approximately 576,000 ha) of habitat in all or portions of 21 Louisiana parishes and 6 Mississippi counties. It is a generalist that uses a variety of habitat types within and adjacent to the LMRAV, including forested wetlands, scrub-shrub, marsh, spoil banks, and upland forests (including upland hardwoods and mixed pine-hardwood forests). On a larger scale and to make a comparison to the Louisiana black bear's capability to use many habitat types, American black bears (in the other portions of the United States and Canada) are known to inhabit vast mountainous areas, coastal plains, chaparral and pinyon-juniper woodlands (*Pinus* spp., *Juniperus* spp.), oak-hickory forests (*Quercus* spp., *Carya* spp.), upland and bottomland hardwood forests, redwood-sitka spruce-hemlock woodlands (*Sequoia sempervirens-Picea sitchensis-Tsuga* spp.), and ponderosa pine forests (*Pinus ponderosa*), to name only a few (Pelton 2003, pp. 549–550). There is a vast array of habitats and associated food sources available for black bears throughout their current range, and bears have demonstrated adaptability and mobility in finding such areas. Therefore, it is highly unlikely that currently projected climate change scenarios would impact black bear habitat to the extent that the Louisiana black bear would be unable to locate suitable habitats (in both quality and quantity) to maintain a viable population for the foreseeable future.

The Louisiana black bear is capable of efficiently traversing the landscape, and individual bears incorporate relatively large expanses of habitat within their respective home ranges (which varies based on gender and subpopulation). Home ranges vary from approximately 1,000 ac [400 ha] to 84,000 ac [34,000 ha] (Beausoleil 1999, p. 60; Wagner 1995, p. 12). Numerous long-distance movements of the Louisiana black bear have been confirmed, and there is documented evidence of dispersal throughout most of their current range (Figure 1 in Davidson et al. 2015, p. 24). In the event habitat is lost due to the effects of climate change effects (such as extreme flooding or drought), Louisiana black bears have demonstrated the ability not only to move at a relatively rapid pace to more suitable areas, but also to adapt to a wide range of potential habitats and food sources.

Habitat supporting the LARB subpopulation (population range from 136 to 194 adult bears (Laufenberg and Clark 2014, p. 45)) of the Louisiana black bear is more vulnerable to the effects of climate change than other subpopulations due to its occurrence within low-elevation coastal habitats that are susceptible to flooding from extreme rainfall events, significant tidal surges (including those associated with tropical weather systems), and riverine flooding. That subpopulation occurs entirely within the Louisiana Coastal Zone, which was delineated by the Louisiana Department of Natural Resources—Office of Coastal Management (LDNR–OCM) based on storm surge data, geology, elevation, soils, vegetation, predicted subsidence/sea level rise, and boundaries of existing coastal programs (LDNR–OCM 2010, pp. 54–60). Based on the current sea level rise estimates (*http://tidesandcurrents.noaa.gov/sltrends/sltrends.shtml*), we do not anticipate a complete and persistent inundation of the coastal zone of Louisiana within the next 100 years. Any such sea level rise impacts are likely to be ameliorated to some extent by the projected successional changes in the Atchafalaya Basin that would eventually convert many of its swamps to BLH forest, thus improving the suitability of that habitat for the Louisiana black bear (*e.g.,* facilitating its dispersal to higher elevation habitats if necessary for survival).

The Service estimated that more than 35,000 ac (14,000 ha) of lakes and cypress-tupelo swamps would convert to higher elevation forests within the ARB by the year 2030 (LeBlanc et al. 1981, p. 65). This prediction is supported by studies documenting increased sedimentation within the Basin (Hupp et al. 2008, p. 139). Sedimentation increases elevation, and areas that were once wet will be naturally colonized with vegetation that will ultimately result in upland forests (Hupp et al. 2008, p. 127) that are more suitable for bear foraging and habitation. Even if the most conservative models were exceeded and the entire coastal zone of Louisiana was subject to permanent inundation in the future (prior to projected habitat changes in the Atchafalaya Basin), only a relatively small proportion of Louisiana black bears and their habitat would be affected. Specifically, more than 80

percent of the Louisiana black bear HRPA, more than 90 percent of Louisiana black bear breeding habitat, 85 percent of the area described as Louisiana black bear critical habitat, and 70 percent of the Louisiana black bear population occur outside of the Louisiana Coastal Zone.

A specific illustration of the resilience of the Louisiana black bear to survive and adapt to extreme climatic events occurred during the recent operation of the Morganza Floodway. The UARB subpopulation occupies a 175-square-mile (453-square-km) area within and adjacent to the Morganza Floodway. Much of the area inhabited by the UARB subpopulation is subject to extreme flooding, especially when Mississippi River stages rise to levels that warrant the Corps' operation of the Morganza Floodway (which has occurred only twice, in 1973 and 2011). The 2011 operation of the Morganza Flood Control Structure coincidentally occurred during an ongoing 6-year Louisiana black bear genetics and population dynamics study that included both radio telemetry and mark-recapture (via hair snares and genetics analyses) methods within and adjacent to the Morganza Floodway (O'Connell-Goode et al. 2014, pp. 479–482). Approximately 60 percent of the breeding habitat that supports the UARB subpopulation was covered in floodwaters, ranging in depth from approximately 10 to 20 feet (3 to 6 meters; O'Connell-Goode et al. 2014, p. 477). Study results indicate that most bears (88.7 percent) maintained residence within the Morganza Floodway (presumably in the remaining 40 percent of available habitat that was less severely flooded) throughout the 56-day operational period of the Morganza Flood Control Structure (O'Connell-Goode et al. 2014, p. 482). A small number of bears did temporarily disperse to higher elevation forests, but most returned to their original home ranges following floodwater recession. The study concluded that the 2011 operation of the Morganza Flood Control Structure had ''no negative biological effects'' on adult Louisiana black bears within the UARB subpopulation (O'Connell-Goode et al. 2014, p. 483). Based on their adaptability, mobility, and demonstrated resiliency, and the lack of evidence suggesting that previous and ongoing climate change has had any adverse impact on the Louisiana black bear or its habitats, we conclude that the effects of climate change are not a threat to the Louisiana black bear now or within the foreseeable future.

Summary of Factor E

Based on recent genetic analyses, the effects of Minnesota bear reintroductions, while evident to some extent in the UARB subpopulation, do not represent a threat to the Louisiana black bear. Other potential threats such as anthropogenic sources of mortality (*e.g.,* poaching, vehicle strikes, and nuisance bear management) and potential effects of hurricanes or climate change do not represent significant threats to the Louisiana black bear. In spite of ongoing mortality from those anthropogenic sources, recent research concludes that the Louisiana black bear within the Tensas and Upper Atchafalaya River Basins (specifically the metapopulation composed of the TRB, UARB, and TRC subpopulations) has an overall probability of persistence in the wild for the next 100 years (in spite of any random demographic, genetic, environmental, or natural catastrophic effects) of approximately 100 percent (0.996; Laufenberg and Clark 2014, p. 2); and population numbers in the LARB subpopulation have nearly doubled since listing. The effects of climate change are not threats based on the species' adaptability, mobility, and demonstrated resiliency in regard to extreme climatic events. Based on all these factors, we find that there are no other natural or manmade factors that are threats to the Louisiana black bear.

Overall Summary of Factors Affecting the Louisiana Black Bear

The primary factors that led to the Louisiana black bear's listing under the Act were historical modification and reduction of habitat, the reduced quality of remaining habitat due to fragmentation, and the threat of future habitat conversion and human-related mortality. An indirect result of habitat fragmentation was isolation of the already small bear populations, subjecting them to threats from factors such as demographic stochasticity and inbreeding. We have carefully assessed the best scientific and commercial information available regarding the threats faced by the Louisiana black bear. These threats have been removed or ameliorated by the actions of multiple conservation partners over the last 20 years. Research has documented that the four main Louisiana subpopulations (TRB, TRC, UARB, and LARB) are stable or increasing (Hooker 2010, O'Connell 2013, Troxler 2013, Laufenberg and Clark 2014, entire documents respectively). Emigration and immigration (*i.e.,* gene flow) has been documented among several of the Louisiana and Mississippi subpopulations (Laufenberg and Clark 2014, pp. 91–94). Overall, the Louisiana black bear metapopulation (TRB, UARB, and TRC) has an estimated probability of long-term persistence (more than 100 years) of 0.996 under even the most conservative scenario (Laufenberg and Clark 2014, p. 82). The areas supporting Louisiana black bear breeding subpopulations have also increased over 430 percent, for a total of 1,806,556 ac (731,087 ha) (see Table 1). We expect conservation efforts will continue to support persistent recovered Louisiana black bear populations post-delisting and into the future, as described above. Based on this assessment of factors potentially impacting the subspecies and its habitat, the current status of the population (increasing abundance, increasing number and distribution of subpopulations, genetic interchange between subpopulations and the overall long-term viability of the metapopulation), we conclude that the Louisiana black bear is not in danger of extinction throughout all of its range or likely to become endangered within the foreseeable future throughout all of its range.

Determination

An assessment of the need for a species' protection under the Act is based on whether a species is in danger of extinction or likely to become so because of any of five factors described in the Summary of Factors Affecting the Species. As required by section 4(a)(1) of the Act, we conducted a review of the status of this species and assessed the five factors to evaluate whether the Louisiana black bear is endangered or threatened throughout all of its range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the Louisiana black bear and its habitat. We reviewed the information available in our files and other available published and unpublished information, and we consulted with recognized experts and other Federal, State, and Tribal agencies.

In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the exposure causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant the threat is. If the threat is significant, it may drive,

or contribute to, the risk of extinction of the species such that the species warrants listing as endangered or threatened as those terms are defined by the Act. This determination does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively is not sufficient to compel a finding that listing is appropriate; we require evidence that these factors are operative threats that act on the species to the point that the species meets the definition of an endangered species or threatened species under the Act.

During our analysis, we did not identify any factors that reach a magnitude that threaten the continued existence of the species. Significant impacts at the time of listing that could have resulted in the extirpation of all or parts of populations have been eliminated or reduced since listing, and we do not expect any of these conditions to substantially change post-delisting and into the foreseeable future. We conclude that the previously recognized impacts to the Louisiana black bear from the present or threatened destruction, modification, or curtailment of its habitat or range and effects of climate change (Factors A and E), and isolation from genetic exchange (Factor E), have been ameliorated or reduced such that the Louisiana black bear is no longer in danger of extinction throughout all of its range or likely to become endangered within the foreseeable future throughout all of its range. We, therefore, conclude that the Louisiana black bear is no longer in danger of extinction throughout its range, nor is it likely to become so in the foreseeable future.

Significant Portion of the Range Analysis

Background

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so throughout all or a significant portion of its range. Having determined that the Louisiana black bear is not endangered or threatened throughout all of its range, we next consider whether there are any significant portions of its range in which the Louisiana black bear is in danger of extinction or likely to become so. We published a final policy interpreting the phrase ''Significant Portion of its Range'' (SPR) (79 FR 37578; July 1, 2014). The final policy states that (1) if a species is found to be endangered or threatened throughout a significant portion of its range, the entire species is listed as endangered or threatened, respectively, and the Act's protections apply to all individuals of the species wherever found; (2) a portion of the range of a species is ''significant'' if the species is not currently endangered or threatened throughout all of its range, but the portion's contribution to the viability of the species is so important that, without the members in that portion, the species would be in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range; (3) the range of a species is considered to be the general geographical area within which that species can be found at the time the Service makes any particular status determination; and (4) if a vertebrate species is endangered or threatened throughout a significant portion of its range, and the population in that significant portion is a valid Distinct Population Segment (DPS), we will list the DPS rather than the entire taxonomic species or subspecies.

The procedure for analyzing whether any portion is a SPR is similar, regardless of the type of status determination we are making. The first step in our analysis of the status of a species is to determine its status throughout all of its range. If we determine that the species is in danger of extinction, or likely to become endangered in the foreseeable future throughout all of its range, we list the species as an endangered species or threatened species and no SPR analysis will be required. If the species is neither in danger of extinction nor likely to become so throughout all of its range, as we have found here, we next determine whether the species is in danger of extinction or likely to become so throughout a significant portion of its range. If it is, we will continue to list the species as an endangered species or threatened species, respectively; if it is not, we conclude that listing the species is no longer warranted.

When we conduct an SPR analysis, we first identify any portions of the species' range that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose in analyzing portions of the range that have no reasonable potential to be significant or in analyzing portions of the range in which there is no reasonable potential for the species to be endangered or threatened. To identify only those portions that warrant further consideration, we determine whether substantial information indicates that: (1) The portions may be ''significant'' and (2) the species may be in danger of extinction there or likely to become so within the foreseeable future. Depending on the biology of the species, its range, and the threats it faces, it might be more efficient for us to address the significance question first or the status question first. Thus, if we determine that a portion of the range is not ''significant,'' we do 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 do not need to determine if that portion is ''significant.'' In practice, a key part of the determination that a species is in danger of extinction in a significant portion of its range is whether the threats are geographically concentrated in some way. If the threats to the species are affecting it uniformly throughout its range, no portion is likely to have a greater risk of extinction, and thus would not warrant further consideration. Moreover, if any concentration of threats apply only to portions of the range that clearly do not meet the biologically based definition of ''significant'' (*i.e.,* the loss of that portion clearly would not be expected to increase the vulnerability to extinction of the entire species), those portions would not warrant further consideration.

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.

If we identify any portions that may be both (1) significant and (2) endangered or threatened, we engage in a more detailed analysis to determine whether these standards are indeed met. The identification of an SPR does not create a presumption, prejudgment, or other determination as to whether the species in that identified SPR is endangered or threatened. We must go through a separate analysis to determine whether the species is endangered or threatened in the SPR. To determine whether a species is endangered or threatened throughout an SPR, we will use the same standards and methodology that we use to determine if a species is endangered or threatened throughout its range.

Depending on the biology of the species, its range, and the threats it faces, it may be more efficient to address the ''significant'' question first, or the status question first. Thus, if we determine that a portion of the range is

not ''significant,'' we do 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 do not need to determine if that portion is ''significant.''

SPR Analysis for Louisiana Black Bear

Applying the process described above for the Louisiana black bear, we have already determined that the species is no longer endangered or threatened throughout its range. We next identified portions of the Louisiana black bear's range that may be significant, and examined whether any threats are geographically concentrated in some way that would indicate that those portions of the range may be in danger of extinction, or likely to become so in the foreseeable future. In Louisiana, both the Louisiana and Mississippi black bear breeding populations occur in the LMRAV. These subpopulations make up the majority of the overall Louisiana black bear population, providing the primary contributions to the conservation of the species, and all face the same type of potential threats—primarily habitat conversion. We have already discussed that trends in that threat have been significantly reduced and in some cases reversed (see Factors A and D). As discussed above, estimates of persistance probability over 100 years of the TRB and the UARB subpopulations were greater than 95 percent except for the two most conservative models for the UARB (long-term viability estimates of 85 percent and 92 percent). While these two subpopulations may be significant, information and analyses indicates that the species is unlikely to be in danger of extinction or to become so in the foreseeable future in these portions. Therefore, these portions do not warrant further consideration to determine whether they are a significant portion of its range.

We next examined whether any threats are geographically concentrated in some way that would indicate the species could be in danger of extinction, or likely to become so, in that area. Through our review of potential threats, we identified the LARB subpopulation as one that that may be at greater risk of extinction due to its additional potential threats from future anticipated development and sea level rise. We thus considered whether this subpopulation may warrant further consideration as a significant portion of the Louisiana black bear's range. The LARB is located within the coastal area of Louisiana in St. Mary, Iberia, and Vermillion Parishes in forested habitat similar to other Louisiana black bear subpopulations. That subpopulation is separated from the other subpopulations and the habitat between them within the Basin is believed to be too wet currently to support breeding females, although bears have been observed along the higher areas on both sides of the Basin. The probability of interchange between the LARB and the other subpopulations is low (Laufenberg and Clark 2014, p. 93); however, reports of bear live-captures, known natal dens, and confirmed sightings indicate bears can and do move out (at least temporarily) of this subpopulation (Figure 1 in Davidson et al. 2015, p. 24). Dispersal by male bears of more than 100 miles is not unusual and combined with the documented occurrences of bears (likely males) on the higher portions (levees and ridges) of the Basin spanning the area between the UARB and LARB subpopulations, movement of individuals among other subpopulations cannot be ruled out. Increased sedimentation is occurring in the interconnecting habitat in the Basin (Hupp et al. 2008, p. 139) as predicted by LeBlanc et al. (1981, p. 65). The increase in sedimentation is resulting in higher elevations within the Basin that will produce suitable bear habitat (*e.g.,* less inundation and more food sources).

Additionally, range expansion by bears from the northern subpopulations would take advantage of the improved Basin habitats. At the current time, the LARB subpopulation is stable to increasing, although we did not have data to determine its long-term viability. The LARB has been characterized by some, based on its genetic uniqueness, as more representative of the Louisiana black bear and thus should be given special consideration for its integrity (Triant et al. 2003, p. 647). However, Csiki et al. (2003, p. 699) suggested that the distinctness of the Louisiana black bear was the result of a genetic bottleneck rather than a true genetic difference. Since 2003, our understanding of genetic markers has improved. Studies by Troxler (2013) and Laufenberg and Clark (2014) reached similar conclusions (*e.g.,* that distinctness is likely due to isolation resulting in restricted gene flow and genetic drift) as Csiki et al. (2003) concluded.

Habitat supporting the LARB subpopulation (population range from 136 to 194 adult bears (Laufenberg and Clark 2014, p. 45)) of the Louisiana black bear is more vulnerable to one of the particular effects of global climate change, the long term threat of sea level rise, than other subpopulations due to its occurrence within low-elevation coastal habitats. However, as discussed above, in the event of coastal bear habitat loss due to climate change effects, bears have demonstrated the ability to adapt and would likely move into more suitable areas. Additionally, any long-term threat of sea level rise would likely be ameliorated to some extent by the projected successional changes in the Atchafalaya Basin that would eventually convert many of its swamps to BLH forest, thus improving the suitability of that habitat for the Louisiana black bear. Although this portion of the range may have a concentration of threats, the subpopulation is currently stable or increasing. However, the lack of data make it difficult to predict long-term viability for this portion of the range, but if the current stability or increasing size continues, it is unlikely that the subspecies would be in danger of extinction (or likely to become so) in this portion of its range. Additionally, the long-term viability estimates for the TRB and UARB subpopulations (greater than 95 percent for over 100 years), which make up the majority of the overall Louisiana black bear population, make is unlikely that the loss of the LARB subpopuation would cause the Louisiana black bear to be in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range. Because we conclude the available information does not indicate that this portion may be both in danger of extinction and likely to be significant, this portion does not warrant further consideration.

We also evaluated whether the other occurrences in Mississippi and northern Louisiana that we cannot currently consider self-sustaining, and may therefore have a higher risk of extinction, could be considered a significant portion of the species' range. We determined that those subpopulations have formed as the result of emigration from nearby subpopulations and are not genetically unique (in other words, they do not contribute substantially to the genetic diversity or representation of the species). These subpopulations indicate the health of their parent subpopulations, but are not so large themselves that their loss would affect the health or conservation status of the other subpopulations. These areas, individually or collectively, are therefore unlikely to constitute a significant portion of the species' range.

Surveys indicate that Louisiana black bear subpopulations have been maintained and are well-established and that remaining factors that may affect the Louisiana black bear occur at

similarly low levels throughout its range. Some factors may continue to affect Louisiana black bear, but would do so at uniformly low levels across the subspecies' range such that they are unlikely to result in adverse effects to subpopulations of the subspecies and do not represent a concentration of threats that may indicate the species could be threatened or endangered in a particular area. Therefore, based on the best scientific and commercial data available, no portion warrants further consideration to determine whether the subspecies may be endangered or threatened in a significant portion of its range.

Summary

In conclusion, we find that the Louisiana black bear is no longer in danger of extinction throughout all or a significant portion of its range, nor is it likely to become endangered in the foreseeable future. Therefore, at this time, the Louisiana black bear no longer meets the definitions of endangered or threatened under the Act, and we are removing the Louisiana black bear from the Federal List of Endangered and Threatened Wildlife.

Conservation Measures

Section 4(g)(1) of the Act requires us, in cooperation with the States, to implement a monitoring program for not less than 5 years for all species that have been delisted due to recovery. PDM refers to activities undertaken to verify that a species delisted due to recovery remains secure from the risk of extinction after the protections of the Act no longer apply. The primary goal of PDM is to ensure that the species' status does not deteriorate, and if a decline is detected, to take measures to halt the decline so that proposing it as threatened or endangered is not again needed. If, at any time during the monitoring period, data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing under section 4(b)(7) of the Act. At the conclusion of the monitoring period, we will review all available information to determine if relisting, the continuation of monitoring, or the termination of monitoring is appropriate.

Post-Delisting Monitoring (PDM) Plan Overview

The purpose of this post-delisting monitoring is to verify that a species remains secure from risk of extinction after it has been removed from the protections of the Act. The monitoring is designed to detect the failure of any delisted species to sustain itself without the protective measures provided by the Act. Section 4(g) of the Act explicitly requires us to cooperate with the States in development and implementation of post-delisting monitoring programs, but we remain responsible for compliance with section 4(g) and, therefore, must remain actively engaged in all phases of post-delisting monitoring. We also seek active participation of other entities that are expected to assume responsibilities for the species' conservation post-delisting.

The Service developed a final PDM plan in cooperation with the LDWF (Service 2016). The PDM plan is designed to verify that the Louisiana black bear remains secure from the risk of extinction after removal from the Federal List of Endangered and Threatened Wildlife by detecting changes in its status and habitat throughout its known range. The PDM plan consists of: (1) A summary of the species' status at the time of delisting; (2) an outline of the roles of PDM cooperators; (3) a description of monitoring methods; (4) an outline of the frequency and duration of monitoring; (5) an outline of data compilation and reporting procedures; and (6) a definition of thresholds or triggers for potential monitoring outcomes and conclusions of the PDM effort.

The PDM plan provides for monitoring Louisiana black bear populations following the same sampling protocol used by the LDWF and USGS prior to delisting. Monitoring will consist of two components: (1) Population demographics and vital statistics monitoring consisting of: regular live-capture (including collection of genetic material), radio-collaring, winter den checks, and radio-telemetry monitoring to estimate recruitment, survival, genetic exchange, and cause-specific mortality in a timely manner; and non-invasive mark-recapture methods to estimate change in population size, apparent survival, per-capita recruitment, and genetic exchange for future viability analyses, and if needed, maintaining a database of reliable public sightings to track geographic distribution; and (2) a habitat-based component consisting of periodic assessments of habitat abundance, persistence, and any changes in protection using interpretation of remotely sensed data and updated GIS information (*e.g.,* conservation easements) range-wide within the HRPA and in specific geographic areas supporting and surrounding the TRB, TRC, UARB, and LARB subpopulations of the Louisiana black bear. The methods described below were developed based on the best known methods currently available. Should newer methods for population monitoring or habitat trend assessment become available during the post-deleting monitoring period that may improve our ability to better evaluate trends, those methods would be explored. Section 4(g) of the Act explicitly requires that we cooperate with the States in development and implementation of PDM programs. However, we remain ultimately responsible for compliance with section 4(g) and, therefore, must remain actively engaged in all phases of PDM. We also seek active participation of other entities that are expected to assume responsibilities for the species' conservation after delisting. In August 2013, LDWF and the Service agreed to be cooperators in the PDM of the Louisiana black bear.

Multiple monitoring strategies will be used for the individual subpopulations in order to ensure that demographics and habitat status will be captured at differing time periods and scale, respectively. Because the TRB and UARB subpopulations were identified as necessary for recovery and delisting (Service 1995, p. 14) of the subspecies, intensive monitoring will occur annually for 7 years within each of these subpopulations following the delisting of the subspecies to monitor Louisiana black bear population vital rates. Although monitoring of the TRC and LARB subpopulations will occur during the 7-year period, it will be less intensive than that of the monitoring for TRB and UARB.

The final PDM plan identifies measurable management thresholds and responses for detecting and reacting to significant changes in Louisiana black bear protected habitat, distribution, and persistence. If monitoring detects declines equaling or exceeding these thresholds, the Service in combination with the LDWF and other partners will investigate causes of these declines, including considerations of habitat changes, substantial human persecution, stochastic events, or any other significant evidence. Such investigation will determine if the Louisiana black bear warrants expanded monitoring, additional research, additional habitat protection, or relisting as an endangered or a threatened species under the Act.

We will post the final PDM plan and any future revisions on our national Web site (*http://endangered.fws.gov*) and on the Louisiana Fish and Wildlife Office's Web site (*http://www.fws.gov/lafayette*).

Effects of the Rule

This final rule revises 50 CFR 17.11(h) by removing the Louisiana black bear from the Federal List of Endangered and Threatened Wildlife. In addition, the rule revises § 17.11(h) to remove similarity of appearance protections for the American black bear, which are in effect within the historical range of the Louisiana black bear. This designation is assigned for law enforcement purposes to an unlisted species that so closely resembles the listed species that its taking represented an additional threat to the Louisiana black bear at the time of listing. With the final delisting of the Louisiana black bear, such a designation would no longer be necessary. Therefore, as of the effective date of this rule (see **DATES**), the prohibitions and conservation measures provided by the Act, particularly through sections 7 and 9, no longer apply to either the American black bear or the Louisiana black bear. Removal of the Louisiana black bear from the Federal List of Endangered and Threatened Wildlife relieves Federal agencies from the need to consult with us under section 7 of the Act. This final rule also revises 50 CFR 17.40(i) by removing regulatory provisions specific to the Louisiana black bear and § 17.95(a) by removing the designated critical habitat for the Louisiana black bear.

Required Determinations

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), need not be prepared in connection with regulations pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that no tribal lands or interests are affected by this rule.

References Cited

A complete list of all references cited in this final rule is available at *http://www.regulations.gov* at Docket No. FWS–R4–ES–2015–0014, or upon request from the Louisiana Fish and Wildlife Office (see **ADDRESSES**).

Authors

The primary authors of this rule are staff members of the Service's Louisiana Fish and Wildlife Service Office (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245, unless otherwise noted.

§ 17.11 [Amended]

■ 2. Amend § 17.11(h) by removing the entries for ''Bear, American black'' and ''Bear, Louisiana black'' under ''MAMMALS'' from the List of Endangered and Threatened Wildlife.

§ 17.40 [Amended]

■ 3. Amend § 17.40 by removing and reserving paragraph (i).

§ 17.95 [Amended]

■ 4. Amend § 17.95(a) by removing the entry for ''Louisiana Black Bear (*Ursus americanus luteolus*)''.

Dated: March 2, 2016.

James W. Kurth,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2016–05206 Filed 3–10–16; 8:45 am]

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Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Removing the Greater Yellowstone Ecosystem Population of Grizzly Bears From the Federal List of Endangered and Threatened Wildlife; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2016–0042; FXES11130900000C6–156–FF09E42000]

RIN 1018–BA41

Endangered and Threatened Wildlife and Plants; Removing the Greater Yellowstone Ecosystem Population of Grizzly Bears From the Federal List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; availability of draft Grizzly Bear Recovery Plan Supplement: Revised Demographic Criteria and draft 2016 Conservation Strategy, and announcement of public informational meetings and hearings.

SUMMARY: The best available scientific and commercial data indicate that the Greater Yellowstone Ecosystem (GYE) population of grizzly bears (*Ursus arctos horribilis*) has recovered and no longer meets the definition of an endangered or threatened species under the Endangered Species Act, as amended (Act). The United States Fish and Wildlife Service (Service) is also proposing to identify the GYE grizzly bear population as a distinct population segment (DPS). Therefore, we, the Service propose to revise the List of Endangered and Threatened Wildlife, under the authority of the Act, by removing the GYE population. The Service has determined that the GYE grizzly bear population has increased in size and more than tripled its occupied range since being listed as threatened under the Act in 1975 and that threats to the population are sufficiently minimized. The participating States of Idaho, Montana, and Wyoming must adopt the necessary post-delisting management objectives, which adequately ensure that the GYE population of grizzly bears remains recovered, into enforceable regulations before the Service will proceed with a final delisting rule.

DATES:

Written comments: We will accept comments received or postmarked on or before May 10, 2016. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date.

Public informational meetings and public hearings: We will hold two public informational meetings and public hearings on the following dates:

○ On April 11, 2016, in Cody, Wyoming. The public informational meeting will run from 2 p.m. to 4 p.m., and the public hearing will run from 5 p.m. to 8 p.m.

○ On April 12, 2016, in Bozeman, Montana. The public informational meeting will run from 2 p.m. to 4 p.m., and the public hearing will run from 5 p.m. to 8 p.m.

ADDRESSES: *Written comments:* You may submit written comments by any one of the following methods:

• *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter Docket No. FWS–R6–ES–2016–0042, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on the blue ''Comment Now!'' box. If your comments will fit in the provided comment box, please use this feature of *http://www.regulations.gov*, as it is most compatible with our comment review procedures. If you attach your comments as a separate document, our preferred file format is Microsoft Word. If you attach multiple comments (such as form letters), our preferred format is a spreadsheet in Microsoft Excel.

• *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: Docket No. FWS–R6–ES–2016–0042, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

• *At a public informational meeting or public hearing.* We will accept written comments at either of the public informational meetings or public hearings. See details on the dates of the public informational meetings and public hearings in **DATES**; the addresses are listed below.

We request that you submit written comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Information Requested, below, for more details).

Public informational meetings and public hearings: We will hold two public informational meetings and public hearings at the following locations:

○ Holiday Inn, 5 East Baxter Lane, Bozeman, MT 59715.

○ Holiday Inn, 1701 Sheridan Ave., Cody, WY 82414.

More information on the public informational meetings and public hearings is provided under Public Informational Meetings and Public Hearings, below.

Document availability: This proposed rule and all supporting documents are available on *http://www.regulations.gov.* In addition, certain documents such as the draft 2016 Conservation Strategy, the draft Grizzly Bear Recovery Plan Supplement: Revised Demographic Criteria, and all references cited are available at *http://www.fws.gov/mountain-prairie/es/grizzlyBear.php.*

FOR FURTHER INFORMATION CONTACT: Dr. Christopher Servheen, Grizzly Bear Recovery Coordinator, U.S. Fish and Wildlife Service, University Hall, Room #309, University of Montana, Missoula, MT 59812; telephone 406–243–4903; facsimile 406–243–3212. For Tribal inquiries, contact Ivy Allen, Native American Liaison, U.S. Fish and Wildlife Service; telephone: 303–236–4575. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

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Executive Summary

(1) Purpose of the Regulatory Action

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for revising the Federal Lists of Endangered and Threatened Wildlife and Plants. Rulemaking is required to remove a species from the Federal Lists of Endangered and Threatened Wildlife and Plants. Accordingly, we are issuing this proposed rule to identify the Greater Yellowstone Ecosystem (GYE) grizzly bear DPS and revise the List of Endangered and Threatened Wildlife. The population is stable, threats are sufficiently minimized, and a post-delisting monitoring and management framework has been developed and will be incorporated into regulatory documents. The best scientific and commercial data available, including our detailed evaluation of information related to the population's trend and structure, indicate that the distinct population segment of grizzly bears in the GYE has recovered and threats have been reduced such that this DPS no longer meets the definition of threatened, or endangered, under the Act. To ensure consistency in management approaches regardless of listed status, concurrent with publication of this proposed rule, we are releasing a draft supplement to the 1993 Recovery Plan's demographic recovery criteria for this population of grizzly bears and a draft of the 2016 Conservation Strategy for public comment. If we finalize this proposal to identify the GYE DPS and remove that DPS from the List of Endangered and Threatened Wildlife, there would be no change to the threatened status of the remaining grizzly bears in the lower 48 States, which would remain protected by the Act.

(2) Major Provision of the Regulatory Action

This proposed action is authorized by the Act. We are proposing to amend § 17.11(h), subchapter B of chapter I, title 50 of the Code of Federal Regulations by revising the listing for ''Bear, grizzly'' under ''Mammals'' in the List of Endangered and Threatened Wildlife to remove the GYE grizzly bear DPS.

(3) Costs and Benefits

We have not analyzed the costs or benefits of this rulemaking action because the Act precludes consideration of such impacts on listing and delisting determinations. Instead, listing and delisting decisions are based solely on the best scientific and commercial information available regarding the status of the subject species.

Greater Yellowstone Ecosystem (GYE)

The Greater Yellowstone Ecosystem (GYE) refers to the larger ecological system containing and surrounding Yellowstone National Park. The GYE includes portions of five National Forests; Yellowstone National Park, Grand Teton National Park, and the John D. Rockefeller Memorial Parkway (administered by Grand Teton National Park); and State, Tribal, and private lands. While there is no distinct boundary to the GYE, it is generally defined as those lands surrounding Yellowstone National Park with elevations greater than 1,500 meters (m) (4,900 feet (ft)) (see USDA Forest Service 2004, p. 46; Schwartz *et al.* 2006*b*, p. 9). While we consider the terms ''Greater Yellowstone Area'' and ''Greater Yellowstone Ecosystem'' to be interchangeable, we use GYE in this proposed rule to be consistent with the draft 2016 Conservation Strategy.

Previous Federal Actions

On July 28, 1975, we published a rule to designate the grizzly bear as threatened in the conterminous (lower 48) United States (40 FR 31734). Accordingly, we developed a Grizzly Bear Recovery Plan (U.S. Fish and Wildlife Service 1982) and updated that plan as necessary (72 FR 11376, March 13, 2007; U.S. Fish and Wildlife Service 1993, 2007*a*, 2007*b*). The designation of the grizzly bear as a threatened species in the conterminous United States and subsequent development of the 1982 and 1993 Recovery Plans occurred before the publication of our DPS policy on February 7, 1996 (61 FR 4722). The 1993 Recovery Plan identifies distinct Recovery Zones and unique demographic parameters for six different grizzly bear populations with the intent that these individual populations would be delisted as they each achieve recovery (U.S. Fish and Wildlife Service 1993, pp. ii, 33–34). On November 17, 2005, we proposed to designate the GYE population of grizzly bears as a DPS and to remove this DPS from the Federal List of Endangered and Threatened Wildlife (70 FR 69854). This proposal had a 120-day comment period (70 FR 69854, November 17, 2005; 71 FR 8251, February 16, 2006), during which we held two public hearings and four open houses (70 FR 69854, November 17, 2005; 71 FR 4097, January 25, 2006). On March 29, 2007, we finalized this proposed action, designating the GYE population as a DPS and removing grizzly bears in the GYE from the Federal List of Endangered and Threatened Wildlife (72 FR 14866). This final determination was vacated by the District Court of Montana on September 21, 2009, in *Greater Yellowstone Coalition* v. *Servheen, et al.,* 672 F.Supp.2d 1105 (D. Mont. 2009). The District Court ruled against the Service on two of the four points brought against them, that the Service was arbitrary and capricious in its evaluation of whitebark pine and that

the identified regulatory mechanisms were inadequate because they were not legally enforceable. In compliance with this order, the GYE grizzly bear population was once again made a threatened population under the Act (16 U.S.C. 1531 *et seq.*) (see 75 FR 14496; March 26, 2010), and the Service withdrew the delisting rule. By vacating the Service's rule, the District Court mooted two other lawsuits challenging the rule. Neither of these lawsuits were decided on the merits. The United States appealed the District Court decision, on November 15, 2011, the Ninth Circuit Court of Appeals issued an opinion affirming in part and reversing in part the district court's decision vacating the final rule delisting grizzly bears in the Greater Yellowstone Ecosystem (*Greater Yellowstone Coalition* v. *Servheen, et al.,* 665 F.3d 105 (9th Cir. 2011)). The Ninth Circuit ruled that the Service's final rule did have adequate regulatory mechanisms but did not adequately explain why the loss of whitebark pine was not a threat to the GYE grizzly bear population. In compliance with this order, the GYE population of grizzly bears remained federally listed as ''threatened'' under the Act, and the Interagency Grizzly Bear Study Team (IGBST) initiated more thorough research into the potential impact of whitebark pine decline on GYE grizzly bears.

Information Requested

We intend that any final action resulting from this proposal will be based on the best available scientific and commercial data and will be as accurate and as effective as possible. Therefore, we invite Tribal and governmental agencies, the scientific community, industry, and other interested parties to submit comments or recommendations concerning any aspect of this proposed rule, the draft 2016 Conservation Strategy, and the draft Grizzly Bear Recovery Plan Supplement: Revised Demographic Criteria for the Greater Yellowstone Ecosystem. Comments should be as specific as possible.

To issue a final rule to implement this proposed action, we will take into consideration all comments and any additional information we receive. Such communications may lead to a final rule that differs from this proposal.

You may submit your comments and materials concerning the proposed rule by one of the methods listed in **ADDRESSES**. Comments must be submitted to *http://www.regulations.gov* before 11:59 p.m. (Eastern Time) on the date specified in **DATES**. We will consider any and all comments received, or mailed comments that are postmarked, by the date specified in **DATES**.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov*. If you provide personal identifying information in your comment, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours at our Missoula office (see **FOR FURTHER INFORMATION CONTACT**).

Peer Review

In accordance with our policy, ''Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities,'' which was published on July 1, 1994 (59 FR 34270), we will seek the expert opinion of at least three appropriate specialists who are independent of the Service, the States, and the Interagency Grizzly Bear Study Team (IGBST) regarding scientific data and interpretations contained in this proposed rule. Those experts will each submit separate opinions for the Service to consider. We will send copies of this proposed rule, the draft 2016 Conservation Strategy, and the draft Grizzly Bear Recovery Plan Supplement: Revised Demographic Criteria to the peer reviewers immediately following publication of this proposed rule in the **Federal Register**. The purpose of such review is to ensure that our decisions are based on scientifically sound data, assumptions, and analysis. Accordingly, the final rule and decision may differ from this proposal.

Public Informational Meetings and Public Hearings

We are holding two public informational meetings and public hearings on the dates listed above in **DATES** at the locations listed above in **ADDRESSES**. We are holding the public hearings to provide interested parties an opportunity to present verbal testimony (formal, oral comments) or written comments regarding the proposed rule and its supporting documents. A formal public hearing is not, however, an opportunity for dialogue with the Service; it is only a forum for accepting formal verbal testimony. In contrast to the public hearings, the public informational meetings allow the public the opportunity to interact with Service staff, who will be available to provide information and address questions on the proposed rule and its supporting documents.

We cannot accept verbal testimony at any of the public informational meetings; verbal testimony can only be accepted at the public hearings. Anyone wishing to make an oral statement at a public hearing for the record is encouraged to provide a written copy of their statement to us at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Speakers can sign up at a hearing if they desire to make an oral statement. Oral and written statements receive equal consideration. There are no limits on the length of written comments submitted to us.

Persons with disabilities needing reasonable accommodations to participate in a public informational meeting or public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT**. Reasonable accommodation requests should be received at least 3 business days prior to the public informational meeting or public hearing to help ensure availability; American Sign Language or English as a second language interpreter needs should be received at least 2 weeks prior to the public informational meeting or public hearing.

Taxonomy and Species Description

Grizzly bears (*Ursus arctos horribilis*) are a member of the brown bear species (*U. arctos*) that occurs in North America, Europe, and Asia; the subspecies *U. a. horribilis* is limited to North America (Rausch 1963, p. 43; Servheen 1999, pp. 50–53).

Grizzly bears are generally larger than other bears and average 200 to 300 kilograms (kg) (400 to 600 pounds (lb)) for males and 110 to 160 kg (250 to 350 lb) for females in the lower 48 States (Craighead and Mitchell 1982, pp. 517–520; Schwartz *et al.* 2003*b*, p. 558). Although their coloration can vary widely from light brown to nearly black (LeFranc *et al.* 1987, pp. 17–18), they can be distinguished from black bears by longer, curved claws, humped shoulders, and a face that appears to be concave (Craighead and Mitchell 1982, p. 517). Grizzly bears are long-lived mammals, generally living to be around 25 years old (LeFranc *et al.* 1987, pp. 47, 51).

Behavior and Life History

Adult grizzly bears are normally solitary except when females have dependent young (Nowak and Paradiso 1983, p. 971), but they are not territorial and home ranges of adult bears

frequently overlap (Schwartz *et al.* 2003*b*, pp. 565–566). Home range size is affected by resource availability, sex, age, and reproductive status (LeFranc *et al.* 1987, p. 31; Blanchard and Knight 1991, pp. 48–51; Mace and Waller 1997, p. 48). Generally, females with cubs-of-the-year or yearlings have the smallest home range sizes (Aune and Kasworm 1989; Blanchard and Knight 1991, pp. 48–49; Mace and Roberts 2011, pp. 27–28). The annual home ranges of adult male grizzly bears in the GYE are approximately 800 square kilometers (sq km) (309 square miles (sq mi)), while female ranges are typically smaller, approximately 210 sq km (81 sq mi) (Bjornlie *et al.* 2014, p. 3). The large home ranges of grizzly bears, particularly males, enhance maintenance of genetic diversity in the population by enabling males to mate with numerous females (Blanchard and Knight 1991, pp. 46–51; Craighead *et al.* 1998, p. 326).

Young, female grizzly bears establish home ranges within or overlapping their mother's (Waser and Jones 1983, p. 361; Schwartz *et al.* 2003*b,* p. 566). This pattern of home range establishment can make dispersal of females across landscapes a slow process. Radio-telemetry and genetic data suggest females establish home ranges an average of 9.8 to 14.3 km (6.1 to 8.9 mi) away from the center of their mother's home range, whereas males generally disperse farther, establishing home ranges roughly 29.9 to 42.0 km (18.6 to 26.0 mi) away from the center of their mother's (McLellan and Hovey 2001, p. 842; Proctor *et al.* 2004, p. 1108).

Grizzly bears have a promiscuous mating system (Hornocker 1962, p. 70; Craighead and Mitchell 1982, p. 522; Schwartz *et al.* 2003*b,* p. 563). Mating occurs from May through July with a peak in mid-June (Craighead and Mitchell 1982, p. 522; Nowak and Paradiso 1983, p. 971). Although females mate in spring and early summer, their fertilized embryos do not implant into the uterus for further development until late fall. Fat stores obtained by female grizzly bears at the end of fall are positively correlated with earlier birth dates and quicker growth rates of their cubs (Robbins *et al.* 2012, p. 543). Additionally, a body fat threshold may exist below which females may not produce cubs, even when bred (Robbins *et al.* 2012, p. 543). Female grizzly bears nurse cubs for 3 to 4 months inside the den. Age of first reproduction and litter size may be related to nutritional state (Stringham 1990, p. 433; McLellan 1994, p. 20; Hilderbrand *et al.* 1999, pp. 135–136). Average age of first reproduction in the GYE is approximately 6 years old but can vary from 3 to 8 years of age (Schwartz *et al.* 2003*b,* p. 563; Schwartz *et al.* 2006*b,* p. 19). Litter size in the GYE ranges from 1 to 4 cubs (Schwartz *et al.* 2003*b,* p. 563) with a mean litter size of 2.04 cubs during 1983–2001 and 2.12 cubs during 2002–2011 (Schwartz *et al.* 2006*b,* p. 19; IGBST 2012, p. 34). Cubs are born in the den in late January or early February and remain with the female for 1.5 to 2.5 years, making the average time between litters in the GYE (*i.e.,* the interbirth interval) 2.78 years (Schwartz *et al.* 2003*b,* p. 564; Schwartz *et al.* 2006*b,* p. 20). Grizzly bears have one of the slowest reproductive rates among terrestrial mammals, resulting primarily from the reproductive factors described above: Late age of first reproduction, small average litter size, and the long interval between litters (Nowak and Paradiso 1983, p. 971; Schwartz *et al.* 2003*b,* p. 564). Given the above factors, it may take a female grizzly bear 10 or more years to replace herself in a population (U.S. Fish and Wildlife Service 1993, p. 4). Grizzly bear females cease reproducing some time in their mid-to-late 20s (Schwartz *et al.* 2003*a,* pp. 109–110).

Grizzly bears usually dig dens on steep slopes where wind and topography cause an accumulation of deep snow and where the snow is unlikely to melt during warm periods. Grizzly bears in the lower 48 States occupy dens for 4 to 6 months each year, beginning in October or November (Linnell *et al.* 2000, p. 401; Haroldson *et al.* 2002, p. 29). Most dens are located above 2,500 m (>8,000 ft) in elevation (Haroldson *et al.* 2002, p. 33) and on slopes ranging from 30 to 60 degrees (Judd *et al.* 1986, p. 115). Approximately 66 percent (1,684,220 acres (ac); 6,815 sq km) of the GYE is potential denning habitat, and it is well distributed, so its availability is not considered a limiting factor for grizzly bears in the GYE (Podruzny *et al.* 2002, p. 22). Denning increases survival during periods of low food availability, deep snow, and low air temperature (Craighead and Craighead 1972, pp. 33–34). During this period, bears do not eat, drink, urinate, or defecate (Folk *et al.* 1976, pp. 376–377; Nelson 1980, p. 2955). Hibernating grizzly bears exhibit a marked decline in heart and respiration rate, but only a slight drop in body temperature (Nowak and Paradiso 1983, p. 971). Due to their relatively constant body temperature in the den, hibernating grizzly bears may be easily aroused and have been known to exit or relocate dens when disturbed by seismic or mining activity (Harding and Nagy 1980, p. 278) or other human activities (Swenson *et al.* 1997, p. 37). Dens are rarely used twice by an individual, although the same general area may be used multiple times (Schoen *et al.* 1987, p. 300; Miller 1990, p. 285; Linnell *et al.* 2000, p. 403). Females display stronger area fidelity than males and generally stay in their dens longer, depending on reproductive status (Judd *et al.* 1986, pp. 113–114; Schoen *et al.* 1987, p. 300; Miller 1990, p. 283; Linnell *et al.* 2000, p. 403). In the GYE, females with new cubs typically emerge from their dens from early April to early May (Haroldson *et al.* 2002, p. 29).

In preparation for hibernation, bears increase their food intake dramatically during a stage called hyperphagia (Craighead and Mitchell 1982, p. 544). Hyperphagia occurs throughout the 2 to 4 months prior to den entry (*i.e.,* August through November). During hyperphagia, excess food is converted into fat, and grizzly bears may gain as much as 1.65 kg/day (3.64 lb/day) (Craighead and Mitchell 1982, p. 544). Grizzly bears must consume foods rich in protein and carbohydrates in order to build up fat reserves to survive denning and post denning periods (Rode and Robbins 2000, pp. 1643–1644). Fat stores are crucial to the hibernating bear as they provide a source of energy and insulate the bear from cold temperatures, and are equally important in providing energy to the bear upon emergence from the den when food is still sparse relative to metabolic requirements (Craighead and Mitchell 1982, p. 544).

Nutritional Ecology

The GYE is a highly diverse landscape containing a wide array of habitat types and bear foods. Plant communities vary from grasslands at lower elevations (<1,900 m (6,230 ft)) to conifer forests at mid-elevations and subalpine and alpine meadows at higher elevations (>2,400 m (7,870 ft)). Grizzly bears are extremely omnivorous, display great diet plasticity—even within a population (Edwards *et al.* 2011, pp. 883–886)—and shift and switch food habits according to their availability (Servheen 1983, pp. 1029–1030; Mace and Jonkel 1986, p. 108; LeFranc *et al.* 1987, pp. 113–114; Aune and Kasworm 1989, pp. 63–71; Schwartz *et al.* 2003*b,* pp. 568–569; Gunther *et al.* 2014, p. 65). Gunther *et al.* (2014, p. 65) conducted an extensive literature review and documented over 260 species of foods consumed by grizzly bears in the GYE, representing 4 of the 5 kingdoms of life. The ability to use whatever food resources are available is one reason

grizzly bears are the most widely distributed bear species in the world, occupying habitats from deserts to alpine mountains and everything in between. This ability to live in a variety of habitats and eat a wide array of foods makes grizzly bears a generalist species. In contrast, specialist species eat only a few specific foods or live in only one or two specific habitat types (Krebs 2009, p. 100).

Grizzly bear diets are highly variable among individuals, seasons, and years (Servheen 1983, pp. 1029–1030; Mattson *et al.* 1991*a,* pp. 1625–1626; LeFranc *et al.* 1987, pp. 113–114; Felicetti *et al.* 2003, p. 767; Schwartz *et al.* 2003*b,* pp. 568–569; Felicetti *et al.* 2004, p. 499; Fortin *et al.* 2013, p. 278; Costello *et al.* 2014, p. 2013; Gunther *et al.* 2014, p. 65). They opportunistically seek and consume whatever plant and animal foods are available to them. Grizzly bears are always sampling new foods so that they have alternative options in years when preferred foods are scarce (Mattson *et al.* 1991*a,* p. 1625). In the GYE, Blanchard and Knight (1991, p. 61) noted that, ''After 10 years of food habits data collection, new feeding strategies continued to appear annually in this population.'' Grizzly bears in the GYE commonly consume ungulates (bison (*Bison bison*), elk (*Cervus canadensis*), moose (*Alces alces*), and deer (*Odocoileus* species)), cutthroat trout (*Oncorhynchus clarki*), roots and tubers, army cutworm moths (*Euxoa auxiliaris*), grasses, and whitebark pine seeds (*Pinus albicaulis*) (Schwartz *et al.* 2003*b,* p. 568). Bears make seasonal movements within their home ranges to locations where these foods are abundant (*e.g.,* ungulate winter ranges, calving areas, spawning streams, talus slopes) (Costello *et al.* 2014, p. 2013). These foods are subject to seasonal and annual variation in availability and therefore are not abundant or available during all seasons or every year (Craighead *et al.* 1995, p. 265; Gunther *et al.* 2014, pp. 64–65). When high-calorie foods are not readily available, grizzly bears supplement their diet with items of lower caloric value that tend to be widely distributed across the landscape and readily available most years (Gunther *et al.* 2014, p. 66). These widely distributed and abundant foods include a wide variety of plants (grasses, sedges, horsetail, and forbs), colonial insects (ants and wasps), fungi (false-truffles), berries (huckleberry, whortleberry, and gooseberry), and small mammals (voles, ground squirrels, and pocket gophers). Spatial and temporal abundance and annual predictability of these foods compensates for their lower caloric value, and, consequently, these foods can comprise a large proportion of grizzly bear annual diets (Craighead *et al.* 1995, p. 253; Gunther *et al.* 2014, p. 66). Grizzly bears also supplement their diet with many foods consumed opportunistically. Some opportunistic foods are consumed for only a short period each year (*e.g.,* earthworms in meadows during spring snowmelt), others are available only in small localized areas (*e.g.,* pondweed rhizomes from small ephemeral ponds within the Yellowstone caldera), and others are available only during sporadic periods of abundance (*e.g.,* midges). Many opportunistic foods are eaten during periods with shortages of more preferred foods or when randomly encountered while foraging for other species (Gunther *et al.* 2014, p. 66).

Due to their high fat content, whitebark pine seeds can be an important fall food for bears in the GYE when they are available (Mattson and Jonkel 1990, p. 223; Mattson *et al.* 1991*a,* p. 1623). Bears that have whitebark pine in their home range may feed predominantly on whitebark pine seeds when production exceeds 20 cones per tree (Blanchard 1990, p. 362). Whitebark pine seed availability can influence the reproductive and survival rates of these grizzly bears on an annual basis because of an increased potential for human-caused mortality during years of low whitebark pine availability (Haroldson *et al.* 2006, p. 36; Schwartz *et al.* 2006*b,* pp. 22, 36; IGBST 2013, p. 24). However, there has been no correlation between long-term survival of independent bears with a decline in whitebark pine availability (van Manen *et al.* 2015, p. 11). Nearly one third of grizzly bear home ranges in the GYE do not contain any whitebark pine (Costello *et al.* 2014, p. 2013). Bears in these areas consume other foods even during years of good whitebark pine production.

Habitat Management

Grizzly bears use a variety of habitats in the GYE (LeFranc *et al.* 1987, p. 120). In general, a grizzly bear's individual habitat needs and daily movements are largely driven by the search for food, mates, cover, security, or den sites. The available habitat for bears is also influenced by people and their activities. Human activities are the primary factor impacting habitat security and the ability of bears to find and access foods, mates, cover, and den sites. Other factors influencing habitat use and function for grizzly bears include overall habitat productivity (*e.g.,* food distribution and abundance), the availability of habitat components (*e.g.,* denning areas, cover types), grizzly bear social dynamics, learned behavior and preferences of individual grizzly bears, grizzly bear population density, and random variation.

The GYE is part of the Middle Rockies ecoregion (Omernik 1987, pp. 120–121; Woods *et al.* 1999, entire; McGrath *et al.* 2002, entire; Chapman *et al.* 2004, entire) and provides the habitat heterogeneity necessary for adequate food, denning, and cover resources. Because there are limited opportunities to increase or control these habitat components, the objective for grizzly bear habitat management is to reduce or mitigate the risk of human-caused mortality. The most effective habitat management tool for reducing grizzly bear mortality risk is managing motorized access to ensure bears have secure areas away from humans (Nielsen *et al.* 2006, p. 225; Schwartz *et al.* 2010, p. 661). We define secure habitat as areas more than 500 m (1,650 ft) from a motorized access route and greater than or equal to 4 hectares (ha) (10 acres (ac)) in size (U.S. Fish and Wildlife Service 2016, *Chapter 3*)). Unmanaged motorized access: (1) Increases human interaction and potential grizzly bear mortality risk; (2) increases displacement from important habitat; (3) increases habituation to humans; and (4) decreases habitat where energetic requirements can be met with limited disturbance from humans (Mattson *et al.* 1987, pp. 269–271; McLellan and Shackleton 1988, pp. 458–459; McLellan 1989, pp. 1862–1864; Mace *et al.* 1996, pp. 1402–1403; Schwartz *et al.* 2010, p. 661). Managing motorized access helps ameliorate these impacts. Other habitat management tools that minimize displacement and reduce grizzly bear mortality risk include regulating livestock allotments and developed sites on public lands. Implementing food storage orders on public lands also reduces mortality risk for both humans and grizzly bears. Requiring users and recreationists in grizzly bear habitat to store their food, garbage, and other bear attractants so that they are inaccessible to bears reduces encounters and grizzly bear-human conflicts.

The primary factor affecting grizzly bears at both the individual and population level is excessive human-caused mortality. Regulating human-caused mortality through habitat management is an effective approach, as evidenced by increasing grizzly bear populations in the lower 48 States where motorized access standards exist (*e.g.,* GYE and Northern Continental Divide Ecosystem). This requires

ongoing monitoring of the grizzly bear population to understand if it is sufficiently resilient to allow for a conservative level of human-caused mortality without causing population decline.

Population Ecology—Background

The scientific discipline that informs decisions about most wildlife population management is population ecology: the study of how populations change over time and space and interact with their environment (Vandermeer and Goldberg 2003, p. 2; Snider and Brimlow 2013, p. 1). Ultimately, the goal of population ecology is to understand why and how populations change over time. Wildlife managers and population ecologists monitor a number of factors to gauge the status of a population and make scientifically informed decisions. These measures include population size, population trend, density, and occupied range.

While population size is a well-known and easily understood metric, it only provides information about a population at a single point in time. Wildlife managers often want to know how a population is changing over time and why. Population trend is determined by births, deaths, and how many animals move into or out of the population (*i.e.,* disperse) and is typically expressed as the population growth rate (represented by the symbol λ, the Greek letter ''lambda''). For grizzly bear populations, lambda estimates the average rate of annual growth, with a value of 1.0 indicating a stable population trend with no net growth or decline. A lambda value of 1.03 means the population size is increasing at 3 percent per year. Conversely, a lambda value of 0.98 means the population size is decreasing at 2 percent per year.

In its simplest form, population trend is driven by births and deaths. Survival and reproduction are the fundamental demographic vital rates driving whether the grizzly bear population increases, decreases, or remains stable. When wildlife biologists refer to demographic vital rates, they are referring to all of the different aspects of reproduction and survival that cumulatively determine a population's trend (*i.e.,* lambda). Some of the demographic factors influencing population trend for grizzly bears are age-specific survival, sex-specific survival, average number of cubs per litter, the time between litters (*i.e.,* interbirth interval), age ratios, sex ratios, average age of first reproduction, lifespan, transition probabilities (see glossary), immigration, and emigration. These data are all used to determine if and why a population is increasing or decreasing (Anderson 2002, p. 53; Mills 2007, p. 59; Mace *et al.* 2012, p. 124).

No population can grow forever because the resources it requires are finite. This understanding led ecologists to develop the concept of carrying capacity (expressed as the symbol ''K''). This is the maximum number of individuals a particular environment can support over the long term without resulting in population declines caused by resource depletion (Vandermeer and Goldberg 2003, p. 261; Krebs 2009, p. 148). Classical studies of population growth occurred under controlled laboratory conditions where populations of a single organism, often an insect species or single-celled organism, were allowed to grow in a confined space with a constant supply of food (Vandermeer and Goldberg 2003, pp. 14–17). Under these conditions, K is a constant value that is approached in a predictable way that can be described by a mathematical equation. However, few studies of wild populations have demonstrated the stability and constant population size suggested by this equation. Instead, many factors affect carrying capacity of animal populations in the wild, and populations usually fluctuate above and below carrying capacity, resulting in relative population stability over time (*i.e.,* lambda value of approximately 1.0 over the long term) (Colinvaux 1986, pp. 138–139, 142; Krebs 2009, p. 148). For populations at or near carrying capacity, population size fluctuates just above and below carrying capacity, sometimes resulting in annual estimates of lambda showing a declining population (figure 1). However, to obtain a biologically meaningful estimate of average annual population growth rate for a long-lived species like the grizzly bear that reproduces only once every 3 years and does not start reproducing until at least 4 years old, we must examine lambda over a longer period of time to see what the average trend is over that specified time. This is not an easy task; for grizzly bears, it takes at least 6 years of monitoring as many as 30 females with radio-collars to accurately estimate average annual population growth (Harris *et al.* 2011, p. 29).

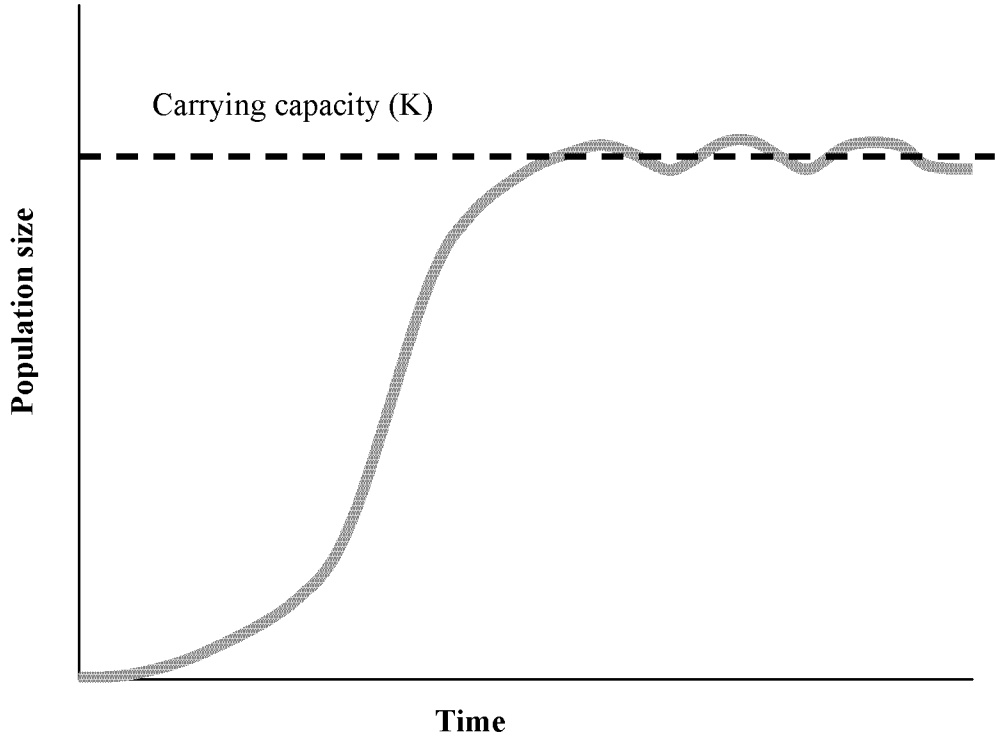

Figure 1.—Typical Population Trend with Respect to Carrying Capacity (K). When the population is low, growth rate is rapid. When the population is at or near K, growth rates decelerate and may temporarily decrease as population size fluctuates around K.

When a population is at or near carrying capacity, mechanisms that regulate or control population size fall into two broad categories: density-dependent effects and density-independent effects. Generally, factors that limit population growth more strongly as population size increases are density-dependent effects, or intrinsic factors, usually expressed through individual behaviors, physiology, or genetic potential (McLellan 1994, p. 15). Extrinsic factors, such as drought or fire that kill individuals regardless of how many individuals are in a population, are considered density-independent effects (Colinvaux 1986, p. 172). These extrinsic factors may include changes in resources, predators, or human impacts. Population stability (*i.e.,* fluctuation around carrying capacity or a long-term equilibrium) is often influenced by a combination of density-dependent and density-independent effects. Among grizzly bears, indicators of density-dependent population regulation can include: (1) Decreased yearling and cub survival due to increases in intraspecific killing (*i.e.,* bears killing other bears), (2) decreases in home-range size, (3) increases in generation time, (4) increases in age of first reproduction, and (5) decreased reproduction (McLellan 1994, entire; Eberhardt 2002, pp. 2851–2852; Kamath *et al.* 2015, p. 10; van Manen *et al.* 2015, pp.8–9). Indicators that density-independent effects are influencing population growth can include: (1) Larger home-range sizes (because bears are roaming more widely in search of foods) (McLoughlin *et al.* 2000, pp. 49–51), (2) decreased cub and yearling survival due to starvation, (3) increases in age of first reproduction due to limited food resources, and (4) decreased reproduction due to limited food resources. As a result of these sometimes similar indicators, determining whether a population is affected more strongly by density-dependent or density-independent effects can be a complex undertaking. For long-lived mammals such as grizzly bears, extensive data collected over decades are needed to understand if and how these factors are operating in a population. We have these data for the GYE grizzly bear population, and the IGBST has been able to tease apart some of these confounding effects to find that density-dependent effects are the likely cause of the recent slow in population growth (see *Changes in Food Resources* under Factor E, below, for more detailed information).

Population viability analyses (PVAs) are another tool population ecologists often use to assess the status of a population by estimating its likelihood of persistence in the future. Boyce *et al.* (2001, pp. 1–11) reviewed the existing published PVAs for GYE grizzly bears and updated these previous analyses using data collected since the original analyses were completed. They also conducted new PVAs using two software packages that had not been available to previous investigators. They found that the GYE grizzly bear population had a 1 percent chance of

going extinct within the next 100 years and a 4 percent chance of going extinct in the next 500 years (Boyce *et al.* 2001, pp. 1, 10–11). The authors cautioned that their analyses were not entirely sufficient because they were not able to consider possible changes in habitat and how these may affect population vital rates (Boyce *et al.* 2001, pp. 31–32). Based on this recommendation, Boyce worked with other researchers to develop a habitat-based framework for evaluating mortality risk of a grizzly bear population in Alberta, Canada (Nielsen *et al.* 2006, p. 225). They concluded that secure habitat (low mortality risk) was the key to grizzly bear survival. Schwartz *et al.* (2010, p. 661) created a similar mortality risk model for the GYE with similar results. Both studies suggest that managing for secure habitat is one of the most effective management actions to ensure population persistence.

Recovery Planning and Implementation

Background

Prior to the arrival of Europeans, the grizzly bear occurred throughout the western half of the contiguous United States, central Mexico, western Canada, and most of Alaska (Roosevelt 1907, pp. 27–28; Wright 1909, pp. vii, 3, 185–186; Merriam 1922, p. 1; Storer and Tevis 1955, p. 18; Rausch 1963, p. 35; Herrero 1972, pp. 224–227; Schwartz *et al. 2003b,* pp. 557–558). Pre-settlement population levels for the western contiguous United States are believed to have been in the range of 50,000 animals (Servheen 1999, p. 50). With European settlement of the American West and government-funded bounty programs aimed at eradication, grizzly bears were shot, poisoned, and trapped wherever they were found, and the resulting range and population declines were dramatic (Roosevelt 1907, pp. 27–28; Wright 1909, p. vii; Storer and Tevis 1955, pp. 26–27; Leopold 1967, p. 30; Koford 1969, p. 95; Craighead and Mitchell 1982, p. 516; Servheen 1999, pp. 50–51). The range and numbers of grizzly bears were reduced to less than 2 percent of their former range and numbers by the 1930s, approximately 125 years after first contact (U.S. Fish and Wildlife Service 1993, p. 9; Servheen 1999, p. 51). Of 37 grizzly bear populations present within the lower 48 States in 1922, 31 were extirpated by 1975 (Servheen 1999, p. 51).

By the 1950s, with little or no conservation effort or management directed at maintaining grizzly bears anywhere in their range, the GYE population had been reduced in numbers and was restricted largely to the confines of Yellowstone National Park and some surrounding areas (Craighead *et al.* 1995, pp. 41–42; Schwartz *et al.* 2003*b,* pp. 575–579). High grizzly bear mortality in 1970 and 1971, following closure of the open-pit garbage dumps in Yellowstone National Park (Gunther 1994, p. 550; Craighead *et al.* 1995, pp. 34–36), and concern about grizzly bear population status throughout its remaining range prompted the 1975 listing of the grizzly bear as a threatened species in the lower 48 States under the Act (40 FR 31734; July 28, 1975). When the grizzly bear was listed in 1975, the population estimate in the GYE ranged from 136 to 312 individuals (Cowan *et al.* 1974, pp. 32, 36; Craighead *et al.* 1974, p. 16; McCullough 1981, p. 175).

Grizzly bear recovery has required, and will continue to require, cooperation among numerous government agencies and the public for a unified management approach. To this end, there are three interagency groups that help guide grizzly bear management in the GYE. The Interagency Grizzly Bear Study Team (IGBST), created in 1973, provides the scientific information necessary to make informed management decisions about grizzly bear habitat and conservation in the GYE. Since its formation in 1973, the published work of the IGBST has made the GYE grizzly bear population the most studied in the world. The wealth of biological information produced by the IGBST over the years includes 30 annual reports, hundreds of articles in peer-reviewed journals, dozens of theses, and other technical reports (see: *http://www.nrmsc.usgs.gov/science/igbst/detailedpubs*). Members of the IGBST include scientists and wildlife managers from the Service, U.S. Geological Survey, National Park Service, Forest Service, academia, and each State wildlife agency involved in grizzly bear recovery.

The second interagency group guiding grizzly bear conservation efforts is the Interagency Grizzly Bear Committee (hereafter referred to as the IGBC). Created in 1983, its members coordinate management efforts and research actions across multiple Federal lands and States to recover the grizzly bear in the lower 48 States (USDA and USDOI 1983, entire). The objective of the IGBC is to change land management practices to more effectively provide security and maintain or improve habitat conditions for the grizzly bear (USDA and USDOI 1983, entire). IGBC members include upper level managers from all affected State and Federal agencies (USDA and USDOI 1983, entire).

The third interagency group guiding management of the GYE grizzly bear population is a subcommittee of the IGBC: The Yellowstone Ecosystem Subcommittee. Formed in 1983 to coordinate recovery efforts specific to the GYE, the Yellowstone Ecosystem Subcommittee includes mid-level managers and representatives from the Service; the five GYE National Forests (the Shoshone, Beaverhead-Deerlodge, Bridger-Teton, Custer-Gallatin, and Caribou-Targhee); Yellowstone National Park; Grand Teton National Park; the Wyoming Game and Fish Department (WGFD); the Montana Department of Fish, Wildlife, and Parks (MTFWP); the Idaho Department of Fish and Game (IDFG); the Bureau of Land Management (BLM); county governments from each affected State; the Northern Arapahoe Tribe; and the Eastern Shoshone Tribe (USDA and USDOI 1983). The IGBST is an advisor to the subcommittee providing all the scientific information on the GYE grizzly bear population and its habitat.

Recovery Planning

In accordance with section 4(f)(1) of the Act, the Service completed a Grizzly Bear Recovery Plan (Recovery Plan) in 1982 (U.S. Fish and Wildlife Service 1982, p. ii). Recovery plans serve as road maps for species recovery—they lay out where we need to go and how to get there through specific actions. Recovery plans are not regulatory documents and are instead intended to provide guidance to the Service, States, and other partners on methods of minimizing threats to listed species and on criteria that may be used to determine when recovery is achieved.

The Recovery Plan identified six recovery ecosystems within the conterminous United States thought to support grizzly bears. Today, grizzly bear distribution is primarily within and around the areas identified as Recovery Zones (U.S. Fish and Wildlife Service 1993, pp. 10–13, 17–18), including: (1) The GYE in northwest Wyoming, eastern Idaho, and southwest Montana (24,000 sq km (9,200 sq mi)) at more than 700 bears (Haroldson *et al.* 2014, p. 17); (2) the Northern Continental Divide Ecosystem (NCDE) of north-central Montana (25,000 sq km (9,600 sq mi)) at more than 900 bears (Kendall *et al.* 2009, p. 9; Mace *et al.* 2012, p. 124); (3) the North Cascades area of north-central Washington (25,000 sq km (9,500 sq mi)) at fewer than 20 bears (last documented sighting in 1996) (Almack *et al.* 1993, p. 4; National Park Service and U.S. Fish and Wildlife Service 2015, p. 3); (4) the Selkirk Mountains area of north Idaho, northeast

Washington, and southeast British Columbia (5,700 sq km (2,200 sq mi)) at approximately 88 bears (U.S. Fish and Wildlife Service 2011, p. 26); and (5) the Cabinet-Yaak area of northwest Montana and northern Idaho (6,700 sq km (2,600 sq mi)) at approximately 48 bears (Kendall *et al.* 2015, p. 1). The Bitterroot Recovery Zone in the Bitterroot Mountains of central Idaho and western Montana (14,500 sq km (5,600 sq mi)) is not known to contain a population of grizzly bears at this time (U.S. Fish and Wildlife Service 1996, p. 1; 65 FR 69624, November 17, 2000; U.S. Fish and Wildlife Service 2000, p. 1–3). The San Juan Mountains of Colorado also were identified as an area of possible grizzly bear occurrence (40 FR 31734, July 28, 1975; U.S. Fish and Wildlife Service 1982, p. 12; U.S. Fish and Wildlife Service 1993, p. 11), but no confirmed sightings of grizzly bears have occurred there since a grizzly bear mortality in 1979 (U.S. Fish and Wildlife Service 1993, p. 11).

In 1993, the Service completed revisions to the Recovery Plan to include additional tasks and new information that increased the focus and effectiveness of recovery efforts (U.S. Fish and Wildlife Service 1993, pp. 41–58). In 1996 and 1997, we released supplemental chapters to the Recovery Plan to direct recovery in the Bitterroot and North Cascades Recovery Zones, respectively (U.S. Fish and Wildlife Service 1996; U.S. Fish and Wildlife Service 1997). In the GYE, we updated both the habitat and demographic recovery criteria in 2007 (72 FR 11376, March 13, 2007). We proposed revisions to the demographic recovery criteria in 2013 (78 FR 17708, March 22, 2013) and are proposing additional revisions concurrent with this proposed rule to reflect the best available science. Below, we report the status of both the habitat and demographic recovery criteria in the GYE.

In 1979, the IGBST developed the first comprehensive ''Guidelines for Management Involving Grizzly Bears in the Greater Yellowstone Area'' (hereafter referred to as the Guidelines) (Mealey 1979, pp. 1–4). We determined in a biological opinion that implementation of the Guidelines by Federal land management agencies would promote conservation of the grizzly bear (U.S. Fish and Wildlife Service 1979, p. 1). Beginning in 1979, the five affected National Forests (Beaverhead-Deerlodge, Bridger-Teton, Caribou-Targhee, Custer-Gallatin, and Shoshone), Yellowstone and Grand Teton National Parks, and the BLM in the GYE began managing habitats for grizzly bears under direction specified in the Guidelines.

In 1986, the IGBC modified the Guidelines to more effectively manage habitat by mapping and managing according to three different management situations (USDA Forest Service 1986, pp. 35–39). In areas governed by ''Management Situation One,'' grizzly bear habitat maintenance and improvement and grizzly bear-human conflict minimization received the highest management priority. In areas governed by ''Management Situation Two,'' grizzly bear use was important, but not the primary use of the area. In areas governed by ''Management Situation Three,'' grizzly bear habitat maintenance and improvement were not management considerations.

The National Forests and National Parks delineated 18 different bear management units (BMUs) within the GYE Recovery Zone to aid in managing habitat and monitoring population trends. Each BMU was further subdivided into subunits, resulting in a total of 40 subunits contained within the 18 BMUs (see map at *http://www.fws.gov/mountain-prairie/es/species/mammals/grizzly/Yellowstone_Recovery_Zone_map.pdf*). The BMUs are analysis areas that approximate the lifetime size of a female's home range, while subunits are analysis areas that approximate the annual home range size of adult females. Subunits provide the optimal scale for evaluation of seasonal feeding opportunities and landscape patterns of food availability for grizzly bears (Weaver *et al.* 1986, p. 236). The BMUs and subunits were identified to provide enough quality habitat and to ensure that grizzly bears were well distributed across the GYE Recovery Zone as per the Recovery Plan (U.S. Fish and Wildlife Service 2007*c,* pp. 20, 41, 44–46). Management improvements made as a result of these Guidelines are discussed under Factor A, below.

Habitat-Based Recovery Criteria

On June 17, 1997, we held a public workshop in Bozeman, Montana, to develop and refine habitat-based recovery criteria for the grizzly bear, with an emphasis on the GYE. This workshop was held as part of the settlement agreement in *Fund for Animals* v. *Babbitt,* 967 F.Supp.6 (D. DC 1997). A **Federal Register** notice notified the public of this workshop and provided interested parties an opportunity to participate and submit comments (62 FR 19777; April 23, 1997). After considering 1,167 written comments, we developed biologically-based habitat recovery criteria with the overall goal of maintaining or improving habitat conditions at levels that existed in 1998.

There is no published method to deductively calculate minimum habitat values required for a healthy and recovered population. Grizzly bears are long-lived opportunistic omnivores whose food and space requirements vary depending on a multitude of environmental and behavioral factors and on variation in the experience and knowledge of each individual bear. Grizzly bear home ranges overlap and change seasonally, annually, and with reproductive status. While these factors make the development of threshold habitat criteria difficult, habitat criteria may be established by assessing what habitat factors in the past were compatible with a stable to increasing grizzly bear population, and then using these habitat conditions as threshold values to be maintained to ensure a healthy population (*i.e.,* a ''no net loss'' approach), as suggested by Nielsen *et al.* (2006, p. 227). We selected 1998 levels as our baseline year because it was known that habitat values at this time were compatible with an increasing grizzly bear population throughout the 1990s (Eberhardt *et al.* 1994, p. 362; Knight and Blanchard 1995, pp. 5, 9; Knight *et al.* 1995, p. 247; Boyce *et al.* 2001, pp. 10–11; Schwartz *et al.* 2006*b,* p. 48) and that the levels of both secure habitat and the number and capacity of developed sites had changed little from 1988 to 1998 (USDA Forest Service 2004, pp. 140–141, 159–162). The 1998 baseline is also described in detail in Factor A, below.

The habitat-based recovery criteria established objective, measurable values for levels of motorized access, secure habitat, developed sites, and livestock allotments (*i.e.,* ''the 1998 baseline'') for the GYE. The 1998 values will not change through time, unless improvements benefit bears. As each of these management objectives are central to potential present or threatened destruction, modification, or curtailment of habitat or range, each of these criteria are discussed in detail under Factor A, below. These habitat-based recovery criteria have been met since their incorporation into the Recovery Plan (U.S. Fish and Wildlife Service 2007*b,* entire).

Additionally, we developed several monitoring items that may help inform management decisions or explain population trends: (1) Trends in the location and availability of whitebark pine, cutthroat trout, army cutworm moths, and winter-killed ungulate carcasses; and (2) grizzly bear mortality numbers, locations, and causes; grizzly bear-human conflicts; nuisance bear

management actions; bear-hunter conflicts; and bear-livestock conflicts (U.S. Fish and Wildlife Service 2007*c,* pp. 25–60). Federal and State agencies monitor these items, and the IGBST produces an annual report with their results. This information is used to examine relationships between food availability, human activity, and demographic parameters of the population such as survival, population growth, or reproduction. The current habitat-based recovery criteria have been appended to the Recovery Plan and are included in the draft 2016 Conservation Strategy, which is the comprehensive post-delisting management plan for a recovered population as called for in the Recovery Plan.

Suitable Habitat

Because we used easily recognized boundaries to delineate the boundaries of the proposed GYE grizzly bear DPS, it includes both suitable and unsuitable habitat (figure 2). For the purposes of this proposed rule, ''suitable habitat'' is considered the area within the DPS boundaries capable of supporting grizzly bear reproduction and survival now and in the foreseeable future. We have defined ''suitable habitat'' for grizzly bears as areas having three characteristics: (1) Being of adequate habitat quality and quantity to support grizzly bear reproduction and survival; (2) being contiguous with the current distribution of GYE grizzly bears such that natural recolonization is possible; and (3) having low mortality risk as indicated through reasonable and manageable levels of grizzly bear mortality.

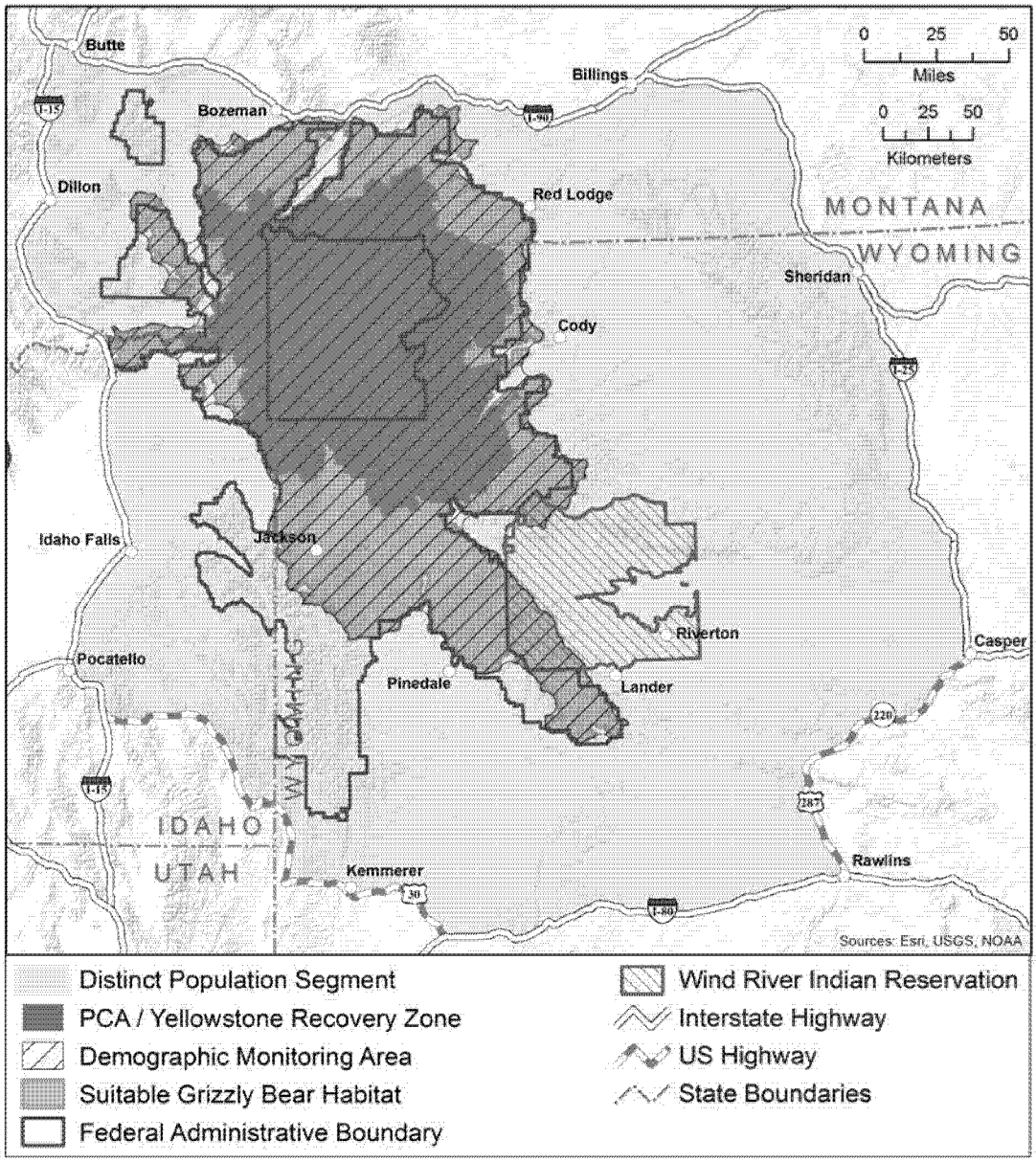

Figure 2. Map of the Greater Yellowstone Ecosystem (GYE). Boundaries are shown for: (1) the GYE grizzly bear distinct population segment (DPS); (2) the primary conservation area (PCA); (3) the demographic monitoring area (DMA); (4) biologically suitable habitat (as defined in Factor A, below); and (5) the Federal administrative boundary.

Our definition and delineation of suitable habitat is built on the widely accepted conclusions of extensive research (Craighead 1980, pp. 8–11; Knight 1980, pp. 1–3; Peek *et al.* 1987, pp. 160–161; Merrill *et al.* 1999, pp. 233–235; Schwartz *et al.* 2010, p. 661) that grizzly bear reproduction and survival is a function of both the biological needs of grizzly bears and remoteness from human activities, which minimizes mortality risk for grizzly bears. Mountainous areas provide hiding cover, the topographic variation necessary to ensure a wide

variety of seasonal foods, and the steep slopes used for denning (Judd *et al.* 1986, pp. 114–115; Aune and Kasworm 1989, pp. 29–58; Linnell *et al.* 2000, pp. 403–405). Higher elevation, mountainous regions in the GYE (Omernik 1987, pp. 118–125; Omernik 1995, pp. 49–62; Woods *et al.* 1999, entire; McGrath *et al.* 2002, entire; Chapman *et al.* 2004, entire) contain high-energy foods such as whitebark pine seeds (Mattson and Jonkel 1990, p. 223; Mattson *et al.* 1991*a,* p. 1623) and army cutworm moths (Mattson *et al.* 1991*b,* 2434; French *et al.* 1994, p. 391).

For our analysis of suitable habitat, we considered the Middle Rockies ecoregion, within which the GYE is contained (Omernik 1987, pp. 120–121; Woods *et al.* 1999, entire; McGrath *et al.* 2002, entire; Chapman *et al.* 2004, entire) to meet grizzly bear biological needs providing food, seasonal foraging opportunities, cover, and denning areas (Mattson and Merrill 2002, p. 1125). Although grizzly bears historically occurred throughout the area of the proposed GYE grizzly bear DPS (Stebler 1972, pp. 297–298), many of these habitats are not, today, biologically suitable for grizzly bears. While there are records of grizzly bears in eastern Wyoming near present-day Sheridan, Casper, and Wheatland, even in the early 19th century, indirect evidence suggests that grizzly bears were less common in these eastern prairie habitats than in mountainous areas to the west (Rollins 1935, p. 191; Wade 1947, p. 444). Grizzly bear presence in these drier, grassland habitats was associated with rivers and streams where grizzly bears used bison carcasses as a major food source (Burroughs 1961, pp. 57–60; Herrero 1972, pp. 224–227; Stebler 1972, pp. 297–298; Mattson and Merrill 2002, pp. 1128–1129). Most of the short-grass prairie on the east side of the Rocky Mountains has been converted into agricultural land (Woods *et al.* 1999, entire), and high densities of traditional food sources are no longer available due to land conversion and human occupancy of urban and rural lands. Traditional food sources such as bison and elk have been dramatically reduced and replaced with domestic livestock attractants such as cattle, sheep, chickens, goats, pigs, and bee hives, which can become anthropogenic sources of prey for grizzly bears. While food sources such as grasses and berries are abundant in some years in the riparian zones within which the bears travel, these are not reliable every year and can only support a small number of bears. These nutritional constraints and the potential for human-bear conflicts limit the potential for a self-sustaining population of grizzly bears to develop in the prairies, although we expect some grizzly bears to live in these areas. Because wild bison herds no longer exist in these areas, they are no longer capable of contributing in a meaningful way to the overall status of the GYE grizzly bear DPS. Thus, we did not include drier sagebrush, prairie, or agricultural lands within our definition of suitable habitat because these land types no longer contain adequate food resources (*i.e.,* bison) to support grizzly bears. Figure 2, above, illustrates suitable habitat within the GYE grizzly bear DPS.

Human-caused mortality risk also can impact which habitat might be considered suitable. Some human-caused mortality is unavoidable in a dynamic system where hundreds of bears inhabit large areas of diverse habitat with several million human visitors and residents. The negative impacts of humans on grizzly bear survival and habitat use are well documented (Harding and Nagy 1980, p. 278; McLellan and Shackleton 1988, pp. 458–459; Aune and Kasworm 1989, pp. 83–103; McLellan 1989, pp. 1862–1864; McLellan and Shackleton 1989, pp. 377–378; Mattson 1990, pp. 41–44; Mattson and Knight 1991, pp. 9–11; Mace *et al.* 1996, p. 1403; McLellan *et al.* 1999, pp. 914–916; White *et al.* 1999, p. 150; Woodroffe 2000, pp. 166–168; Boyce *et al.* 2001, p. 34; Johnson *et al.* 2004, p. 976; Schwartz *et al.* 2010, p. 661). These effects range from temporary displacement to actual mortality. Grizzly bear persistence in the contiguous United States between 1920 and 2000 was negatively associated with human and livestock densities (Mattson and Merrill 2002, pp. 1129–1134). As human population densities increase, the frequency of encounters between humans and grizzly bears also increases, resulting in more human-caused grizzly bear mortalities due to a perceived or real threat to human life or property (Mattson *et al.* 1996, pp. 1014–1015). Similarly, as livestock densities increase in habitat occupied by grizzly bears, depredations follow. Although grizzly bears frequently coexist with cattle without depredating them, when grizzly bears encounter domestic sheep, they usually are attracted to such flocks and depredate the sheep (Jonkel 1980, p. 12; Knight and Judd 1983, pp. 188–189; Orme and Williams 1986, pp. 199–202; Anderson *et al.* 2002, pp. 252–253). If repeated depredations occur, managers either relocate the bear or remove it from the population, resulting in such domestic sheep areas becoming population sinks (Knight *et al.* 1988, pp. 122–123).

Because urban sites and sheep allotments possess high mortality risks for grizzly bears, we did not include these areas as suitable habitat (Knight *et al.* 1988, pp. 122–123). Based on 2000 census data, we defined urban areas as census blocks with human population densities of more than 50 people per sq km (129 people per sq mi) (U.S. Census Bureau 2005, entire). Cities within the Middle Rockies ecoregion, such as West Yellowstone, Gardiner, Big Sky, and Cooke City, Montana, and Jackson, Wyoming, were not included as suitable habitat. There are large, contiguous blocks of sheep allotments in peripheral areas of the ecosystem in the Wyoming Mountain Range, the Salt River Mountain Range, and portions of the Wind River Mountain Range on the Bridger-Teton and the Targhee National Forests (see figure 2, above). This spatial distribution of sheep allotments on the periphery of suitable habitat results in areas of high mortality risk to bears within these allotments and a few small, isolated patches or strips of suitable habitat adjacent to or within sheep allotments. These strips and patches of land possess higher mortality risks for grizzly bears because of their enclosure by and proximity to areas of high mortality risk. This phenomenon in which the quantity and quality of suitable habitat is diminished because of interactions with surrounding less suitable habitat is known as an ''edge effect'' (Lande 1988, pp. 3–4; Yahner 1988, pp. 335–337; Mills 1995, p. 396). Edge effects are exacerbated in small habitat patches with high perimeter-to-area ratios (*i.e.,* those that are longer and narrower) and in wide-ranging species such as grizzly bears because they are more likely to encounter surrounding, unsuitable habitat (Woodroffe and Ginsberg 1998, p. 2126). Due to the negative edge effects of this distribution of sheep allotments on the periphery of grizzly bear range, our analysis did not classify linear strips and isolated patches of habitat as suitable habitat.

Finally, dispersal capabilities of grizzly bears were considered in our determination of which potential habitat areas might be considered suitable. Although the Bighorn Mountains west of I–90 near Sheridan, Wyoming, are grouped within the Middle Rockies ecoregion, they are not connected to the current distribution of grizzly bears via suitable habitat or linkage zones, nor are there opportunities for such linkage. The Bighorn Mountains are comprised of 6,341 sq km (2,448 sq mi) of habitat that is classified as part of the Middle

Rockies ecoregion, but are separated from the current grizzly bear distribution by approximately 100 km (60 mi) of a mosaic of private and BLM lands primarily used for agriculture, livestock grazing, and oil and gas production (Chapman *et al.* 2004, entire). Although there is a possibility that individual bears may emigrate from the GYE to the Bighorn Mountains occasionally, this dispersal distance exceeds the average dispersal distance for both males (30 to 42 km (19 to 26 mi)) and females (10 to 14 km (6 to 9 mi)) (McLellan and Hovey 2001, p. 842; Proctor *et al.* 2004, p. 1108). Without constant emigrants from suitable habitat, the Bighorn Mountains will not support a self-sustaining grizzly bear population. Therefore, due to the fact that this mountain range is disjunct from other suitable habitat and current grizzly bear distribution, our analysis did not classify the Bighorn Mountains as suitable habitat within the GYE grizzly bear DPS boundaries.

Some areas that do not meet our definition of suitable habitat may still be used by grizzly bears (4,635 sq km (1,787 sq mi)) (Schwartz *et al.* 2002, p. 209; Schwartz *et al.* 2006*b,* pp. 64–66). The records of grizzly bears in these unsuitable habitat areas are generally due to recorded grizzly bear-human conflicts or to transient animals. These areas are defined as unsuitable due to the high risk of mortality resulting from these grizzly bear-human conflicts. These unsuitable habitat areas do not support grizzly bear reproduction or survival because bears that repeatedly come into conflict with humans or livestock are usually either relocated or removed (*i.e.,* euthanized or placed in an approved American Zoological Association facility) from these areas.

According to the habitat suitability criteria described above, the GYE contains approximately 46,035 sq km (17,774 sq mi) of suitable grizzly bear habitat within the DPS boundaries; or roughly 24 percent of the total area within the DPS boundaries (see figure 2, above). This amount of suitable habitat is sufficient to meet all habitat needs of a recovered grizzly bear population and provide ecological resiliency to the population through the availability of widely distributed, high-quality habitat that will allow the population to respond to environmental changes. Grizzly bears currently occupy about 90 percent of that suitable habitat (42,180 sq km (16,286 sq mi)) (Haroldson 2015, *in litt.*). It is important to note that the current grizzly bear occupancy does not mean that equal densities of grizzly bears are found throughout the region. Instead, most grizzly bears (approximately 75 percent of females with cubs-of-the-year) are within the PCA for most or part of each year (Schwartz *et al.* 2006*a,* pp. 64–66; Haroldson 2014, *in litt.*). Grizzly bear use of suitable habitat may vary seasonally and annually with different areas being more important than others in some seasons or years (Aune and Kasworm 1989, pp. 48–62). We expect grizzly bears to naturally recolonize much, if not all, suitable habitat (Pyare *et al.* 2004, pp. 5–6).

Population and Demographic Recovery Criteria

The 1993 Recovery Plan identified three demographic parameters that should be measured to assess recovery in the GYE. The first criterion established a minimum population size. The second criterion ensured reproductive females were distributed across the Recovery Zone, and the third criterion created total mortality limits that would allow the population to achieve recovery. Since the 1993 Recovery Plan was released, we have evaluated and updated how we assess those recovery criteria as newer, better science became available. These revisions include implementing new scientific methods to determine the status of the GYE grizzly bear demographic monitoring area (DMA) population, estimate population size, and determine what levels of mortality the population could withstand without causing population decline (*i.e.,* the sustainable mortality rate). The DMA is the area within which the population is annually surveyed and estimated and within which the total mortality limits apply, and is based on the suitable habitat area (see figure 2, above). The Wildlife Monograph: ''Temporal, Spatial, and Environmental Influences on The Demographics of Grizzly Bears in The Greater Yellowstone Ecosystem'' (Schwartz *et al.* 2006*b,* entire); the report: ''Reassessing Methods to Estimate Population Size and Sustainable Mortality Limits for the Yellowstone Grizzly Bear'' (IGBST 2005, entire); and the report: ''Reassessing Methods to Estimate Population Size and Sustainable Mortality Limits for the Yellowstone Grizzly Bear Workshop Document Supplement 19–21 June, 2006'' (IGBST 2006, entire) provided the scientific basis for revising the demographic recovery criteria in the GYE in 2007 (72 FR 11376; March 13, 2007). Similarly, the revisions we proposed to implement in 2013 (78 FR 17708; March 22, 2013) are based on updated demographic analyses using the same methods as before (Schwartz *et al.* 2006*b,* pp. 9–16) and reported in the IGBST's 2012 report: ''Updating and Evaluating Approaches to Estimate Population Size and Sustainable Mortality Limits for Grizzly Bears in the Greater Yellowstone Ecosystem'' (hereafter referred to as the 2012 IGBST report). This 2012 IGBST report informed the scientific basis for the changes we proposed to the GYE demographic recovery criteria in 2013.

In 2013, we proposed to change two of the recovery criteria for the Yellowstone Ecosystem in the Grizzly Bear Recovery Plan (78 FR 17708; March 22, 2013). Changes were proposed for the demographic goal of maintaining a minimum population of 500 animals and at least 48 females with cubs, and to eliminate this criterion's dependence on a specific counting method; and to revise the area where the population would be counted and where total mortality limits would apply. We chose to revise the criteria because they no longer represented the best scientific data or the best technique to assess recovery of the GYE grizzly bear DMA population (78 FR 17708; March 22, 2013). Specifically, these criteria warrant revision because: (1) Updated demographic analyses for 2002–2011 indicate that the rate of growth seen during the 1983–2001 period has slowed and sex ratios have changed; (2) there is consensus among scientists and statisticians that the area within which we apply total mortality limits should be the same area we use to estimate population size; and (3) the population has basically stabilized inside the DMA since 2002, with an average population size between 2002–2014 of 674 using the model-averaged Chao2 population estimation method (95% Confidence Interval (CI) = 600–747). This stabilization is evidence that the population is close to its carrying capacity as evidenced by density dependent regulation occurring inside the DMA (van Manen *et al.* 2015, entire). Also, there is a need to allow the IGBST to update the method used to measure population size demographic criteria so that they can incorporate results from new scientific methods based on peer-reviewed, scientific literature as they become available.

We released these proposed revisions related to population size and total mortality limits for public comment in 2013 (78 FR 17708; March 22, 2013) but did not finalize them so that we could consider another round of public comments on these revisions in association with the comments on this proposed rule. Further proposed revisions to the Recovery Plan Supplement: Revised Demographic Criteria and the draft 2016 Conservation

Strategy for the Grizzly Bear in the GYE are being made available for public review and comment concurrent with this proposed rule. After review and incorporation of appropriate public comments, we plan to release a final Grizzly Bear Recovery Plan Supplement: Revised Demographic Criteria (U.S. Fish and Wildlife Service 1993, p. 44) and the 2016 Conservation Strategy for the Grizzly Bear in the Greater Yellowstone Ecosystem concurrent with release of a final determination on this proposed rule.

Below, we summarize relevant portions of the demographic analyses contained in the IGBST's 2012 report (IGBST 2012, entire) and compare them with the previous results of Schwartz *et al.* (2006*b,* entire) to draw conclusions concerning the grizzly bear population in the GYE DMA using these collective results. These analyses inform the scientific basis for our proposed revisions. While Schwartz *et al.* (2006*b,* p. 11) used data from 1983 through 2001; the 2012 IGBST report examined a more recent time period, 2002 through 2011 (IGBST 2012, p. 33). The IGBST found that population growth had slowed since the previous time period, but was still stable to slightly increasing, meaning the population had not declined. Because the fates of some radio-collared bears are unknown, Schwartz *et al.* (2006*b,* p. 48) and the IGBST (2012, p. 34) calculated two separate estimates of population growth rate: one based on the assumption that every bear with an unknown fate had died (*i.e.,* a conservative estimate); and the other simply removing bears with an unknown fate from the sample. The true population growth rate is assumed to be somewhere in between these two estimates because we know from 30 years of tracking grizzly bears with radio-collars that every lost collar does not indicate a dead bear. While Schwartz *et al.* (2006*b,* p. 48) found the GYE grizzly bear DMA population increased at a rate between 4.2 and 7.6 percent per year between 1983 and 2002, the IGBST (2012, p. 34) found this growth had slowed and leveled off and was between 0.3 percent and 2.2 percent per year during 2002–2011.

Schwartz *et al.* (2006*b,* p. 29) analyzed survivorship of cubs, yearlings, and independent bears based on whether they lived inside Yellowstone National Park, outside the Park but inside the Recovery Zone or PCA, or outside the PCA entirely. The PCA boundaries (containing 23,853 sq km (9,210 sq mi) correspond to those of the Yellowstone Recovery Zone (U.S. Fish and Wildlife Service 1993, p. 41) and will replace the Recovery Zone boundary (see figure 2, above). They concluded that grizzly bears were approaching carrying capacity inside Yellowstone National Park. The IGBST (2012, p. 33) documented lower cub and yearling survival than in the previous time period, results consistent with the conclusion by Schwartz *et al.* (2006*b*). Importantly, annual survival of independent females (the most influential age-sex cohort on population trend) remained the same while independent male survival increased (IGBST 2012, p. 33). Collectively, these two studies indicate that the growth rate of the GYE grizzly bear DMA population has slowed as bear densities have approached carrying capacity, particularly in the core area of occupied range.

Mortality reduction is a key part of any successful management effort for grizzly bears; however, some mortality, including most human-caused mortality, is unavoidable in a dynamic system where hundreds of bears inhabit large areas of diverse habitat with several million human visitors and residents. Adult female mortality influences the population trajectory more than mortality of males or dependent young (Eberhardt 1977, p. 210; Knight and Eberhardt 1985, p. 331; Schwartz *et al.* 2006*b,* p. 48). Low adult female survival was the critical factor that caused decline in the GYE population prior to the mid-1980s (Knight and Eberhardt 1985, p. 331). In the early 1980s, with the development of the first Recovery Plan (U.S. Fish and Wildlife Service 1982, pp. 21–24), agencies began to address mortality and increase adult female survivorship (USDA Forest Service 1986, pp. 1–2; Knight *et al.* 1999, pp. 56–57).

The Recovery Plan and subsequent supplements to it (U.S. Fish and Wildlife Service 1982, pp. 33–34; U.S. Fish and Wildlife Service 1993, pp. 20–21; U.S. Fish and Wildlife Service 2007*b,* p. 2) established three demographic criteria to objectively measure and monitor recovery of the GYE grizzly bear DMA population. The three parameters that are measured have remained the same since the 1993 plan: (1) Minimum population size for maintaining genetic integrity; (2) population distribution; and (3) total mortality limits that allow continued population health and occupancy of the recovery area. The most current demographic criteria were appended to the 1993 Recovery Plan in 2007, and proposed revisions to those were released for public comment in 2013, though not finalized, as explained above. Further revisions to the demographic criteria are being released for public comment concurrent with this proposed rule. Below, we detail each recovery criterion currently proposed.

Demographic Recovery Criterion 1—Maintain a population size of at least 500 bears and at least 48 females with cubs in the demographic monitoiring area (DMA) as indicated by methods established in published, peer-reviewed scientific literature and calculated by the IGBST using the most updated protocol as posted on their Web site. The current method (2016) used to estimate population size is the model-averaged Chao2 method. If the estimate of total population size drops below 500 or counts of females with cubs go below 48 unduplicated females with cubs in 3 consecutive years, this criterion will not be met. The population estimate and counts of unduplicated females with cubs will be calculated by the IGBST using data obtained within the DMA.

A minimum population size of at least 500 animals within the DMA will assure genetic health. Population size will be quantified by methods established in published, peer-reviewed scientific literature and calculated by the IGBST using the most updated protocol, as posted on their Web site. This number will ensure the short-term fitness of the population is not threatened by losses in genetic diversity in such an isolated population. Five hundred is a minimum population threshold. The goal is to maintain the population well above this threshold to ensure that genetic issues are not a detriment to the short-term genetic fitness of the GYE grizzly bear population. If the population declined to 500, more than one third of the suitable habitat in the DMA would be unoccupied (van Manen 2015, *in litt.*), and, therefore, the grizzly bear population could not be considered demographically recovered.

The model-averaged Chao2 method is currently the best available science to estimate the total population size in the GYE. The IGBST has been calculating population size on an annual basis using the model-averaged Chao2 (see glossary) estimate since 2002, and this method has been published in the peer-reviewed scientific literature. The model-averaged Chao2 method is the population estimate method that has the lowest amount of annual variation, and it is the most sensitive method to detect increasing or decreasing population trends over time. As the grizzly bear population has increased, model-averaged Chao2 estimates have become increasingly conservative (*i.e.,* prone to underestimation). As a conservative approach to population estimation, the model-averaged Chao2 method will

continue to be the method used to assess Criterion 1 (see U.S. Fish and Wildlife Service 2016, Appendix C, for the application protocol for annual population estimation using the Chao2 method) until a new population estimator is approved. If new methods become available, these will be considered for application in the GYE as long as they represent the best available science. However, until possible new methods are developed, the model-averaged Chao2 method will continue to be used. *Status:* This recovery criterion has been met since 2003 (see IGBST annual reports available at *http://www.nrmsc.usgs.gov/products/IGBST*).

Demographic Recovery Criterion 2—Sixteen of 18 bear management units within the PCA (see map at *http://www.fws.gov/mountain-prairie/es/grizzlyBear.php*) must be occupied by females with young, with no two adjacent bear management units unoccupied, during a 6-year sum of observations. This criterion is important as it ensures that reproductive females occupy the majority of the PCA and are not concentrated in one portion of the ecosystem. *Status:* This recovery criterion has been met since at least 2001.

Demographic Recovery Criterion 3—Maintain the population around the 2002–2014 Chao2 modeled average (average = 674; 95% CI = 600–757; 90% CI = 612–735) by maintaining annual mortality limits for independent females, independent males, and dependent young as shown in table 1 in this proposed rule. (These adjustable mortality rates were calculated as those necessary to manage the population to the modeled average of 674 bears which occurred during the time period that this population's growth stabilized.) If mortality limits are exceeded for any sex/age class for 3 consecutive years and any annual population estimate falls below 612 (the lower bound of the 90% confidence interval), the IGBST will produce a Biology and Monitoring Review to inform the appropriate management response. If any annual population estimate falls below 600 (the lower bound of the 95% confidence interval), this criterion will not be met and there will be no discretionary mortality, except as necessary for human safety.

The population had stabilized 2002–2014 at a mean model-averaged Chao2 population size of 674 (95% CI = 600–757), which is very similar to the population size of 683 when the Yellowstone population was previously delisted in 2007 (72 FR 14866; March 29, 2007). The population has now naturally stabilized because of density-dependent population effects that resulted in reduced survival of subadults. The existence of lower subadult survival and occupancy by grizzly bears in almost all suitable habitat inside the DMA has been demonstrated by van Manen *et al.* (2015, entire). *Status:* This criterion has been met for all age and sex classes since 2004.

TABLE 1—TOTAL MORTALITY RATE LIMITS INSIDE THE DMA. THESE MORTALITY RATES WERE CALCULATED AS THOSE LIMITS NECESSARY TO MANAGE TOWARD THE LONG-TERM AVERAGE POPULATION SIZE THAT OCCURRED FROM 2002 TO 2014 USING THE MODEL-AVERAGED CHAO2 POPULATION ESTIMATE METHOD (674, 95% CI = 600–747). IF POPULATION SIZE IS ESTIMATED AS FEWER THAN OR EQUAL TO 600 IN ANY YEAR, NO DISCRETIONARY MORTALITY WILL OCCUR UNLESS NECESSARY FOR HUMAN SAFETY

	Total grizzly bear population estimate		
	≤674	675–747	>747
Mortality limit % for independent FEMALES (using model-averaged Chao2 method)	≤7.6%	9%	10%
Mortality limit % for independent MALES (using model-averaged Chao2 method)	15%	20%	22%
Mortality limit for % of DEPENDENT YOUNG (using model-averaged Chao2 method)	≤7.6%	9%	10%

Consistent with USFWS Director Dan Ashe's letter of September 25, 2015, to the state directors, if the model-averaged Chao2 population estimate is less than 674, the total mortality rate for independent females and dependent young will be less than 7.6%.

Total mortality: Documented known and probable grizzly bear mortalities from all causes including but are not limited to: management removals, illegal kills, mistaken identity kills, self-defense kills, vehicle kills, natural mortalities, undetermined-cause mortalities, grizzly bear hunting, and a statistical estimate of the number of unknown/unreported mortalities.

The Conservation Strategy

The Conservation Strategy is the management plan that institutionalizes the successful program that resulted in the recovery of the GYE population. The Conservation Strategy will guide post-delisting management, just as it has guided management in the GYE since 2007. Recovery of the GYE grizzly bear population is the result of ongoing partnerships between Federal, Tribal, and State agencies; the governors of these States; county and city governments; educational institutions; numerous nongovernmental organizations; private landowners; and the public who live, work, and recreate in the GYE. Just as recovery of the GYE grizzly bear population could not have occurred without these excellent working relationships, maintenance of a recovered grizzly bear population requires continued application of the management actions and partnerships that resulted in the recovery of the grizzly bears and their habitat, and this is what the Conservation Strategy does. Grizzly bears are a ''conservation-reliant'' species because of their low resiliency to excessive human-caused mortality and the manageable nature of this threat (Scott *et al.* 2005, p. 384). This means that for grizzly bears in the GYE to remain recovered there will always need to be careful and cautious management of mortalities and habitat. Consequently, the 2016 Conservation Strategy will remain in effect indefinitely—beyond the 5-year post-delisting monitoring period required by the Act—to facilitate and assure continued successful management of the population and its habitat across multiple land ownerships and jurisdictions.

In order to document the regulatory mechanisms and coordinated management approach necessary to ensure the long-term maintenance of a recovered population, the Recovery Plan calls for the development of ''a conservation strategy to outline habitat and population monitoring that will continue in force after recovery'' (Recovery Plan Task Y426) (U.S. Fish and Wildlife Service 1993, p. 55). To accomplish this goal, a Conservation Strategy Team was formed in 1993. This team included biologists and managers from the Service, National Park Service,

Forest Service, U.S. Geological Survey (USGS), IDFG, WGFD, and MTFWP.

In March 2000, a draft Conservation Strategy for the GYE was released for public review and comment (65 FR 11340; March 2, 2000). Also in 2000, a Governors' Roundtable was organized to provide recommendations from the perspectives of the three States that would be involved with grizzly bear management after delisting. In 2003, the draft Final Conservation Strategy for the Grizzly Bear in the GYE was released, along with drafts of State grizzly bear management plans (all accessible at *http://www.fws.gov/mountain-prairie/es/grizzlyBear.php*). We responded to all public comments and peer reviews received on the Conservation Strategy and finalized the Conservation Strategy in 2007 (72 FR 11376; March 13, 2007). Revisions have been made to the Conservation Strategy and a draft 2016 Conservation Strategy is presented for public comment concurrent with this proposed rule (accessible at *http://www.fws.gov/mountain-prairie/es/grizzlyBear.php*).

The purposes of the Conservation Strategy and associated State and Federal implementation plans are to: (1) Describe, summarize, and implement the coordinated efforts to manage the grizzly bear population and its habitat to ensure continued conservation of the GYE grizzly bear population; (2) specify and implement the population/mortality management, habitat, and nuisance bear standards to maintain a recovered grizzly bear population for the future; (3) document specific State and Federal regulatory mechanisms and legal authorities, policies, management, and monitoring programs that exist to maintain the recovered grizzly bear population; and (4) document the actions that participating agencies have agreed to implement (U.S. Fish and Wildlife Service 2016, Executive Summary).

Implementation of the Conservation Strategy by all agency partners will coordinate management and monitoring of the GYE grizzly bear population and its habitat after delisting. The draft 2016 Conservation Strategy establishes and details a regulatory framework and authority for Federal and State agencies to take over management of the GYE grizzly bear population from the Service. The draft 2016 Conservation Strategy also identifies, defines, and requires adequate post-delisting monitoring to maintain a healthy GYE grizzly bear population (U.S. Fish and Wildlife Service 2016, Chapters 2 and 3). The draft 2016 Conservation Strategy has objective, measurable habitat and population standards, with clear State and Federal management responses if deviations occur (U.S. Fish and Wildlife Service 2016, Chapter 6). It represents 20 years of a collaborative, interagency effort among the members of the Yellowstone Ecosystem Subcommittee. State grizzly bear management plans were developed in all three affected States (Idaho, Montana, and Wyoming). Revised state plans will be incorporated into the final 2016 Conservation Strategy as appendices to ensure that the plans and the Conservation Strategy are consistent and complementary (accessible at *http://www.fws.gov/mountain-prairie/es/grizzlyBear.php*). If the State plans change from those available for comment appended to this draft Strategy, these revised State plans will be available for public comment and finalized prior to a final determination on this proposed rule. All the State and Federal agencies party to the draft 2016 Conservation Strategy will need to sign a memorandum of understanding agreeing to implement the revised 2016 Conservation Strategy prior to a final rule.

The draft 2016 Conservation Strategy identifies and provides a framework for managing habitat within the PCA and managing demographic parameters within the DMA (see figure 2, above). The PCA contains adequate seasonal habitat components for a portion of the recovered GYE grizzly bear population for the future and to allow bears to continue to expand outside the PCA. The PCA includes approximately 51 percent of suitable grizzly bear habitat within the GYE and approximately 75 percent of the population of female grizzly bears with cubs (Haroldson 2014, *in litt.*) (For more information about what constitutes ''suitable habitat,'' see the suitable habitat discussion under Factor A, below).

The 2016 Conservation Strategy will be implemented and funded by Federal, Tribal, and State agencies within the GYE. The signatories to the final 2016 Conservation Strategy have a demonstrated track record of funding measures to ensure recovery of this grizzly bear population for more than 3 decades. The Service intends to continue contributing funding to the implementation of the 2016 Conservation Strategy. In general, the Forest Service and National Park Service will be responsible for habitat management to reduce the risk of human-caused mortality to grizzly bears while the National Park Service, and State and Tribal wildlife agencies, will be responsible for managing the population within specific total mortality limits. The Forest Service and National Park Service collectively manage approximately 98 percent of lands inside the PCA. Specifically, Yellowstone National Park; Grand Teton National Park; and the Shoshone, Beaverhead-Deerlodge, Bridger-Teton, Caribou-Targhee, and Custer-Gallatin National Forests are the Federal entities responsible for implementing the 2016 Conservation Strategy. Affected National Forests and National Parks have incorporated, or will incorporate before a final rule is issued, the habitat standards and criteria into their Forest Plans and National Park management plans and/or Superintendent's Compendia via appropriate amendment processes so that they are legally applied to these public lands within the GYE (see Grand Teton National Park 2006, p. 1; USDA Forest Service 2006*b,* p. 4; Yellowstone National Park 2006, p. 12). Outside of the PCA, grizzly bear habitat is well protected via Wilderness Area designation (Wilderness or Wilderness Study Area) or Forest Plan direction, and demographic standards will protect the population throughout the DMA.

If this proposed rule is made final, the Yellowstone Grizzly Bear Coordinating Committee (hereafter referred to as the YGCC) will replace the Yellowstone Ecosystem Subcommittee as the interagency group coordinating implementation of the 2016 Conservation Strategy's habitat and population standards, and monitoring (U.S. Fish and Wildlife Service 2016, Chapter 6). Similar to the Yellowstone Ecosystem Subcommittee, the YGCC members include representatives from Yellowstone and Grand Teton National Parks, the five affected National Forests, BLM, USGS, IDFG, MTFWP, WGFD, one member from local county governments within each State, and one member from the Shoshone Bannock, Northern Arapahoe, and Eastern Shoshone Tribes. All meetings will be open to the public. Besides coordinating management, research, and financial needs for successful conservation of the GYE grizzly bear population, the YGCC will review the IGBST Annual Reports and review and respond to any deviations from habitat or population standards. As per the implementation section of the 2016 Conservation Strategy, the YGCC will coordinate management and implementation of the 2016 Conservation Strategy and work together to rectify problems and to assure that the habitat and population standards and total mortality limits will be met and maintained.

The draft 2016 Conservation Strategy is an adaptive, dynamic document that establishes a framework to incorporate new and better scientific information as

it becomes available or as necessary in response to environmental changes. Any changes and updates to the 2016 Conservation Strategy must meet the following two criteria: (1) Be based on the best available science; and (2) be subject to public comment before being implemented by the YGCC (U.S. Fish and Wildlife Service 2016, Chapter 1).

Distinct Vertebrate Population Segment Policy Overview

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing species, reclassifying species, or removing species from listed status. ''Species'' is defined by the Act as including any species or subspecies of fish or wildlife or plants, and any distinct vertebrate population segment of fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). We, along with the National Marine Fisheries Service (now the National Oceanic and Atmospheric Administration—Fisheries), developed the Policy Regarding the Recognition of Distinct Vertebrate Population Segments (DPS policy) (61 FR 4722; February 7, 1996), to help us in determining what constitutes a distinct population segment (DPS). Under this policy, the Service considers two factors to determine whether the population segment is a valid DPS: (1) Discreteness of the population segment in relation to the remainder of the taxon to which it belongs; and (2) the significance of the population segment to the taxon to which it belongs. If a population meets both tests, it is a DPS, and the Service then evaluates the population segment's conservation status according to the standards in section 4 of the Act for listing, delisting, or reclassification (*i.e.,* is the DPS endangered or threatened). Our policy further recognizes it may be appropriate to assign different classifications (*i.e.,* endangered or threatened) to different DPSs of the same vertebrate taxon (61 FR 4725; February 7, 1996).

Past Practice and History of Using DPSs

As of February 9, 2016, of the 436 native vertebrate listings, 89 are listed as less than an entire taxonomic species or subspecies (henceforth referred to in this discussion as populations) under one of several authorities, including the ''distinct population segment'' language in the Act's definition of species (section 3(16)). Twenty-three of these 89 populations, which span 5 different taxa, predate the 1996 DPS Policy; as such, the final listing determinations for these populations did not include formal policy-based analyses or expressly designate the listed entity as a DPS. In several instances, however, the Service and National Marine Fisheries Service (NMFS) have established a DPS and revised the List of Endangered and Threatened Wildlife in a single action, as shown in the following examples.

In February 1985, the Service delisted the brown pelican (*Pelecanus occidentalis*) in the southeastern United States and continued to identify it as endangered throughout the remainder of its range (50 FR 4938; February 4, 1985). The Service later went on to delist the brown pelican in the remainder of its range (74 FR 59444; November 17, 2009). In June 1994, NMFS revised the entry for the gray whale (*Eschrichtius robustus*) to remove the eastern North Pacific population from the List of Endangered and Threatened Wildlife while retaining the western North Pacific population as endangered (59 FR 31094; June 16, 1994). In May 1997, NMFS identified the western and eastern DPSs of the Steller sea lion (*Eumetopias jubatus*), which had been listed as threatened, and listed the western DPS as endangered (62 FR 24345; May 5, 1997). In July 2003, the Service established two DPSs of the Columbian white-tailed deer (*Odocoileus virginianus leucurus*)—the Douglas County DPS and the Columbia River DPS—and delisted only the Douglas County DPS, while retaining listed status for the Columbia River DPS (68 FR 43647; July 24, 2003). The Columbia River DPS was recently proposed for reclassification to threatened (October 8, 2015; 80 FR 60850). In March 2007, the Service identified the American crocodile (*Crocodylus acutus*) in Florida as a DPS within the existing endangered listing of the American crocodile and reclassified the Florida DPS from endangered to threatened (72 FR 13027; March 20, 2007). In September 2011, the Service and NMFS jointly determined the loggerhead sea turtle (*Caretta caretta*) is composed of nine DPSs and replaced the species-wide listing with four DPSs as threatened and five DPSs as endangered (76 FR 58868; September 22, 2011). The Service and NMFS have jointly proposed to make similar revisions to the species-wide listing for the green sea turtle (*Chelonia mydas*), and NMFS has also recently proposed to revise the global listing for humpback whale (*Megaptera novaeangliae*) (80 FR 15272; March 23, 2015, and 80 FR 22304; April 21, 2015, respectively). Revising the lower 48 State listing for grizzly bear by removing the GYE DPS is consistent with the Service's past and practice.

Our authority to make these determinations and to revise the list accordingly is a reasonable interpretation of the language of the Act, and our ability to do so is an important component of the Service's program for the conservation of endangered and threatened species. Our authority to revise the existing listing of a species (the grizzly bear in the lower 48 States) to identify a GYE DPS and determine that it is healthy enough that it no longer needs the Act's protections is found in the precise language of the Act. Moreover, even if that authority were not clear, our interpretation of this authority to make determinations under section 4(a)(1) of the Act and to revise the endangered and threatened species list to reflect those determinations under section 4(c)(1) of the Act is reasonable and fully consistent with the Act's text, structure, legislative history, relevant judicial interpretations, and policy objectives.

On December 12, 2008, a formal opinion was issued by the Solicitor, ''U.S. Fish and Wildlife Service Authority Under Section 4(c)(1) of the Endangered Species Act to Revise Lists of Endangered and Threatened Species to 'Reflect Recent Determinations' '' (U.S. DOI 2008). The Service fully agrees with the analysis and conclusions set out in the Solicitor's opinion. This proposed action is consistent with the opinion. The complete text of the Solicitor's opinion can be found at *https://www.doi.gov/sites/doi.opengov.ibmcloud.com/files/uploads/M-37018.pdf*.

We recognize that our interpretation and use of the DPS policy to revise and delist distinct population segments has been challenged in *Humane Society of the United States* v. *Jewell,* 76 F.Supp.3d 69 (D. D.C. 2014). Partly at issue in that case was our application of the DPS policy to Western Great Lakes wolves in a delisting rule (76 FR 81666; December 28, 2011). Our rule was vacated by the district court's decision. We respectfully disagree with the district court's interpretation of the DPS policy, and the United States has appealed that decision.

In the 1993 Grizzly Bear Recovery Plan, the Service identifies six grizzly bear Recovery Zones and identifies unique demographic recovery criteria for each one. The 1993 Recovery Plan states that it is the intent of the Service to delist individual populations as they achieve recovery (U.S. Fish and Wildlife Service 1993, p. ii). The Service has proceeded in a manner consistent with the Recovery Plan with respect to

individual population treatment. For example, grizzly bears in the Cabinet-Yaak, Selkirk, and North Cascades Recovery Zones, all included in the original threatened grizzly bear listing, were petitioned for reclassification from threatened to endangered. Although already listed as threatened, we determined that reclassifying those grizzly bears to endangered was warranted but precluded by higher priorities. After 2014, the Service determined that the Cabinet-Yaak and Selkirk populations had recovered to the point that they were no longer warranted but precluded from listing as endangered; they remain listed as threatened. Grizzly bears in the North Cascades Recovery Zone are still warranted but precluded for reclassification from threatened to endangered. The Bitterroot Recovery Zone now has status under section 10(j) of the Act, which authorizes the Service to release an experimental population of grizzly bears in that Recovery Zone.

Distinct Vertebrate Population Segment Analysis

Analysis of Discreteness in Relation to Remainder of Taxon

Under our DPS Policy, a population of a vertebrate taxon may be considered discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same taxon (*i.e., Ursus arctos horribilis*) as a consequence of physical, physiological, ecological, or behavioral factors (quantitative measures of genetic or morphological discontinuity may provide evidence of this separation); or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) (''the inadequacy of existing regulatory mechanisms'') of the Act. The DPS Policy does not require complete separation of one DPS from another, and occasional interchange does not undermine the discreteness of potential DPSs. If complete separation is required, the loss of the population has little significance to other populations (61 FR 4722, 4724). The DPS policy only requires that populations be ''markedly separated'' from each other. Thus, if occasional individual grizzly bears move between populations, the population could still display the required level of discreteness per the DPS Policy. The standard adopted allows for some limited interchange among population segments considered to be discrete, so that loss of an interstitial population could well have consequences for gene flow and demographic suitability of a species as a whole.

Although the DPS Policy does not allow State or other intra-national governmental boundaries to be used as the basis for determining the discreteness of a potential DPS, an artificial or human-made boundary may be used to clearly identify the geographic area included within a DPS designation. Easily identified human-made objects, such as the center line of interstate highways, Federal highways, and State highways are useful for delimiting DPS boundaries. Thus, the proposed GYE grizzly bear DPS consists of: That portion of Idaho that is east of Interstate Highway 15 and north of U.S. Highway 30; that portion of Montana that is east of Interstate Highway 15 and south of Interstate Highway 90; and that portion of Wyoming that is south of Interstate Highway 90, west of Interstate Highway 25, west of Wyoming State Highway 220, and west of U.S. Highway 287 south of Three Forks (at the 220 and 287 intersection, and north of Interstate Highway 80 and U.S. Highway 30) (see DPS boundary in figure 2, above). Due to the use of highways as easily described boundaries, large areas of unsuitable habitat are included in the proposed DPS boundaries.

The core of the proposed GYE grizzly bear DPS is the Yellowstone PCA (24,000 sq km (9,200 sq mi)) (U.S. Fish and Wildlife Service 1993, p. 39). The Yellowstone PCA includes Yellowstone National Park; a portion of Grand Teton National Park; John D. Rockefeller Memorial Parkway; sizable contiguous portions of the Shoshone, Bridger-Teton, Caribou-Targhee, Custer-Gallatin, and Beaverhead-Deerlodge National Forests; BLM lands; and surrounding State and private lands (U.S. Fish and Wildlife Service 1993, p. 39). As grizzly bear populations have rebounded and densities have increased, bears have expanded their range beyond the PCA, into other suitable habitat in the DMA. Grizzly bears now occupy about 44,624 sq km (17,229 sq mi) or 89 percent of the GYE DMA (Haroldson 2015, *in litt.*), with occasional occurrences well beyond this estimate of occupied range. No grizzly bears originating from the Yellowstone PCA have been suspected or confirmed beyond the borders of the GYE grizzly bear DPS described above. Similarly, no grizzly bears originating from other Recovery Zones have been detected inside the borders of the GYE grizzly bear DPS (Wildlife Genetics International 2015, *in litt.*).

The GYE grizzly bear population is the southernmost population remaining in the conterminous United States and has been physically separated from other areas where grizzly bears occur for at least 100 years (Merriam 1922, pp. 1–2; Miller and Waits 2003, p. 4334). The nearest population of grizzly bears is found in the NCDE approximately 160 km (100 mi) to the north. Although their range continues to expand north (Bjornlie *et al.* 2013, p. 185), grizzly bears from the GYE have not been documented north of Interstate 90 outside the proposed DPS boundaries (Frey 2014, *in litt.*). Over the last few decades, the NCDE grizzly bear population has been slowly expanding to the south, and there have been several confirmed grizzly bears from the NCDE within 32 to 80 km (20 to 50 mi) of the GYE grizzly bear DPS boundaries near Butte, Deerlodge, and Anaconda, Montana (Jonkel 2014, *in litt.*). However, there is currently no known connectivity between these two grizzly bear populations.

Genetic data also support the conclusion that grizzly bears from the GYE are separated from other grizzly bears. Genetic studies estimating heterozygosity (which provides a measure of genetic diversity) show 60 percent heterozygosity in the GYE grizzly bears compared to 67 percent in the NCDE grizzly bears (Haroldson *et al.* 2010, p. 7). Heterozygosity is a useful measure of genetic diversity, with higher values indicative of greater genetic variation and evolutionary potential. High levels of genetic variation are indicative of high levels of connectivity among populations or high numbers of breeding animals. By comparing heterozygosity of extant bears to samples from Yellowstone grizzly bears of the early 1900s, Miller and Waits (2003, p. 4338) concluded that gene flow and, therefore, population connectivity between the GYE grizzly population and populations to the north was low even 100 years ago. The reasons for this historic limitation of gene flow are unclear, but we do know increasing levels of human activity and settlement in this intervening area over the last century further limited grizzly bear movements into and out of the GYE, likely resulting in the current lack of connectivity (Proctor *et al.* 2012, p. 35).

Based on the best available scientific data about grizzly bear locations and movements, we find that the GYE grizzly bear population and other remaining grizzly bear populations are markedly, physically separated from each other. Therefore, the GYE grizzly bear population meets the criterion of discreteness under our DPS Policy. Occasional movement of bears from

other grizzly bear populations into the GYE grizzly bear population would be beneficial to its long-term persistence (Boyce *et al.* 2001, pp. 25, 26). While future connectivity is desirable and will be actively managed for, this would not undermine discreteness, as all that is required is ''marked separation,'' not absolute separation. Even if occasional individual grizzly bears disperse among populations, the GYE grizzly bear population would still display the required level of discreteness per the DPS Policy. And, as stated in the 1993 Recovery Plan, we recognize that natural connectivity is important to long-term grizzly bear conservation, and we will continue efforts to work toward this goal independent of the delisting of the GYE grizzly bear DPS (U.S. Fish and Wildlife Service 1993, p. 53). This issue is discussed further under Factor E below.

Analysis of Significance of Population Segment to Taxon

If we determine a population segment is discrete under one or more of the conditions described in the Service's DPS policy, its biological and ecological significance will then be considered in light of Congressional guidance that the authority to list DPS's be used ''sparingly'' while encouraging the conservation of genetic diversity (see Senate Report 151, 96th Congress, 1st Session). In carrying out this examination, we consider available scientific evidence of the population's importance to the taxon (*i.e., Ursus arctos horribilis*) to which it belongs. Since precise circumstances are likely to vary considerably from case to case, the DPS policy does not describe all the classes of information that might be used in determining the biological and ecological importance of a discrete population. However, the DPS policy describes four possible classes of information that provide evidence of a population segment's biological and ecological importance to the taxon to which it belongs. As specified in the DPS policy (61 FR 4722; February 7, 1996), this consideration of the population segment's significance may include, but is not limited to, the following: (1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) Evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon; (3) Evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; or (4) Evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics. To be considered significant, a population segment needs to satisfy only one of these conditions, or other classes of information that might bear on the biological and ecological importance of a discrete population segment, as described in the DPS policy (61 FR 4722; February 7, 1996). Below we address Factors 1, 2, and 4. Factor 3 does not apply to the GYE grizzly bear population because there are several other extant populations of grizzly bears in North America.

Unusual or Unique Ecological Setting

New information since the publication of the March 29, 2007, final rule (72 FR 14866) and the 2011 status review (U.S. Fish and Wildlife Service 2011) calls into question whether the GYE is truly a unique ecological setting. Previously, we concluded that the GYE was a unique ecological setting because grizzly bears were more carnivorous there than in other ecosystems in the lower 48 States and that they still used whitebark pine seeds extensively while other populations no longer did.

Based on previous research, we found that meat constitutes 45 percent and 79 percent of the annual diet for females and males in the GYE, respectively (Jacoby *et al.* 1999, p. 925). These high percentages of meat in GYE grizzly bears' diet appeared to be in contrast with the 0 to 33 percent of meat in the diet of bears in the NCDE and 0 to 17 percent of meat in the diet of bears from the Cabinet-Yaak Ecosystem (Jacoby *et al.* 1999, p. 925). However, these analyses were recently revisited and supplemented with larger sample sizes with very different results. First, Schwartz *et al.* (2014, p. 75) found that meat constitutes 44 percent of the annual diet among grizzly bears in the GYE, with no statistical difference among sex and age groups. For the Yellowstone Lake area, Fortin *et al.* (2013, p. 275) found that meat constitutes 38 percent and 45 percent of the annual diet for females and males in the GYE, respectively. These levels are very similar to those in the NCDE, where meat constitutes 38 percent and 56 percent of the annual diet for females and males, respectively (Teisberg *et al.* 2014, p. 7). Previous information also indicated that bison, a species endemic to North America, accounted for up to 24 percent of ungulate meat in GYE grizzly bear diets (Mattson 1997, p. 167). However, Fortin *et al.* (2013, p. 275) found bison comprise only about 9 percent of grizzly bear diets around the Yellowstone Lake area, possibly indicating grizzly bears do not use this endemic food source as much as previously thought in the GYE.

We also previously concluded the GYE grizzly bear population exists in a unique ecological setting because it is able to use whitebark pine seeds as a major food source (see 72 FR 14866; March 29, 2007). We considered the use of whitebark pine seeds by GYE grizzly bears unique because in most areas of its range, whitebark pine has been significantly reduced in numbers and distribution due to the introduced pathogen white pine blister rust (*Cronartium ribicola*) (Kendall and Keane 2001, pp. 228–232). New information indicates that whitebark pine has also been reduced in the GYE since 2002 due to a mountain pine beetle epidemic. Since this time, bears have been documented using whitebark pine less frequently. A recent study using GPS data indicated nearly one third of sampled grizzly bears in the GYE did not even have whitebark pine within their home ranges (Costello *et al.* 2014, p. 2009). Grizzly bears in the GYE do not seek out whitebark pine in years of poor seed production but make use of other foods within their home ranges instead (Costello *et al.* 2014, p. 2013). Additionally, methods used by Felicetti *et al.* (2003, entire) to assess whitebark pine use in the GYE may not be as reliable as previously thought because other foods in the GYE could be mistakenly identified as whitebark pine, indicating more use than is actually occurring (Schwartz *et al.* 2014, p. 6).

In light of these new data indicating grizzly bears in the GYE do not consume more meat than other populations in the lower 48 States and their use of whitebark pine has waned, we no longer consider the GYE grizzly bear population to meet the DPS policy standard for significance based on its persistence in an ecological setting unusual or unique for the taxon.

Significant Gap in the Range of the Taxon

Given the grizzly bear's historic occupancy of the conterminous United States and the portion of the historic range the conterminous United States represent, recovery in the lower 48 States where the grizzly bear existed in 1975 when it was listed has long been viewed as important to the taxon (40 FR 31734; July 28, 1975). The GYE grizzly bear population is significant in achieving this objective, as it is one of only five known occupied areas and one unoccupied area and constitutes approximately half of the estimated number of grizzly bears remaining in the conterminous 48 States. As noted above,

grizzly bears once lived throughout the North American Rockies from Alaska and Canada, and south into central Mexico. Grizzly bears have been extirpated from most of the southern portions of their historic range. Today, the GYE grizzly bear population represents the southernmost reach of the taxon. The loss of this population would significantly impact representation of the species because it would substantially curtail the range of the grizzly bear in North America by moving the range approximately 3 degrees of latitude or 200 mi (350 km) to the north. Therefore, we find that the GYE population of grizzly bears meets the significance criterion under our DPS policy because its loss would represent a significant gap in the range of the taxon.

Marked Genetic Differences

Several studies have documented some level of genetic differences between grizzly bears in the GYE and other populations in North America (Paetkau *et al.* 1998, pp. 421–424; Waits *et al.* 1998, p. 310; Proctor *et al.* 2012, p. 12). The GYE population has been isolated from other grizzly bear populations for 100 years or more (Miller and Waits 2003, p. 4334). However, Miller and Waits (2003, p. 4334) could only speculate as to the reasons behind this historical separation or how long it had been occurring. Proctor *et al.* (2012, p. 35) concluded that observed differences in heterozygosity among grizzly bear populations in southern Canada and the United States were an artifact of human-caused habitat fragmentation, not the result of different evolutionary pressures selecting for specific traits. We do not know whether these differences in heterozygosity levels are biologically meaningful, and we have no data indicating they are. Because we do not know the biological significance (if any) of the observed differences, we cannot say with certainty that the GYE grizzly bear population's genetics differ ''markedly'' from other grizzly bear populations. Therefore, we do not consider these genetic differences to meet the DPS policy's standard for significance.

In summary, while we no longer consider the GYE grizzly bear population to be significant due to unique ecological conditions or marked genetic differences, we still conclude that the GYE grizzly bear population is significant because the loss of this population would result in a significant gap in the range of the taxon.

Summary of Distinct Population Segment Analysis

Based on the best scientific and commercial data available, as described above, we find that the GYE grizzly bear population is discrete from other grizzly bear populations and significant to the remainder of the taxon (*i.e., Ursus arctos horribilis*). Because the GYE grizzly bear population is discrete and significant, it meets the definition of a DPS under the Act. Therefore, the GYE grizzly bear DPS is a listable entity under the Act, and we now assess this DPS's conservation status in relation to the Act's standards for listing, delisting, or reclassification (*i.e.,* whether this DPS meets the definition of an endangered or threatened species under the Act).

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing species, reclassifying species, or removing species from listed status. ''Species'' is defined by the Act as including any species or subspecies of fish or wildlife or plants, and any distinct vertebrate population segment of fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We must consider these same five factors in delisting a species. We may delist a species according to 50 CFR 424.11(d) if the best available scientific and commercial data indicate that the species is neither endangered nor threatened for the following reasons: (1) The species is extinct; (2) the species has recovered and is no longer endangered or threatened; and/or (3) the original scientific data used at the time the species was classified were in error.

A recovered species is one that no longer meets the Act's definition of endangered or threatened. A species is endangered for purposes of the Act if it is in danger of extinction throughout all or a significant portion of its range (SPR) and is threatened if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. The word ''range'' in these definitions refers to the range in which the species currently exists. Determining whether a species is recovered requires consideration of the same five categories of threats specified in section 4(a)(1) of the Act. For species that are already listed as endangered or threatened, this analysis of threats is an evaluation of both the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future following the removal of the Act's protections.

In considering what factors might constitute threats, we must look beyond the exposure of the species to a particular factor to evaluate whether the species may respond to the factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat, and during the five-factor threats analysis, we attempt to determine how significant a threat it is. The threat is significant if it drives or contributes to the risk of extinction of the species such that the species warrants listing as endangered or threatened as those terms are defined by the Act. However, the identification of factors that could affect a species negatively may not be sufficient to justify a finding that the species warrants listing. The information must include evidence sufficient to suggest that the potential threat is likely to materialize and that it has the capacity (*i.e.,* it should be of sufficient magnitude and extent) to affect the species' status such that it meets the definition of endangered or threatened under the Act. The following analysis examines the five factors affecting, or likely to affect, the GYE grizzly bear population within the foreseeable future. We previously concluded GYE grizzly bears are recovered and warranted delisting (72 FR 14866; March 29, 2007). In this proposed rule, we make a determination as to whether the distinct population segment of GYE grizzly bears is an endangered or threatened species, based on the best scientific and commercial information available. In so doing, we address the issues raised by the Ninth Circuit in *Greater Yellowstone Coalition* v. *Servheen,* 665 F.3d 1015 (9th Cir. 2011), which were briefly discussed above.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Factor A requires the Service to consider present or threatened destruction, modification, or curtailment of grizzly bear habitat or its range. Here, the following

considerations warrant discussion regarding the GYE grizzly bear population: (1) Motorized access management, (2) developed sites, (3) livestock allotments, (4) mineral and energy development, (5) recreation, (6) snowmobiling, (7) vegetation management, (8) climate change, and (9) habitat fragmentation.

Habitat destruction and modification were contributing factors leading to the listing of the grizzly bear as a threatened species under the Act in 1975 (40 FR 31734; July 28, 1975). Both the dramatic decreases in historical range and land management practices in formerly secure grizzly bear habitat led to the 1975 listing (40 FR 31734; July 28, 1975). For consideration under the Act, the word range applies to where the species currently exists. To address this source of population decline, the IGBST was created in 1973, to collect, manage, analyze, and distribute science-based information regarding habitat and demographic parameters upon which to base management and recovery. Then, in 1983, the Interagency Grizzly Bear Committee (IGBC) was created to coordinate management efforts across multiple Federal lands and different States within the various Recovery Zones ultimately working to achieve recovery of the grizzly bear in the lower 48 States. Its objective was to change land management practices on Federal lands that supported grizzly bear populations at the time of listing to provide security and maintain or improve habitat conditions for the grizzly bear. Since 1986, National Forest and National Park plans have incorporated the Interagency Grizzly Bear Guidelines (USDA Forest Service 1986, pp. 1–2) to manage grizzly bear habitat in the Yellowstone PCA.

Management improvements made as a result of the Interagency Grizzly Bear Guidelines include, but are not limited to: (1) Federal and State agency coordination to produce nuisance bear guidelines that allow a quick response to resolve and minimize grizzly bear-human confrontations; (2) reduced motorized access route densities through restrictions, decommissioning, and closures; (3) highway design considerations to facilitate population connectivity; (4) seasonal closure of some areas to all human access in National Parks that are particularly important to grizzly bears; (5) closure of many areas in the GYE to oil and gas leasing, or implementing restrictions such as no surface occupancy; (6) elimination of six active and four vacant sheep allotments on the Caribou-Targhee National Forest since 1998, resulting in an 86 percent decrease in total sheep animal months inside the Yellowstone PCA; and (7) expanded information and education programs in the Yellowstone PCA to help reduce the number of grizzly bear mortalities caused by big-game hunters (outside National Parks). Overall, adherence to the Interagency Grizzly Bear Guidelines has changed land management practices on Federal lands to provide security and to maintain or improve habitat conditions for the grizzly bear. Implementation of these guidelines has led to the successful rebound of the GYE grizzly bear population, allowing it to significantly increase in size and distribution since its listing in 1975.

Concurrent with this proposed rule, an interagency group representing pertinent State and Federal parties is releasing a draft 2016 Conservation Strategy for the grizzly bear in the GYE to guide management and monitoring of the habitat and population of GYE grizzly bears after delisting. The draft 2016 Conservation Strategy will be the most recent iteration of the Conservation Strategy, which was first published in final form in 2007 (see our notice of availability published on March 13, 2007, at 72 FR 11376). The draft 2016 Conservation Strategy incorporates the explicit and measurable habitat criteria established in the ''Recovery Plan Supplement: Habitat-based Recovery Criteria for the Greater Yellowstone Ecosystem'' (U.S. Fish and Wildlife Service 2007*b*). Whereas the Interagency Grizzly Bear Guidelines helped to guide successful recovery efforts, the 2016 Conservation Strategy will help guide the recovered GYE population post-delisting. The draft 2016 Conservation Strategy identifies and provides a framework for managing two areas, the PCA and adjacent areas of the DMA, where occupancy by grizzly bears is anticipated in the foreseeable future. What follows is an assessment of present or threatened destruction, modification, or curtailment of the grizzly bear's habitat within the PCA and adjacent areas of the DMA.

Habitat Management Inside the Primary Conservation Area

As per the draft 2016 Conservation Strategy and the habitat-based recovery criteria discussed above, the PCA will be a core secure area for grizzly bears where human impacts on habitat conditions will be maintained at or below levels that existed in 1998 (U.S. Fish and Wildlife Service 2016, chapter 3). Specifically, the amount of secure habitat will not decrease below 1998 levels while the number of developed sites and livestock allotments will not increase above 1998 levels. The 1998 baseline for habitat standards was chosen because the levels of secure habitat and developed sites on public lands remained relatively constant in the 10 years preceding 1998 (USDA Forest Service 2004, pp. 140–141), and the selection of 1998 assured that habitat conditions existing at a time when the population was increasing at a rate of 4 to 7 percent per year (Schwartz *et al.* 2006*b,* p. 48) would be maintained. For each of the 40 bear management subunits, the 1998 baseline was determined through a GIS analysis of the amount of secure habitat, open and closed road densities, the number and capacity of livestock allotments, and the number of developed sites on public lands.

Motorized Access Management: When we listed the grizzly bear in 1975, we identified land management practices that create new ways for humans to access formerly secure grizzly bear habitat as the mechanism that resulted in bears being more susceptible to the threat of human-caused mortality and human-bear conflicts (40 FR 31734; July 28, 1975). We recognized early on that managing this human access to grizzly bears would be the key to effective habitat management and an extensive body of literature supports this approach. Specifically, unmanaged motorized access impacts grizzly bears by: (1) Increasing human interaction and potential grizzly bear mortality risk; (2) increasing displacement from important habitat; (3) increasing habituation to humans; and (4) decreasing habitat where energetic requirements can be met with limited disturbance from humans (Mattson *et al.* 1987, pp. 269–271; McLellan and Shackleton 1988, pp. 458–459; McLellan 1989, pp. 1862–1864; Mace *et al.* 1996, pp. 1402–1403; Schwartz *et al.* 2010, p.661).

Motorized access affects grizzly bears primarily through increased human-caused mortality risk (Schwartz *et al.* 2010, p. 661). Secondarily, motorized access may affect grizzly bears through temporary or permanent habitat loss due to human disturbance. Managing motorized access by providing large proportions of secure habitat helps ameliorate the impacts of displacement and increased human-caused mortality risk in grizzly bear habitat. Secure habitat refers to those areas with no motorized access that are at least 4 ha (10 ac) in size and more than 500 m (1,650 ft) from a motorized access route or recurring helicopter flight line (USDA Forest Service 2004, pp. 160–161). In the 1998 baseline, secure habitat comprised 45.4 to 100 percent of the total area within a given subunit with an

average of 85.6 percent throughout the entire PCA (U.S. Fish and Wildlife Service 2016, Appendix E). These levels of secure habitat have been successfully maintained and will continue to be maintained or improved, as directed by the draft 2016 Conservation Strategy and the memorandum of understanding (MOU) signed by all State and Federal partner agencies (U.S. Fish and Wildlife Service 2016, MOU). Three subunits were identified as in need of improvement from 1998 levels. These subunits have shown on average a 7.5 percent increase in secure habitat and these improved levels will serve as the new baseline for these three subunits with the implementation of the 2006 Gallatin National Forest Travel Management Plan (*in prep.*). Because of the positive effect that secure habitat has on grizzly bear survival and reproduction, one of the draft 2016 Conservation Strategy objectives is no net decrease in these levels of secure habitat inside the PCA so that the PCA can continue to function as a source area for grizzly bears in the GYE. Therefore, we do not foresee that decreases in secure habitat inside the PCA will pose a threat to the GYE grizzly bear DPS now, or in the future.

Developed Sites: The National Parks and National Forests within the PCA will manage developed sites at 1998 levels within each bear management subunit, with some exceptions for administrative and maintenance needs (U.S. Fish and Wildlife Service 2016, Chapter 3). ''Developed sites'' refer to those sites or facilities on public land with features intended to accommodate public use or recreation. Such sites are typically identified or advertised via visitor maps or information displays as identifiable destination sites promoted by the agency. Examples of developed sites include, but are not limited to, campgrounds, picnic areas, trailheads, boat launches, rental cabins, summer homes, lodges, service stations, restaurants, visitor centers, administrative sites, and permitted resource exploration or extraction sites such as oil and gas exploratory wells, production wells, plans of operation for mining activities, and work camps. ''Administrative sites'' are those sites or facilities constructed for use primarily by government employees to facilitate the administration and management of public lands. Administrative sites are counted toward developed sites, and examples include headquarters, ranger stations, patrol cabins, park entrances, federal employee housing, and other facilities supporting government operations. In contrast to developed or administrative sites, ''dispersed sites'' are those not associated with a developed site, such as a front-country campground. These sites are typically characterized as having no permanent agency-constructed features, are temporary in nature, have minimal to no site modifications, have informal spacing, and possibly include primitive road access. Dispersed sites are not counted toward developed sites. Developed sites on public lands are currently inventoried and tracked in GIS databases. As of 1998, there were 593 developed sites on public land within the PCA (U.S. Fish and Wildlife Service 2016, Appendix E). As of 2014, the number of developed sites on public lands had decreased to 578 (Greater Yellowstone Area Grizzly Bear Habitat Modeling Team 2015, p. 90).

The primary concern related to developed sites is direct mortality from bear-human encounters and unsecured attractants. Secondary concerns include temporary or permanent habitat loss and displacement due to increased length of time of human use and increased human disturbance to surrounding areas. In areas of suitable habitat inside the PCA, the National Park Service and the Forest Service enforce food storage rules aimed at decreasing grizzly bear access to human foods (U.S. Fish and Wildlife Service 2016, Chapter 1). These regulations will continue to be enforced and are in effect for nearly all currently occupied grizzly bear habitat within the GYE grizzly bear DPS boundaries (U.S. Fish and Wildlife Service 2016, Chapter 1). In conclusion, because the National Parks and National Forests within the PCA will continue to manage developed sites at 1998 levels within each bear management subunit and because food storage rules will be enforced on these public lands, we do not foresee that the existing number of, nor an increase in the number of, developed sites inside the PCA will pose a threat to the GYE grizzly bear DPS now, or in the future.

Livestock Allotments: When grizzly bears were listed in 1975, the Service identified ''. . . livestock use of surrounding national forests'' as detrimental to grizzly bears ''. . . unless management measures favoring the species are enacted'' (40 FR 31734; July 28, 1975). Impacts to grizzly bears from livestock operations potentially include: (1) Direct mortality from control actions resulting from livestock depredation; (2) direct mortality due to control actions resulting from grizzly bear habituation and/or learned use of bear attractants such as livestock carcasses and feed; (3) increased chances of a grizzly bear livestock conflict; (4) displacement due to livestock or related management activity; and (5) direct competition for preferred forage species.

Approximately 14 percent (45/311) of all human-caused grizzly bear mortalities in the GYE between 2002 and 2014 were due to management removal actions associated with livestock depredations. This human-caused mortality is the main impact to grizzly bears in the GYE associated with livestock. Increased chances of grizzly bear conflict related to livestock have been minimized through requirements to securely store and/or promptly remove attractants associated with livestock operations (*e.g.,* livestock carcasses, livestock feed, etc.). The effects of displacement and direct competition with livestock for forage are considered negligible to grizzly bear population dynamics because even with direct grizzly bear mortality, current levels of livestock allotments have not precluded grizzly bear population growth and expansion.

The 2007 Conservation Strategy and Forest Service Record of Decision implementing their forest plan amendments (USDA Forest Service 2006*b,* entire) established habitat standards regarding livestock allotments. The number of active livestock allotments, total acres affected, and permitted sheep animal months within the PCA will not increase above 1998 levels (USDA Forest Service 2006*b,* p. 5; U.S. Fish and Wildlife Service 2016, Chapter 3). Due to the higher prevalence of grizzly bear conflicts associated with sheep grazing, existing sheep allotments will be phased out as the opportunity arises with willing permittees (USDA Forest Service 2006*b,* p. 6; U.S. Fish and Wildlife Service 2016, Chapter 3).

A total of 106 livestock allotments existed inside the PCA in 1998. Of these allotments, there were 72 active and 13 vacant cattle allotments and 11 active and 10 vacant sheep allotments, with a total of 23,090 animal months (U.S. Fish and Wildlife Service 2016, Appendix E). Sheep animal months are calculated by multiplying the permitted number of animals by the permitted number of months. Any use of vacant allotments will only be permitted if the number and net acreage of allotments inside the PCA does not increase above the 1998 baseline. Since 1998, the Caribou-Targhee National Forest has closed six sheep allotments within the PCA, while the Shoshone National Forest has closed two sheep allotments and the Gallatin National Forest has closed four (Greater Yellowstone Area Grizzly Bear Habitat Modeling Team, p. 86). This has resulted in a reduction of 21,120 sheep animal months, a 91 percent reduction,

from the total calculated for 1998 within the PCA, and is a testament to the commitment land management agencies have to the ongoing success of the grizzly bear population in the GYE. As of 2014, there is only one active sheep allotment within the PCA, on the Caribou-Targhee National Forest. The mandatory restriction on creating new livestock allotments and the voluntary phasing out of livestock allotments with recurring conflicts further ensure that the PCA will continue to function as source habitat. Because there will continue to be no net increase in cattle or sheep allotments allowed on public lands inside the PCA, we do not expect that livestock allotments inside the PCA will constitute a threat to the GYE grizzly bear DPS now, or in the future.

Mineral and Energy Development: Management of oil, gas, and mining are tracked as part of the developed site standard (U.S. Fish and Wildlife Service 2016, Chapter 3). There were no active oil and gas leases inside the PCA as of 1998 (USDA Forest Service 2006*a,* p. 209). Based on Forest Plan direction, there are approximately 243 sq km (94 sq mi) of secure habitat that could allow surface occupancy for oil and gas projects within the PCA (USDA Forest Service 2006*a,* figures 48 and 96). This comprises less than 4 percent of all suitable habitat within the PCA. Additionally, 1,354 preexisting mining claims were located in 10 of the subunits inside the PCA (U.S. Fish and Wildlife Service 2016, Appendix E), but only 28 of these mining claims had operating plans. These operating plans are included in the 1998 developed site baseline. Under the conditions of the draft 2016 Conservation Strategy, any new oil, gas or mineral project will be approved only if it conforms to secure habitat and developed site standards (U.S. Fish and Wildlife Service 1993, p. 5–6; U.S. Fish and Wildlife Service 2016, Chapter 3). For instance, any oil, gas or mineral project that reduces the amount of secure habitat permanently will have to provide replacement secure habitat of similar habitat quality (based on our scientific understanding of grizzly bear habitat), and any change in developed sites will require mitigation equivalent to the type and extent of the impact, and such mitigation must be in place before project initiation or be provided concurrently with project development as an integral part of the project plan (U.S. Fish and Wildlife Service 2016, chapter 3). For projects that temporarily change the amount of secure habitat, only one project is allowed in any subunit at any time (U.S. Fish and Wildlife Service 2016, chapter 3). Mitigation of any project will occur within the same subunit and will be proportional to the type and extent of the project (U.S. Fish and Wildlife Service 2016, chapter 3). In conclusion, because any new mineral or energy development will continue to be approved only if it conforms to the secure habitat and developed site standards set forth in the draft 2016 Conservation Strategy, we do not expect that such development inside the PCA will constitute a threat to the GYE grizzly bear DPS now, or in the future.

Recreation: At least 3 million people visit and recreate in the National Parks and National Forests of the GYE annually (USDA Forest Service 2006*a,* pp. 176, 184; Cain 2014, p. 46; Gunther 2014, p. 47). Based on past trends, visitation and recreation are expected to increase in the future. For instance, Yellowstone National Park has shown an approximate 15 percent increase in the number of people visiting each decade since the 1930s (USDA Forest Service 2006*a,* p. 183); however, the number of people recreating in the backcountry there has remained relatively constant from the 1970s through 2010s (Gunther 2014, p. 47). The concern related to increased recreation is that it may increase the probability of grizzly bear-human encounters, with subsequent increases in human-caused mortality (Mattson *et al.* 1996, p. 1014).

Recreation in the GYE can be divided into six basic categories based on season of use (winter or all other seasons), mode of access (motorized or non-motorized), and level of development (developed or dispersed) (USDA Forest Service 2006*a,* p. 187). Inside the PCA, the vast majority of lands available for recreation are accessible through non-motorized travel only (USDA Forest Service 2006*a,* p. 179). Motorized recreation during the summer, spring, and fall inside the PCA will be limited to existing roads as per the standards in the draft 2016 Conservation Strategy that restrict increases in roads or motorized trails. Similarly, recreation at developed sites such as lodges, downhill ski areas, and campgrounds will be limited by the developed sites habitat standard described in the draft 2016 Conservation Strategy. The number and capacity of existing developed sites on public lands will not increase once delisting occurs. For a more complete discussion of projected increases in recreation in the GYE National Forests, see the Final Environmental Impact Statement for the Forest Plan Amendment for Grizzly Bear Habitat Conservation for the GYE National Forests (USDA Forest Service 2006*a,* pp. 176–189).

This potential stressor on the GYE grizzly bear population would exist regardless of listed status and will be addressed in the same way whether this population is listed or delisted, through ongoing information and education campaigns. These outreach efforts are an important contributing factor to successful grizzly bear conservation and would continue under the 2016 Conservation Strategy. In conclusion, because the few motorized access routes inside the PCA will not increase, because the number and capacity of developed sites on public lands within the PCA will not increase, and because the National Parks and National Forests within the PCA will continue to educate visitors on its lands about how to recreate safely in bear country and avoid grizzly bear-human conflicts, we do not expect that the current level of recreation, nor increases in recreation, will constitute a threat to the GYE grizzly bear DPS now, or in the future.

Snowmobiling: Snowmobiling has the potential to disturb bears while in their dens and after emergence from their dens in the spring. Because grizzly bears are easily awakened in the den (Schwartz *et al.* 2003*b,* p. 567) and have been documented abandoning den sites after seismic disturbance (Reynolds *et al.* 1986, p. 174), the potential impact from snowmobiling should be considered. We found no studies in the peer-reviewed literature documenting the effects of snowmobile use on any denning bear species, and the information that is available is anecdotal in nature (U.S. Fish and Wildlife Service 2002, entire; Hegg *et al.* 2010, entire).

Disturbance in the den could result in increased energetic costs (increased activity and heart rate inside the den) and possibly den abandonment, which, in theory, could ultimately lead to a decline in physical condition of the individual or even cub mortality (Swenson *et al.* 1997, p. 37; Graves and Reams 2001, p. 41). Although the potential for this type of disturbance while in the den certainly exists, Reynolds *et al.* (1986, p. 174) found that grizzly bears denning within 1.4 to 1.6 km (0.9 to 1.0 mi) of active seismic exploration and detonations moved around inside their dens but did not leave them. Harding and Nagy (1980, p. 278) documented two instances of den abandonment during fossil fuel extraction operations. One bear abandoned its den when a seismic vehicle drove directly over the den (Harding and Nagy 1980, p. 278). The other bear abandoned its den when a

gravel mining operation literally destroyed the den (Harding and Nagy 1980, p. 278). Reynolds *et al.* (1986, entire) also examined the effects of tracked vehicles and tractors pulling sledges. In 1978, there was a route for tractors and tracked vehicles within 100 m (328 ft) of a den inhabited by a female with three yearlings. This family group did not abandon their den at any point (Reynolds *et al.* 1986, p. 174). Reynolds *et al.* (1986, p. 174) documented one instance of possible den abandonment due to detonations for seismic testing within 200 m of a den (Reynolds *et al.* 1986, p. 174). This bear was not marked, but an empty den was reported by seismic crews.

Swenson *et al.* (1997, entire) monitored 13 different grizzly bears for at least 5 winters each and documented 18 instances of den abandonment, 12 of which were related to human activities. Four of these instances were hunting related (*i.e.,* gunshots fired within 100 m (328 ft) of the den), two occurred after ''forestry activity *at* the den site,'' one had moose and dog tracks within 10 m (33 ft) of a den, one had dog tracks *at* the den site, one had ski tracks within 80 to 90 m (262 to 295 ft) from a den, one had an excavation machine working within 75 m (246 ft) of a den, and two were categorized as ''human related'' without further details (Swenson *et al.* 1997, p. 37). Swenson *et al.* (1997) found that most den abandonment (72 percent) occurred early in the season before pregnant females give birth. However, there still may be a reproductive cost of these early den abandonments: 60 percent (sample size of 5) of female bears that abandoned a den site before giving birth lost at least one cub whereas only 6 percent (sample size of 36) of pregnant females that did not abandon their dens lost a cub in or near their den (Swenson *et al.* 1997, p. 37). In the GYE, the one documented observation of snowmobile use at a known den site found the bear did not abandon its den, even though snowmobiles were operating directly on top of it (Hegg *et al.* 2010, p. 26). This, however, is only an anecdotal observation because it is based on a sample size of one. We found no records of litter abandonment by grizzly bears in the lower 48 States due to snowmobiling activity. Additionally, monitoring of den occupancy for 3 years on the Gallatin National Forest in Montana did not document any den abandonment (Gallatin National Forest 2006, entire).

In summary, the available data about the potential for disturbance while denning and den abandonment from nearby snowmobile use are extrapolated from studies examining the impacts of other human activities and are identified as ''anecdotal'' in nature (Swenson *et al.* 1997, p. 37) with sample sizes so small they cannot be legitimately applied to assess population-level impacts (in their entirety: Harding and Nagy 1980; Reynolds *et al.* 1986; Hegg *et al.* 2010). Because there are no data or information suggesting snowmobile use in the GYE is negatively affecting grizzly bear population, or even individual bears, we determine that snowmobiling does not constitute a threat to the GYE grizzly bear DPS now, or in the future. Yet, because the potential for disturbance and impacts to reproductive success exists, monitoring will continue to support adaptive management decisions about snowmobile use in areas where disturbance is documented or likely to occur.

Vegetation Management: Vegetation management occurs throughout the GYE on lands managed by the Forest Service and National Park Service. Vegetation management projects typically include timber harvest, thinning, prescribed fire, and salvage of burned, diseased, or insect-infested stands. If not implemented properly, vegetation management programs can negatively affect grizzly bears by: (1) Removing hiding cover; (2) disturbing or displacing bears from habitat during the logging period; (3) increasing grizzly bear-human conflicts or mortalities as a result of unsecured attractants; and (4) increasing mortality risk or displacement due to new roads into previously roadless areas and/or increased vehicular use on existing restricted roads, especially if roads remain open to the public after vegetation management is complete.

Conversely, vegetation management may result in positive effects on grizzly bear habitat once the project is complete, provided key habitats such as riparian areas and known food production areas are maintained or enhanced. For instance, tree removal for thinning or timber harvest and prescribed burning can result in localized increases in bear foods through increased growth of grasses, forbs, and berry-producing shrubs (Zager *et al.* 1983, p. 124; Kerns *et al.* 2004, p. 675). Vegetation management may also benefit grizzly bear habitat by controlling undesirable invasive species, improving riparian management, and limiting livestock grazing in important food production areas.

Changes in the distribution, quantity, and quality of cover are not necessarily detrimental to grizzly bears as long as they are coordinated on a BMU or subunit scale to ensure that grizzly bear needs are addressed throughout the various projects occurring on multiple jurisdictions at any given time. Although there are known, usually temporary, impacts to individual bears from timber management activities, these impacts have been adequately mitigated using the Interagency Grizzly Bear Guidelines in place since 1986, and will continue to be managed at levels acceptable to the grizzly bear population under the 2016 Conservation Strategy. Therefore, we do not expect that vegetation management inside the PCA will constitute a threat to the GYE grizzly bear DPS now, or in the future.

Climate Change: The effects of climate change may result in a number of changes to grizzly bear habitat, including a reduction in snowpack levels, shifts in denning times, shifts in the abundance and distribution of some natural food sources, and changes in fire regimes. Most grizzly bear biologists in the United States and Canada do not expect habitat changes predicted under climate change scenarios to directly threaten grizzly bears (Servheen and Cross 2010, p. 4). These effects may even make habitat more suitable and food sources more abundant. However, these ecological changes may also affect the timing and frequency of grizzly bear-human interactions and conflicts (Servheen and Cross 2010, p. 4) and are discussed below under Factor E (*Other Natural or Manmade Factors Affecting Its Continued Existence*).

Habitat Fragmentation: The GYE grizzly bear population is currently a contiguous population across its range, and there are no data to indicate habitat fragmentation within this population is occurring. Although currently not occurring, habitat fragmentation can cause loss of connectivity and increase human-caused mortalities, and thus is a potential threat to grizzly bears. To prevent habitat fragmentation and degradation, the evaluation of all road construction projects in suitable habitat on Federal lands throughout the GYE DMA will continue to include the impacts of the project on grizzly bear habitat connectivity. This evaluation would go through an open and public planning process (U.S. Fish and Wildlife Service 2007*a,* pp. 38–41; U.S. Fish and Wildlife Service 2016, Chapter 3). By identifying areas used by grizzly bears, officials can mitigate potential impacts from road construction both during and after a project. Federal agencies will continue to identify important crossing areas by collecting information about known bear crossings, bear sightings, ungulate road

mortality data, bear home range analyses, and locations of game trails. Potential advantages of this data collection requirement include reduction of grizzly bear mortality due to vehicle collisions, access to seasonal habitats, maintenance of traditional dispersal routes, and decreased risk of fragmentation of individual home ranges. For example, work crews will place temporary work camps in areas with lower risk of displacing grizzly bears, and food and garbage will be kept in bear-resistant containers. Highway planners will incorporate warning signs and crossing structures such as culverts or underpasses into projects when possible to facilitate safe highway crossings by wildlife. Additionally, the conflict prevention, response, and outreach elements of the draft 2016 Conservation Strategy play an important role in preventing habitat fragmentation by keeping valleys that are mostly privately owned from becoming mortality sinks to grizzly bears attracted to human sources of foods. In conclusion, because these activities that combat habitat fragmentation will continue to occur under the draft 2016 Conservation Strategy, we do not expect that fragmentation within the GYE grizzly bear DPS boundaries will constitute a threat to the GYE grizzly bear DPS now, or in the future.

Habitat Management Outside the Primary Conservation Area

In suitable habitat outside of the PCA within the DPS boundaries, the Forest Service, BLM, and State wildlife agencies will monitor habitat and population criteria to prevent potential threats to habitat, ensuring that the measures of the Act continue to be unnecessary (Idaho's Yellowstone Grizzly Bear Delisting Advisory Team 2002, pp. 2–3; MTFWP 2002, p. 2; WGFD 2005, p. 1; USDA Forest Service 2006*a,* pp. 44–45; U.S. Fish and Wildlife Service 2016, Executive Summary). Factors impacting suitable habitat outside of the PCA in the future are similar to those inside the PCA and may include projects that involve road construction, livestock allotments, developed sites, and increased human-caused grizzly bear mortality risk.

Of the 22,783 sq km (8,797 sq mi or 5.6 million acres) of suitable habitat outside of the PCA within the DPS boundaries, the Forest Service manages 17,292 sq km (6,676 sq mi), or 76 percent. Of the 76 percent of suitable habitat outside of the PCA that the Forest Service manages, nearly 80 percent (13,685 sq km (5,284 sq mi)) is Designated Wilderness Area (6,799 sq km (2,625 sq mi)), Wilderness Study Area (708 sq km (273 sq mi)), or Inventoried Roadless Area (6,179 sq km (2,386 sq mi)). These designations provide regulatory mechanisms outside of the Act and the draft 2016 Conservation Strategy that protect grizzly bear habitat from increases in motorized use, oil and gas development, livestock allotments, and timber harvest. These designations are further described in Factor D. This large area of widely distributed habitat allows for continued population expansion and provides additional resiliency to environmental change.

Wilderness areas outside of the PCA are protected from new road construction, livestock allotments, developed sites, and mining claims by the Wilderness Act of 1964, 16 U.S.C. 1131 *et seq.* If pre-existing mining claims are pursued, the plans of operation are subject to Wilderness Act restrictions on road construction, permanent human habitation, and developed sites. The protections provided by the Wilderness Act are further described in Factor D.

Wilderness study areas are designated by Federal land management agencies (*e.g.,* Forest Service) as those having wilderness characteristics and being worthy of congressional designation as a wilderness area. Individual National Forests that designate wilderness study areas manage these areas to maintain their wilderness characteristics until Congress decides whether to designate them as permanent wilderness areas. This means that individual wilderness study areas are protected from new road construction by Forest Plans, and activities such as timber harvest, mining, and oil and gas development and are much less likely to occur because the road networks required for these activities do not presently exist and are not likely to be approved in the future. Wilderness Study Areas are further described in Factor D.

Inventoried Roadless Areas currently provide 4,891 sq km (1,888 sq mi) of secure habitat for grizzly bears outside of the PCA within the DPS boundaries. This amount of secure habitat is less than the total area contained within Inventoried Roadless Areas (6,179 sq km (2,386 sq mi)) because some motorized use is allowed due to roads that existed before the area was designated as roadless. Thus, a certain amount of road use is grandfathered in to the designation of Inventoried Roadless Areas. The 2001 Roadless Areas Conservation Rule (66 FR 3244, January 12, 2001; hereafter referred to as the ''Roadless Rule'') prohibits new road construction, road re-construction, and timber harvest in Inventoried Roadless Areas. Additional information about the Roadless Rule is provided in Factor D. This restriction on road building makes mining activities and oil and gas production much less likely because access to these resources becomes cost-prohibitive or impossible without new roads. Potential changes in the management of these areas are not anticipated because the Roadless Rule was upheld by the Tenth Circuit Court of Appeals in 2011. (See *Wyoming* v. *USDA,* 661 F.3d 1209 (10th Cir. 2011).)

Based on the amount of Wilderness, Wilderness Study Area, and Inventoried Roadless Area, an estimated 71 percent (12,396 of 17,291 sq km (4,786 of 6,676 sq mi)) of suitable habitat outside the PCA on Forest Service lands within the DPS is currently secure habitat and is likely to remain secure habitat. Because grizzly bears would remain on the Forest Service Sensitive Species list after delisting (USDA Forest Service 2006*b,* p. 26), any increases in roads on National Forests would have to comply with the National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*) and would be subject to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) process and analysis of potential impacts to grizzly bears. This management designation—''sensitive species'' under the 1982 Forest Service Planning Regulations (47 FR 43037; September 30, 1982) or ''species of conservation concern'' under the 2012 Forest Service Planning Regulations (77 FR 21162; April 9, 2012)—ensures that components of land management plans will provide appropriate ecological conditions (*i.e.,* habitats) necessary to continue to provide for a recovered population (USDA Forest Service 2006*b,* p. 26).

Both Federal and State agencies are committed to managing habitat so that the GYE grizzly bear DPS remains recovered and is not likely to become endangered in all or a significant portion of its range in the foreseeable future (U.S. Fish and Wildlife Service 2016, entire; Idaho's Yellowstone Grizzly Bear Delisting Advisory Team 2002, pp. 2–3; MTFWP 2002, p. 2; WGFD 2005, p. 1) (see Factor D discussion, below). In suitable habitat outside of the PCA, restrictions on human activities are more flexible, but the Forest Service, BLM, and State wildlife agencies will still carefully manage these lands, monitor bear-human conflicts in these areas, and respond with management as necessary to reduce such conflicts to account for the complex needs of both grizzly bears and humans (U.S. Fish and Wildlife Service 2016, Chapter 4; Idaho's Yellowstone Grizzly Bear Delisting

Advisory Team 2002, pp. 16–17; MTFWP 2002, pp. 55–56; WGFD 2005, pp. 25–26; USDA Forest Service 2006*b,* pp. A1–A27).

By and large, habitat management on Federal public lands is directed by Federal land management plans, not State management plans. However, the three State grizzly bear management plans recognize the importance of areas that provide security for grizzly bears in suitable habitat outside of the PCA within the DPS boundaries on Federal lands. For example, the Montana and Wyoming plans recommend limiting average road densities to 1.6 km/2.6 sq km (1 mi/sq mi) or less in these areas (MTFWP 2002, pp. 32–34; WGFD 2005, pp. 22–25). Both States have similar standards for elk habitat on State lands and note that these levels of motorized access benefit a variety of wildlife species while maintaining reasonable public access. Similarly, the Idaho State plan recognizes that management of motorized access outside the PCA should focus on areas that have road densities of 1.6 km/2.6 sq km (1 mi/sq mi) or less. The area most likely to be occupied by grizzly bears outside the PCA in Idaho is on the Caribou-Targhee National Forest. The 1997 Targhee Forest Plan includes motorized access standards and management prescriptions outside the PCA that provide for long-term security in 59 percent of existing secure habitat outside of the PCA (USDA Forest Service 2006*a,* pp. 78, 109).

In 2004, there were roughly 150 active cattle allotments and 12 active sheep allotments in suitable habitat outside the PCA within the DPS boundaries (USDA Forest Service 2004, p. 129). The Targhee Forest closed two of these sheep allotments in 2004, and there have not been any new allotments created since then (USDA Forest Service 2006*a,* p. 168; Landenburger 2014, *in litt.*). The Forest Service is committed to working with willing permittees to retire allotments with recurring conflicts that cannot be resolved by modifying grazing practices (USDA Forest Service 2006*b,* p. 6). Although conflicts with livestock have the potential to result in mortality for grizzly bears, the draft 2016 Conservation Strategy's specific total mortality limits will preclude population-level impacts. The draft 2016 Conservation Strategy directs the IGBST to monitor and spatially map all grizzly bear mortalities (both inside and outside the PCA), causes of death, the source of the problem, and alter management to maintain a recovered population and prevent the need to relist the population under the Act (U.S. Fish and Wildlife Service 2016, chapter 2).

There are over 500 developed sites on the five National Forests in the areas identified as suitable habitat outside the PCA within the DPS boundaries (USDA Forest Service 2004, p. 138). While grizzly bear-human conflicts at developed sites on public lands do occur, the most frequent reason for management removals are conflicts on private lands (Servheen *et al.* 2004, p. 21). Existing Forest Service food storage regulations for these areas will continue to minimize the potential for grizzly bear-human conflicts through food storage requirements, outreach, and education. The number and capacity of developed sites will be subject to management direction established in Forest Plans. Should the IGBST determine developed sites on public lands are related to increases in mortality beyond the sustainable limits discussed above, managers may choose to close specific developed sites or otherwise alter management in the area in order to maintain a recovered population and prevent the need to relist the population under the Act. Due to the Forest Service's commitment to manage National Forest lands in the GYE to maintain a recovered population (U.S. Fish and Wildlife Service 2016, chapter 3; USDA Forest Service 2006*b,* pp. iii, A–6), we do not expect livestock allotments or developed sites in suitable habitat outside of the PCA to reach densities that are likely to be a threat to the GYE grizzly bear DPS in the future.

According to current Forest Plan direction, less than 19 percent (3,213 sq km (1,240 sq mi)) of suitable habitat outside the PCA within the DPS boundaries on Forest Service land allows surface occupancy for oil and gas development, and 11 percent (1,926 sq km (744 sq mi)) has both suitable timber and a management prescription that allows scheduled timber harvest. The primary impacts to grizzly bears associated with timber harvest and oil and gas development are increases in road densities, with subsequent increases in human access, grizzly bear-human encounters, and human-caused grizzly bear mortalities (McLellan and Shackleton 1988, pp. 458–459; McLellan and Shackleton 1989, pp. 377–379; Mace *et al.* 1996, pp. 1402–1403). Although seismic exploration associated with oil and gas development or mining may disturb denning grizzly bears (Harding and Nagy 1980, p. 278; Reynolds *et al.* 1986, pp. 174–175), actual den abandonment is rarely observed, and there has been no documentation of such abandonment by grizzly bears in the GYE. Additionally, only a small portion of this total land area will contain active projects at any given time, if at all. For example, among the roughly 1,926 sq km (744 sq mi) identified as having both suitable timber and a management prescription that allows timber harvest, from 2000 to 2002, an average of only 5 sq km (2 sq mi) was actually logged annually (USDA Forest Service 2004, p. 118). Similarly, although nearly 3,213 sq km (1,240 sq mi) of suitable habitat on National Forest lands inside the DPS boundaries allow surface occupancy for oil and gas development, there currently are no active wells inside these areas (USDA Forest Service 2004, pp. 170–171).

Ultimately, the five affected National Forests (the Beaverhead-Deerlodge, Bridger-Teton, Caribou-Targhee, Custer-Gallatin, and Shoshone) will manage the number of roads, livestock allotments, developed sites, timber harvest projects, and oil and gas wells outside of the PCA in the DMA to allow for a recovered grizzly bear population. The National Forest plans that provide for this management are further described below in the discussion of Factor D, below. Because the grizzly bear will be classified as a ''species of conservation concern''—or the equivalent management designation—on Forest Service lands if this proposal is made final, components of land management plans and individual projects must provide appropriate ecological conditions and habitats necessary to continue to provide for a recovered population (USDA Forest Service 2006*b,* p. 26). Under the National Forest Management Act of 1976, the Forest Service will consider all potential impacts of projects to the GYE grizzly bear population in the NEPA planning process and then ensure that activities will provide appropriate habitat to maintain the population's recovered status.

Rapidly accelerating growth of human populations in some areas outside of the PCA continues to define the limits of grizzly bear range, and will likely limit the expansion of the GYE grizzly bear population onto private lands in some areas outside the PCA. Urban and rural sprawl (low-density housing and associated businesses) has resulted in increasing numbers of grizzly bear-human conflicts with subsequent increases in grizzly bear mortality rates. Private lands account for a disproportionate number of bear deaths and conflicts (U.S. Fish and Wildlife Service 2007*c,* figures 15 and 16). Nearly 9 percent of all suitable habitat outside of the PCA is privately owned. As private lands are developed and as secure habitat on private lands declines,

State and Federal agencies will work together to balance impacts from private land development (U.S. Fish and Wildlife Service 2007*c,* p. 54). Outside the PCA, State agencies will assist nongovernmental organizations and other entities to identify and prioritize potential lands suitable for permanent conservation through easements and other means as much as possible (U.S. Fish and Wildlife Service 2007*c,* p. 54). Due to the large areas of widely distributed suitable habitat on public lands that are protected by Federal legislation and managed by agencies committed to the maintenance of a recovered grizzly bear population, we do not consider human population growth on private lands to constitute a threat to the GYE grizzly bear DPS now or, in the future.

Summary of Factor A

In summary, the following factors warranted consideration as possible threats to the Greater Yellowstone Ecosystem grizzly bear DPS under Factor A: (1) Motorized access management, (2) developed sites, (3) livestock allotments, (4) mineral and energy development, (5) recreation, (6) snowmobiling, (7) vegetation management, (8) climate change, and (9) habitat fragmentation. Restrictions on motorized access, developed sites, and livestock allotments ensure that they will be maintained at or below 1998 levels, a time when the population was increasing at a rate of 4 to 7 percent per year (Schwartz *et al.* 2006*b,* p. 48). Additionally, secure habitat will be maintained at or above 1998 levels. The primary factors related to past habitat destruction and modification have been reduced through changes in management practices that have already or will be formally incorporated into regulatory documents.

Within suitable habitat, different levels of management and protection are applied to areas based on their level of importance. Within the PCA, the portion of the range where 75 percent of the females with cubs live (Schwartz *et al.* 2006*a,* p. 66), habitat protections are in place specifically for grizzly bear conservation. For this area, the Service developed objective and measurable habitat-based recovery criteria to limit habitat degradation and human-caused mortality risk related to motorized access, developed sites, and livestock allotments (*i.e.,* the 1998 baseline). If and when delisting occurs, the GYE National Forests and National Parks will continue their 15-year history of implementation by legally implementing the appropriate planning documents that incorporate the 1998 baseline values as habitat standards (USDA Forest Service 2006*b,* p. 26). Together, these two Federal agencies manage 98 percent of lands within the PCA and 88 percent of all suitable habitat within the DPS boundaries. As it has done for the last decade, the IGSBT will continue to monitor compliance with the 1998 baseline values and will also continue to monitor grizzly bear body condition, fat levels, and diet composition. Accordingly, the PCA, which comprises 51 percent of the suitable habitat within the DPS boundaries and contains 75 percent of all females with cubs (Schwartz *et al.* 2006*a,* p. 64; Haroldson 2014, *in litt.*), will remain a highly secure area for grizzly bears, with habitat conditions maintained at or above levels documented in 1998. Maintenance of the 1998 baseline values inside the PCA will continue to adequately ameliorate the multitude of stressors on grizzly bear habitat such that they do not become threats to the GYE grizzly bear DPS in the future.

Suitable habitat outside the PCA provides additional ecological resiliency and habitat redundancy to allow the population to respond to environmental changes. Habitat protections specifically for grizzly bear conservation are not necessary here because other binding regulatory mechanisms are in place for nearly 60 percent of the area outside the PCA. In these areas, the Wilderness Act, the Roadless Areas Conservation Rule, and National Forest Land Management Plans limit development and motorized use, as is further described in Factor D. Management of individual projects on public land outside the PCA will continue to consider and minimize impacts on grizzly bear habitat. Efforts by nongovernmental organizations and State and county agencies will seek to minimize bear-human conflicts on private lands (U.S. Fish and Wildlife Service 2016, Chapter 4). These and other conservation measures discussed in the ''*Forest Service's Forest plan amendment for grizzly bear habitat conservation for the Greater Yellowstone Area National Forests final environmental impact statement, Record of Decision''* (USDA Forest Service 2006*b*) ensure threats to the GYE grizzly bear population's suitable habitat outside the PCA will continue to be ameliorated and will not be a threat to this population's long-term persistence.

Other management practices on Federal lands have been changed to provide security and to maintain or improve habitat conditions for grizzly bears. All operating plans for oil and gas leases must conform to secure habitat and developed site standards, which require mitigation for any change in secure habitat. Recreation inside the GYE is limited through existing road and developed site standards. Additionally, information and education campaigns educate visitors about how to recreate safely in bear country and avoid bear-human conflicts. There are no data available on the impacts of snowmobiling on grizzly bears to suggest an effect on grizzly bear survival or recovery of the population. Although vegetation management may temporarily impact individual grizzly bears, these activities are coordinated on a BMU or subunit scale according to the Interagency Grizzly Bear Guidelines to mitigate for any potentially negative effect. As a result of vegetation management, there may also be positive effects on grizzly bears where key habitats are maintained or enhanced. The habitat changes that are predicted under climate change scenarios are not expected by most grizzly bear biologists to directly threaten grizzly bears. The potential for changes in the frequency and timing of grizzly bear-human interactions is discussed below under Factor E. Finally, there are no data to indicate that habitat fragmentation is occurring within the GYE.

In summary, the factors discussed under Factor A continue to occur across the range of the GYE grizzly bear population but are sufficiently ameliorated so they only affect a small proportion of the population. Despite these factors related to habitat, the population has increased and stabilized while its range has expanded. Therefore, based on the best available information and on continuation of current regulatory commitment, we do not consider the present or threatened destruction, modification, or curtailment of its habitat or range to constitute a threat to the GYE grizzly bear DPS now, or in the future.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

When grizzly bears were listed in 1975, we identified ''indiscriminate illegal killing'' and management removals as primary threats to the population. We now consider mortalities including management removals and illegal killings under Factor C, under the ''Human-Caused Mortality'' section. This section evaluates legal grizzly bear hunting for commercial and recreational purposes in the GYE if this population were no longer protected from this type of take by the Act. No grizzly bears have been removed from the GYE since 1975 for

commercial, recreational, scientific, or educational purposes. While there have been some mortalities related to research trapping since 1975, these were accidental and they are also discussed under Factor C, below. The only commercial or recreational take anticipated post-delisting is a limited, controlled hunt. Mortality due to illegal poaching, defense of life and property, mistaken identity or other accidental take, and management removals are discussed in the ''Human-Caused Mortality'' section under Factor C. In this section, we describe expected conditions that would be compatible with a recovered GYE grizzly bear population.

To achieve mortality management in the area appropriate to the long-term conservation of the GYE population and to assure that the area of mortality management was the same as the area where the population estimates are made, the Service, based on recommendations in an IGBST report (2012), has proposed to modify the area where mortalities are counted against the total mortality limits to be the same area that is monitored to annually estimate population size. The basis for this area, called the demographic monitoring area (DMA), was the boundary developed in 2007 by the Service (2007*b*) for what was termed ''suitable habitat.'' This suitable habitat boundary (enclosing a total area of 46,035 sq km (17,774 sq mi)) is sufficiently large to support a viable population in the long term, so that mortalities outside of it and inside the DPS could be excluded from consideration. Importantly, the area closely resembles the area in which unique adult female grizzly bears with cubs-of-the-year (less than 1 year old) (see glossary) are surveyed and counted and for which population size is estimated. This DMA area is thus most appropriate for applying total mortality limits. The IGBST's 2012 report noted, however, that because the suitable habitat boundary was drawn using mountainous ecoregions, there were narrow, linear areas along valley floors that did not meet the definition of suitable habitat and where population sinks may be created. This phenomenon, in which the quantity and quality of suitable habitat is diminished because of interactions with surrounding, less suitable habitat, is known as an ''edge effect'' (in their entirety: Lande 1998; Yahner 1988; Mills 1995). Edge effects are exacerbated in small habitat patches with high perimeter-to-area ratios (*i.e.,* those that are long and narrow) and in wide-ranging species such as grizzly bears because they are more likely to encounter surrounding, unsuitable habitat (Woodroffe and Ginsberg 1998, p. 2126). Mortalities in these areas would be outside suitable habitat but could have disproportionate effects on the population generally contained within the suitable habitat zone, potentially acting as mortality sinks. The Service accepted the recommendation of the IGBST in the 2012 report for an alternative boundary that includes these narrow areas outside suitable habitat, but is largely bounded by it (see figure 2). The final designation of the DMA includes suitable habitat plus the potential sink areas for a total area of approximately 49,928 sq km (19,279 sq mi) (see figure 2). The DMA contains 100 percent of the PCA and 100 percent of the suitable habitat, as shown in figure 2.

The population has basically stabilized inside the DMA since 2002, with the model-averaged Chao2 population estimate for 2002–2014 being 674 (95% CI = 600–747). This stabilization over 13 years is strong evidence that the population is exhibiting density-dependent population regulation inside the DMA, and this has recently been documented (van Manen *et al.* 2015, entire). The fact that the population inside the DMA has stabilized due to density-dependent effects is strong support that, at this population size, the population has achieved recovery within the DMA.

Accordingly, the agencies implementing the draft 2016 Conservation Strategy have decided that the population in the DMA will be managed around the long-term average population size for 2002–2014 of 674 (95% CI = 600–747)(using the model-averaged Chao2 estimate). The population inside the DMA has stabilized itself at this population size through density-dependent regulation. The model-averaged Chao2 method will be used by the IGBST to annually estimate population size inside the DMA (in their entirety: Keating *et al.* 2002; Cherry *et al.* 2007), as this currently represents the best available science. To achieve a population in the DMA around the long-term average of 674, the total mortality limits for independent females will be set at 7.6 percent when the population is at 674, less than 7.6 percent when the population is lower, and more than 7.6 percent when the population is higher (as per table 1, above, and tables 2 and 3, below). A total mortality limit of 7.6 percent for independent females is the mortality level that the best available science shows results in population stability (IGBST 2012, entire). Annual estimates of population size in the DMA will be made each fall by the IGBST using the model-averaged Chao2 method. These annual estimates will normally vary as in any wild animal population. The annual model-averaged Chao2 population estimate for a given year within the DMA will be used to set the total mortality limits from all causes for the DMA for the following year as per table 1, above, and tables 2 and 3, below. Mortalities will be managed on a sliding scale within the DMA as follows (see table 1, above, for more information):

- Below 600: No discretionary mortality would be allowed unless necessary to address human safety issues.
- Between 600 and 673: Total mortality limits would be less than 7.6 percent for independent females (>2 years old), 15 percent for independent males (>2 years old), and less than 7.6 percent for dependent young.
- At 674: Total mortality limits would be 7.6 percent for independent females, 15 percent for independent males, and 7.6 percent for dependent young.
- Between 675 and 747: Total mortality limits would not exceed 9 percent for independent females, 20 percent for independent males, and 9 percent for dependent young.
- Greater than 747: Total mortality limits would not exceed 10 percent for independent females, 22 percent for independent males, and 10 percent for dependent young.

If this proposed rule is made final, grizzly bears will be classified as a game species throughout the GYE DPS boundaries outside National Parks and the Wind River Indian Reservation in the States of Wyoming, Montana, and Idaho. While we anticipate the States will desire to institute a carefully regulated hunt with ecosystem-wide coordinated total mortality limits, we do not expect grizzly bear trapping to occur due to public safety considerations and the precedent that there has never been public grizzly bear trapping in the modern era. The States of Montana, Idaho, and Wyoming do not permit public trapping of any bears currently, and there is no information to indicate they will begin. Public trapping is not identified as a possible management tool in any of their State management plans. Hunting on the Wind River Reservation will be at the discretion of the Tribes and only be available to Tribal members (Title XVI Fish and Game Code, Eastern Shoshone and Northern Arapaho Tribes 2009, p. 9). The National Park Service will not allow grizzly bear hunting within

National Park boundaries. Within the DMA (see figure 2, above), the National Park Service, the MFWP, the WGFD, the IDFG, and the Tribes of the Wind River Reservation (WRR) will manage total mortality to ensure all recovery criteria continue to be met.

TABLE 2—FRAMEWORK TO MANAGE INSIDE THE DMA FOR THE POPULATION GOAL OF THE AVERAGE POPULATION FOR 2002–2014 USING THE MODEL-AVERAGED CHAO2 METHOD. THESE TOTAL MORTALITY RATES WILL RESULT IN POPULATION STABILITY AROUND THE LONG-TERM AVERAGE POPULATION SIZE OF 674 (95% CI = 600–747) THAT EXISTED DURING 2002–2014 AS CALCULATED USING THE MODEL-AVERAGED CHAO2 POPULATION ESTIMATE METHOD. IF THE POPULATION IS FEWER THAN 674, THE TOTAL MORTALITY RATE FOR INDEPENDENT FEMALES AND DEPENDENT YOUNG MUST BE LESS THAN 7.6 PERCENT. IF POPULATION SIZE IS FEWER THAN OR EQUAL TO 600 IN ANY YEAR, NO DISCRETIONARY MORTALITY WILL OCCUR UNLESS NECESSARY FOR HUMAN SAFETY

Management framework	Background and application protocol			
1. Area within which mortality limits apply	49,928 sq km (19,279 sq mi) demographic monitoring area (DMA) (see figure 2, above).			
2. Goal of the draft 2016 Conservation Strategy	To maintain the population around the average population estimate for 2002–2014 of 674 (95% CI = 600–757) during a period of population stability using the model-averaged Chao2 methodology (Keating *et al.* 2002; Cherry *et al.* 2007; Harris *et al.* 2007). This will ensure the continuation of a recovered grizzly bear population in accordance with the three demographic recovery criteria as described in the Recovery Plan and the draft 2016 Conservation Strategy.			
3. Population estimator	The model-averaged Chao2 population estimator will be used as the population measurement tool unless another scientifically sound method becomes available. The model-averaged Chao2 population estimate for 2002–2014 was 674 (95% CI = 600–747).			
4. Mortality limit setting protocol	Each fall, the IGBST will annually produce a model-averaged Chao2 population estimate for the DMA. That population estimate will be used to establish the total mortality limit percentages for each age/sex class for the following year as per #8, #9, and #10 (below).			
5. Allocation process for managed mortalities	The States will meet annually in the month of January to review population monitoring data supplied by IGBST and collectively establish discretionary mortality within the total mortality limits per age/sex class available for regulated harvest for each jurisdiction (MT, ID, WY) in the DMA so that DMA thresholds are not exceeded. If requested, the WRR will receive a portion of the available mortality limit based on the percentage of the WRR geographic area within the DMA. Mortalities outside the DMA are the responsibility of each State and do not count against total mortality limits.			
6. Management of hunting mortalities	Per State regulations and MOA, hunting seasons will be closed within 24 hours of meeting total mortality limits for any age/sex class as per this table. Any mortality exceeding total mortality limits in any year will be subtracted from that age/sex class total mortality limit for the following year.			
7. Management review by the IGBST	A management review will be conducted by the IGBST every 5 to 10 years at the direction of the YGCC. This management review will assess if the management system is achieving the desired goal of ensuring a recovered grizzly bear population in accordance with recovery criteria. The management review is a science-based process that will be led by the IGBST (which includes all State and Federal agencies and the WRR Tribes) using all recent available scientific data to assess population numbers and trend against the management objective and recovery criteria. Age/sex-specific survival and reproductive rates will also be reevaluated using the most recent data to adjust total mortality levels as necessary.			
8. Mortality limit % for all causes for independent FEMALES based on the results of the model-averaged Chao2 method.	Pop. size	≤674	675–747	>747
	Mort. %	≤7.6%	9%	10%
9. Mortality limit % for all causes for independent MALES based on the results of the model-averaged Chao2 method.	Pop. size	≤674	675–747	>747
	Mort. %	15%	20%	22%
10. Mortality limit for % for all causes for dependent young based on the results of the model-averaged Chao2 method.	Pop. Size	≤674	675–747	>747
	Mort. %	≤7.6%	9%	10%

Consistent with USFWS Director Dan Ashe's letter of September 25, 2015, to the state directors, if the model-averaged Chao2 population estimate is less than 674, the total mortality rate for independent females and dependent young will be less than 7.6%.

If State agencies decide to establish hunting seasons, the following regulatory mechanisms must be in place by law and regulation for delisting to occur. The States will enact specific regulations that will serve as adequate

regulatory mechanisms over human-caused mortality, including mortality from sport hunting. These regulations must include:

- Suspending all discretionary mortality inside the DMA, except if required for human safety, if the model-averaged Chao2 population estimate falls below 600;
- Suspending grizzly bear hunting inside the DMA if total mortality limits for any sex/age class (as per tables 1 and 2, above, and table 3, below) are met at any time during the year;
- Female grizzly bear with young will not be available for recreational harvest; and
- In a given year, discretionary mortality will only be allowed if non-discretionary mortality (see Factor C discussion, below) does not meet or exceed total mortality limits for that year.
- Any mortality that exceeds total mortality limits in any year will be subtracted from that age/sex class total mortality limit for the following year to assure that long-term mortality levels remain within prescribed limits inside the DMA.

In addition to the regulatory mechanism above, if total mortality limits for independent females, or independent males, or dependent young are exceeded for 3 consecutive years, and the model-averaged population estimate falls below 612 (the lower limit of the 90% CI), the IGBST will complete a biology and monitoring review to evaluate the impacts of these total mortality levels on the population and present it to the YGCC and the public. The States will coordinate via a signed MOU to manage total mortalities within the DMA to be within the age/sex mortality limits as per tables 1 and 2, above, and table 3, below.

TABLE 3—ALLOWABLE NUMBER OF TOTAL MORTALITIES FROM ALL CAUSES INSIDE THE DMA UNDER THE TOTAL MORTALITY LIMITS FOR INDEPENDENT FEMALES AND INDEPENDENT MALES AT DIFFERENT POPULATION SIZES

	Population size			
	600 to 673	674	675 to 747	>747
1. Total annual mortality limit from all causes for independent FEMALES (≥2 years).	At <7.6% mortality = 16 to 17.	At 7.6% mortality = 18.	At 9% mortality = 21 to 23.	At 10% mortality = >26.
2. Total annual mortality limit from all causes for independent MALES (≥2 years).	At 15% mortality = 31 to 34.	At 15% mortality = 35.	At 20% mortality = 47 to 52.	At 22% mortality = >57.
Total mortality: Documented known and probable grizzly bear mortalities from all causes including but are not limited to: Management removals, illegal kills, mistaken identity kills, self-defense kills, vehicle kills, natural mortalities, undetermined-cause mortalities, grizzly bear hunting, and a statistical estimate of the number of unknown/unreported mortalities.				

The mortalities in table 3 are the total number of allowable mortalities inside the DMA from all causes for different population sizes. Total mortality limits in table 3 for each sex/age class are based on the size of each sex/age cohort, which changes with population size.

There are mortalities that occur every year due to multiple sources including management removals, illegal kills, self-defense, calculated unknown/unreported mortalities, natural mortalities, and other causes such as vehicle collisions. These are considered background levels of mortality and must be taken into account in any calculation and allocation of additional mortality available for hunting in order to remain within the total mortality limits. The expected numbers of background mortalities inside the DMA are calculated by taking the average number of mortalities from the most recent 4-year period from all sources, other than grizzly bear hunting, including calculated unknown/unreported numbers. Because background mortality levels vary from year to year, averaging these over several years is a reasonable predictor of these numbers. This average number of expected background mortalities for independent females and males is then subtracted from the total number of allowable mortalities for the most recent population estimate as per table 3. The resulting number is the expected number of independent female and male bears available for hunting allocation.

As an example, the average background mortality from 2012 to 2015 was 37 (15 females and 22 males) independent bear deaths/year due to management removals, illegal kills, calculated unknown/unreported, natural causes, and other deaths. These are from inside the DMA only. In this example, with an average background mortality of 37 (15 females and 22 males), if the DMA population in a given year was at 674 bears as calculated by the modeled-averaged Chao 2 method, using table 3 there would be 3 female bears and 13 male bears available for discretionary hunting mortality (18 − 15 = 3 independent females and 35 − 22 = 13 independent males). Once either one of these mortality limits was met in any year, the state regulatory mechanisms closing hunting seasons would apply. For the 2015 DMA population estimate of 717, the total allowable mortality for independent females is 22 and for independent males is 50. Applying the average background mortality of 15 and 22 for independent females and independent males, respectively, that would allow for a discretionary mortality inside the DMA of 22 − 15 = 7 independent females and 50 − ;22 = 28 independent males. If the average background mortality was higher than the 2012–2015 average of 37, there may not be any discretionary mortality in a given year. Concurrently, if the average background mortality declined, there may be additional discretionary mortality available.

These examples serve to explain the process that will be used to determine discretionary mortality. Within these mortality limits, state fish and wildlife agencies have discretion to determine whether they intend to propose a grizzly bear hunting season and/or how much discretionary mortality (within allowable limits) to allocate to hunting.

This proposed rule is based on these anticipated changes to Wyoming,

Montana, and Idaho State laws and regulations necessary to implement mortality management inside the GYE DMA described in this section and in tables 1, 2, and 3. It is our expectation that these adequate regulatory mechanisms as described above will be finalized prior to the publication of any final rule resulting from this proposal.

Other regulations, such as timing and location of hunting seasons, should seasons be implemented, would be devised by the States to minimize the possibility that total mortality limits of independent females are exceeded within the DMA (Idaho's Yellowstone Grizzly Bear Delisting Advisory Team 2002, p. 20; WGFD 2004, p. 20; MFWP 2013, p. 61).

To assure that the distribution criterion (16 of 18 bear management units within the Recovery Zone must be occupied by females with young, with no 2 adjacent bear management units unoccupied, during a 6-year sum of observations) is maintained, the IGBST will annually monitor and report the distribution of reproducing females. If the necessary distribution of reproducing females is not met for three consecutive years, the IGBST will complete a biology and monitoring review to evaluate the impacts of reduced distribution of reproducing females on the population and present it to the YGCC. This biology and monitoring review will consider the significance of the reduced distribution of reproducing females and make recommendations to increase their distribution as necessary.

If this proposed rule is made final, the Service may initiate a formal status review and could emergency relist the GYE grizzly population until the formal status review is complete under the following conditions: (1) If there are any changes in Federal, State, or Tribal laws, rules, regulations, or management plans that depart significantly from the specifics of population or habitat management detailed in this proposed rule and significantly increase the threat to the population; or (2) if the population falls below 500 in any year using the model-averaged Chao2 method, or counts of females with cubs fall below 48 for 3 consecutive years; or (3) if independent female total mortality limits as per tables 1, 2, and 3, above, are exceeded for 3 consecutive years and the population is fewer than 600; or (4) if fewer than 16 of 18 bear management units are occupied by females with young for 3 consecutive 6-year sums of observations. Such a status review would be necessary for relisting the grizzly population should that be warranted.

In areas of the GYE grizzly bear DPS outside the DMA boundaries, respective States and Tribes may establish hunting seasons independent of the total mortality limits inside the DMA. Hunting mortality outside the DMA boundary would not threaten the GYE grizzly bear DPS because total mortality limits are in place as per tables 1, 2, and 3, above, for the source population within the DMA boundary.

To increase the likelihood of occasional genetic interchange between the GYE grizzly bear population and the NCDE grizzly bear population, the State of Montana has indicated they will manage discretionary mortality in this area in order to retain the opportunity for natural movements of bears between ecosystems. Maintaining the presence of non-conflict grizzly bears in areas between the NCDE management area and the DMA of the GYE, such as the Tobacco Root and Highland Mountains, would likely facilitate periodic grizzly bear movements between the NCDE and GYE.

To ensure total mortality rates remain consistent with population objectives after delisting, the IGBST will conduct a demographic review of population vital rates (table 2, item #7) at least every 5 to 10 years in perpetuity. The results of these reviews will be used to make appropriate adjustments to assure adherence to the population objective to maintain the average population from 2002–2014 inside the DMA and to maintain a recovered population in accordance with the recovery criteria. The 5- to 10-year time interval was selected based on life-history characteristics of bears and methodologies in order to obtain estimates with acceptable levels of uncertainty and statistical rigor (Harris *et al.* 2011, p. 29).

Summary of Factor B

In summary, commercial and recreational hunting warranted consideration as possible threats to the GYE grizzly bear DPS under Factor B. These three regulatory commitments will need to be in place exist prior to issuance of a final rule:

(1) The States will ensure the application of the details in tables 1, 2, and 3, above, regarding annual total mortality levels for each age/sex class are based on annual IGBST model-averaged Chao2 population estimates; and

(2) The States will implement and maintain by law and regulation, as detailed above and in tables 1, 2, and 3, management responses to any departures from total mortality limits for independent females, independent males, and dependent young to maintain the population inside the DMA around the average population size from 2002–2014; and

(3) The State of Montana will manage discretionary mortality in the area between the GYE and the NCDE in order to retain the opportunity for natural movements of bears between ecosystems.

In addition, the Service may initiate a status review with possible emergency relisting act if: (1) There are any changes in Federal, State, or Tribal laws, rules, regulations, or management plans that depart significantly from the specifics of population or habitat management detailed in this proposed rule and significantly increase the threat to the population; or (2) the population falls below 500 in any year using the model-averaged Chao2 method or counts of females with cubs fall below 48 for 3 consecutive years; or (3) independent female total mortality limits as per tables 1, 2, and 3, above, are exceeded for 3 consecutive years and the population is fewer than 600; or (4) fewer than 16 of 18 bear management units are occupied by females with young for 3 consecutive 6-year sums of observations.

If these commitments are implemented into regulations, they would ameliorate impacts related to commercial and recreational hunting such that hunting would not threatehn the the GYE grizzly bear DPS in the future. Should Wyoming, Montana, and/or Idaho fail to make the changes necessary detailed above to support a recovered grizzly bear population, or deviate significantly from the changes in law and regulation described above and in tables 1, 2, and 3, above, delisting could not occur. In addition to State laws and regulations, the IGBST will conduct a demographic review of the population vital rates every 5 to 10 years on which allowable total mortality limits are based to assure adherence to the population objective. We consider the regulatory commitment outlined in this section by State and Federal agencies to reasonably ensure conservation of the GYE grizzly bear DPS. Because of these detailed State and Federal regulatory commitments, we conclude that commercial and recreational hunting will not constitute a substantial threat to the GYE grizzly bear DPS now, or in the future.

C. Disease or Predation

Factor C requires the Service to consider disease or predation affecting the continued existence of a species. In addition to natural disease and predation, we consider here human-

caused mortality other than legal hunting to include illegal poaching, defense of life and property mortality, accidental mortality, and management removals.

Disease

Although grizzly bears have been documented with a variety of bacteria and other pathogens, parasites, and disease, fatalities are uncommon (LeFranc *et al.* 1987, p. 61) and do not appear to have population-level impacts on grizzly bears (Jonkel and Cowan 1971, pp. 31–32; Mundy and Flook 1973, p. 13; Rogers and Rogers 1976, p. 423). Researchers have demonstrated grizzly bears with brucellosis (type 4), clostridium, toxoplasmosis, canine distemper, canine parvovirus, canine hepatitis, and rabies (LeFranc *et al.* 1987, p. 61; Zarnke and Evans 1989, p. 586; Marsilio *et al.* 1997, p. 304; Zarnke *et al.* 1997, p. 474). However, based on nearly 40 years of research by the IGBST, natural mortalities in the wild due to disease have never been documented (IGBST 2005, pp. 34–35; Craighead *et al.* 1988, pp. 24–84). Based on this absence in more than 50 years of data, we conclude mortalities due to bacteria, pathogens, or disease are negligible components of total mortality in the GYE and are likely to remain an insignificant factor in population dynamics into the future. Therefore, we conclude this source of mortality does not constitute a threat to the GYE grizzly bear DPS now, or in the future.

Natural Predation

Grizzly bears are occasionally killed by other wildlife. Adult grizzly bears kill cubs, sub-adults, or other adults (Stringham 1980, p. 337; Dean *et al.* 1986, pp. 208–211; Hessing and Aumiller 1994, pp. 332–335; McLellan 1994, p. 15; Schwartz *et al.* 2003*b,* pp. 571–572). This type of intraspecific killing seems to occur rarely (Stringham 1980, p. 337) and has only been observed among grizzly bears in the GYE 28 times between 1986 and 2012 (Haroldson 2014, *in litt.*). Wolves and grizzly bears often scavenge similar types of carrion and, sometimes, will interact with each other in an aggressive manner. Since wolves were reintroduced into the GYE in 1995, we know of 339 wolf-grizzly bear interactions with 6 incidents in which wolf packs likely killed grizzly bear cubs and 2 incidents in which wolves likely killed adult female grizzly bears (Gunther and Smith 2004, pp. 233–236; Gunther 2014, *in litt.*). Overall, these types of aggressive interactions among grizzly bears or with other wildlife are rare and are likely to remain an insignificant factor in population dynamics into the future. Therefore, we conclude this source of mortality does not constitute a threat to the GYE grizzly bear DPS now, or in the future.

Human-Caused Mortality

This section discusses all sources of human-caused mortality except legal hunting, which is discussed above under Factor B. Excessive human-caused mortality was the primary factor contributing to grizzly bear decline during the 19th and 20th centuries (Leopold 1967, p. 30; Koford 1969, p. 95; Servheen 1990, p. 1; Servheen 1999, pp. 50–52; Mattson and Merrill 2002, pp. 1129, 1132; Schwartz *et al.* 2003*b,* p. 571), eventually leading to their listing as a threatened species in 1975 (40 FR 31734; July 28, 1975). Grizzly bears were seen as a threat to livestock and to human safety and, therefore, an impediment to westward expansion. Both the Federal government and most early settlers were dedicated to eradicating large predators. Grizzly bears were shot, poisoned, trapped, and killed wherever humans encountered them (Servheen 1999, p. 50). By the time grizzly bears were listed under the Act in 1975, there were only a few hundred grizzly bears remaining in the lower 48 States in less than 2 percent of their former range (U.S. Fish and Wildlife Service 1993, pp. 8–12).

From 1980 to 2002, 66 percent (191) of the 290 known grizzly bear mortalities were human-caused (Servheen *et al.* 2004, p. 21). The main causes of human-caused mortality were human site conflicts, self-defense, vandal killings, and hunting-related, all of which can be partially mitigated for through management actions (Servheen *et al.* 2004, p. 21). In our March 29, 2007, final rule (72 FR 14866), we report that despite these mortalities, this time period corresponds to one during which the Yellowstone grizzly bear population saw population growth and range expansion. Since then, the IGBST has updated these demographic analyses using data from 2002–2011 (IGBST 2012, entire). Below, we evaluate human-caused grizzly bear mortality for 2002–2014, as it represents the most recent and best available information on this subject. For more information on the demographic vital rates for 2002–2011, please see *Population and Demographic Recovery Criteria* in the Recovery Planning and Implementation section, above. From 2002–2014, 76 percent of known or probable grizzly bear mortalities in the GYE DMA (311/410) were human-caused (Haroldson 2014, *in litt.;* Haroldson *et al.* 2015, p. 26). While the number of independent female grizzly bears killed by humans each year has increased gradually, human-caused mortality occurring in the fall, when bears are at an increased risk of conflicts involving hunters, as a proportion of the estimated population size has remained relatively constant, particularly for females (Haroldson 2015, *in litt.*). Overall, human-caused mortality rates have been low enough to allow the GYE grizzly bear population to increase in numbers and range (Schwartz *et al.* 2006a, pp. 64–66; Schwartz *et al.* 2006b, p. 48; Bjornlie *et al.* 2014, p. 184). Total mortality limits and anticipated State regulations to manage within agreed-upon morality limits as per tables 1, 2, and 3, above, will ensure that mortality will continue to be managed at levels that do not result in long-term population decline. In this section, we discuss impacts from human-caused mortality, including illegal poaching, defense of life and property, accidental mortality, and management removals.

We define poaching as intentional, illegal killing of grizzly bears. People may kill grizzly bears for several reasons, including a general perception that grizzly bears in the area may be dangerous, frustration over depredations of livestock, or to protest land-use and road-use restrictions associated with grizzly bear habitat management (Servheen *et al.* 2004, p. 21). Regardless of the reason, poaching continues to occur. We are aware of at least 22 such killings in the GYE between 2002 and 2014 (Haroldson 2014, *in litt.;* Haroldson *et al.* 2015, p. 26). This constituted 7 percent of known grizzly bear mortalities from 2002 to 2014. This level of take occurred during a period when poaching was enforceable by Federal prosecution. We do not expect poaching to significantly increase if this proposed action is finalized because State and Tribal designation as a game animal means poaching will remain illegal and prosecutable. Please see Factor D for discussion about State and Tribal designation of grizzly bears as a game animal. If anything, authorized hunting through designating the grizzly bear as a game animal may reduce the amount of illegal poaching.

State and Federal law enforcement agents have cooperated to ensure consistent enforcement of laws protecting grizzly bears. Currently, State and Federal prosecutors and enforcement personnel from each State and Federal jurisdiction work together to make recommendations to all jurisdictions, counties, and States, on uniform enforcement, prosecution, and sentencing relating to illegal grizzly bear kills. This cooperation means illegal

grizzly bear mortalities are often prosecuted under State statutes instead of the Act. We have a long record of this enforcement approach being effective, and no reason to doubt its effectiveness in the absence of the Act's additional layer of Federal protections.

If we delist the GYE DPS, all three affected States and the Eastern Shoshone and Northern Arapaho Tribes of the Wind River Reservation will classify grizzly bears in the GYE as game animals, which cannot be taken without authorization by State or Tribal wildlife agencies (U.S. Fish and Wildlife Service 2016, Chapter 7; Idaho's Yellowstone Grizzly Bear Delisting Advisory Team 2002, pp. 18–21; MTFWP 2002, p. 2; WGFD 2005, p. 20; Eastern Shoshone and Northern Arapaho Tribes 2009, p. 9). In other words, it will still be illegal for private citizens to kill grizzly bears unless it is in self-defense (as is currently allowed under the Act's protections), or if they have a hunting license issued by State or Tribal wildlife agencies, or in the Montana portion of the DPS, if a grizzly bear is caught in the act of attacking or killing livestock (87–6–106 MCA). With respect to the last exception, there must be injured or dead livestock associated with any grizzly bear killed in defense of livestock in Montana. There are no documented cases of livestock owners or herders actually observing a grizzly bear depredating on livestock since records began being kept in 1975. Before that time, it would have been legal for a livestock operator to kill a grizzly bear just for being present. Details surrounding these mortalities are scant. States will continue to enforce, prosecute, and sentence poachers just as they do for any game animal such as elk, black bears, and cougars. Although it is widely recognized that poaching still occurs, this illegal source of mortality is not significant enough to hinder population stability for the GYE grizzly bear population (IGBST 2012, p. 34) or range expansion (Pyare *et al.* 2004, pp. 5–6; Bjornlie *et al.* 2013, p. 184).

Information and education programs, (which are described in detail in Factor E), with a long record of implementation and will continue under the draft 2016 Conservation Strategy continue after delisting, have helped minimize the potential threat of poaching. More specifically, these programs address illegal killing by working to change human values, perceptions, and beliefs about grizzly bears and Federal regulation of public lands (Servheen *et al.* 2004, p. 27). To address the concerns of user groups who have objections to land use restrictions that accommodate grizzly bears, Federal and State agencies market the benefits of restricting motorized access to multiple species. For example, both Montana and Wyoming have recommendations for elk habitat security similar to those for grizzly bears (less than 1.6 km/2.6 sq km (1 mi/sq mi)). This level of motorized access meets the needs of a variety of wildlife species, while maintaining reasonable opportunities for public access. Information and education programs also reduce the threat of poaching by teaching people about bear behavior and ecology so that they can avoid encounters and conflicts or respond appropriately if encounters do occur. In this way, we can correct common misconceptions and lessen the perceived threat grizzly bears pose. Additionally, information and education programs foster relationships and build trust between the general public and the government agencies implementing them by initiating communication and dialogue.

From 2002 to 2014, humans killed 97 grizzly bears in self-defense or defense of others in the GYE. This constituted nearly 31 percent of known grizzly bear mortalities during this time period (Haroldson 2014, *in litt.;* Haroldson *et al.* 2015, p. 26). This type of grizzly bear mortality is currently allowed under the provisions of the Act through a 4(d) rule (50 CFR 17.40(b)). These grizzly bear mortalities occurred primarily with elk hunters on public lands during the fall, but also at other times and locations (IGBST 2009, p. 18). These self-defense situations with elk hunters occur during surprise encounters, at hunter-killed carcasses or gut piles, or when packing out carcasses. Federal and State agencies have many options to potentially reduce conflicts with hunters (IGBST 2009, pp. 21–31), but self-defense mortalities will always be a reality when conserving a species that is capable of killing humans. By promoting the use of bear spray and continuing information and education programs pertaining to food and carcass storage and retrieval, many of these grizzly bear deaths can be avoided. Through its enabling legislation, the National Park Service authorizes an elk reduction program in both Grand Teton National Park and the John D. Rockefeller Memorial Parkway. Elk hunters in Grand Teton National Park and John D. Rockefeller Memorial Parkway are required to carry bear spray in an accessible location, thus reducing the potential for an encounter that results in grizzly bear mortality. Outside of these National Parks, carrying bear spray is strongly encouraged through hunter education programs and other information and education materials.

Another primary source of human-caused mortality is agency removal of nuisance bears following grizzly bear-human conflicts. Between 2002 and 2014, agency removals resulted in 135 mortalities, accounting for 43 percent of human-caused mortalities. This type of grizzly bear mortality is allowed under the Act through a 4(d) rule (50 CFR 17.40(b)). While lethal to the individual grizzly bears involved, these removals promote conservation of the GYE grizzly bear population by minimizing illegal killing of bears, providing an opportunity to educate the public about how to avoid conflicts, and promoting tolerance of grizzly bears by responding promptly and effectively when bears pose a threat to public safety.

Conflicts at developed sites (on either public or private lands) were responsible for 90 of the 135 agency removals between 2002 and 2014. These conflicts usually involve attractants such as garbage, human foods, pet/livestock/wildlife foods, livestock carcasses, and wildlife carcasses, but also are related to attitudes, understanding, and tolerance toward grizzly bears. Mandatory food storage orders on public lands decrease the chances of conflicts while State and Federal information and education programs reduce grizzly bear-human conflicts on both private and public lands by educating the public about potential grizzly bear attractants and how to store them properly. Accordingly, roughly 68 percent of the total budgets of the agencies responsible for implementing the draft 2016 Conservation Strategy and managing the GYE grizzly bear population post-delisting is for grizzly bear-human conflict management, outreach, and education (U.S. Fish and Wildlife Service 2016, Appendix F). To address public attitudes and knowledge levels, information and education programs present grizzly bears as a valuable public resource while acknowledging the potential dangers associated with them and ways to avoid conflicts (for a detailed discussion of information and education programs, see Factor E discussion, below). These outreach programs have been successful, as evidenced by a stable to increasing grizzly bear population despite large increases in people living and recreating in the GYE over the last 3 decades. Information and education programs are an integral component of the draft 2016 Conservation Strategy and will continue to be implemented by all partners whether the GYE grizzly bear is listed or not.

Agency removals due to grizzly bear conflicts with livestock accounted for nearly 15 percent (45 out of 311) of known mortalities between 2002 and 2014, and 33 percent of management removals (45 out of 135) (Haroldson 2014, *in litt.;* Haroldson *et al.* 2015, p. 26). Several measures to reduce livestock conflicts are in place inside the PCA, and only one of these 45 mortalities occurred inside the PCA. The Forest Service phases out sheep allotments within the PCA as opportunities arise and, currently, only one active sheep allotment remains inside the PCA (USDA Forest Service 2006*a,* p. 167; Landenburger 2014, *in litt.*). The Forest Service also has closed sheep allotments outside the PCA to resolve conflicts with species such as bighorn sheep as well as grizzly bears. Additionally, the alternative chosen by the Forest Service during its NEPA process to amend the five national forest plans for grizzly bear habitat conservation includes direction to resolve recurring conflicts on livestock allotments through retirement of those allotments with willing permittees (USDA Forest Service 2006*b,* pp. 16–17; U.S. Fish and Wildlife Service 2016, Chapter 3). Livestock grazing permits include special provisions regarding reporting of conflicts, proper food and attractant storage procedures, and carcass removal. The Forest Service monitors compliance with these special provisions associated with livestock allotments annually (Servheen *et al.* 2004, p. 28). We consider these measures effective at reducing this threat, as evidenced by the rarity of livestock depredation removals inside the PCA. Upon delisting, the Forest Service will continue to implement these measures that minimize grizzly bear conflicts with livestock. The draft 2016 Conservation Strategy also recognizes that removal of individual nuisance bears is sometimes required, as most depredations are done by a few individuals (Jonkel 1980, p. 12; Knight and Judd 1983, p.188; Anderson *et al.* 2002, pp. 252–253).

The draft 2016 Conservation Strategy and State grizzly bear management plans will guide decisions about agency removals of nuisance bears post-delisting and keep this source of human-caused mortality within the total mortality limits for each age/sex class as per table 2, above. The draft 2016 Conservation Strategy is consistent with current protocols (USDA Forest Service 1986, pp. 53–54), emphasizing the individual's importance to the entire population. Females will continue to receive a higher level of protection than males. Location, cause of incident, severity of incident, history of the bear, health, age, and sex of the bear, and demographic characteristics are all considered in any relocation or removal action. Upon delisting, State, Tribal, and National Park Service bear managers would continue to coordinate and consult with each other and other relevant Federal agencies (*i.e.,* Forest Service, BLM) about nuisance bear relocation and removal decisions, but coordination with the Service during each incident would no longer be required (50 CFR 17.40). The draft 2016 Conservation Strategy emphasizes removal of the human cause of the conflict when possible, or management and education actions to limit such conflicts (U.S. Fish and Wildlife Service 2016, chapter 4). In addition, an information and education team will continue to coordinate the development, implementation, and dissemination of programs and materials to aid in preventative management of bear-human conflicts. The draft 2016 Conservation Strategy recognizes that successful management of grizzly bear-human conflicts requires an integrated, multiple-agency approach to continue to keep human-caused grizzly bear mortality within sustainable levels.

Overall, we consider agency management removals a necessary component of grizzly bear conservation. Nuisance bears can become a threat to human safety and erode public support if they are not addressed. Without the support of the people that live, work, and recreate in grizzly bear country, conservation will not be successful. Therefore, we do not consider management removals a threat to the GYE grizzly bear population now, or in the future. However, we recognize the importance of managing these sanctioned removals within sustainable levels, and Federal, Tribal, State management agencies are committed to working with citizens, landowners, and visitors to address unsecured attractants to reduce the need for grizzly bear removals.

Humans kill grizzly bears unintentionally in a number of ways. From 2002 to 2014, there were 34 accidental mortalities and 23 mortalities associated with mistaken identification (totaling 18 percent of known mortality for this time period) (Haroldson 2014, *in litt.;* Haroldson *et al.* 2015, p. 26). Accidental sources of mortality during this time included roadkills, electrocution, and mortalities associated with research trapping by the IGBST. For the first time since 1982, there were grizzly bear mortalities possibly associated with scientific research capture and handling in 2006. That year, four different bears died within 4 days of being captured, most likely from clostridium infections but the degraded nature of the carcasses made the exact cause of death impossible to determine. Then in 2008, two more grizzly bear mortalities suspected of being related to research capture and handling occurred. A necropsy was able to confirm the cause of death for one of these bears as a clostridial infection at the anesthesia injection site. Once the cause of death was confirmed, the IGBST changed its handling protocol to include antibiotics for each capture (Haroldson and Frey 2009, p. 21). There has not been a research-related capture mortality since. Because of the IGBST's rigorous protocols and adaptive approach dictating proper bear capture, handling, and drugging techniques, this type of human-caused mortality is not a threat to the GYE grizzly bear population. Measures to reduce vehicle collisions with grizzly bears include removing roadkill carcasses from the road so that grizzly bears are not attracted to the roadside (Servheen *et al.* 2004, p. 28). Cost-effective mitigation efforts to facilitate safe crossings by wildlife will be voluntarily incorporated in road construction or reconstruction projects on Federal lands within suitable grizzly bear habitat.

Mistaken identification of grizzly bears by black bear hunters is a manageable source of mortality. The draft 2016 Conservation Strategy identifies information and education programs targeted at hunters that emphasize patience, awareness, and correct identification of targets to help reduce grizzly bear mortalities from inexperienced black bear and ungulate hunters (U.S. Fish and Wildlife Service 2016, Chapter 5). Beginning in license year 2002, the State of Montana required that all black bear hunters pass a Bear Identification Test before receiving a black bear hunting license (see *http://fwp.mt.gov/education/hunter/bearID/* for more information and details). Idaho and Wyoming provide a voluntary bear identification test online (WGFD 2005, p. 34; MTFWP 2002, p. 63). In addition, all three States include grizzly bear encounter management as a core subject in basic hunter education courses.

The IGBST prepares annual reports analyzing the causes of conflicts, known and probable mortalities, and proposed management solutions (Servheen *et al.* 2004, pp. 1–29). The IGBST would continue to use these data to identify where problems occur and compare trends in locations, sources, land ownership, and types of conflicts to inform proactive management of grizzly

bear-human conflicts. As directed by the draft 2016 Conservation Strategy (U.S. Fish and Wildlife Service 2016, chapter 4), upon delisting, the IGBST would continue to summarize nuisance bear control actions in annual reports and the YGCC would continue the Yellowstone Ecosystem Subcommittee's role reviewing and implementing management responses (in their entirety: IGBST 2009; YGCC 2009). The IGBST and YGCC implemented this adaptive management approach when the GYE grizzly bear population was delisted between 2007 and 2009. After high levels of mortality in 2008, the IGBST provided management options to the YGCC about ways to reduce human-caused mortality. In fall 2009, the YGCC provided updates on what measures they had implemented since the report was released the previous spring. These efforts included: Increased outreach on the value of bear spray; development of a comprehensive encounter, conflict, and mortality database; and increased agency presence on Forest Service lands during hunting season. For a complete summary of agency responses to the IGBST's recommendations, see pages 9–18 of the fall 2009 meeting minutes (YGCC 2009). Because human-caused mortality has been reduced through information and education programs (*e.g.,* bear identification to reduce mistaken identity kills by black bear hunters) and management of bear removals (*e.g.,* reduction in livestock predation), we conclude this source of mortality does not constitute a threat to the GYE grizzly bear DPS now, or in the future.

Summary of Factor C

In summary, the following factors warranted consideration as possible threats to the Greater Yellowstone Ecosystem grizzly bear DPS under Factor C: (1) Natural disease, (2) natural predation, and (3) human-caused mortality, other than legal hunting. Both natural disease and natural predation are rare occurrences and therefore not considered a threat to the GYE grizzly bear population. Human-caused mortality, other than legal hunting, includes illegal poaching, defense of life and property mortality, accidental mortality, and management removals. Information and education programs reduce human-caused mortality by: (1) Changing human perceptions and beliefs about grizzly bears; (2) educating recreationists and hunters on how to avoid encounters and conflicts, how to react during a bear encounter, use of bear spray, and proper food storage; and (3) education of black bear hunters on bear identification.

When grizzly bears were listed in 1975, we identified ''indiscriminate illegal killing,'' and management removals as threats to the population. By defining a recovered population as one that ''can sustain the existing level of known and estimated unknown, unreported human-caused mortality that exists within the ecosystem,'' the 1993 Recovery Plan recognized that eliminating all human-caused mortality was not possible or necessary (U.S. Fish and Wildlife Service 1993, p. 41). Documentation of a stable to increasing population trend (Schwartz *et al.* 2006*b,* p. 48; IGBST 2012, p. 34) indicates mortality levels have allowed the GYE grizzly bear population to meet this definition of recovered.

Overall, from 2002 to 2014, the GYE grizzly bear population incurred an average of 23.9 human-caused grizzly bear mortalities per year (Haroldson 2014, *in litt.;* Haroldson *et al.* 2015, p. 26). Despite these mortalities, the GYE grizzly bear population has continued to increase in size and expand its distribution (Pyare *et al.* 2004, pp. 5–6; Schwartz *et al.* 2006*a,* pp. 64–66; Schwartz *et al.* 2006*b,* p.48; IGBST 2012, p. 34; Bjornlie *et al.* 2013, p. 184). Although humans are still directly or indirectly responsible for the majority of grizzly bear deaths, this source of mortality is effectively mitigated through science-based management, monitoring, and outreach efforts. It is the intent of the agencies to institutionalize the careful management and monitoring of human-caused mortality through the draft 2016 Conservation Strategy, National Forest and National Park management plans, State grizzly bear management plans, and State wildlife commission rules and regulations (see Factor D, below). Because a 4(d) rule currently allows grizzly bears to be killed in self-defense, defense of others, or by agency removal of nuisance bears, management of human-caused mortality post-delisting would not differ significantly if the protections of the Act were no longer in place. Although grizzly bear hunting is anticipated to occur, it would be within the total mortality limits for independent females and males noted in tables 1, 2, and 3, above, that will ensure the population remains recovered within the DMA as measured by adherence to total mortality limits and annual population estimates (see tables 2 and 3 and Factor B, above). Hunting would not occur if other sources of mortality exceeded the total mortality limits (see tables 2 and 3 and Factor B, above). Therefore, based on the best available scientific and commercial information, application of mortality management detailed in this proposed rule and the draft 2016 Conservation Strategy, and the expectation that these bear management practices will continue into the future, we conclude that disease and predation do not constitute threats to the GYE grizzly bear DPS now and are not anticipated to constitute threats in the future.

D. The Inadequacy of Existing Regulatory Mechanisms

Grizzly bear populations declined in part because there were inadequate regulatory mechanisms in place to protect habitat (40 FR 31734; July 28, 1975). Once grizzly bears were listed under the Act, they immediately benefited from its regulatory framework that included prohibition of take—broadly defined under the Act to include harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct—and that requires Federal agencies to consult with the Service to ensure any project funded, authorized, or carried out by them does not jeopardize the continuing existence of a listed species. Grizzly bears benefitted from the requirement that Federal agencies ensure their actions will not likely jeopardize the continued existence of the species. They also benefitted from the development and implementation of recovery plans. The regulatory framework and tools provided by the Act have improved the status of the GYE grizzly bear population to the point where the population has recovered and delisting is now appropriate. Below, we consider the adequacy of existing regulatory mechanisms that would remain in place if this grizzly bear population is delisted and the Act no longer applies.

Laws and regulations of the Federal, Tribal, and State governments provide the legal authority for grizzly bear population and habitat management, monitoring, information and education programs, and conflict response. Grizzly bear habitat management is accomplished primarily by the Forest Service and NPS. Ninety-eight percent of lands within the PCA and 88 percent of lands within all suitable habitat are managed by one of these agencies. While the Forest Service and NPS are responsible for habitat management, the NPS, States, and Tribes share responsibility for population management (*i.e.,* monitoring, mortality management, conflict response, and hunting regulations). The States are generally responsible for managing resident wildlife but not habitat on

Federal public lands such as Forest Service or Bureau of Land Management. National Park lands are an exception, as they are managed by the National Park Service.

The management of grizzly bears and their habitat draws from the laws and regulations of the Federal, State, and Tribal agencies in the proposed GYE DPS boundaries (U.S. Fish and Wildlife Service 2016, chapter 7). These laws and regulations provide the legal authority for controlling mortality, providing secure habitats, managing grizzly bear-human conflicts, controlling hunters, limiting access where necessary, controlling livestock grazing, maintaining information and education programs to control conflicts, monitoring populations and habitats, and requesting management and petitions for relisting if necessary. Recovery of the Yellowstone grizzly bear population is the result of ongoing partnerships between Federal and State agencies, the governors of these States, county and city governments, educational institutions, numerous nongovernmental organizations, private landowners, and the public who live, work, and recreate in the GYE. Just as recovery of the Yellowstone grizzly bear population could not have occurred without these excellent working relationships, maintenance of a recovered grizzly population will be the result of the continuation of these partnerships. The State plans and the State regulations describe and summarize the coordinated efforts required to manage the GYE grizzly bear population and its habitat such that its recovery is ensured. These State-based documents specify the general population, habitat, and nuisance bear management protocols necessary to manage human-caused mortality risk and maintain a recovered grizzly bear population. The State plans do not currently include detailed laws or regulations in reference to hunting management as described above under Factor B. The Federal and State plans and regulations document the existing Federal and State regulatory mechanisms and legal authorities, policies, management, and post-delisting monitoring plans that exist to maintain the recovered grizzly bear population. The primary components of habitat and population management committed to in the draft 2016 Conservation Strategy have been (or will be) incorporated into legally binding frameworks such as National Forest Land Resource Management Plans, National Park Superintendent Compendiums, Tribal ordinances, and State Fish and Game Commission management regulations. The 2016 Conservation Strategy will remain in effect in perpetuity, beyond delisting and the 5-year monitoring period required by the Act as grizzly bears, like many other species, will always be ''conservation-reliant'' (Scott *et al.* 2005, p. 384) because of their low resiliency to excessive human-caused mortality. The need to carefully manage human-caused bear mortality and to coordinate management of the population across multiple land ownerships and jurisdictions will always remain.

U.S. Forest Service

The Forest Service manages nearly 68 percent (31,234 of 46,035 sq km (12,060 of 17,774 sq mi)) of suitable grizzly bear habitat within the GYE. Because the Forest Service does not manage direct take of grizzly bears, they amended their Land Management Plans in 2006 to include legally binding habitat standards. These amendments required levels of secure habitat, developed sites, and livestock allotments inside the PCA to be maintained at or improved upon 1998 levels to minimize human-caused mortality risk (USDA Forest Service 2006*b,* p. iii). In addition to the habitat standards inside the PCA, these amendments provide guidance and direction for habitat management outside the PCA, including but not limited to: a goal for accommodating grizzly bears outside the PCA; direction on managing livestock allotments with recurring conflicts through retirement of such allotments with willing permittees; direction emphasizing the use of food storage orders to minimize grizzly bear-human conflicts; a guideline to maintain, to the extent feasible, important grizzly bear food resources; and several monitoring items that will enhance habitat management outside of the PCA (USDA Forest Service 2006*a,* pp. 34–37). These amendments to the GYE National Forest Land Management Plans would become effective if, and when, delisting is finalized. They were in effect for 2.5 years when GYE grizzly bears were delisted between March 2007 and September 2009, but they were technically not applicable after the March 29, 2007, final rule (72 FR 14866) was vacated by the District Court of Montana. Importantly, even after the Montana District Court's decision, the Forest Service continued to manage according to the agreements reached in the 2007 Conservation Strategy and its Forest Plan amendments even though the delisting rule was vacated and the Forest Service was not legally required to manage under those standards. Because of this commitment and the fact that the plans have been successfully implemented by the Forest Service, there is a 7-year demonstrated track record of implementation by the signatories of the 2007 Conservation Strategy.

While the habitat standards in the draft 2016 Conservation Strategy that were incorporated into Forest Plans assure secure habitat and minimal human-caused mortality risk inside the PCA, other regulatory mechanisms ensure sufficient habitat protections outside the PCA. Of the 22,783 sq km (8,797 sq mi) of suitable habitat outside the PCA, the Forest Service manages 17,292 sq km (6,676 sq mi), or 76 percent. Of this 76 percent of suitable habitat outside of the PCA but within the DMA that the Forest Service manages, 39 percent is Designated Wilderness Area, 4 percent is Wilderness Study Area, and 36 percent is Inventoried Roadless Area. These designations provide regulatory mechanisms that protect grizzly bear habitat from increases in motorized use, oil and gas development, livestock allotments, and timber harvest.

Specifically, the Wilderness Act of 1964 does not allow road construction, new livestock allotments, or new oil, gas, and mining developments in designated Wilderness Areas. This means the 6,799 sq km (2,625 sq mi) of secure habitat outside of the PCA in Wilderness Areas is protected by an existing regulatory mechanism. This secure suitable habitat is biologically significant to the GYE grizzly bear DPS because it will allow population expansion into these areas that are minimally affected by humans. Wilderness study areas are designated by Federal land management agencies (*e.g.,* Forest Service) as those having wilderness characteristics and being worthy of congressional designation as a wilderness area. Individual National Forests that designate wilderness study areas manage these areas to maintain their wilderness characteristics until Congress decides whether to designate them as permanent wilderness areas. This means that individual wilderness study areas are protected from new road construction by Forest Plans and activities such as timber harvest, mining, and oil and gas development. These development activities are much less likely to occur because the road networks required for these activities either do not exist or are unlikely to be approved in the future.

Inventoried Roadless Areas currently provide 4,891 sq km (1,888 sq mi) of secure habitat for grizzly bears outside of the PCA within the DPS boundaries. The 2001 Roadless Rule prohibits road

construction, road reconstruction, and timber harvest in Inventoried Roadless Areas (66 FR 3244; January 12, 2001). This restriction on road building makes mining activities and oil and gas production much less likely because access to these resources becomes cost-prohibitive or impossible without new roads.

If delisting occurs, the Forest Service will classify grizzly bears in the GYE as a ''species of conservation concern''—or the equivalent management designation—and will manage activities to provide for the needs of a recovered population (USDA Forest Service 2006*b,* p. 26). This classification means the Forest Service will consider all potential impacts to the GYE grizzly bear population from proposed activities as part of its NEPA compliance obligations. Then, under the National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*), the Forest Service will ensure that land management activities provide for the needs of a recovered population and maintain viable populations of species of conservation concern.

National Park Service

The National Park Service manages 20 percent (9,407 of 46,035 sq km (3,632 of 17,774 sq mi)) of suitable habitat within the DPS boundaries, all of which is in the PCA. Yellowstone National Park incorporated the habitat, population, monitoring, and nuisance bear standards described in the 2007 Conservation Strategy into their Superintendent's Compendium in 2014 (Yellowstone National Park 2014, p. 18) and Grand Teton National Park will do the same in their 2016 Compendium, before this proposed action is finalized. Grizzly bear hunting is not allowed in Yellowstone National Park or Grand Teton National Park. Within the John D. Rockefeller Jr. Memorial Parkway, the Secretary of the Interior is required to permit hunting in accordance with applicable Federal and State law, with exceptions for public safety, administration, or public use and enjoyment.

Tribal Lands

Together, the Eastern Shoshone Tribe and the Northern Arapaho Tribe manage wildlife and its habitat within the boundaries of the Wind River Reservation (see figure 2, above). Less than 3 percent of suitable habitat (1,360 sq km (525 sq mi)) is potentially affected by Tribal decisions, so their habitat management would never constitute a threat to the GYE grizzly bear population. No Tribal managed land occurs within the PCA. The Tribes' Grizzly Bear Management Plan (2009) will facilitate grizzly bear occupancy in areas of suitable habitat on the Wind River Reservation and allows grizzly bears access to high-elevation whitebark pine and army cutworm moth aggregation sites, thus allowing for additional resiliency of the GYE grizzly bear DPS in response to changing environmental conditions. The Wind River Reservation Forest Management Plan calls for no net increase in roads in the Wind River Roadless Area and the Monument Peak area of the Owl Creek Mountains. In the remaining portion of Tribal lands occupied by grizzly bears, open road densities of 1.6 km/sq km (1 mi/sq mi) or less will be maintained (Eastern Shoshone and Northern Arapaho Tribes 2009, p. 11). These Tribes do not allow hunting by non-Tribal members. If a limited hunt is approved by applicable Tribal mechanisms, it must be consistent with the demographic standards described under Factor B of this proposed rule and in the Tribal Grizzly Bear Management Plan (Eastern Shoshone and Northern Arapaho Tribes 2009, pp. 2, 9).

State Regulatory Mechanisms

The three State grizzly bear management plans direct State land management agencies to maintain or improve habitats that are important to grizzly bears and to monitor population criteria outside the PCA. Idaho, Montana, and Wyoming have developed management plans for areas outside the PCA to: (1) Assure that the measures of the Act continue to be unnecessary for the grizzly bears in the GYE DPS; (2) support expansion of grizzly bears beyond the PCA, into areas of biologically and socially acceptable suitable habitat; and (3) manage grizzly bears as a game animal, including allowing regulated hunting when and where appropriate (in their entirety: Idaho's Yellowstone Grizzly Bear Delisting Advisory Team 2002; MTFWP 2002, 2013; WGFD 2005). The plans for all three States were completed in 2002, with Wyoming's plan amedned in 2005 and Montana's plan updated in 2013, and grizzly bears within the GYE DPS will be incorporated into existing game species management plans should we delist them.

If delisting is made final, the States of Wyoming, Montana, and Idaho will classify grizzly bears as game animals throughout the DPS boundaries. This status provides legal protection to grizzly bears by prohibiting unlimited or unwarranted killing of grizzly bears by the public. The regulatory mechanism proposed by States discussed under Factor B and in tables 1, 2, and 3, above, that would govern potential hunting seasons must be in place by law and regulation in each State for delisting to occur. We expect that these State statutory and regulatory changes will be made within the next several months.

Other regulations, such as timing and location of seasons, seasonal closure procedures, and licenses and fees would be devised by the States to minimize the possibility that total mortality limits of independent females are exceeded within the DMA (Idaho's Yellowstone Grizzly Bear Delisting Advisory Team 2002, p. 20; WGFD 2004, p. 20; MFWP 2013, p. 61).

Any grizzly bear hunting within the DMA would only occur if total annual mortality limits specified for the GYE grizzly bear DMA population are not exceeded as per tables 1, 2, and 3, above. Hunting limits would be regulated by State regulations as described above. The killing of grizzly bears in self-defense or defense of others by humans will continue to be allowed under both Federal (*e.g.,* laws that would apply on Forest Service and National Park Service lands) and State law. State management plans do not allow for legal take of grizzly bears by humans unless it is within the designated seasons and limits for grizzly bear mortality (Idaho's Yellowstone Grizzly Bear Delisting Advisory Team 2002; MTFWP 2002; WGFD 2005) or, in the Montana portion of the DPS, if a grizzly bear is caught ''in the act'' of attacking or killing livestock (87–3–130 MCA). A State law enforcement investigation would have to verify an injured or dead livestock animal.

The management of nuisance bears within the GYE grizzly bear DPS boundaries would be based upon existing laws and authorities of State wildlife agencies and Federal land management agencies, and directed by protocols established in the draft 2016 Conservation Strategy and State management plans. Inside the National Parks, Yellowstone or Grand Teton National Park grizzly bear biologists will continue to respond to grizzly bear-human conflicts. In all areas outside of the National Parks, State and Tribal wildlife agencies will continue responding to grizzly bear-human conflicts. The focus and intent of nuisance grizzly bear management inside and outside the PCA will be predicated on strategies and actions to prevent grizzly bear-human conflicts. State and Tribal management plans and State regulations provide the necessary regulatory framework and guidelines to State wildlife agencies for managing and maintaining a recovered GYE grizzly bear DPS inside of the DMA. Any

mortalities due to nuisance bear management or removal will count against the total mortality limit inside the DMA. By identifying the agencies responsible for nuisance bear management and responding to grizzly bear-human conflicts using a clearly orchestrated protocol, these State and Tribal plans and regulations create a framework within which the needs of grizzly bears and humans can be balanced.

It is anticipated that take of grizzly bears would therefore would likely be strictly limited by hunting seasons and quotas and legally enforceable through laws and regulations concerning grizzly bears and other game animals in each State. We expect that State wildlife commissions would also promulgate regulations with commitments to coordinate hunting limits within the DMA among jurisdictions and within the total mortality limits calculated annually by the IGBST (see tables 1, 2, and 3, above, for details on these mortality limits) as described under Factor B. These regulations would constitute legally enforceable regulatory mechanisms and these regulations must be adopted and in place before the Service goes forward with a final delisting rule.

Summary of Factor D

In summary, when the listing of the grizzly bear population was finalized in 1975, the inadequacy of existing regulatory mechanisms was identified under Factor D as one of the threats to the population. Legally enforceable regulatory mechanisms that would be in place if this proposed rule is finalized and the GYE grizzly bear DPS is delisted include National Park Superintendent's Compendiums, the Forest Service Amendment for Grizzly Bear Habitat Conservation for the GYE National Forests, the Wind River Reservation regulations, and State Fish and Game Commission laws and regulations as per tables 1, 2, and 3 and as described under Factor B, above.

In addition to these regulatory mechanisms, after delisting, the Service will initiate a status review with possible emergency listing if changes in Federal, State, or Tribal laws, rules, regulations, or management plans depart significantly from the management details described in this section, thereby compromising implementation of the draft 2016 Conservation Strategy. In total, these mechanisms would provide an adequate regulatory framework within which the GYE grizzly bear population would continue to experience long-term population health within the DMA.

Based on this information, it is reasonable to conclude existing regulatory mechanisms, and those that would be enacted before this proposed rule is made final, are adequate to protect the GYE grizzly bear population if the protections of the Act were no longer in place. Therefore, based on the best available information, we conclude that the inadequacy of existing regulatory mechanisms will not constitute a threat to the GYE grizzly bear DPS now or in the future if the appropriate regulatory mechanisms are adopted and maintained by the States in enforceable regulations before this proposed rule becomes final.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Factor E requires the Service to consider other natural or manmade factors affecting the continued existence of a species. Here, four other considerations warrant additional discussion regarding the GYE grizzly bear DPS: (1) Genetic health; (2) changes in food resources; (3) climate change; and (4) human attitudes toward grizzly bear conservation.

Genetic Health

The isolated nature of the GYE grizzly bear population was identified as a potential threat when listed in 1975. Declines in genetic diversity are expected in isolated populations (Allendorf *et al.* 1991, p. 651; Burgman *et al.* 1993, p. 220). For the GYE grizzly bear population, decreases in genetic diversity would occur gradually over decades due to long generational time and relatively large population size (Miller and Waits 2003, p. 4338). Indicators of fitness in the GYE grizzly bear population demonstrate that the current levels of genetic diversity are capable of supporting healthy reproductive and survival rates, as evidenced by normal litter size, no evidence of disease, high survivorship, an equal sex ratio, normal body size and physical characteristics, and a stable to increasing population (Schwartz *et al.* 2006*b,* entire; IGBST 2012, entire). These indicators of fitness will be monitored annually, in perpetuity. Because current levels of genetic diversity are adequate and heterozygosity values have increased slightly over the last few decades from 0.55 (Paetkau *et al.* 1998, p. 421), to 0.56 (Miller and Waits 2003, p. 4337), to 0.60 using more recent data and larger sample sizes (Haroldson *et al.* 2010, p. 7), we know there is no immediate need for new genetic material (Miller and Waits 2003, p. 4338).

Effective population size is a metric used by geneticists to distinguish between total population size and the actual number of individuals available to reproduce at any given time. For example, many individuals in a population may be too young to reproduce and, therefore, are not part of the ''effective population size.'' Short-term fitness (*i.e.,* survival and reproduction rates) can be attained by maintaining an effective population size of at least 50 individuals (Frankel and Soulé 1981, p. 74). For long-term fitness (*i.e.,* evolutionary response), the effective population size of the GYE grizzly bear population should remain above 100 animals (Miller and Waits 2003, p. 4338). In grizzly bears, effective population size is approximately 25 to 27 percent of total population size (Allendorf *et al.* 1991, p. 650; Miller and Waits 2003; Groom *et al.* 2006, p. 405), so an effective population size of 100 corresponds to a total population size of about 400 animals. To further ensure this minimum number of animals in the population necessary for genetic health is always maintained, the draft 2016 Conservation Strategy established a standard to maintain the total population size above 500 animals (U.S. Fish and Wildlife Service 2016, Chapter 2). Recent work (Kamath *et al.* 2015, p. 6) demonstrates that the effective population size (N_e) of the GYE population has increased from 102 (95% CI = 64–207) in 1982, to 469 (95% CI = 284–772) in 2010. The current effective population is more than four times the minimum effective population size suggested in the literature (Miller and Waits 2003, p. 4338).

While this current effective population size of approximately 469 animals is adequate to maintain genetic health in this population, 1 to 2 effective migrants from other grizzly bear populations every 10 years would maintain or enhance this level of genetic diversity and therefore assure genetic health in the long term (Mills and Allendorf 1996, pp. 1510, 1516; Newman and Tallmon 2001, pp. 1059–1061; Miller and Waits 2003, p. 4338) and benefit its long-term persistence (Boyce *et al.* 2001, pp. 25, 26; Kamath *et al.* 2015, p. 11). We have defined an effective migrant as an individual that immigrates into an isolated population from a separate area, survives, breeds, and whose offspring survive. Based on Miller and Waits (2003, p. 4338), the 2007 Conservation Strategy recommended that if no movement or successful genetic interchange was detected by 2020, two effective migrants from the NCDE would be translocated

into the GYE grizzly bear population every 10 years (*i.e.,* one generation) to maintain current levels of genetic diversity (U.S. Fish and Wildlife Service 2007*c,* p. 37). In light of new information in Kamath *et al.* (2015) documenting stable levels of heterozygosity and a current effective population size of 469 animals (Kamath *et al.* 2015, p. 6), we have removed the deadline of 2020 for translocation from the draft 2016 Conservation Strategy. As stated by Kamath *et al.* (2015, p. 11), the current effective population size is sufficiently large to avoid substantial accumulation of inbreeding depression, thereby reducing concerns regarding genetic factors affecting the viability of GYE grizzly bears. However, the Service recognizes that the long-term viability of the GYE grizzly bear population will benefit from occasional gene flow from nearby grizzly bear populations like that in the NCDE. Thus, efforts will continue to facilitate occasional movement of male bears between the NCDE and Yellowstone in the intervening areas between the GYE and the NCDE. To increase the likelihood of occasional genetic interchange between the GYE grizzly bear population and the NCDE grizzly bear population, the State of Montana has indicated they will manage discretionary mortality in this area in order to retain the opportunity for natural movements of bears between ecosystems. Translocation of bears between these ecosystems will be a last resort and will only be implemented if there are demonstrated effects of lowered heterozygosity among GYE grizzly bears or other genetic measures that indicate a decrease in genetic diversity.

To document natural connectivity between the GYE and the NCDE, Federal and State agencies will continue to monitor bear movements on the northern periphery of the GYE grizzly bear DPS boundaries and the southern edges of the NCDE using radio-telemetry and will collect genetic samples from all captured or dead bears to document possible gene flow between these two ecosystems (U.S. Fish and Wildlife Service 2016, Chapter 2). These genetic samples will detect migrants using an ''assignment test'' to identify the area from which individuals are most likely to have originated based on their unique genetic signature (Paetkau *et al.* 1995, p. 348; Waser and Strobeck 1998, p. 43; Paetkau *et al.* 2004, p. 56; Proctor *et al.* 2005, pp. 2410–2412). This technique also identifies bears that may be the product of reproduction between GYE and NCDE grizzly bears (Dixon *et al.* 2006, p. 158). In addition to monitoring for gene flow and movements, we will continue interagency efforts to provide and maintain movement opportunities for grizzly bears, and reestablish natural connectivity and gene flow between the GYE grizzly bear DPS and other grizzly bear populations. To promote natural connectivity, there are attractant storage rules on public lands between the GYE and other grizzly bear recovery zones in the NCDE and Bitterroot. We do not consider connectivity to the east, west, or south a relevant issue to the GYE grizzly bear population's long-term persistence because there are no extant populations in these directions to enhance the genetic diversity of the GYE population. However, we recognize the GYE grizzly bear population could be a possible source population to re-colonize the Bitterroot Ecosystem to the west.

Genetic concerns are not currently a threat to the GYE grizzly bear population (Miller and Waits 2003, p. 4338; Kamath *et al.* 2015, entire). Attractant storage orders on public lands, through a reduction in conflict situations, and careful regulation of hunting in certain areas provide adequate measures to promote natural connectivity and prevent reductions in genetic diversity. The IGBST will carefully monitor movements and the presence of alleles from grizzly bear populations outside the GYE grizzly bear DPS boundaries (U.S. Fish and Wildlife Service 2016, Chapter 2). The IGBST will continue to monitor genetic diversity of the GYE grizzly bear population so that a possible reduction in genetic diversity due to the geographic isolation of the GYE grizzly bear population will be detected and responded to accordingly with translocation of outside grizzly bears into the GYE. This approach ensures that long-term genetic diversity does warrant a continued threatened listing for the GYE DPS. Therefore, based on the best available scientific information, we conclude that genetic diversity does not constitute a threat to the GYE grizzly bear DPS now, nor is it anticipated to in the future.

Changes in Food Resources

The IGBST currently monitors the productivity of four common grizzly bear foods in the GYE: whitebark pine seeds, army cutworm moths, winter-killed ungulates, and spawning cutthroat trout. While these are some of the highest calorie food sources available to grizzly bears in the GYE (Mealey 1975, pp. 84–86; Pritchard and Robbins 1990, p. 1647; Craighead *et al.* 1995, pp. 247–252), only whitebark pine seeds are known to have an influence on grizzly bear mortality risk and reproduction. There is no known relationship between grizzly bear mortality risk or reproduction and any other individual food (Schwartz *et al.* 2010, p. 662).

Grizzly bears primarily consume elk and bison as winter-killed carrion in the early spring, but also kill calves opportunistically and prey upon adults weakened during the fall breeding season. The availability of these ungulates is threatened by brucellosis (*Brucella abortus*) and resulting management practices resulting in bison removal, chronic wasting disease (CWD), competition with other top predators for ungulates, and decreasing winter severity. Brucellosis does not affect bison as a food source for grizzly bears, and the subsequent removal program is managed to ''maintain a wild, free-ranging population of bison'' (USDOI National Park Service and USDA Animal and Plant Health Inspection Service 2000, p. 22). CWD is fatal to deer and elk but has not been detected in the GYE and as transmission is density-dependent (Schauber and Woolf 2003, pp. 611–612); CWD would not result in local extinction of deer or elk populations. The availability of ungulate carcasses is not anticipated to be impacted by either of these diseases such that they are a threat to the GYE grizzly bear population now, or in the future. The reintroduction of gray wolves (*Canis lupus*) to the GYE in 1995 has created competition between grizzly bears and wolves for carrion; however, there has been no documentation of negative influence on the GYE grizzly bear population (Servheen and Knight 1993, p. 36). Decreasing winter severity and length as a result of climate change could reduce spring carrion availability (Wilmers and Getz 2005, p. 574; Wilmers and Post 2006, p. 405). A reduction of winter-killed ungulates may be buffered by an increase of availability of meat to adult grizzly bears during the active season as a result of grizzly bears usually prevailing in usurping wolf-killed ungulate carcasses (Ballard *et al.* 2003, p. 262). Therefore, fluctuations in the availability of ungulates are not a threat to the GYE grizzly bear population now, or in future.

A decline in the Yellowstone cutthroat trout population has resulted from a combination of factors: the introduction of nonnative lake trout (*Salvelinus naymaycush*), a parasite that causes whirling disease (*Myxobolus cerebralis*), and several years of drought conditions in the Intermountain West (Koel *et al.* 2005, p. 10). Although there has been a corresponding decrease in

grizzly bear use of cutthroat trout, only a small portion of the GYE grizzly bear population uses cutthroat trout (Haroldson *et al.* 2005, p. 175), and grizzly bears that fish in spawning streams only consume, on average, between 8 and 55 trout per year (Felicetti *et al.* 2004, p. 499). Therefore, potential declines in cutthroat trout are not currently, nor are they likely, to become a threat in future to the GYE grizzly bear population.

Army cutworm moths aggregate on remote, high-elevation talus slopes where grizzly bears forage on them from mid-summer to late summer. Grizzly bears could potentially be disturbed by backcountry visitors (White *et al.* 1999, p. 150), but this has not been documented in the GYE. The situation is monitored by the IGBST and the WGFD, who will take appropriate management action as necessary. Climate change may affect army cutworm moths by changing the distribution of plants that the moths feed on or the flowering times of the plants (Woiwod 1997, pp. 152–153). However, they GYE plant communities have a wide elevational range that would allow for distributional changes (Romme and Turner 1991, p. 382), and army cutworm moths display foraging plasticity (Burton *et al.* 1980, pp. 12–13). Therefore, potential changes to army cutworm moth availability are not likely to threaten the GYE grizzly bear population in the future.

More details on the specific ways in which changes in ungulates, cutthroat trout, and army cutworm moths could affect the GYE grizzly bear population are discussed in detail in the 2007 final rule (72 FR 14866, March 29, 2007, pp. 14,928–14,933). Our analysis focuses on the potential impacts that the loss of whitebark pine could have on the GYE grizzly bear population. While we discussed notable declines in whitebark pine due to mountain pine beetle in the 2007 final rule, the data used to estimate population growth only went through 2002. The Ninth Circuit Court of Appeals questioned our conclusions about future population viability based on data gathered before the sharp decline in whitebark pine began (*Greater Yellowstone Coalition, Inc.* v. *Servheen, et al.,* 665 F.3d 1015, (9th Cir. 2011)). To assess the population's vital rates since 2002, the IGBST completed a comprehensive demographic review using data from 2002–2011 (IGBST 2012, p. 7) and extensive analyses to determine if the decline in whitebark pine is driving observed changes in population vital rates (IGBST 2013, entire).

Whitebark pine still faces the same threats reported in our 2007 final rule and reiterated in our 12-month finding for whitebark pine (76 FR 42631; July 19, 2011). Whitebark pine is currently warranted for protected status under the Act but that action is precluded by higher priority actions. This status is primarily the result of direct mortality due to white pine blister rust and mountain pine beetles but also less obvious impacts from climate change and fire suppression. For more details on the status of whitebark pine, please see the 2013 candidate notice of review (78 FR 70104; November 22, 2013).

During years of low whitebark pine seed availability, we know grizzly bear-human conflicts may increase as bears use lower elevation, less secure habitat within their home ranges (Gunther *et al.* 2004, pp. 13–15; Schwartz *et al.* 2010, pp. 661–662). Approximately six more independent females and six more independent males die across the ecosystem in poor whitebark pine years (IGBST 2013, p. 25, figure 5). These mortalities are primarily due to defense of life encounters and wildlife management agency removals of conflict bears (Gunther *et al.* 2004, pp. 13–14; IGBST 2009, p. 4). Additionally, both litter size and the likelihood of producing a litter may decrease in years following poor whitebark pine years (Schwartz *et al.* 2006b, p. 21). Despite these effects on survival and reproduction, using data from 2002 to 2011, the IGBST documented an average annual population growth rate for the GYE grizzly bear population between 0.3 and 2.2 percent (IGBST 2012, p. 34). Although the population was still increasing in this more recent time period, it was increasing at a slower rate than in the previous time period (1983–2001). Therefore, the IGBST examined the potential influence whitebark pine was having on this population growth rate. Because extrinsic, density-independent factors (*e.g.,* whitebark pine availability) and intrinsic, density-dependent factors (*i.e.,* a population at or near carrying capacity) can produce similar changes in population vital rates, the IGBST conducted several analyses to clarify and tease apart these two similar effects. The results of these analyses were summarized in a single report titled ''Response of Yellowstone grizzly bears to changes in food resources: a synthesis'' (hereafter referred to as ''the Food Synthesis Report'') (IGBST 2013). Regardless of whether these changes are being driven by declines in whitebark pine or are simply an indication of the population reaching carrying capacity, our management response would be the same: to carefully manage human-caused mortality based on scientific monitoring of the population.

For the Food Synthesis Report, the IGBST developed a comprehensive set of research questions and hypotheses to evaluate grizzly bear responses to changes in food resources. Specifically, the IGBST asked eight questions: (1) How diverse is the diet of GYE grizzly bears? (2) Has grizzly bear selection of whitebark pine habitat decreased as tree mortality increased? (3) Has grizzly bear body condition decreased as whitebark pine declined? (4) Has animal matter provided grizzly bears with an alternative food resource to declining whitebark pine? (5) Have grizzly bear movements increased during the period of whitebark pine decline (2000–2011)? (6) Has home range size increased as grizzly bears sought alterative foods, or has home range size decreased as grizzly bear density increased? (7) Has the number of human-caused grizzly bear mortalities increased as whitebark pine decreased? (8) Are changes in vital rates during the last decade associated more with decline in whitebark pine resources than increases in grizzly bear density? The preliminary answers to these questions are contained in the Synthesis Report and the final results have been (or will be) published in peer-reviewed journals (in their entirety: Schwartz *et al.* 2013; Bjornlie *et al.* 2013; Costello *et al.* 2014; Gunther *et al.* 2014; Schwartz *et al.* 2014; van Manen *et al.* 2015; Ebinger *et al. in review;* Haroldson *et al. in prep*.)

Key findings of the Synthesis Report are summarized below. To address the first question about how diverse GYE grizzly bear diets are, Gunther *et al.* (2014, entire) conducted an extensive literature review and documented over 260 species of foods consumed by grizzly bears in the GYE, representing four of the five kingdoms of life (for more information, please see Nutritional Ecology, above). Regarding the second research question, if whitebark pine was a preferred food or if individual grizzly bears were dependent on this food source, we would expect movement rates and grizzly bear selection of whitebark pine to increase as its availability decreased and bears had to search further and longer to find this food source. However, Costello *et al.* (2014, p. 2013) found that grizzly bear selection of whitebark pine habitat had actually decreased between 2000 and 2011. They also found that movement rates had not changed over the study period, further supporting the notion that grizzly bears were simply finding alternative foods within their home

ranges as whitebark pine seeds became less available over the past decade (Costello *et al.* 2014, p. 2013). Regarding the third research question, if grizzly bears were dependent on whitebark pine to meet their nutritional requirements, we would expect body condition to have decreased since 2002. Instead, Schwartz *et al.* (2013, p. 75) and the IGBST (2013, p. 18) found body mass and percent body fat in the fall had not changed significantly from 2000 to 2010. When they examined trends in females only, the data seemed to show a slightly declining trend in female body fat during the fall, starting around 2006 (Schwartz *et al.* 2014, p. 72). However, they suggested it could be the result of very small sample sizes (n = 2.6 bears/year) and noted the data for 2011 (not included in their published paper) showed an increase in fall body fat for females, ultimately cautioning that more data were needed before it could be determined if there was truly a trend (Schwartz *et al.* 2014, p. 76). In the Food Synthesis Report, the IGBST revisited the previous analysis with information since 2010, and found ''body condition is not different between poor and good years of whitebark pine production'' (IGBST 2013, p. 18). In response to the fourth research question, the IGBST found that ungulate carcass use had increased since 2002, and that bears used more meat in years with poor whitebark pine seed production (Schwartz *et al.* 2013, p. 68). These results were expected and are consistent with previous findings (Mattson 1997, p. 169). To answer the fifth and sixth research questions identified in the previous paragraph, the IGBST examined movement rates and home range sizes. They found daily and fall bear movements had not increased from 2000 to 2011 (Costello *et al.* 2014, pp. 2011, 2013). Additionally, they documented that home ranges actually decreased significantly for females and that this decrease was greater in areas with higher grizzly bear densities (Bjornlie *et al.* 2014, p. 4–6). The IGBST compared pre- (1989–1999) and post-whitebark pine impact (2007–2012) periods and did not find a relationship between home range size and amount of live whitebark pine in the home range (Bjornlie *et al.* 2014, p. 4–6). Because we would expect daily and fall movements and home range size to increase if food resources were declining and bears were roaming more widely in search of foods, these findings offer strong support that changes in population vital rates since the early 2000s are more indicative of the population approaching carrying capacity than a shortage of resources (van Manen *et al.* 2015, p. 21).

In response to the seventh question, while land managers have little influence on how calories are spread across the landscape, we have much more influence on human-caused mortality risk. Consistent with findings from earlier studies, Haroldson *et al.* (*in prep.*) found that grizzly bear mortalities increase in poor compared to good whitebark pine years. Assuming the poorest observed whitebark pine cone production, Haroldson *et al.* (*in prep.*) predicted an increase of 10 annual mortalities ecosystem-wide of independent females comparing 2000 with 2012, encompassing the period that coincided with whitebark pine decline (IGBST 2013, p. 25). The greatest increase in predicted mortality occurred outside the PCA, which may be partially attributable to range expansion and continued population increase (Haroldson *et al. in prep.*). However, increased mortality numbers have not led to a declining population trend (IGBST 2012, p. 34).

In response to the eight question, the IGBST found that while whitebark pine seed production can influence reproductive rates the following year, the overall fecundity rates during the last decade (2002–2011) did not decline when compared with data from 1983–2001 (IGBST 2013, p. 32). This is important because fecundity rates are a function of both litter size and the likelihood of producing a litter, the two ways in which whitebark pine seed production may affect reproduction. Although Schwartz *et al.* (2006, p. 21) found one-cub litters were more common in years following poor whitebark pine seed production, one-cub litters are still adequate for population growth. Furthermore, one-cub litters are still relatively uncommon following poor whitebark pine years, as evidenced by a very consistent average litter size around two since the IGBST began reporting this metric. Fecundity and mean litter size did not change between the two monitoring periods (1983–2001 vs. 2002–2011) examined by the IGBST even though the availability of whitebark pine seeds declined (IGBST 2013, pp. 33–34).

In contrast to previous studies that concluded increased mortality in poor whitebark pine years led to population decline in those years (Pease and Mattson 1999, p. 964), the IGBST found the population did not decline despite increased mortality in poor whitebark pine years. The conclusions of Pease and Mattson (1999, p. 964) are flawed. First and foremost, estimating population growth for individual, non-consecutive years, as Pease and Mattson (1999, p. 962) did, is ''not legitimate'' and results in an ''incorrect estimate'' (Eberhardt and Cherry 2000, p. 3257). Even assuming their methods of separating out individual, non-consecutive years of data for a species whose reproduction and survival are inextricably linked to multiple, consecutive years (*e.g.,* reproductive status in 1 year affects status in the following year), many other aspects of their analysis do not reflect the best available science. An important difference between Pease and Mattson (1999, p. 964) and other population growth rate estimates (Eberhardt *et al.* 1994, p. 362; Boyce 1995, entire; Schwartz *et al.* 2006b, p. 48; IGBST 2012, p. 34) is related to their treatment of conflict bears. Pease and Mattson (1999, p. 967) assumed that grizzly bears with any history of conflict would experience lower survival rates associated with conflict bears for the rest of their lives. The findings of Schwartz *et al.* (2006, p.42) challenge this assumption, finding that while survival of conflict bears decreases during the year of the conflict and the next year, survival returns to approximately normal within 2 years. In other words, management-trapped bears often return to foraging on naturally occurring food sources, away from human developments. Another assumption made by Pease and Mattson (1999, p. 967) was that 73 percent of the GYE grizzly bear population were conflict bears, with correspondingly lower survival rates. However, Schwartz *et al.* (2006, p. 39) found only about 28 percent of the GYE grizzly bear population were ever involved in conflicts. Together, these two erroneous assumptions by Pease and Mattson (1996, p. 967) resulted in a gross underestimation of population trend. As a result, we do not consider Pease and Mattson (1996) to be the best available science.

Earlier studies suggested that increased grizzly bear mortalities in poor whitebark pine years are a result of bears roaming more widely in search of foods and exposing themselves to higher mortality risk in roaded habitats at lower elevations. However, Costello *et al.* (2014, p. 2014) showed that grizzly bears did not roam over larger areas or canvass more area within their fall ranges as whitebark pine declined rapidly starting in the early 2000s, and suggested bears found alternative foods within their fall ranges. Furthermore, Bjornlie *et al.* (2014, p. 4) found that home range size has not increased after whitebark pine declined, and Schwartz

et al. (2010, p. 662) found that when bears use lower elevations in poor whitebark pine seed production years, it is the amount of secure habitat that determines mortality risk. Meaning, in both good and poor whitebark pine seed years, survival is determined primarily by levels of secure habitat. Therefore, our approach of maintaining these levels of secure habitat on 98 percent of lands within the PCA and 60 percent of suitable habitat outside the PCA provides strong mitigation against any impacts the decline of whitebark pine may have on this grizzly bear population because the mechanism driving the increased mortality risk is secure habitat, not the presence or absence of whitebark pine.

We recognize that changes in food resources can have some influence on population vital rates. These research questions and results do not refute that possibility, but the preponderance of evidence supports the conclusion that bears are finding sufficient alternative food resources to maintain body condition (Schwartz *et al.* 2013, p. 75; IGBST 2013, p. 20). Evidence suggests that observed changes in population vital rates since the rapid decline of whitebark pine that began in the early 2000s are being driven by density-dependent effects and have resulted in a stable to slightly increasing population trend. Van Manen *et al.* (2015, entire) found cub survival, yearling survival, and reproductive transition from no offspring to cubs all changed from 1983 to 2012, with lower rates evident during the last 10–15 years. Cub survival and reproductive transition were negatively associated with an index of grizzly bear density, indicating greater declines where bear densities were higher. Their analysis did not support a similar relationship for the index of whitebark pine mortality. The results of van Manen *et al.* (2015) support the interpretation that slowing population growth during the last decade was associated more with increasing grizzly bear density than the decline in whitebark pine. In other words, the population is approaching carrying capacity (van Manen *et al.* 2015, entire). This evidence further supports the recovered status of the GYE grizzly bear population. Despite significant changes in food resources in the GYE in the last 15 years, grizzly bear population growth increased or stabilized.

While there was some concern that the rapid loss of whitebark pine could result in mortality rates similar to those experienced after the open-pit garbage dumps were closed in the early 1970s (Schwartz *et al.* 2006b, p. 42), we now know this has not been the case. This is most likely due to the fact that whitebark pine has never been a spatially or temporally predictable food source on the landscape like the open-pit garbage dumps were. The dumps were open year round and provided high-calorie foods the entire time. They were in the exact same location every year and for the entire season. Grizzly bears congregated at these known locations in large numbers and in very close proximity to each other and to people. None of these circumstances are true for grizzly bears foraging on whitebark pine seeds.

Greater Yellowstone Ecosystem grizzly bears have high diet diversity (Gunther *et al.* 2014, p. 65) and use alternate foods in years of low whitebark pine seed production (Schwartz *et al.* 2013, pp. 75–76). Nearly one third of grizzly bears in the GYE do not have whitebark pine in their home range, so they do not use this food (Costello *et al.* 2014, p. 2013). Grizzly bears in the GYE that do use whitebark pine are accustomed to successfully finding alternative natural foods in years when whitebark pine seeds are not available, and body mass and body fat are not different between good and poor whitebark pine seed years (Schwartz *et al.* 2014, pp. 72–73, 75).

The IGBST will continue to monitor annual production of common foods, grizzly bear-human conflicts, survival rates, reproductive rates, and the causes and locations of grizzly bear mortality, as detailed in the draft 2016 Conservation Strategy (U.S. Fish and Wildlife Service 2016, Chapters 3 and 4). These data provide the 2016 Conservation Strategy's signatory agencies with the scientific information necessary to inform and implement adaptive management (Holling 1978, pp. 11–16) actions in response to ecological changes that may impact the future of the GYE grizzly bear population. These management responses may involve increased habitat protection, increased mortality management, or a status review and emergency relisting of the population if management actions are unable to address the problems.

Grizzly bears are resourceful omnivores that will make behavioral adaptations regarding food acquisition (Schwartz *et al.* 201, p. 75). Diets of grizzly bears vary among individuals, seasons, years, and where they reside within the GYE (Mealey 1980, pp. 284–287; Mattson *et al.* 1991*a,* pp. 1625–1626; Felicetti *et al.* 2003, p. 767; Felicetti *et al.* 2004, p. 499; Koel *et al.* 2005, p. 14; Costello *et al.* 2014, p. 2013; Gunther *et al.* 2014, pp. 66–67), reflecting their ability to find adequate food resources across a diverse and changing landscape. In other nearby areas such as the NCDE (100 miles north of the GYE) whitebark pine has been functionally extinct as a bear food for at least 40 years (Kendall and Keane 2001, pp. 228–232), yet the NCDE grizzly bear population has continued to increase and thrive with an estimated 765 bears in 2004, and a subsequent average 3 percent annual rate of growth (Kendall *et al.* 2009, p. 9; Mace *et al.* 2012, p. 124). Similarly, although whitebark pine seed production and availability of cutthroat trout in the Yellowstone Lake area varied dramatically over the last 3 decades due to both natural and human-introduced causes (Reinhart and Mattson 1990, pp. 345–349; Podruzny *et al.* 1999, pp. 134–137; Felicetti *et al.* 2004, p. 499; Haroldson *et al.* 2005, pp. 175–178; Haroldson 2014, p. 45; Teisberg *et al.* 2014, pp. 375–376), the GYE grizzly bear population has continued to increase and expand during this time period despite these changes in foods (Schwartz *et al.* 2006a, p. 66; IGBST 2012, p. 34; Bjornlie *et al.* 2014, p. 184). The GYE grizzly bear population has been coping with the unpredictable nature of whitebark pine seed production for millennia. Grizzly bears are not dependent upon whitebark pine seeds for survival, nor do they have a diet that is specialized on consumption of these seeds. While we know whitebark pine seed production can influence reproductive and survival rates, it has not caused a negative population trend, as evidenced by stable to slightly increasing trend between 2002 and 2011 (IGBST 2012, p. 34). As articulated in the Food Synthesis Report by the IGBST (IGBST 2013, pp. 32–35) and supporting studies (in their entirety: Bjornlie *et al.* 2014; Costello *et al.* 2014; Gunther *et al.* 2014), the demonstrated resiliency to declines in whitebark pine seed production and other high-calorie foods such as cutthroat trout shows that changes in food resources are not likely to become substantial impediments to the long-term persistence of the GYE grizzly bear population.

In *Greater Yellowstone Coalition* v. *Servheen,* 665 F.3d 1015 (9th Cir. 2011), the Ninth Circuit faulted the Service's conclusion that whitebark pine losses did not pose a threat. First, the Ninth Circuit noted that grizzly bears' adaptability and resourcefulness increased the threat from whitebark pine loss because it raised the risk of conflicts with humans as bears looked for other food sources. The Service acknowledges this component of the threat from whitebark pine loss, but despite increased mortality during poor whitebark years, the population trend

has remained stable to increasing (IGBST 2012, p. 34). Additionally, during years of poor whitebark pine seed availability, grizzly bears did not roam over larger areas (Costello *et al.* 2014, p. 2014); rather, the increased risk of mortality was related to the use of lower elevations and less secure habitat within their home range (Schwartz *et al.* 2010, p. 662). Second, the court noted that the Service's data on long-term population growth came from 2002, before the pine beetle epidemic began. New data show that although population growth has slowed from the 4 to 7 percent that occurred from 1983 to 2001 (Eberhardt *et al.* 1994, p. 362; Knight and Blanchard 1995, pp. 18–19; Schwartz *et al.* 2006b, p. 48), it continued to grow at a rate of 0.3 to 2.2 percent from 2002 to 2011 (IGBST 2012, p. 34). Third, the court faulted the Service for using a study of NCDE bears to prove GYE grizzly bears continued to increase despite whitebark pine losses, even though GYE bears were reported to be unique because of their reliance on whitebark pine seeds. Current data show that the GYE bear population has stabilized or increased despite the loss of whitebark pine seeds (IGBST 2012, p. 34). As explained in the DPS analysis, the Service no longer considers the GYE bear population to be significant due to unique ecological conditions, including reliance on whitebark pine seeds. A recent study found that nearly one third of collared grizzly bears in the GYE did not even have whitebark pine within their home ranges and those that did made use of other foods within their home ranges during poor whitebark pine years (Costello *et al.* 2014, pp. 2009, 2013). Fourth, the Ninth Circuit observed that the Service contradicted itself by stating that the entire PCA was necessary to support a recovered population, yet acknowledged that whitebark pine would persist in only a small part of the PCA. New data show that despite the decline in whitebark pine, the GYE population is stable at close to carrying capacity and is exhibiting density-dependent regulation inside the DMA (van Manen *et al.* 2015, entire). Fifth, the court determined it was arbitrary and capricious for the Service to rely on scientific uncertainty about whitebark pine loss in a delisting decision. Any uncertainty about the loss of whitebark pine has been conclusively resolved by GYE population numbers that show stable or increasing populations despite loss of whitebark pine seeds (IGBST 2012, p. 34) and no long-term changes in vital rates (IGBST 2012, pp. 32–34). Furthermore, whitebark pine tree mortality has significantly slowed since 2009, suggesting that the current beetle outbreak may have run its course (Haroldson 2015, p. 47). Finally, the Ninth Circuit faulted the Service for relying on adaptive management and monitoring without describing management responses and specific triggering criteria. The population objectives that will be incorporated into regulations provide specific triggers for management action (see Factor B discussion, above). The Service continues to believe that adaptive management will play a role in future management decisions because new data and new information will require appropriate management responses.

In summary, the best scientific and commercial data available regarding grizzly bear responses to food losses suggest this issue is not a threat to the GYE grizzly bear population and is not an impediment to long-term population persistence. Therefore, we conclude that changes in food resources do not constitute a threat to the GYE grizzly bear DPS now, nor is it anticipated to in the future.

Climate Change

Our analyses under the Act include consideration of observed or likely environmental changes resulting from ongoing and projected changes in climate. As defined by the Intergovernmental Panel on Climate Change (IPCC), the term ''climate'' refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2013*a,* p. 1450). The term ''climate change'' thus refers to a change in the state of the climate that can be identified by changes in the mean or the variability of relevant properties, which persists for an extended period, typically decades or longer, due to natural conditions (*e.g.,* solar cycles), or human-caused changes in the composition of the atmosphere or in land use (IPCC 2013*a,* p. 1450).

Scientific measurements spanning several decades demonstrate that changes in climate are occurring. In particular, warming of the climate system is unequivocal, and many of the observed changes in the last 60 years are unprecedented over decades to millennia (IPCC 2013*b,* p. 4). The current rate of climate change may be as fast as any extended warming period over the past 65 million years and is projected to accelerate in the next 30 to 80 years (National Research Council 2013, p. 5). Thus, rapid climate change is adding to other sources of extinction pressures, such as land use and human-caused mortality, which will likely place extinction rates in this era among just a handful of the severe biodiversity crises observed in Earth's geological record (American Association for the Advancement of Sciences 2014, p. 17).

Examples of various other observed and projected changes in climate and associated effects and risks, and the bases for them, are provided for global and regional scales in recent reports issued by the IPCC (in their entirety: 2013*c,* 2014), and similar types of information for the United States and regions within it are available via the National Climate Assessment (Melillo *et al.* 2014, entire). Results of scientific analyses presented by the IPCC show that most of the observed increase in global average temperature since the mid-20th century cannot be explained by natural variability in climate and is ''extremely likely'' (defined by the IPCC as 95–100 percent likelihood) due to the observed increase in greenhouse gas concentrations in the atmosphere as a result of human activities, particularly carbon dioxide emissions from fossil fuel use (IPCC 2013*b,* p. 17).

Scientists use a variety of climate models, which include consideration of natural processes and variability, as well as various scenarios of potential levels and timing of greenhouse gas emissions, to evaluate the causes of changes already observed and to project future changes in temperature and other climate conditions. Model results yield very similar projections of average global warming until about 2030, and thereafter the magnitude and rate of warming vary through the end of the century depending on the assumptions about population levels, emissions of greenhouse gases, and other factors that influence climate change. Thus, absent extremely rapid stabilization of greenhouse gas emissions at a global level, there is strong scientific support for projections that warming will continue through the 21st century, and that the magnitude and rate of change will be influenced substantially by human actions regarding greenhouse gas emissions (IPCC 2013*b,* p. 19; IPCC 2014, entire).

Global climate projections are informative, and, in some cases, the only or the best scientific information available for us to use. However, projected changes in climate and related impacts can vary substantially across and within different regions of the world (in their entirety: IPCC 2013*c,* 2014), and within the US (Melillo *et al.* 2014, entire). Therefore, we use ''downscaled'' projections when they are available and have been developed

through appropriate scientific procedures, because such projections provide higher resolution information that is more relevant to spatial scales used for analyses of a given species (see Glick *et al.* 2011, pp. 58–61, for a discussion of downscaling).

The hydrologic regime in the Rocky Mountains has changed and is projected to change further (Bartlein *et al.* 1997, p. 786; Cayan *et al.* 2001, p. 411; Leung *et al.* 2004, p. 75; Stewart *et al.* 2004, pp. 223–224; Pederson *et al.* 2011, p. 1666). The western United States may experience milder, wetter winters with warmer, drier summers and an overall decrease in snowpack (Leung *et al.* 2004, pp. 93–94). While some climate models do not demonstrate significant changes in total annual precipitation for the western United States (Duffy *et al.* 2006, p. 893), an increase in ''rain on snow'' events is expected (Leung *et al.* 2004, p. 93; McWethy *et al.* 2010, p. 55). The amount of snowpack and the timing of snowmelt may also change, with an earlier peak stream flow each spring (Cayan *et al.* 2001, p. 410; Leung *et al.* 2004, p. 75; Stewart *et al.* 2004, pp. 223–224). Although there is some disagreement about changes in the water content of snow under varying climate scenarios (Duffy *et al.* 2006, p. 893), reduced runoff from decreased snowpack could translate into decreased soil moisture in the summer (Leung *et al.* 2004, p. 75). However, Pederson *et al.* (2011, p. 1682) found that increased spring precipitation in the northern Rocky Mountains is offsetting these impacts to total annual stream flow from expected declines in snowpack thus far.

The effects related to climate change may result in a number of changes to grizzly bear habitat, including a reduction in snowpack levels, shifts in denning times, shifts in the abundance and distribution of some natural food sources, and changes in fire regimes. Most grizzly bear biologists in the United States and Canada do not expect habitat changes predicted under climate change scenarios to directly threaten grizzly bears (Servheen and Cross 2010, p. 4). These changes may even make habitat more suitable and food sources more abundant. However, these ecological changes may also affect the timing and frequency of grizzly bear-human interactions and conflicts (Servheen and Cross 2010, p. 4).

Because timing of den entry and emergence is at least partially influenced by food availability and weather (Craighead and Craighead 1972, pp. 33–34; Van Daele *et al.* 1990, p. 264), less snowpack would likely shorten the denning season as foods become available later in the fall and earlier in the spring. In the GYE, Haroldson *et al.* (2002, pp. 34–35) reported later den entry dates for male grizzly bears, corresponding with increasing November temperatures from 1975 to 1999. This increased time outside of the den could increase the potential for conflicts with humans (Servheen and Cross 2010, p. 4).

The effects related to climate change could create temporal and spatial shifts in grizzly bear food sources (Rodriguez *et al.* 2007, pp. 41–42). Changes in plant communities have already been documented, with species' ranges shifting farther north and higher in elevation due to environmental constraints (Walther *et al.* 2002, pp. 390–391; Walther 2003, pp. 172–175; Walther *et al.* 2005, p. 1428) and increases in outbreaks of insects that reduce survival (Bentz *et al.* 2010, entire). Decreased snowpack could lead to fewer avalanches thereby reducing avalanche chutes, an important habitat component to grizzly bears, across the landscape. However, increases in ''rain on snow'' events may decrease the stability of snowpack resulting in increases in avalanches. Changes in vegetative food distributions also may influence other mammal distributions, including potential prey species like ungulates. While the extent and rate to which individual plant species will be impacted is difficult to foresee with any level of confidence (in their entirety: Walther *et al.* 2002; Fagre *et al.* 2003), there is general consensus that grizzly bears are flexible enough in their dietary needs that they will not be impacted directly by ecological constraints such as shifts in food distributions and abundance (Servheen and Cross 2010, p. 4; IGBST 2013, p. 35).

Fire regimes can affect the abundance and distribution of some vegetative bear foods (*e.g.,* grasses, berry-producing shrubs) (LeFranc *et al.* 1987, p. 150). For instance, fires can reduce canopy cover, which usually increases berry production. However, on steep south or west slopes, excessive canopy removal due to fires or vegetation management may decrease berry production through subsequent moisture stress and exposure to sun, wind, and frost (Simonin 2000, entire). Fire frequency and severity may increase with late summer droughts predicted under climate change scenarios (Nitschke and Innes 2008, p. 853; McWethy *et al.* 2010, p. 55). Increased fire frequency has the potential to improve grizzly bear habitat, with low to moderate severity fires being the best. For example, fire treatment most beneficial to huckleberry shrubs is that which results in damage to stems, but does little damage to rhizomes (Simonin 2000, entire). High-intensity fires may reduce grizzly bear habitat quality immediately afterwards by decreasing hiding cover and delaying regrowth of vegetation, although Blanchard and Knight (1996, p. 121) found that increased production of forbs and root crops in the years following the high-intensity, widespread Yellowstone fires of 1988 benefited grizzly bears. Because grizzly bears have shown resiliency to changes in vegetation resulting from fires, we do not anticipate altered fire regimes predicted under most climate change scenarios will have significant negative impacts on grizzly bear survival or reproduction, despite its potential effects on vegetation. Therefore, we conclude that the effects of climate change do not constitute a threat to the GYE grizzly bear DPS now, nor are they anticipated to in the future.

Public Support and Human Attitudes

Public support is paramount to any successful large carnivore conservation program (Servheen 1998, p. 67). Historically, human attitudes played a primary role in grizzly bear population declines by promoting a culture and government framework that encouraged excessive, unregulated, human-caused mortality. Through government-endorsed eradication programs and perceived threats to human life and economic livelihood, humans settling the West were able to effectively eliminate most known grizzly bear populations after only 100 years of westward expansion.

We have seen a change in public perceptions and attitudes toward the grizzly bear in the last several decades. The same government that once financially supported active extermination of the bear now uses its resources to protect the great symbol of American wildness. This change in government policy and practice is a product of changing public attitudes about the grizzly bear. Although attitudes about grizzly bears vary geographically and demographically, there has been a revival of positive attitudes toward the grizzly bear and its conservation (Kellert *et al.* 1996, pp. 983–986).

Public outreach presents a unique opportunity to effectively integrate human and ecological concerns into comprehensive programs that can modify societal beliefs about, perceptions of, and behaviors toward grizzly bears. Attitudes toward wildlife are shaped by numerous factors including basic wildlife values, biological and ecological understanding of species, perceptions about individual

species, and specific interactions or experiences with species (Kellert 1994, pp. 44–48; Kellert *et al.* 1996, pp. 983–986). Information and education programs teach visitors and residents about grizzly bear biology, ecology, and behavior, and enhance appreciation for this large predator while dispelling myths about its temperament and feeding habits. Effective information and education programs have been an essential factor contributing to the recovery of the GYE grizzly bear population since its listing in 1975. By identifying values common to certain user groups, the information and education working group can disseminate appropriate materials and provide workshops catered to these values. By providing general information to visitors and targeting specific user groups about living and working in grizzly bear country, we believe continued coexistence between grizzly bears and humans will be accomplished.

Traditionally, residents of the GYE involved in resource extraction industries, such as loggers, miners, livestock operators, and hunting guides, are opposed to land-use restrictions that place the needs of the grizzly bear above human needs (Kellert 1994, p. 48; Kellert *et al.* 1996, p. 984). Surveys of these user groups have shown that they tolerate large predators when they are not seen as direct threats to their economic stability or personal freedoms (Kellert *et al.* 1996, p. 985). Delisting could increase acceptance of grizzly bears by giving local government and private citizens more discretion in decisions that affect them. Increased flexibility regarding depredating bears in areas outside of the PCA may increase tolerance for the grizzly bear by landowners and livestock operators by potentially reducing the number of conflict situations.

Ultimately, the future of the grizzly bear will be based on the people who live, work, and recreate in grizzly bear habitat and the willingness and ability of these people to learn to coexist with the grizzly bear and to accept this animal as a cohabitant of the land. Other management strategies are unlikely to succeed without effective and innovative public information and education programs. The objective of the public outreach program is to proactively address grizzly bear-human conflicts by informing the public about the root causes of these conflicts and providing suggestions on how to prevent them. By increasing awareness of grizzly bear behavior and biology, we hope to enhance public involvement and appreciation of the grizzly bear. In addition to public outreach programs, the States have implemented other programs to help reduce conflicts with the people that are directly affected by grizzly bears. These efforts include livestock carcass removal programs, electric fencing subsidies for apiaries and orchards, and sharing costs of bear-resistant garbage bins where appropriate.

Although some human-caused grizzly bear mortalities are unintentional (*e.g.,* vehicle collisions, trap mortality), intentional deaths in response to grizzly bear-human conflicts are responsible for the majority of known and probable human-caused mortalities. Fortunately, this source of mortality can be reduced significantly if adequate information and education are provided to people who live, work, and recreate in occupied grizzly bear habitat and proper management infrastructure is in place (Linnell *et al.* 2001, p. 345). For example, even though more than 3 million people visit the National Parks and National Forests of the GYE each year, (USDA Forest Service 2006*a,* pp. 176, 183, 184; Cain 2014, p. 46; Gunther 2014, p. 47), the average number of conflicts per year between 1992 and 2010 was only 150 (Gunther *et al.* 2012, p. 51). The current information and education working group has been a major component contributing to the successful recovery of the GYE grizzly bear population over the last 30 years. Both Federal and State management agencies are committed to continuing to work with citizens, landowners, and visitors within the GYE grizzly bear DPS boundaries to address the human sources of conflicts.

From 1980 through 2002, at least 36 percent (72 out of 196) of human-caused mortalities may have been avoided if relevant information and education materials had been presented, understood, and used by involved parties (Servheen *et al.* 2004, p. 15). Educating back- and front-country users about the importance of securing potential bear attractants can reduce grizzly bear mortality risk. Similarly, adhering to hiking recommendations, such as making noise, hiking with other people, and hiking during daylight hours, can further reduce grizzly bear mortalities by decreasing the likelihood that hikers will encounter bears. Hunter-related mortalities may involve hunters defending their life because of carcasses that are left unattended or stored improperly. Grizzly bear mortalities also occur when hunters mistake grizzly bears for black bears. All of these circumstances can be further reduced through information and education programs.

Outside the PCA, State wildlife agencies recognize that the key to preventing grizzly bear-human conflicts is providing information and education to the public. State grizzly bear management plans also acknowledge that this is the most effective long-term solution to grizzly bear-human conflicts and that adequate public outreach programs are paramount to ongoing grizzly bear survival and successful coexistence with humans in the GYE so that the measures of the Act continue to not be necessary. All three States have been actively involved in information and education outreach for over a decade and their respective management plans contain chapters detailing efforts to continue current programs and expand them when possible. For example, the WGFD created a formal grizzly bear-human conflict management program in July 1990, and has coordinated an extensive information and education program since then. Similarly, since 1993, MTFWP has implemented countless public outreach efforts to minimize bear-human conflicts, and the IDFG has organized and implemented education programs and workshops focused on private and public lands on the western periphery of the grizzly bear's range.

Compensating ranchers for losses caused by grizzly bears is another approach to build support for coexistence between livestock operators and grizzly bears. In cases of grizzly bear livestock depredation that have been verified by USDA Animal and Plant Health Inspection Service's Wildlife Services, IDFG, MTFWP, or WGFD, affected livestock owners are compensated. Since 1997, compensation in Montana and Idaho has been provided primarily by private organizations, principally Defenders of Wildlife. Since the program's inception in 1997, the Defenders of Wildlife Grizzly Bear Compensation Trust paid over $400,000 to livestock operators in the northern Rockies for confirmed and probable livestock losses to grizzly bears (Edge 2013, entire). In 2013, the State of Montana passed legislation establishing a compensation program for direct livestock losses caused by grizzly bears (MCA 2–15–3113). In light of this legislation, Defenders of Wildlife stopped their compensation program in Montana and redirected funds to other conflict prevention programs. Defenders of Wildlife continues to compensate livestock producers in Idaho. In Wyoming, compensation has always been paid directly by the State. Upon delisting, both Idaho and Wyoming's grizzly bear management plans call for

State funding of compensation programs (Idaho's Grizzly Bear Delisting Advisory Team 2002, p. 16; WGFD 2005, p. 30). In Idaho, compensation funds would come from the secondary depredation account, and the program would be administered by the appropriate IDFG Regional Landowner Sportsman Coordinators and Regional Supervisors (Idaho's Grizzly Bear Delisting Advisory Team 2002, p. 16). In Wyoming, the WGFD will pay for all compensable damage to agricultural products as provided by State law and regulation (WGFD 2005, p. 30). The WGFD will continue efforts to establish a long-term funding mechanism to compensate property owners for livestock and apiary losses caused by grizzly bears. In Montana, long-term funding to compensate livestock owners for direct kills has been secured through the general fund. A long-term funding source has not been identified for conflict prevention projects but is being actively pursued. Therefore, we conclude that through the positive influence of the information and education program, public support and attitude does not constitute a threat to the GYE grizzly bear DPS now, nor is it anticipated to in the future.

Summary of Factor E

Factor E requires the Service to consider other natural or man-made factors affecting a species' continued existence. The following factors warranted consideration as possible threats to the GYE grizzly bear population: (1) Genetic health, (2) potential changes in food resources, (3) climate change, and (4) human attitudes toward grizzly bear recovery. We do not consider genetic concerns to be a threat for the following reasons: we have an effective population size more than four times that recommended by the best available science; we know levels of genetic diversity have not declined in the last century; we know current levels of genetic diversity are sufficient to support healthy reproduction and survival; and we know that genetic contribution from individual bears outside of the GYE will not be necessary for the next several decades (Miller and Waits 2003, p. 4338; Kamath *et al.,* entire). We do not anticipate that genetic issues will affect grizzly bears in the future because of ongoing efforts to restore natural connectivity and a commitment to translocate animals in the future, if needed, as provided in the draft 2016 Conservation Strategy. Changing climate conditions have the potential to affect grizzly bear habitat with subsequent implications for grizzly bear-human conflicts. While we do not consider the effects of climate change a direct threat to grizzly bear habitat in the GYE, it could influence the timing and frequency of some grizzly bear-human conflicts with possible increases in grizzly bear mortality. This possible increase in grizzly bear mortality risk should not be a threat because of coordinated total mortality limits within the DMA (see table 2 and Factor B discussion, above). Because the GYE grizzly bear population has increased or remained stable during declines in whitebark pine seed production and other high-calorie foods since the early 1990s, there is no evidence that changes in food resources will become substantial impediments to the long-term persistence of the GYE grizzly bear population. Finally, we do not anticipate human attitudes becoming a threat to the GYE grizzly bear population because of effective outreach programs and established regulatory frameworks. Essentially, the management response to all of these potential threats would be to limit human-caused mortality through conflict prevention and management to limit discretionary mortality (see table 2 and Factor B discussion, above). Because of the manageable nature of these potential threats through conflict prevention and response efforts and the large area of suitable, secure habitat within the GYE, we do not consider them to be a threat to the GYE grizzly bear DPS now, or in the future.

Cumulative Effects of Factors A Through E

Many of the threats faced by grizzly bears are interrelated and could be synergistic. Principal threats discussed above include habitat loss through road building and the resulting increased human access to grizzly bear habitat, human-caused mortality of grizzly bears, and the legal mechanisms that direct habitat and population management. The principal threats assessed in previous sections may cumulatively impact the GYE grizzly bear population beyond the scope of each individual threat. For example, the loss of whitebark pine could lead to lower survival rates at the same time of the year when grizzly bears are vulnerable to human-caused mortality from elk hunting. Alternatively, expected increases in human populations across the West and climate change both have the potential to increase grizzly bear conflicts and human-caused mortality. Historically, each of these factors impacted grizzly bears in the GYE and cumulatively acted to reduce their range and abundance over time. Today, these stressors have been adequately mitigated and do not impact the GYE grizzly bear population with the same intensity.

While these numerous stressors on grizzly bear persistence are challenging to conservation, our experience demonstrates that it is possible for large carnivore conservation to be compatible with them (Linnell *et al.* 2001, p. 48). Despite these risks, the best available information indicates the GYE grizzly bear population's trend and range has been increasing. We consider estimates of population trend (*i.e.,* ''lambda'') to be the ultimate metric to assess cumulative impacts to the population. It reflects all of the various stressors on the population and provides a scientific basis to correct a negative trend. This calculation reflects total mortality, changes in habitat quality, changes in population density, change in range, displacement effects, and so forth. In other words, there will always be threats to the GYE grizzly bear population that lead to human-caused mortality or displacement, but if these are not causing the population to decline, we cannot consider them substantial.

Summary of Factors Affecting the Greater Yellowstone Ecosystem Grizzly Bear Population

The primary factors related to past habitat destruction and modification have been reduced through changes in management practices that have been or will be formally incorporated into regulatory documents. Maintenance of the 1998 baseline values for secure habitat, developed sites on public lands, and livestock allotments inside the PCA will adequately ameliorate the multitude of stressors on grizzly bear habitat such that they do not become threats to the GYE grizzly bear population in the future. We expect many of the threats discussed under Factor A to continue to occur at some level, but they are sufficiently ameliorated so they only affect a small proportion of the population. If and when delisting occurs, the GYE National Forests and National Parks will continue to implement and maintain the 1998 baseline. Together, these two Federal agencies manage 98 percent of lands within the PCA and 88 percent of all suitable habitat within the DPS boundaries. Suitable habitat outside the PCA provides additional ecological resiliency and habitat redundancy to allow the population to respond to environmental changes. Habitat protections specifically for grizzly bear conservation are not necessary here because other binding regulatory mechanisms that limit development and

motorized use are already in place for nearly 60 percent of the area outside the PCA. These and other conservation measures discussed in the Forest Service's Record of Decision (2006*b*) ensure threats to the GYE grizzly bear population's habitat outside the PCA will not become substantial enough to threaten this population's long-term persistence. Therefore, based on the best available information and expectation that current management practices will continue into the future, we conclude that the present or threatened destruction, modification, or curtailment of its habitat or range does not constitute a threat to the GYE grizzly bear DPS and is not expected to in the future.

The resumption of legal grizzly bear hunting for commercial and recreational purposes in the GYE was the primary post-delisting threat to the population under Factor B. Since 1975, no grizzly bears have been removed from the GYE for commercial, recreational, scientific, or education purposes. Inside the DMA, the population has stabilized since 2002 and is exhibiting density dependent population regulation (van Manen *et al.* 2015, entire). Therefore, mortalities from all causes including hunting inside the DMA will be managed by all Federal, State, and Tribal agencies to ensure recovery consistent with the Service's recovery criteria. Annual population estimates will be made by the IGBST each fall and used to set the total mortality limits for the DMA the following year (Tables 1, 2, and 3, above).

When grizzly bears were listed in 1975, we identified ''indiscriminate illegal killing,'' and management removals as threats to the population under Factor C. In response, we implemented demographic recovery criteria to maintain a minimum population size, a well-distributed population, and establish total mortality limits based on scientific data and direct monitoring of the population. Since implementing these criteria, the GYE grizzly bear population has tripled in size and range (Eberhardt *et al.* 1994, pp. 361–362; Knight and Blanchard 1995, pp. 2–11; Boyce *et al.* 2001, pp. 1–11; Schwartz *et al.* 2006b, p. 48; Pyare *et al.* 2004, pp. 5–6; Schwartz *et al.* 2006a, pp. 64–66; IGBST 2012, p. 34; Bjornlie *et al.* 2013, p. 184). Although humans are still directly or indirectly responsible for the majority of grizzly bear deaths, this source of mortality is effectively mitigated through science-based management, State regulations, careful population monitoring, and outreach efforts. Although grizzly bear hunting is anticipated to occur outside of the national parks, it would be within scientifically determined sustainable levels to maintain the population in the long term and would not occur if other sources of human-caused mortality were excessive. Therefore, based on the best available information and expectation that State regulatory mechanisms (as described under Factor B, above) will limit total mortality levels within the levels detailed in tables 1, 2, and 3, above, and that these regulatory mechanisms will continue into the future, we conclude that disease, human-caused mortality, and hunting do not constitute threats now or in the future.

The importance of regulatory mechanisms and effective wildlife management infrastructure to large carnivore conservation cannot be understated, as stated under Factor D (see Linnell *et al.* 2001, p. 348). Before delisting could occur, the regulatory mechanisms that would be in place include National Park Superintendent's Compendiums, the Forest Service Amendment for Grizzly Bear Habitat Conservation for the GYE National Forests, and State and Tribal commission regulations controlling mortality as described under Factor D. The management infrastructure is already in place and described in the draft 2016 Conservation Strategy. Because the signatory agencies to the 2016 Conservation Strategy are the same agencies that have been managing grizzly bear habitat, population, and monitoring for the last 30 years, the management transition would be minimal. Existing regulatory mechanisms, and additional State regulations that would be in place before this proposed rule is made final, would ensure the GYE grizzly bear population continues to recovery goals. Therefore, we conclude that the existing and anticipated regulatory mechanism are adequate to maintain a healthy and recovered population of grizzly bears into the future and do not pose a threat now, or in the future.

Other factors, under Factor E, we considered that could become threats to the GYE grizzly bear population included: (1) Genetic health, (2) potential changes in food resources, (3) climate change, and (4) human attitudes toward grizzly bear recovery. Essentially, the management response to all of these potential threats would be to limit human-caused mortality through conflict prevention and management as well as managing discretionary mortality. Because of the manageable nature of these potential threats through conflict prevention and response efforts and the large amount of suitable, secure habitat within the GYE we do not expect other natural or manmade factors to become threats to the GYE grizzly bear population.

Many of the threats faced by grizzly bears are interrelated and could cumulatively impact the GYE grizzly bear population through excessive grizzly bear mortality. While these numerous stressors on grizzly bear persistence are challenging to conservation, our experience demonstrates it is possible for large carnivore conservation to be compatible with them (Linnell *et al.* 2001, p. 48), particularly given the rigorous scientific monitoring protocols established for the GYE grizzly bear population. There will always be threats to the GYE grizzly bear population but if these are not causing the population to decline, we do not consider them to threaten the long-term persistence of the population.

Proposed Determination

An assessment of the need for a species' protection under the Act is based on whether a species is in danger of extinction or likely to become so because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. As required by section 4(a)(1) of the Act, we conducted a review of the status of this species and assessed the five factors to evaluate whether the GYE grizzly bear DPS is endangered or threatened throughout all of its range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the species.

In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the exposure causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat and we then attempt to determine how significant the threat is. If the threat is significant, it may drive, or contribute to, the risk of extinction of the species such that the species warrants listing as endangered or threatened as those terms are defined by the Act. Alternatively, some threats may be significant enough to contribute to the risk of extinction but are adequately ameliorated through active conservation and management efforts so that the risk is low enough that it does

not mean the species is in danger of extinction or likely to become so in the future.

As demonstrated in our five-factor analysis, threats to this population and its habitat have been sufficiently minimized and the GYE grizzly bear DPS is a biologically recovered population. Multiple, independent lines of evidence support this interpretation. Counts of females with cubs-of-the-year have increased. Since at least 2001, the demographic recovery criterion that requires 16 of the 18 BMUs to be occupied with females with young has been met. The Recovery Plan target for a minimum population size of 500 animals inside the DMA to assure genetic health has been met since at least 2007, using the conservative model-averaged Chao2 estimate. Calculations of population trajectory derived from radio-monitored female bears show an increasing population trend at a rate of 4 to 7 percent per year from 1983 through 2001 (Eberhardt *et al.* 1994, p. 362; Knight and Blanchard 1995, pp. 18–19; Schwartz *et al.* 2006b, p. 48), and 0.3 to 2.2 percent from 2002 to 2011 (IGBST 2012, p. 34). Occupied grizzly bear range has more than doubled since 1975 (Basile 1982, pp. 3–10; Blanchard *et al.* 1992, p. 92; Schwartz *et al.* 2002, p. 203; Pyare *et al.* 2004, pp. 5–6; Schwartz *et al.* 2006a, pp. 64–66; Bjornlie *et al.* 2013, p. 184). Independent female survival rates, the single most important cohort to population trajectory, are high and have remained unchanged for 3 decades (IGBST 2012, p. 33). In total, this population has increased from estimates ranging between 136 and 312 bears when listed in 1975 (Cowan *et al.* 1974, pp. 32, 36; Craighead *et al.* 1974, p. 16; McCullough 1981, p. 175), to an average population size between 2002–2014 of 674 using the model-averaged Chao2 population estimation method.

Grizzly bears occupied 84 percent of suitable habitat within the DPS boundaries as of 2014 (Haroldson 2014, *in litt.*) and will likely occupy the remainder of the suitable habitat in the future. The GYE grizzly bear population has sufficient numbers and distribution of reproductive individuals to maintain its recovered status. The main threat of human-caused mortality has been addressed through carefully monitored and controlled total mortality limits established in the Grizzly Bear Recovery Plan and carried over into the draft 2016 Conservation Strategy (U.S. Fish and Wildlife Service 2016, Chapter 2) and into State regulations as per table 2 and Factor B, above. These total mortality limits are calculated to ensure long-term population stability around the average population size for 2002–2014.

During our analysis, we did not identify any factors alone or in combination that are likely to reach a magnitude that would threaten the continued existence of the species. Significant threats identified at the time of listing that could have resulted in the extirpation of the population have been eliminated or reduced since listing. We conclude that known impacts to the GYE grizzly bear population from the loss of secure habitat and development on public lands (Factor A); unregulated, excessive human-caused mortality (Factors B and C); a lack of regulatory mechanisms to manage habitat and population (Factor D); and genetic isolation, changes to food resources, climate change, or negative public attitudes (Factor E), do not rise to a level of significance, such that the population is in danger of extinction now or in the future. Thus, based on our assessment of the best scientific and commercial information available and on our expectation that current management practices will continue into the future, and that State regulations will be in place prior to delisting to regulate total mortality as per table 2 and Factor B, above, we therefore determine that the GYE grizzly bear DPS has recovered to the point at which protection under the Act is no longer required. The best scientific and commercial data available indicate that the GYE grizzly bear DPS is no longer endangered or threatened should appropriate regulatory mechanisms be developed by the States, as described in this proposed rule.

Significant Portion of Range Analysis

Background

Having determined that the GYE grizzly bear DPS is not in danger of extinction or likely to become so in the foreseeable future throughout all of its range, we next consider whether there are any significant portions of its range in which the GYE grizzly bear DPS is in danger of extinction or likely to become so. Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so throughout all or a significant portion of its range. The Act defines ''endangered species'' as any species, which is ''in danger of extinction throughout all or a significant portion of its range,'' and ''threatened species'' as any species which is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The term ''species'' includes ''any subspecies of fish or wildlife or plants, and any distinct population segment [DPS] of any species of vertebrate fish or wildlife which interbreeds when mature.'' We published a final policy interpreting the phrase ''significant portion of its range'' (SPR) (79 FR 37578; July 1, 2014). The final policy states that (1) if a species is found to be endangered or threatened throughout a significant portion of its range, the entire species is listed as endangered or threatened, respectively, and the Act's protections apply to all individuals of the species wherever found; (2) a portion of the range of a species is ''significant'' if the species is not currently endangered or threatened throughout all of its range, but the portion's contribution to the viability of the species is so important that, without the members in that portion, the species would be in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range; (3) the range of a species is considered to be the general geographical area within which that species can be found at the time the Service or the National Marine Fisheries Service (NMFS) makes any particular status determination; and (4) if a vertebrate species is endangered or threatened throughout an SPR, and the population in that significant portion is a valid DPS, we will list the DPS rather than the entire taxonomic species or subspecies.

The SPR policy is applied to all status determinations, including analyses for the purposes of making listing, delisting, and reclassification determinations. The procedure for analyzing whether any portion is an SPR is similar, regardless of the type of status determination we are making. The first step in our analysis of the status of a species is to determine its status throughout all of its range. If we determine that the species is in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range, we list the species as an endangered species (or threatened species) and no SPR analysis will be required. If the species is neither in danger of extinction nor likely to become so throughout all of its range, we next determine whether the species is in danger of extinction or likely to become so throughout a significant portion of its range. If it is, we list the species as an endangered species or threatened species, respectively; if it is not, we conclude that listing the species is not warranted.

When we conduct an SPR analysis, we first identify any portions of the species' range that warrant further consideration. The range of a species can theoretically be divided into

portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be both significant and contain populations that are endangered or threatened. To identify only those portions that warrant further consideration, we 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. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are affecting it uniformly throughout its range, no portion is likely to have a greater risk of extinction, and thus would not warrant further consideration. Moreover, if any concentration of threats apply only to portions of the range that clearly do not meet the biologically based definition of ''significant'' (*i.e.,* the loss of that portion clearly would not be expected to increase the vulnerability to extinction of the entire species), those portions will not warrant further consideration.

If we identify any portions or a range that may both (1) be significant and (2) contain populations that are in danger of extinction or likely to become so, we engage in a more detailed analysis to determine whether these standards are indeed met. As discussed above, to determine whether a portion of the range of a species is significant, we consider whether, under a hypothetical scenario, the portion's contribution to the viability of the species is so important that, without the members in that portion, the species would be in danger of extinction or likely to become so in the foreseeable future throughout all of its range. This analysis will consider the contribution of that portion to the viability of the species based on principles of conservation biology. Contribution would be evaluated using the concepts of redundancy, resiliency, and representation. (These concepts can similarly be expressed in terms of abundance, spatial distribution, productivity, and diversity.) The identification of an SPR does not create a presumption, prejudgment, or other determination as to whether the species in that identified SPR is endangered or threatened. We must go through a separate analysis to determine whether the species is in danger of extinction or likely to become so in the SPR. To determine whether a species is endangered or threatened throughout an SPR, we will use the same standards and methodology that we use to determine if a species is endangered or threatened throughout its range.

Depending on the biology of the species, its range, and the threats it faces, it may be more efficient to address the ''significant'' question first, or the status question first. Thus, if we determine that a portion of the range is not ''significant,'' we do 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 do not need to determine if that portion is ''significant.''

SPR Analysis for the GYE Grizzly Bear DPS

Applying the process described above, we evaluated the range of the GYE grizzly bear population to determine if any area could be considered a significant portion of its 50,280 sq km (19,413 sq mi) range (Bjornlie *et al.* 2013, p. 184). As mentioned above, one way to identify portions for further analyses is to identify portions that might be of biological or conservation importance, such as any natural, biological divisions within the range that may, for example, provide population redundancy or have unique ecological, genetic, or other characteristics. Based on examination of the best available science (Schwartz *et al.* 2006b, entire; IGBST 2012, entire), we determined the GYE grizzly bear population is a single, contiguous population within the DPS boundaries and that there are no separate areas of the range that are significantly different from others or that are likely to be of greater biological or conservation importance than any other areas due to natural biological reasons alone. Therefore, there is not substantial information that logical, biological divisions exist within the GYE grizzly bear population's range.

After determining there are no natural divisions delineating separate portions of the GYE grizzly bear population, we next examined whether any threats are geographically concentrated in some way that would indicate the species could be in danger of extinction, or likely to become so, in that area. Through our review of potential threats, we identified greater mortality risk in the areas on the periphery of the population's range. More grizzly bear mortality occurs toward the periphery of its range, as evidenced by lower population growth rates in these areas (Schwartz *et al.* 2006b, p. 58; IGBST 2012, p. 34) and higher concentrations of conflicts (Gunther *et al.* 2012, p. 50). These areas where greater mortality is likely to occur are outside the DMA boundaries. We do not anticipate declines in relative population size or geographically concentrated threats inside the DMA boundaries due to conservative population objectives, enforceable mortality limits, vast amounts of wilderness and roadless areas, and additional habitat protections specifically in place for grizzly bears on public lands in nearly half of occupied range (*i.e.,* the PCA). With these measures evaluated by a meticulous monitoring program, we are reasonably assured grizzly bears inside the DMA boundaries will continue to flourish. Because it is also reasonable to expect that GYE grizzly bears may not be managed as conservatively outside the DMA boundaries where they could be exposed to more intensive hunting and management pressure, we considered these peripheral areas where known grizzly bear range extends outside the DMA boundaries to warrant further consideration to determine if they are a significant portion of this population's range.

Because we identified areas on the periphery of the range as warranting further consideration due to the geographic concentration of mortality risk there, we then evaluated whether these areas are significant to the GYE grizzly bear population such that, without the members in that portion, the entire population would be in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range.

These peripheral areas do not support grizzly bear reproduction or survival because bears that repeatedly come into conflict with humans or livestock are usually either relocated or removed from these areas. Bears in these peripheral areas will not establish self-sustaining, year-round populations due to a lack of suitable habitat, land ownership patterns, and the lack of traditional, natural grizzly bear foods (*i.e.,* bison). Instead, bears in these peripheral areas will likely always rely on the GYE grizzly bear population inside the DMA as a source population. Grizzly bears in these peripheral areas are not biologically necessary to the GYE grizzly bear population and a lack of occupancy outside the DMA boundaries in peripheral areas will not impact whether the GYE population is likely to become endangered or threatened in the foreseeable future

throughout all or a significant portion of its range.

The core population inside the DMA is resilient, and its distribution provides the necessary redundancy to offset loss of individual bears in peripheral areas. The areas that may experience higher mortality rates represent a very small proportion of the range, and an even smaller proportion of the total number of animals in the GYE grizzly bear population. Moreover, if bears in these peripheral areas were in fact lost, that would not appreciably reduce the long-term viability of the GYE grizzly bear population, much less cause the population in the remainder of its range to be in danger of extinction or likely to become so. Therefore, there is not substantial information that the peripheral portions of the GYE grizzly bear population's range are significant to the rest of the population.

After careful examination of the GYE grizzly bear population in the context of our definition of ''significant portion of its range,'' we determined areas on the periphery of the range warranted further consideration because human-caused mortality risk threats are geographically concentrated there. After identifying these areas, we evaluated whether they were significant and determined they were not significant because, even without the grizzly bears in these areas, the GYE grizzly bear DPS would not be in danger of extinction, or likely to become so in the foreseeable future. These areas will likely never contribute meaningfully to the GYE grizzly bear population because of lack of suitable habitat and loss of traditional grizzly bear foods (*i.e.,* bison). Therefore, we did not need to determine if grizzly bears were in danger of extinction or likely to become so in these peripheral areas. We have carefully assessed the best scientific and commercial data available and determined that the GYE grizzly bear population is no longer in danger of extinction throughout all or a significant portion of its range, nor is it likely to become so in the future. As a result of this determination, we are proposing to remove this population from the List of Endangered and Threatened Wildlife.

Effects of the Rule

This proposal, if made final, would revise 50 CFR 17.11(h) to remove the GYE grizzly bear DPS from the Federal List of Endangered and Threatened Wildlife. The prohibitions and conservation measures provided by the Act, particularly through sections 7 and 9, would no longer apply to this DPS. Federal agencies would no longer be required to consult with the Service under section 7 of the Act in the event that activities they authorize, fund, or carry out may affect the GYE grizzly bear population. However, actions within the DPS would still be managed by State, Tribal, and Federal laws, regulations, policies, and management plans ensuring enforcement of the draft 2016 Conservation Strategy. Delisting the GYE grizzly bear DPS is expected to have positive effects in terms of management flexibility to the States and local governments. The full protections of the Act, including section 4(d)(50 CFR 17.40) would still continue to apply to grizzly bears in other portions of the lower 48-States outside the GYE grizzly bear DPS' boundaries. Those grizzly bears outside the GYE DPS will remain fully protected by the Act.

Post-Delisting Monitoring

Section 4(g)(1) of the Act requires us to implement a system, in cooperation with the States, to monitor for at least 5 years all delisted and recovered species. The primary purpose of this requirement is to ensure that the recovered species does not deteriorate, and if an unanticipated decline is detected, to take measures to halt the decline to avoid relisting. If data indicate that protective status under the Act should be reinstated, we will initiate listing procedures, including, if appropriate, emergency listing. For the GYE grizzly bear population, the draft 2016 Conservation Strategy serves as the post-delisting monitoring plan. The 2016 Conservation Strategy will remain in effect beyond the 5-year monitoring period required by the Act because grizzly bears are a ''conservation-reliant'' species (Scott *et al.* 2005, p. 384) because of their low resiliency to excessive human-caused mortality and the manageable nature of this threat. Conservation-reliant species can maintain recovered, self-sustaining wild populations with ongoing management actions (Scott *et al.* 2005, p. 383). These management actions are detailed in the draft 2016 Conservation Strategy and will be informed and updated as necessary by all the habitat and population parameters that will be annually monitored by the IGBST.

Monitoring

To ensure the long-term conservation of grizzly bear habitat and continued recovery of the GYE grizzly bear population, several monitoring programs and protocols have been developed and integrated into land management agency planning documents. The draft 2016 Conservation Strategy and appended State grizzly bear management plans satisfy the requirements for having a post-delisting monitoring plan for the GYE grizzly bear population. Monitoring programs and a coordinated approach to management would continue in perpetuity. Monitoring programs will focus on assessing whether demographic and habitat standards described in the draft 2016 Conservation Strategy are being achieved and maintained.

Within the PCA, the IGBST will continue to monitor habitat standards and adherence to the 1998 baseline. The IGBST will report on levels of secure habitat, developed sites, and livestock allotments annually and these will not be allowed to deviate from 1998 baseline values unless changes were to be beneficial to grizzly bears (USDA Forest Service 2006*b,* entire; Yellowstone National Park 2014, p. 18). The IGBST, with participation from Yellowstone National Park, the Forest Service, and State and Tribal wildlife agencies, also will continue to monitor the abundance and distribution of common grizzly bear foods. This allows managers some degree of predictive power to anticipate and avoid grizzly bear-human conflicts related to a shortage of one or more foods in a given season.

Within the DMA, the IGBST will continue to document population trends, distribution, survival and birth rates, and the presence of alleles from grizzly bear populations outside the GYE grizzly bear DPS boundaries to document gene flow into the population. Throughout the DPS boundaries, locations of grizzly bear mortalities on private lands will be provided to the IGBST for incorporation into their annual report. To examine reproductive rates, survival rates, causes of death, and overall population trends, the IGBST will radio collar and monitor a minimum of 25 adult female grizzly bears every year. These bears will be spatially distributed throughout the ecosystem so they provide a representative sample of the entire population inside the DMA. Mortalities will be monitored and reported annually and maintained in accordance with the total mortality limits and population objectives in table 2, above.

Outside of the PCA, the GYE National Forests will monitor agreed-upon habitat parameters in suitable habitat and will calculate secure habitat values outside of the PCA every 2 years and submit these data for inclusion in the IGBST's annual report (USDA Forest Service 2006*b,* p. 6). The GYE National Forests also will monitor and evaluate livestock allotments for recurring conflicts with grizzly bears in suitable habitat outside the PCA (USDA Forest

Service 2006*b,* p. 6). The Greater Yellowstone Whitebark Pine Monitoring Group will continue to monitor whitebark pine occurrence, productivity, and health both inside and outside the PCA (USDA Forest Service 2006*b,* p. 7). Members of the IGBST will monitor grizzly bear vital rates and population parameters within the entire DMA. Finally, State wildlife agencies will provide known mortality information to the IGBST, which will annually summarize these data with respect to location, type, date of incident, and the sex and age of the bear for the entire DPS area.

In the 2007 final rule (72 FR 14866; March 29, 2007), we reported habitat quality and effectiveness values for 1998 using the Cumulative Effects Model and associated 1998 habitat data (U.S. Fish and Wildlife Service 2007, appendix F). Since 1998, the value of the Cumulative Effects Model has been questioned (Boyce *et al.* 2001, p. 32). Specifically, the validity of all the coefficients cannot be verified or ground-truthed, calling into question all of the model outputs. Without scientific and statistical defensibility the Cumulative Effects Model will not produce credible results and it cannot be used (Boyce *et al.* 2001, p. 32; Brocowski 2006, pp. 85–87). While the Cumulative Effects Model provided an index of relative change in habitat quality over time, it was never able to predict grizzly bear habitat use or preference or relate habitat to changes in population parameters. Because we no longer consider the Cumulative Effects Model to represent the best available science, we are no longer relying on or reporting measures of habitat quality or effectiveness using it. Instead, the IGBST will assess and report human-caused changes to grizzly bear habitat through maintenance of the 1998 baseline values for developed sites, grazing allotments, and secure habitat (U.S. Fish and Wildlife Service 2016, appendix E).

While the inverse relationship between whitebark pine cone production and grizzly bear conflicts in the Yellowstone Ecosystem has been documented (Mattson *et al.* 1992, p. 436; Gunther *et al.* 1997, p. 38; Gunther *et al.* 2004, pp. 13–14), there are no data relating other foods such as spring ungulate carcasses, army cutworm moths, and cutthroat trout to the number of grizzly bear-human conflicts. Additionally, Schwartz *et al.* (2010, p. 662) found no relationship between the spatial distribution of whitebark pine, cutthroat trout, army cutworm moths, or ungulates and grizzly bear survival. Therefore, while it is important to continue to monitor food abundance, there is no scientific evidence that habitat quality is a limiting factor for grizzly bear survival in the GYE. The IGBST will continue coordinating with the National Forests and National Parks within the PCA to monitor food abundance but will focus management recommendations on regulating the risk of human-caused mortality through the 1998 baseline (*i.e.,* factors the agencies have the authority and ability to regulate). Private land development and the numbers, causes, and spatial distribution of human-bear conflicts will continue to be monitored and reported annually, because this is where habitat quality intersects with grizzly bear mortality risk.

To address the possible ''lag effect'' associated with slow habitat degradation taking a decade or more to translate into detectable changes in population size (see Doak 1995), the IGBST will monitor a suite of indices simultaneously to provide a highly sensitive system to monitor the health of the population and its habitat and to provide a sound scientific basis to respond to any changes or needs with adaptive management actions (Holling 1978, pp. 11–16). This ''lag effect'' is only a concern if the sole method to detect changes in habitat is monitoring changes in total population size (see Doak 1995, p. 1376). The monitoring systems in the draft 2016 Conservation Strategy (U.S. Fish and Wildlife Service 2016, Chapter 2) are far more detailed and sophisticated and would detect changes in vital rates in response to habitat changes sooner than the system described by Doak (1995, pp. 1371–1372). The IGBST will be monitoring a suite of vital rates including survival of radio-collared bears, mortality of all bears, reproductive success, litter size, litter interval, number of females with cubs, distribution of females with cubs, and overall population trajectory, in addition to the physical condition of bears by monitoring body mass and body fat levels of each bear handled. Because of the scope of monitoring, we feel confident that we will be able to detect the consequences of significant changes in habitat.

Monitoring systems in the draft 2016 Conservation Strategy allow for adaptive management (Holling 1978, pp. 11–16) as environmental issues change. The agencies have committed in the draft 2016 Conservation Strategy to be responsive to the needs of the grizzly bear through adaptive management (Holling 1978, pp. 11–16) actions based on the results of detailed annual population and habitat monitoring. These monitoring efforts would reflect the best scientific and commercial data and any new information that has become available since the delisting determination. The entire process would be dynamic so that when new science becomes available it will be incorporated into the management planning and monitoring systems outlined in the draft 2016 Conservation Strategy (U.S. Fish and Wildlife Service 2016, chapters 2, 3, and 4). The results of this extensive monitoring would allow wildlife and land managers to identify and address potential threats preemptively, allowing those managers and the Service to ensure that the GYE grizzly bear population remains a recovered population.

Triggers for a Biology and Monitoring Review by the IGBST

The YGCC will use the IGBST's monitoring results and annual reports to determine if the population and habitat standards are being adhered to. The States, Tribes, and National Parks will use the IGBST's annually produced model-averaged Chao2 population estimates to set and establish total mortality limits within the DMA as per tables 1, 2, and 3, above. The 2016 Conservation Strategy signatories have agreed that if there are deviations from certain population or habitat standards, the IGBST will conduct a Biology and Monitoring Review as described under Factor B, above. A Biology and Monitoring Review would be initiated if any of the following scenarios occur (as further described under Factor B, above): (1) Exceeding the total mortality limit for independent females for 3 consecutive years; (2) exceeding the total mortality limits for independent males for 3 consecutive years; (3) exceeding the total mortality limit for dependent young for 3 consecutive years; (4) failure to meet the distribution criterion requiring sightings of females with offspring in at least 16 of 18 BMUs in 2 consecutive years. In addition to the scenarios described under Factor B, a Biology and Monitoring Review by the IGBST would be initiated if there were a failure to meet any of the habitat standards described in the draft 2016 Conservation Strategy pertaining to levels of secure habitat, developed sites, and livestock allotments. These IGBST reviews were established to detect deviations that may occur due to normal variability or chance events and do not necessarily mean the GYE grizzly bear's status is deteriorating. As such, they are more easily activated than those that trigger a Service status review under the Act. These triggers could indicate the need to adjust management approaches and are intended to provide the YGCC with ample time to respond with

management actions before involving the Service.

An IGBST Biology and Monitoring Review examines habitat management, population management, or monitoring efforts of participating agencies with an objective of identifying the source or cause of failing to meet a habitat or demographic goal. This review also will provide management recommendations to correct any such deviations. A Biology and Monitoring Review could occur if funding becomes inadequate to the implementation of the draft 2016 Conservation Strategy to such an extent that it compromised the recovered status of the GYE grizzly bear population. If the review is triggered by failure to meet a population goal, the review would involve a comprehensive review of vital rates including survival rates, litter size, litter interval, grizzly bear-human conflicts, and mortalities. The IGBST will attempt to identify the reason behind any variation in vital rates such as habitat conditions, poaching, excessive roadkill, etc., and determine if these compromise the recovered status of the population. Similarly, if the review was triggered by failure to meet a habitat standard, the review would examine what caused the failure, whether this requires that the measures of the Act are necessary to assure the recovered status of the population, and what actions may be taken to correct the problem. The IGBST would complete this review and release it to the public within 6 months of initiation and make it available to the YGCC and the public.

The YGCC responds to a Biology and Monitoring Review with actions to address deviations from habitat standards or, if the desired population and habitat standards specified in the draft 2016 Conservation Strategy cannot be met in the opinion of the YGCC, the YGCC could petition us for relisting (U.S. Fish and Wildlife Service 2016, Chapter 6). Because the YGCC possesses substantial information about the population's status, the Service would respond by conducting a status review to determine if relisting is warranted.

The Service can also initiate a status review independent of the IGBST or the YGCC should the total mortality limits be exceeded by a significant margin or routinely violated or if substantial management changes occur significant enough to raise concerns about population level impacts. Emergency relisting of the population is an option we can and will use, if necessary, in accordance with section 4(g)(2) of the Act, if the threat(s) were severe and immediate (16 U.S.C. 1533(g)). Such an emergency relisting would be effective the day the rule is published in the **Federal Register** and would be effective for 240 days. During this time, we would conduct our normal notice-and-comment rulemaking regarding the listing of the species based on the five factors of section 4(a)(1) of the Act to take effect when the 240-day limit on the emergency relisting expires.

Triggers for a Service Status Review

Should we finalize this proposal and delist the GYE grizzly bear population, we will use the information in IGBST annual reports and adherence to total mortality limits as per tables 1, 2, and 3, above, to determine if a formal status review is necessary. Because we anticipate the YGCC and IGBST are fully committed to maintaining GYE grizzly bear population management and habitat management through implantation of the draft 2016 Conservation Strategy and State and Federal management plans, and to correct any problems through the process established in the draft 2016 Conservation Strategy and described in the preceding section, we created a higher threshold for criteria that would trigger a formal Service status review. Specifically, the following scenarios would result in a formal status review by the Service: (1) Any changes in Federal, State, or Tribal laws, rules, regulations, or management plans that depart significantly from the specifics of population or habitat management detailed in this proposed rule and significantly increase the threat to the population; or (2) if the population falls below 500 in any year using the model-averaged Chao2 method, or counts of females with cubs fall below 48 for 3 consecutive years; or (3) if independent female total mortality limits as per tables 1, 2, and 3, above, are exceeded for 3 consecutive years and the population is fewer than 600; or (4) if fewer than 16 of 18 bear management units are occupied by females with young for 3 consecutive 6-year sums of observations. For example, if independent female total mortality limits were exceeded in 3 of 4 years, but they were not 3 consecutive years, the Service would conduct a status review.

Status reviews and relisting decisions would be based on the best available scientific and commercial data available. If a status review is triggered, the Service would evaluate the status of the GYE grizzly bear population to determine if relisting is warranted. We would make prompt use of the Act's emergency listing provisions if necessary to prevent a significant risk to the well-being of the GYE grizzly bear population. We have the authority to emergency relist at any time, and a completed status review is not necessary to exercise this emergency relisting authority.

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- Be logically organized;
- Use the active voice to address readers directly;
- Use clear language rather than jargon;
- Be divided into short sections and sentences; and
- Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the names of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), need not be prepared in connection with regulations pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationships With Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for

healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes.

Beginning in April 2014, the Grizzly Bear Recovery Program sent via registered mail consultation invitation letters to the four Tribes having treaty interests in the proposed GYE grizzly bear delisting area: Northern Arapaho, Eastern Shoshone, Northwestern Band of the Shoshone Nation, and Shoshone-Bannock Tribes. Over the next year, the Service was made aware of many more Tribes having an interest in the GYE grizzly bear and expanded our efforts in explaining the status of the bear and offering government-to-government consultation to Tribes. On February 17, 2015, the Service sent letters offering government-to-government consultation to 26 Tribes. On June 15, 2015, the Service sent out a second round of letters to 48 Tribes, offering another opportunity for consultation, followed by personal phone calls or emails from Service leadership to the 48 Tribes, personally inviting them to engage in government-to-government consultation. On August 13, 2015, the Service met with the Rocky Mountain Tribal Leaders Council in Billings, Montana, and invited Tribal representative to engage in consultation concerning the bear. On October 29, 2015, the Service sent letters to 53 Tribes, which included all Tribes, Tribal Councils, and First Nations in Canada that have contacted the Service regarding the GYE grizzly bear population. The letters invited Federal Tribes to engage in government-to-government consultation, and invited all Tribes to participate in a Tribal webinar and conference call. To date, the Service has conducted five Tribal consultations. The Service will conduct two additional Tribal consultation meetings with federally recognized Tribes. The locations for these meetings are not yet available; we will post them on our Web site at *http://www.fws.gov/mountain-prairie/ea/tribal-grizzly.php* as soon as possible. Government-to-Government consultation is not open to the public or media. This is consultation with Tribes speaking on behalf of their Tribe and as a representative of their Tribe (see **FOR FURTHER INFORMATION CONTACT** above, for more information).

References Cited

A complete list of all references cited in this proposed rule is available at *http://www.regulations.gov* at Docket No. FWS–R6–ES–2016–0042, or is available upon request from the Grizzly Bear Recovery Coordinator (see **ADDRESSES**).

Glossary

1998 baseline: The 1998 baseline represents the best available habitat measures representing ground conditions inside the Primary Conservation Area (PCA) as of 1998. Habitat standards identified in the draft 2016 Conservation Strategy pertain to secure habitat, developed sites, and livestock grazing allotments. The standards demand that all three of these habitat parameters are to be maintained at or improved upon conditions that existed in 1998. The 1998 baseline represents the best estimate of what was known to be on the ground at that time and establishes a benchmark against which future improvements and/or impacts can be assessed. It also provides a clear standard for agency managers to follow when considering project effect analysis.

Chao2: The Chao2 estimator is a bias-corrected estimator of the total number of female grizzly bears with cubs-of-the-year, derived from the frequency of single sightings or double sightings of unique females with cubs-of-the-year as identified based on a rule set by Knight *et al.* (1995).

Demographic monitoring area (DMA): The area of suitable habitat plus the potential sink areas within which the Yellowstone grizzly bear population is annually surveyed and estimated and within which the total mortality limits apply. The DMA is 49,928 sq km (19,279 sq mi). See figure 2, above, for a map showing the DMA.

Dependent young: Young grizzly bears less than 2 years old. Dependent young are with their mothers and are dependent upon them for survival.

Discretionary mortality: Mortalities that are the result of hunting or management removals.

Distinct population segment (DPS): The Service defined a DPS in the DPS policy (61 FR 4722; February 7, 1996) that considers two factors to determine whether the population segment is a valid DPS: (1) Discreteness of the population segment in relation to the remainder of the taxon to which it belongs; and (2) the significance of the population segment to the taxon to which it belongs. If a population meets both tests, it is a DPS, and the Service then evaluates the population segment's conservation status according to the standards in section 4 of the Act for listing, delisting, or reclassification.

Greater Yellowstone Ecosystem (GYE): Yellowstone National Park and Grand Teton National Park form the core of the Greater Yellowstone Ecosystem, which includes portions of three States: Wyoming, Montana, and Idaho. At more than 90,000 sq km (34,750 sq mi), it is one of the largest nearly intact temperate-zone ecosystems on Earth.

Independent females: Grizzly bear females more than 2 years old.

Independent males: Grizzly bear males more than 2 years old.

Interagency Grizzly Bear Study Team (IGBST): The Interagency Grizzly Bear Study Team (IGBST) is an interdisciplinary group of scientists and biologists responsible for long-term monitoring and research efforts on grizzly bears in the Greater Yellowstone Ecosystem (GYE). The main objectives of the team are to: (1) Monitor the status and trend of the grizzly bear population in the GYE; and (2) determine patterns of habitat use by bears and the relationship of land management activities to the welfare of the bear population. The IGBST is led by the U.S. Geological Survey (USGS). IGBST members are representatives from the USGS, National Park Service, U.S. Fish and Wildlife Service, U.S. Forest Service, the Eastern Shoshone and Northern Arapaho Tribal Fish and Game Department, and the States of Idaho, Montana, and Wyoming.

Primary Conservation Area (PCA): The name of the recovery zone area post-delisting. The habitat-based recovery criteria apply within the PCA.

Recovery Zone: The area defined in the 1993 Grizzly Bear Recovery Plan within which the recovery efforts would be focused in the Yellowstone Ecosystem. The Recovery Zone is not designed to contain all grizzly bears.

Significant portion of the range (SPR): The Service's SPR policy (79 FR 37578; July 1, 2014) defines a portion of the range of a species as ''significant'' if the species is not currently endangered or threatened throughout all of its range, but the portion's contribution to the viability of the species is so important that, without the members in that portion, the species would be in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range.

Suitable habitat: We define suitable habitat for grizzly bears as areas having three characteristics: (1) Being of adequate habitat quality and quantity to support grizzly bear reproduction and survival; (2) being contiguous with the current distribution of GYE grizzly bears such that natural recolonization is possible; and (3) having low mortality risk as indicated through reasonable and manageable levels of grizzly bear mortality. Suitable habitat is made up of the Middle Rockies ecoregion, within which the Greater Yellowstone

Ecosystem is contained. This area meets grizzly bear biological needs providing food, seasonal foraging opportunities, cover, and denning areas. See the *Suitable Habitat* section of this proposed rule for a more complete explanation.

Total mortality: Documented known and probable grizzly bear mortalities from all causes including but are not limited to: Management removals, illegal kills, mistaken identity kills, self-defense kills, vehicle kills, natural mortalities, undetermined-cause mortalities, grizzly bear hunting, and a statistical estimate of the number of unknown/unreported mortalities.

Transition probability: The probability of a transition for an adult female (greater than 3-years old) among reproductive states. The possible reproductive states are: No young, with cubs, with yearlings, or with 2-year-olds. Ten potential reproductive transitions are biologically feasible.

Yellowstone Grizzly Bear Coordinating Committee (YGCC): The committee of State, Federal, Tribal, and county agencies charged with implementing the draft 2016 Conservation Strategy post-delisting. They will coordinate management and promote the exchange of information about the GYE grizzly bear population. Members include: Yellowstone and Grand Teton National Parks; Five National forests: Beaverhead-Deerlodge, Bridger-Teton, Caribou-Targhee, Custer-Gallatin, and Shoshone; One Bureau of Land Management representative; the Biological Resources Division of the U.S. Geological Survey; one representative each from Idaho, Montana, and Wyoming; and one representative from each native American Tribe with sovereign powers over reservation lands within the ecosystem.

Authors

The primary authors of this proposed rule are staff members of the Service's Grizzly Bear Recovery Office (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we hereby propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11(h) by revising the first entry for ''Bear, grizzly'' under ''Mammals'' in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		*
Bear, grizzly	*Ursus arctos horribilis.*	North America ..	U.S.A., conterminous (lower 48) States, except: (1) where listed as an experimental population; and (2) that portion of Idaho that is east of Interstate Highway 15 and north of U.S. Highway 30; that portion of Montana that is east of Interstate Highway 15 and south of Interstate Highway 90; that portion of Wyoming south of Interstate Highway 90, west of Interstate Highway 25, Wyoming State Highway 220, and U.S. Highway 287 south of Three Forks (at the 220 and 287 intersection), and north of Interstate Highway 80 and U.S. Highway 30.	T	1, 2D, 9, 759	NA	17.40(b)
*	*	*	*	*	*		*

* * * * *

Dated: March 2, 2016.

James W. Kurth,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2016–05167 Filed 3–10–16; 8:45 am]

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Part V

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 511

Medicare Program; Part B Drug Payment Model; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 511

[CMS–1670–P]

RIN 0938–AS85

Medicare Program; Part B Drug Payment Model

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule discusses the implementation of a new Medicare payment model under section 1115A of the Social Security Act (the Act). We propose the Part B Drug Payment Model as a two-phase model that would test whether alternative drug payment designs will lead to a reduction in Medicare expenditures, while preserving or enhancing the quality of care provided to Medicare beneficiaries. The first phase would involve changing the 6 percent add-on to Average Sales Price (ASP) that we use to make drug payments under Part B to 2.5 percent plus a flat fee (in a budget neutral manner). The second phase would implement value-based purchasing tools similar to those employed by commercial health plans, pharmacy benefit managers, hospitals, and other entities that manage health benefits and drug utilization. We believe this model will further our goals of smarter, that is, more efficient spending on quality care for Medicare beneficiaries.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on May 9, 2016.

ADDRESSES: In commenting, please refer to file code CMS–1670–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov*. Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1670–P, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1670–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses prior to the close of the comment period:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Susan Janeczko (410) 786–4529 or Jasmine McKenzie (410) 786–8102.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov*. Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

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Acronyms

Because of the many terms to which we refer by acronym in this proposed rule, we are listing these abbreviations and their corresponding terms in alphabetical order below:

AHRQ Agency for Healthcare Research and Quality
AMP Average Manufacturer Price
ASP Average Sales Price
AWP Average Wholesale Price
BBA Balanced Budget Act of 1997, Pub. L. 105–33
BPCI Bundled Payments for Care Improvement
CAP Competitive Acquisition Program
CDS Clinical Decision Support
CCN CMS Certification Number
CJR Comprehensive Joint Replacement
CMS Centers for Medicare & Medicaid Services
CPI Consumer Price Index
CY Calendar Year
DME Durable Medical Equipment
ESRD End Stage Renal Disease
FFS Fee-for-Service
GAO U.S. Government Accountability Office
IgG Immunoglobulin G
IVIG Intravenous Immune Globulin
HCPCS Healthcare Common Procedure Coding System
MAC Medicare Administrative Contractor
MedPAC Medicare Payment Advisory Commission
NDC National Drug Code
NOC Not Otherwise Classified
NPI National Provider Identifier
OIG Department of Health and Human Services' Office of the Inspector General
OCM Oncology Care Model
OPPS Outpatient Prospective Payment System
OPD Outpatient Department
PBM Pharmacy Benefit Manager
PBPM Per-beneficiary-per-month
PCSA Primary Care Service Area
PFS Physician Fee Schedule
TIN Taxpayer identification number
VBP Value-Based Purchasing
WAC Wholesale Acquisition Cost

I. Executive Summary

A. Purpose

Part B includes a limited drug benefit that encompasses drugs and biologicals described in section 1861(t) of the Act. For the purposes of this proposed rule, the term ''drugs'' refers to drugs and biologicals paid under the Part B program, as well as biosimilars. Currently covered Part B drugs fall into three general categories: drugs furnished incident to a physician's services, drugs administered via a covered item of durable medical equipment (DME), and other drugs specified by statute. Based on our claims data, we estimate total Part B payments for separately paid drugs in 2015 were $22 billion (this includes cost sharing). In 2007, the total payments were $11 billion; the average annual increase since 2007 has been 8.6 percent.[1] This significant growth has largely been driven by spending on separately paid drugs in the hospital outpatient setting, which more than doubled between 2007 and 2015, from $3 billion to $8 billion respectively.

The purpose of this proposed rule is to test a new payment model called the Part B Drug Payment Model under the authority of the Center for Medicare and Medicaid Innovation (Innovation Center). Section 1115A of the Act authorizes the Innovation Center to test innovative payment and service delivery models to reduce program expenditures while preserving or enhancing the quality of care furnished to Medicare, Medicaid, and Children's Health Insurance Program beneficiaries. We propose to exercise this authority to test whether the alternative drug payment designs discussed in this proposed rule will lead to spending our dollars more wisely for drugs paid under Part B, that is, a reduction in Medicare expenditures, while preserving or enhancing the quality of care provided to Medicare beneficiaries.

Many Part B drugs, including drugs furnished in the hospital outpatient setting, are paid using the methodology in section 1847A of the Act. In most cases, this means payment is based on the Average Sales Price (ASP) plus a statutorily mandated 6 percent add-on. Under this methodology, expensive drugs receive higher add-on payment amounts than inexpensive drugs while there are no clear incentives for providing high value care, including drug therapy. We propose a two phase model to test whether alternative payment approaches for Part B drugs improve value (relative to current drug payment approaches under Part B), improve outcomes and reduce expenditures for Part B drugs. This model's goals are also consistent with the Administration's broader strategy to encourage better care, smarter spending, and healthier people by paying providers and suppliers for what works, unlocking health care data, and finding new ways to coordinate and integrate care to improve quality. (*http://www.hhs.gov/about/news/2015/01/26/better-smarter-healthier-in-historic-announcement-hhs-sets-clear-goals-and-timeline-for-shifting-medicare-reimbursements-from-volume-to-value.html#*).

[1] GAO Report MEDICARE PART B Expenditures for New Drugs Concentrated among a Few Drugs, and Most Were Costly for Beneficiaries (GAO–16–12) October 2015. *http://www.gao.gov/products/GAO-16-12*

B. Summary of Major Provisions

1. Model Overview

Medicare pays for most drugs that are administered in a physician's office or the hospital outpatient department at ASP+ 6 percent as described in section 1847A of the Act. The payment for these drugs does not include costs for administering the drug to a patient (for example by injection or infusion); payments for these physician and hospital services are made separately, and payment amounts are determined under the physician fee schedule (PFS) (*https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/PhysicianFeeSched/index.html*) and the Hospital Outpatient Prospective Payment System (OPPS) (*https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalOutpatientPPS/index.html*). The ASP payment amount determined under section 1847A of the Act reflects a weighted average sales price for all National Drug Codes (NDCs) that are assigned to a Healthcare Common Procedure Coding System (HCPCS) code. The ASP payment amount does not vary based on the price an individual provider or supplier pays to acquire the drug. Payment determinations under the methodology in section 1847A of the Act also do not take into account the effectiveness of a particular drug. The payment determinations also do not consider the cost of clinically comparable drugs that may be priced exclusively in other HCPCS codes. The ASP methodology may encourage the use of more expensive drugs because the 6 percent add-on generates more revenue for more expensive drugs (see MedPAC Report to the Congress: Medicare and the Health Care Delivery System June 2015, pages 65–72). The ASP is calculated quarterly using manufacturer-submitted data on sales to all purchasers (with limited exceptions as articulated in section 1847A(c)(2) of the Act, such as sales at nominal charge and sales exempt from best price) with manufacturers' rebates, discounts, and price concessions included in the ASP calculation. The statute does not identify a reason for the

additional 6 percent add-on above ASP. As noted in the MedPAC report (and by sources cited in the report), the add-on is needed to account for handling and overhead costs and/or to account for additional mark-up in distribution channels that are not captured in the manufacturer reported ASP.

The following paragraphs present a brief summary of our proposals. Additional details are discussed later in this proposed rule. We propose two phases for the Part B Drug Payment Model. In phase I of the model, we propose implementing a variation to the add-on component of Part B drug payment methodology in different geographic areas of the country. We would test whether the proposed alternative approach for the ASP add-on payment, which is discussed later in this proposed rule, would strengthen the financial incentive for physicians to choose higher value drugs. To eliminate selection bias, we are proposing to require participation for all providers and suppliers furnishing any Part B drugs included in the Part B Drug Payment Model who are located in the geographic areas that are selected for inclusion in the model. We propose to implement this first phase of the overall model no earlier than 60 days following display of the final rule. While this approach addresses the add-on to the manufacturer's ASP, it does not directly address the manufacturer's ASP, which is a more significant driver of drug expenditures than the add-on payment amount for Part B drugs. For a given HCPCS code, the add-on represents about 6 percent of an ASP-based Part B drug payment; the remaining 94 percent of the payment is calculated from the manufacturers' reported ASP data.

In phase II of this model, we propose to implement value-based purchasing (VBP) in conjunction with the phase I variation of the ASP add-on payment amount for drugs paid under Part B. Phase II would use tools currently employed by commercial health plans, pharmacy benefit managers (PBMs), hospitals, and other entities that manage health benefits and drug utilization. These tools have been used for years with positive results, and we believe that some of these successful approaches may be adaptable to Part B. We propose to apply one or more tools, such as indication-based pricing, reference pricing, and clinical decision support tools to Part B drugs. We will test whether the implementation of the tools affects expenditures and outcomes.

In addition to the proposals and comment solicitations associated with phase I and phase II, we also solicit comments on how to create value-based purchasing arrangements with manufacturers under Medicare fee-for-service (FFS) payment for drugs; on whether we should consider implementing an updated version of the Competitive Acquisition Program (CAP); and whether we should pursue a more bundled or episode-based approach that moves beyond an FFS payment structure. We would consider all comments on these two solicitations for future rulemaking.

2. Model Scope

Under the model, we propose that providers and suppliers, in a selected geographic area, who are furnishing a covered and separately paid Part B drug that is included in this model, would receive alternative Part B drug payments. Within such selected areas, examples of providers and suppliers that Medicare commonly pays for Part B drugs include: physicians, durable medical equipment (DME) suppliers (including certain pharmacies that furnish Part B drugs), and hospital outpatient departments that furnish and bill for Part B drugs. There will be no specific enrollment activities for providers, suppliers, or beneficiaries in this model; the furnishing of Part B drugs in a particular geographic area will determine participation. We propose to require all providers and suppliers to participate in the model if furnishing Part B drugs included in the model and located in a geographic area that is chosen for participation in the model. We propose to determine a provider or supplier's specific geographic location based on the service location ZIP code for physician drug claims, the beneficiary ZIP code for DME supply claims, and the ZIP code for the address associated with the CMS certification number (CCN) for hospital outpatient claims. We propose to use Primary Care Service Areas (PCSAs) as the geographic area. We propose random assignment of all PCSAs to one of four groups: the three test arms (paying a modified ASP add-on amount, implementation of VBP tools, and both modified ASP add-on and VBP tools at the same time) or a fourth control group. We propose to include the majority of drugs paid under Part B in the model; in general, this means drugs that appear on the quarterly ASP Price Files. We propose to exclude some categories of drugs, including drugs separately billed by End-Stage Renal Disease (ESRD) facilities from the proposed Part B Drug Payment Model.

We propose that the model would run for five years; phase I would begin in the fall of 2016 (no earlier than 60 days after the rule is finalized). During phase I, providers and suppliers that participate in the model would receive payments with either the existing statutory add-on amount or payments with the modified add-on amount. Phase II would begin no sooner than January 1, 2017. When phase II begins, providers and suppliers selected to participate in the VBP arms would begin receiving VBP-based payments for certain drugs and would participate in other VBP activities, such as feedback on prescribing patterns. Providers and suppliers in geographic areas selected for one arm of the model will experience both phase I pricing and phase II VBP pricing. We expect that phase II could take several years to fully implement. Our goal is to have both phases of the model in full operation during the last three years of the proposed five year duration to fully evaluate changes and collect sufficient data.

3. Model Payment

In section III of this proposed rule, we propose to test an alternative to the ASP add-on payment in phase I of the model. We would assign providers and suppliers to the alternative ASP add-on approach or to the control group. We propose to use ASP+2.5 percent plus a flat fee as the alternative add-on amount; however, we also discuss and solicit comments on whether an additional approach, such as ASP + a tiered percentage add-on amount should be tested. We invite comment on whether these two approaches are sufficiently different to warrant separate arms under this model. The aggregate value of the phase I add-on that is paid each year is proposed to be budget neutral meaning that the initial total payments under the model will be based on the most recently available calendar year claim's total Part B drug payment amount for separately paid drugs and then updated annually. In other words, we are not proposing a reduction to total spending for Part B drugs. Instead, we propose to test redistribution of the add-on payment on Part B drugs expenditure and outcomes. Additional detail about phase I appears in section III.A. of this proposed rule.

In phase II of the model, we propose to test the application of a group of value-based purchasing tools that commercial and Medicare Part D plans use to improve patient outcomes and manage drug cost. We review several different tools, including value-based pricing, clinical decision support tools, and we discuss the potential applicability to the Part B drug and hospital outpatient benefits. Additional detail about phase II appears in section

III.B. of this proposed rule. Table 1 summarizes the phases and arms of the model.

TABLE 1—SUMMARY OF THE PROPOSED MODEL

Phase 1—ASP+X (no earlier than 60 days after display of final rule, Fall 2016)	Phase 2—VBP (no earlier than January 2017)
ASP+6% (control)	ASP+6% (control).
	ASP+6% with VBP Tools.
ASP+2.5% and Flat Fee Drug Payment.	ASP+2.5% and Flat Fee Drug Payment.
	ASP+2.5% + Flat Fee Drug Payment with VBP Tools.

Note: Primary Care Service Areas (which are clusters of ZIP codes that reflect primary care service delivery) would be randomly assigned to each model test arm and the control group. The assigned PCSAs would not include ZIP codes in the state of Maryland where hospital outpatient departments operate under an all-payer model.

We also solicit comment on creating value-based purchasing arrangements directly with manufacturers, taking an episode-based or bundled pricing approach, and applicability of the Part B Drug CAP.

4. Overlap With Ongoing CMS Efforts

We note that there are possibilities of overlap between the Part B Drug Payment Model and the Medicare Shared Savings Program, the Medicare Intravenous Immune Globulin (IVIG) Demonstration, and other Innovation Center payment models, such as the Oncology Care Model (OCM) and the Bundled Payments for Care Improvement (BPCI) initiative. In general, we propose not to exclude beneficiaries, suppliers (including physicians), or providers in the Part B Drug Payment Model from other Innovation Center models or CMS programs, such as the Medicare Shared Savings Program, as detailed in section III.E. of this proposed rule. We acknowledge that there is potentially greater overlap between this proposed model and OCM than other models. We propose to include OCM practices in the Part B Drug Payment Model, but we request comment on the best approach for handling that overlap and on whether we should exclude OCM practices and their comparison practices from the Part B Drug Payment Model.

C. Economic Effects

Under phase I we propose to modify the ASP add-on amount to be 2.5 percent plus a flat fee of $16.80. We propose to establish the amount of the flat fee to ensure total estimated payments under this model are budget neutral to aggregate Part B spending, using the most recent year of available claims data. For phase I of this model, budget neutrality calculations were done using CY 2014 claims processed through June 30, 2015. We present the redistributional impacts among practitioners and hospitals in section IX. of this proposed rule. In general, phase I has the overall effect of modestly shifting money from hospitals and specialties that use higher cost drugs, such as ophthalmology, to specialties that use lower cost drugs, including primary care, pain management, and orthopedic specialties. In aggregate, rural practitioners are estimated to experience a net benefit and rural hospitals are estimated to experience smaller reductions than urban hospitals. Overall, spending on drugs furnished in the office setting increases while spending on drugs furnished in the hospital setting decreases.

We intend to achieve savings through behavioral responses to the revised pricing, as we hope that the revised pricing will remove any excess financial incentive to prescribe high cost drugs over lower cost ones when comparable low cost drugs are available. In other words, we believe that removing the financial incentive that may be associated with higher add-on payments will lead to some reduction in expenditures during phase I of the proposed model. An exact estimate of the amount of savings that might be achieved through behavioral responses is not readily available. Prior research on behavioral changes following modifications to drug margins suggests that the modifications we propose to the 6 percent add-on are likely to change prescribing behavior.

In phase II, we propose applying VBP tools including value-pricing and clinical decision support tools. The pricing under this phase would not be budget neutral, and we intend to achieve savings. We invite extensive comment throughout this proposed rule on the applicability of various value-based purchasing tools to the Part B and hospital outpatient drug benefit. We do not believe that we have enough detail on the structure of the final VBP component to quantify potential savings at this time. As with phase I, we believe that implementation of these tools will result in some reduction in expenditures. We invite comment on the extent of savings that might be achieved based on experience with these VBP tools.

II. Participation

A. Background

This section describes the drugs that are furnished and paid under Part B; the providers and suppliers that furnish them; and the drugs, participants, and geographic areas that would be included in the model.

1. Drugs and Biologicals Paid Under Part B

Part B currently covers and pays for a limited number of prescription drugs. As stated earlier, for the purposes of this proposed rule, the term ''drugs'' will refer to drugs and biologicals paid under Part B and also includes biosimilars. Drugs paid under Part B generally fall into three categories: drugs furnished incident to a physician's service in the physician office or hospital outpatient settings, drugs administered via a covered item of DME, and other categories of drugs specified by statute (generally in section 1861(s)(2) of the Act).

The majority of Part B drug expenditures are for drugs furnished incident to a physician's service. Drugs furnished incident to a physician's service are typically injectable drugs that are administered in a non-facility setting (covered under section 1861(s)(2)(A) of the Act) or in a hospital outpatient setting (covered under section 1861(s)(2)(B) of the Act). Examples of ''incident to'' drugs include injectable drugs used to treat macular degeneration, intravenously administered drugs used to treat cancer, injectable drugs used in connection with the treatment of cancer, and injectable biologicals used to treat rheumatoid arthritis. The statute (sections 1861(s)(2)(A) and 1861(s)(2)(B) of the Act) limits ''incident to'' services to drugs that are not usually self-administered; self-administered drugs, such as orally administered tablets and capsules are not paid for under the ''incident to'' provision. Payment for drugs furnished incident to a physician's service falls under section 1842(o) of the Act. In accordance with section 1842(o)(1)(C) of the Act, most ''incident to'' drugs are paid under the methodology in section 1847A of the Act.

Part B also pays for drugs that are infused through a covered item of DME, such as drugs administered with an intravenous pump and inhalation drugs administered through a nebulizer. Medicare payments for these drugs are described in section 1842(o)(1)(D) of the Act for DME infusion drugs and section 1842(o)(1)(G) of the Act for inhalation drugs.

Finally, Part B covers and pays for a number of drugs with specific benefit categories defined under section 1861(s) of the Act including—immunosuppressive drugs; hemophilia blood clotting factors; certain oral anti-cancer drugs; certain oral antiemetic drugs; pneumococcal pneumonia, influenza and hepatitis B vaccines; erythropoietin for trained home dialysis patients; certain other drugs separately billed by ESRD facilities; and certain osteoporosis drugs. Payment for many of these drugs falls under section 1842(o) of the Act, and in accordance with section 1842(o)(1)(C) of the Act, most, but not all, drugs with specific benefit categories are paid under the methodology in section 1847A of the Act. As discussed below, we propose to include the majority of Part B drugs in this model.

2. Types of Providers and Suppliers Furnishing Part B Drugs

Types of providers and suppliers that are paid for all or some of the Medicare covered Part B drugs that they furnish include physicians, pharmacies, DME suppliers, hospital outpatient departments, and ESRD facilities. We propose to include the majority of Part B drugs in the Part B Drug Payment Model and therefore we anticipate that few providers, and physicians and other suppliers that currently furnish Part B drugs would be excluded. However, some may experience limited impact from participation if they prescribe or furnish a low volume of drugs paid under the Part B benefit. Based on payment data for Part B drugs, among the providers, physician, and DME suppliers that furnish Part B drugs, we anticipate that physicians and outpatient hospitals will see the greatest impact from this proposed model.

In section IX, Regulatory Impact Analysis, we discuss the potential effects of this model on suppliers and providers, including rural hospitals. Although the impact on rural hospitals is expected to be minimal (see Table 2) and the impact on rural physician specialties is generally favorable (when compared to urban specialties) (see Table 1), we are soliciting comments on the potential effect that this model may have on rural practices, how rural practices may differ from non-rural practices and whether rural practices should be considered separately from other practice locations. On a similar note, we are also soliciting comments on the potential effect that this model may have on small practices, how small practices (for example, solo practices and practices with two to nine eligible professionals) may differ from large practices and whether small practices should be considered separately from other practices.

B. Proposed Drugs Paid Under Part B To Be Included in the Model

Although the Part B drug benefit is generally considered to be limited in scope, the Part B drug benefit includes many categories of drugs, and encompasses a variety of care settings, and payment methodologies. In accordance with section 1842(o)(1)(C) of the Act, most Part B drugs are paid based on the ASP methodology described in section 1847A of the Act. However, at times Part B drugs are paid based on Wholesale Acquisition Cost (WAC), as authorized under section 1847A(c)(4) of the Act (see 75 FR 73465–6, the section titled Partial Quarter ASP data), or average manufacturer price (AMP)-based price substitutions, as authorized under section 1847A(d) of the Act (see 77 FR 69140). Also, in accordance with section 1842(o) of the Act, other payment methodologies may also be applied to Part B drugs: average wholesale price (AWP)-based payments (using the AWP in effect in October 1, 2003) are made for certain drugs infused with covered DME; and AWP-based payments (using current AWP) are made for influenza, pneumococcal pneumonia and hepatitis B vaccines (section 1842(o)(1)(A)(iv) of the Act). We also use current AWP to make payment for very new drugs without ASP under the OPPS (80 FR 70426 and 80 FR 70442–3; Medicare Claims Processing Manual 100–04, Chapter 17, Section 20.1.3). With the exception of the following: influenza vaccine payment amounts, which are updated annually near the beginning of each flu season (*https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Part-B-Drugs/McrPartBDrugAvgSalesPrice/VaccinesPricing.html*), certain new drugs under the OPPS, and DME infusion drug payments which are based on November 2003 AWP values (section 1842(o)(1)(D) of the Act), payment amounts for drugs paid under the methodology in section 1847A of the Act (which means most Part B drugs) are updated quarterly by CMS. Contractors then use these quarterly updates to make payment determinations. Examples of the quarterly ASP price file updates for 2016 are available at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Part-B-Drugs/McrPartBDrugAvgSalesPrice/2016ASPFiles.html*. Contractors may also make independent payment amount determinations in situations where a national price is not available for physician and other supplier claims and for drugs that are specifically excluded from payment based on section 1847A of the Act (for example, radiopharmaceuticals as noted in section 303(h) of the Medicare Modernization Act). In such cases, pricing may be determined based on compendia or invoices (Medicare Claims Processing Manual 100–04, Chapter 17, Section 20.1.3).

With limited exceptions that are discussed in this section below, we propose to include all Part B drugs in this model. We would overlay payment amounts for Part B drugs (which are also referred to as payment allowance limits) on the quarterly ASP Drug Pricing Files (see *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Part-B-Drugs/McrPartBDrugAvgSalesPrice/2016ASPFiles.html*) and the quarterly update to Addendum B of the OPPS (*https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalOutpatientPPS/Addendum-A-and-Addendum-B-Updates.html*) with model-derived payment amounts in the geographic areas that are being evaluated. Therefore, we would include nationally priced drugs with ASP, WAC, and AMP-based payment amounts that are on the quarterly price file; we note that based on recent claims data, nationally priced drugs with ASP-based payments account for the vast majority of this group. This means that the following drugs (and certain associated fees) would also be included in the model:

- Drugs and biologicals (including biosimilars) with HCPCS codes that are nationally priced under the methodology described in section 1847A of the Act, including ASP and WAC-based payment amounts, and drugs (and biologicals) paid separately under OPPS. Because OPPS pass-through drugs described in section 1833(t)(6) of the Act are paid ASP+6 percent, which is the same payment as separately paid drugs under the OPPS, we propose including all OPPS pass-through drugs in the model. In phase I, for drugs paid based on ASP and WAC, the 6 percent add-on will be replaced with the updated add-on amount (discussed in section III.A. of this proposed rule). In phase I, for HCPCS codes with AMP-based payments, the lower of the quarter's AMP-based payment amount (that is, the AMP-based amount on the quarterly ASP files) or the model payment amount would be used; in other words, if the model-based payment is lower than the AMP-substitution-based payment determined under the authority in

section 1847A(d) of the Act, the model-based payment amount will be used.

• Non-infused drugs furnished by DME suppliers (including the limited number of Part B drugs dispensed by pharmacies), such as immunosuppressives, oral chemotherapy, oral antiemetics, inhalation drugs used with DME, and clotting factors. Payment for these drugs is typically based on the ASP, but additional fees are also paid by Medicare for dispensing, supplying, or furnishing some of these drugs in accordance with section 1842(o) of the Act. We believe that it is important for the model to include drugs that are used outside of the incident-to setting. Also, we believe that it is important to understand the impact of other payment-related financial incentives that are associated with the drug payment, therefore we propose that phase II of this model may incorporate changes to the furnishing, supplying and dispensing fees that are associated with these drugs. (Note that this subset of drugs that are furnished by DME suppliers does not include drugs that are infused with covered DME. DME infusion drugs are discussed later in this section.)

• Intravenously and subcutaneously administered immunoglobulin G (IgG). This includes products administered in the office as well as intravenous products administered in the home to patients with primary immunodeficiency under the benefit described in section 1861(s)(2)(Z) of the Act. Payment for intravenously administered IgG used in these situations is typically based on the ASP (section 1842(o)(1)(E)), while payment for subcutaneously infused IgG will depend on who furnishes the drug. For example, physicians would typically be paid an ASP-based amount while DME suppliers would be paid an amount based on the AWP.

We do not believe that all Part B drugs are appropriate candidates for inclusion in this phase of the model, and we propose to exclude the following categories of drugs:

• Contractor-priced drugs, including drugs that do not appear on the quarterly national ASP price file. Because pricing for contractor-priced drugs may vary, we are limiting the model to drugs that are nationally priced by CMS. Contractor-priced drugs (which are not nationally priced) would continue to be priced by contractors as described in the Medicare Claims Processing Manual 100–04, Chapter 17, Section 20.1.3. However, in situations where the previous manual citation either permits contractors to contact us to obtain payment limits for drugs not included in the quarterly ASP or Not Otherwise Classified (NOC) drug file, or when contractors have the authority to independently determine a payment amount, we propose that contractors would be permitted to utilize reductions to the add-on percentage that they calculate. For example if a contractor currently uses a WAC-based payment amount and adds a 6 percent add-on under existing authority, the add-on percentage could be decreased to correspond to the model arm that is being evaluated in that area. We propose to implement this approach by issuing subregulatory instructions to contractors that would allow them to utilize the modified add-on percentage for contractor-based claims. We seek comments on whether we should permit contractors to alter the add-on percentage for drug payment amounts that are determined by contractors during this model. Contractor-priced drugs include certain radiopharmaceuticals that are furnished in the physician's office (therapeutic radiopharmaceuticals paid separately under the OPPS for hospital outpatients are discussed later in this rule).

• Influenza, pneumococcal pneumonia and hepatitis B vaccines paid under the benefit described in section 1861(s)(10) of the Act. Payment amounts for these vaccines are not determined using the methodology in section 1847A. We consider these items to be preventive services (for more information about preventive services, see *https://www.cms.gov/Medicare/Prevention/PrevntionGenInfo/index.html?redirect=/Prevntiongeninfo/*), and preventive services, such as these vaccines, are typically provided at no cost to beneficiaries. We propose to exclude vaccines in section 1861(s)(10) of the Act that are preventive services from this model.

• Drugs infused with a covered item of DME in phase I. Payment for this subset of DME drugs is made based on the AWP in effect on October 1, 2003. We propose to exclude this category of drugs from phase I of the model so that DME policy can focus on issues related to DME and so that the model does not interfere with decisions related to the inclusion or exclusion of these drugs in DME competitive bidding. However, OIG has pointed out concerns related to mismatch between acquisition costs and payment for this group of drugs (OEI–12–12–00310, February 2013. See *http://oig.hhs.gov/oei/reports/oei-12-12-00310.asp*). We do not propose to exclude DME infusion drugs from the entire model, just phase I.

• ESRD drugs paid under the authority in section 1881 of the Act. Many ESRD drugs are bundled with services, and relatively few drugs are still paid separately. Given adoption of bundled payments for renal dialysis services and the diminishing number of drugs that are paid separately in this setting, we do not believe that including ESRD drugs in the proposed Part B Drug Payment Model is prudent.

• Blood and blood products. Blood and blood products are prepared in blood banks (rather than drug manufacturing facilities), and have different distribution channels than drugs that are paid under Part B. ASP sales data and compendia pricing for many of these products are not available.

We are also concerned about how to treat drugs that are in short supply. Due to access concerns related to drug shortages, under current Part B drug payment, we exclude drugs that are in short supply from AMP-based price substitution and, instead, we utilize the ASP+6 percent payment amount. The exclusion criteria for the AMP price substitution and the process for determining whether a drug is in short supply are described in the CY 2013 Medicare PFS rule with comment (77 FR 69141). To maintain access to drugs that are in short supply, we believe that incorporating a safeguard is prudent. Thus, for drugs that are included in the model and are reported by the FDA to be in short supply (for example on the FDA Current Drug Shortage list at *http://www.fda.gov/Drugs/DrugSafety/DrugShortages/ucm050792.htm*) at the time that model payment amounts are being finalized for the next quarter, we propose to continue paying for these drugs using the existing statutory methodology in section 1847A of the Act. This safeguard will prevent the use of a payment amount that is lower than that determined using the existing statutory methodology if a drug is in short supply.

We considered proposing to pay the greater of the following: the applicable arm's model payment amount, or the current quarter's statutory payment amount (which is often ASP+6 percent). We believe that this approach could increase payment compared to the model intervention for many drugs that are in short supply; however, we have no evidence that leads us to believe that this approach would have any meaningful positive effect on the resolution of a drug shortage. We are also concerned that incorporating this approach in this model would not provide us reliable information on how pricing impacts the focus, size, and

duration of drug shortages. We are seeking comment on whether paying the greater of the applicable arm's model payment amount, or the current quarter's statutory payment amount has a significant potential benefit that would persuade us to reconsider our position.

The new proposed § 511.200, found in subpart C of this proposed rule, reflects the drugs that we propose to include in the model. Section 511.300(c)(1) addresses drugs that are in short supply.

C. Proposed Participants, Selected Geographic Areas, and Sampling

We propose that providers and suppliers in selected geographic areas furnishing covered and separately paid Part B drugs that are included in this model, under phase I, would receive an alternative add-on to the ASP for Part B drug payments. Under phase II of the proposed model, providers and suppliers in other distinct and/or overlapping geographic areas would receive VBP payments (see sections III.A and B. of this proposed rule for a description of the proposed alternative Part B drug payments; note that one arm combines an alternative ASP add-on payment and VBP). We are interested in testing and evaluating the impact of an alternative ASP payment for Part B drugs alone in phase I of the proposed model, and in phase II, we are interested in testing and evaluating the impact of VBP tools alone and simultaneously in combination with alternative ASP payments (see Table 1 in section I).

The Part B Drug Payment Model requires the participation of all providers and suppliers furnishing covered and separately paid Part B drugs that are included in this model. We believe a model in which participation is required of all providers and suppliers furnishing included Part B drugs in the selected geographic areas is appropriate to ensure that observed outcomes in each arm of the model do not suffer from selection bias inherent in a voluntary participation model and that observed outcomes can be generalized to all providers and suppliers billing Part B drugs. The voluntary structure of some 1115A model initiatives has facilitated testing new payment methodologies that differ significantly from current payment structures, such as BPCI. Voluntary participation can limit the generalizability of model results as voluntary model participants may not be broadly representative of all entities who could be affected by the model. Before BPCI models were scheduled to end, CMS launched the Comprehensive Joint Replacement (CJR) initiative after realizing that the full potential of new payment models requires the engagement of an even broader set of providers and suppliers than have participated to date, including those who may only be reached when new payment models are applied to an entire class of providers of a service. Requiring participation in the Part B Drug Payment Model ensures that the broadest set of providers and suppliers are included in the model from the start. Mandatory participation allows us to observe the experiences of an entire class of providers and suppliers with various characteristics, such as different geographies, patient populations, and specialty mixes, and to examine whether these characteristics impact the effect of the model on prescribing patterns and Medicare Part B drug expenditures.

In determining which providers and suppliers to include in the model, we considered whether the model should be limited to specific specialties that prescribe (or furnish) a significant portion of high cost drugs only or to any entity prescribing drugs for certain indications. Limiting the model to specific specialties that are associated with high cost drug payments would not allow us to observe overall changes in prescribing patterns by practitioners for all Part B drugs. Many types of providers and suppliers furnish Part B drugs that are of low or medium cost in addition to high cost drugs. Medium and low-cost drugs may also be affected by statutory pricing, and CMS believes that understanding their prescribing patterns may be as important as understanding high cost drug prescribing patterns.

Similarly, limiting the model to drugs that only treat a specific indication also would not allow us to assess the full impact of proposed payment changes on Part B expenditures and outcomes as drugs that treat a specific indication rarely represent the full range of drug treatment options that are typically available in Part B, and could miss attributes such as the presence of substitutable therapies and a wide range of pricing. Therefore, given the authority in section 1115A(a)(5) of the Act, which allows the Secretary to elect to limit testing of a model to certain geographic areas, we propose to require all providers and suppliers in selected geographic areas furnishing and receiving separate payment for the drugs separately paid under Part B that are included in this proposed model to take part in the model. We discuss our consideration of geographic area selection and random assignment methodology in more detail below.

1. Overview and Options for Geographic Area Selection

In determining the most appropriate geographic unit for this model, we considered five options: (1) States; (2) Core Based Statistical Areas (CBSA); [2] (3) Dartmouth Atlas of Health Care's Hospital Referral Regions (HRR); [3] (4) ZIP codes [4] and (5) PCSA.[5]

For phase I of the model, we are proposing an alternative ASP payment method to be tested against the current ASP+6 percent method (see section III of this proposed rule), that creates three requirements for the selection of geographic areas. First, the areas need to be sufficiently large so that most providers and suppliers do not have practice locations in multiple areas. A provider or supplier with practice locations in multiple areas may be subject to multiple payment changes. This situation could create an unnecessary administrative burden for the provider or supplier. It may also create an opportunity for a provider or supplier to attempt to influence a patient to receive a medically appropriate drug paid under Part B at the practice location that provides higher payment to the provider or supplier. Moreover, we want to test the alternative payment methods in circumstances that most closely resemble how Part B drug payment policy currently is implemented, with only one payment methodology applicable to a particular provider or supplier for a particular Part B drug. Under all of these circumstances, a larger unit of analysis is preferred.

Second, the areas need to be sufficient in number to ensure adequate statistical power for the evaluation of the model. In general, the larger the number of geographic units available for assignment to the intervention and comparison groups, the greater our ability to determine whether measured differences between the intervention and comparison groups are attributable to the effects of the model or to random chance. Thus, in choosing a unit of analysis, a choice that creates more independent geographic units is preferred.

Third, the areas need to have characteristics that are relatively more similar when comparing one to another so that observed changes at the area level can be more clearly attributed to

[2] *http://www.census.gov/population/metro/.*

[3] *http://www.dartmouthatlas.org/downloads/methods/geogappdx.pdf.*

[4] *http://www.census.gov/geo/reference/zctas.html.*

[5] *http://bhpr.hrsa.gov/healthworkforce/data/primarycareserviceareas/index.html.*

the intervention and not to other factors. If two groups of areas are exactly alike in all relevant aspects before an intervention is applied, then after the intervention is applied to one group of areas and not the other, we can conclude that any differences that we observed between the two groups are a result of the intervention. In practice, while it is possible to select intervention and comparison areas in a way that ensures that the intervention and comparison groups are similar with respect to a set of observed characteristics (an approach known as ''stratification''), it is generally impossible to construct groups that are identical in all respects because not all relevant differences can be observed. Instead, the standard approach to evaluating the effects of an intervention is to select a sufficiently large number of intervention and comparison areas to ensure that any unobserved differences between the two groups are likely to be small (on average), which permits the differences between the groups to be attributed to the intervention with reasonable confidence. The less variation there is among the areas being studied (after accounting for any reduction in variation due to stratification), the smaller the number of intervention and comparison areas required to reliably detect an effect of a given size (or, equivalently, the smaller the effect that can reliably be detected for any given number of intervention and comparison areas).

In general, with geographic areas as the unit of analysis, larger areas are likely to exhibit more substantial cross-area variation with respect to relevant characteristics such as the total number of beneficiaries as well as variations in the number of beneficiaries per square mile, or beneficiary population density. While, as noted above, stratification can help reduce the differences between the intervention and comparison areas with respect to observed characteristics, when areas vary widely and there are relatively few potential areas to test, stratification may have a limited ability to ensure balance with respect to observed characteristics and thereby increase the power of a test.

In selecting the most appropriate geographic unit for the model, the first option that we considered for a unit of analysis was entire states. States represent a sufficiently large area so as to prevent most individual providers or suppliers from experiencing multiple interventions under the model simultaneously. However, states as a unit of analysis also would greatly limit the number of independent geographic areas subject to selection under the model and, therefore, would decrease the statistical power of the model test to the extent that none of the anticipated changes in Part B drug use or expenditures due to the model interventions could be measured with statistical confidence.

For the second option, we considered CBSAs, a Census-defined core area containing a substantial population nucleus together with adjacent communities that have a high degree of economic and social integration. There are 929 CBSAs, which include 388 Metropolitan Statistical Areas (MSAs), with an urban core population of at least 50,000, and 541 Micropolitan Statistical Areas (µSA), with an urban core population of at least 10,000 but less than 50,000. All remaining areas within a state that are not included in CBSAs are lumped into one area designated as Outside Core Based Statistical Areas.[6] The choice of a geographical unit based on CBSA status could mean an MSA, or a Combined Statistical Area (CSA) that consists of adjacent MSAs or µSAs or both. Unlike CJR, where the providers and suppliers of services included in the model tend to be concentrated in high population density regions captured by CBSAs, in this proposed model, the practice locations of Part B drug providers and suppliers are distributed more often in less population dense areas. Therefore, the choice of a CBSA unit for the model would not include all providers and suppliers eligible for the model in regions that are fully representative of the entire country. To address this issue, we would anticipate designating the non-CBSA portions of each state (if any) as additional units of analysis to ensure the model addresses all eligible providers and suppliers. These non-CBSA areas could either be considered a single large unit or could be divided into counties. If CBSAs were adopted as the unit of analysis for the model test, they are sufficiently large to prevent most individual providers or suppliers from experiencing two intervention arms simultaneously. The 929 CBSAs divided equally among the three proposed model test arms and the fourth control arm would result in approximately 232 CBSAs per arm. This could provide minimally sufficient statistical power to detect moderate changes in Part B drug expenditures or utilization, provided that appropriate stratification or analytic adjustments are made to address the wide variation across CBSAs in size and population density. However, having only minimally sufficient power may reduce the opportunities to conduct deeper analyses, such as examining whether specific aspects of the VBP intervention have a greater impact compared with smaller and more uniform areas.[7] The differences in sizes and population densities of CBSA subunits may require additional stratification or analytic adjustments to be able to generalize results.

For the third option, we considered HRRs, which represent regional health care markets for tertiary medical care. There are 306 HRRs, which include at least one city where both major cardiovascular surgical procedures and neurosurgery are performed.[8] The number of HRRs is an improvement relative to states, but would not provide sufficient statistical power for an effective evaluation of this model. Therefore, the HRR is not the most appropriate unit of analysis for this model.

Fourth, we considered the smallest geographic unit directly linkable to Medicare Part B claims, the U.S. Postal Service's five digit ZIP codes.[9] ZIP codes are assigned by the U.S. Postal Service to every address in the country. They represent a system of 5-digit codes that geographically identifies individual Post Offices or metropolitan area delivery stations associated with every mailing address. There are more than 42,000 five digit ZIP codes.[10] The number of ZIP codes would provide sufficient statistical power for the model evaluation analyses. However, we are concerned that ZIP codes are very small geographic areas. While hospital outpatient departments bill as part of the hospital from a single location with a single ZIP code, large physician practices can span multiple ZIP codes. Supplier claims include a service location ZIP code that determines the geographic adjustment, and the physician must bill based upon the ZIP code of the location where services were

[6] On July 15, 2015, OMB issued OMB Bulletin No. 15–01, which established revised delineations for MSAs, µSAs, and CSAs, and provided guidance on the use of the delineations of these statistical areas. A copy of this bulletin may be obtained at *https://www.whitehouse.gov/sites/default/files/omb/bulletins/2015/15-01.pdf.* The Standards for Delineating Metropolitan and Micropolitan Statistical Areas Notice upon which the 2015 revisions are based was published June 28, 2010 and corrected July 7, 2010.

[7] Murray, D.M., Varnell, S.P., & Blitstein, J.L. (2004). Design and Analysis of Group-Randomized Trials: A Review of Recent Methodological Developments. American Journal of Public Health, 94(3), 423–432.

[8] *http://www.dartmouthatlas.org/downloads/methods/geogappdx.pdf.* pp.294–5. Accessed Jan 13, 2016.

[9] *http://faq.usps.com/#Zone.* Accessed Jan 13, 2016.

[10] *http://faq.usps.com/?articleId=219334.* Accessed Jan 13, 2016.

rendered. While sampling by ZIP code would improve the power of the model's evaluation, it could expose physicians to multiple payment methods during the model test, which as we discussed above, is an unnecessary burden and has no analog in current policy.

In seeking an area definition that is sufficiently large to minimize the potential for exposing providers or suppliers to multiple test payment alternatives, while sufficiently small to ensure a sufficient numbers of areas, and to limit cluster effects due to differences that cannot be balanced using stratification, we considered aggregations of contiguous ZIP codes. Random aggregations of contiguous ZIP codes can be developed to optimize the characteristics required for a robust test of the model. Developing a unit of analysis tailored to the model test has merit, but the goal of this model is not to develop a new unit of analysis, and the process for doing so would require considerable resources for definition and validation. We would prefer to adopt an existing geographic unit of analysis that meets the requirements for testing the model.

Finally, we considered PCSAs, which were defined and updated under contract to the Health Resources and Services Administration (HRSA) by The Dartmouth Institute.[11] With the goal of representing service areas for office based primary health care services, PCSAs were defined based upon patterns of Medicare Part B primary care services (specifically, patterns linking the residence of Medicare Part B beneficiaries with the practice locations for evaluation and management visits to Medicare participating physicians in primary care specialties [12]). While the service areas for evaluation and management visits may not directly match Part B drug-service areas, they are likely to be a closer match than randomly aggregated ZIP codes. CMS analyzed CY 2014 claims data, including provider and supplier practice locations for those delivering Part B drugs relative to PCSA boundaries using the practice location of the performing National Provider Identifier (NPI) or the billing location of the organizational NPI for hospital outpatient departments, and observed that almost all claims for an individual provider or supplier were billed within a single PCSA. It is possible, however, that large practices may have practice locations in more than one PCSA. As a result, there could be situations during the model test in which those large practices are exposed to multiple arms, and thus to different payment methods simultaneously.

Nevertheless, we believe that of all existing units of analysis, PCSAs are the most appropriate unit for testing this model in that they exhibit a desirable mix of size, internal homogeneity relative to differences between areas, and number. This preference is based on the specifics of this model, including the types of services involved, the national scope, and the simultaneous testing of multiple payment alternatives, and is not meant to imply that other units of analysis would not be appropriate in a different model (for example, the MSA used in the CJR model [13]).

We propose to require all providers and suppliers furnishing Part B drugs that are included in the model to participate in the Part B Drug Payment Model. Participation means that any claim submitted for a Part B drug in the model will be paid according to the payment applicable for the control group, ASP+6 percent, or one of the proposed test alternatives (see Table 1). We propose the payment method used will be determined by the PCSA associated with the claim. We propose to associate claims with a PCSA on the basis of the ZIP code of the appropriate performing or billing NPI or beneficiary recorded on the claim. The service location ZIP code linked to the performing NPI (recorded in item 32) will be used for practitioner claims (CMS–1500). The ZIP code in the CCN address associated with a hospital will be used for hospital outpatient department claims. The residence ZIP code of the beneficiary receiving a Part B drug will be used for DME claims (CMS–1490S). Each five digit ZIP code identified in U.S. Postal Service ZIP code files is linked to a PCSA. The PCSA associated with the claim in the manner above will be assigned to one of the three test arms or the control arm of this model test (see below for PCSA assignment method). We include a summary table of the proposed model under section I.B.3. of this proposed rule.

2. PCSA Selection

There are 7,144 PCSAs in the United States, covering all 50 states.[14] Because the waiver for Medicare hospital payment rules in the Maryland All-Payer Model [15] may create unobservable bias in the prescribing patterns or payments for the Part B drugs in this model test, we propose to exclude Part B drug claims from providers and suppliers associated with the 96 PCSAs located in Maryland from the Part B Drug Payment Model. This exclusion leaves a total of 7,048 PCSAs in the model test.

To test the impact of the model's intervention arms compared to the control (discussed in section III. of this proposed rule and also see summary table in section I.B.3.), we propose to assign all 7,048 PCSAs to an arm of the model test, approximately 1,700 PCSAs to each of the control and three test arms. Under the control arm, we propose a provider or supplier would receive payment for a Part B drug claim according to the current ASP+6 percent methodology. Under the arms with an ASP payment alternative, we propose a provider or supplier would receive payment for a Part B drug claim according to the assigned alternative method, ASP+2.5 percent + flat fee. Under the two model arms with the VBP tools in phase II, we propose a provider or supplier would receive payment for a Part B drug claim according to the assigned payment method, either the current ASP+6 percent methodology or the ASP payment alternative (ASP+2.5 percent + flat fee), but with one or more of the VBP tools discussed in section III.B. The model is designed to allow the simultaneous testing of the ASP payment alternative separately compared to the control without VBP, and with the ASP payment alternative interactively with the VBP tools.

The assignment of each PCSA to an arm of the study will be based on a stratified random approach. We consider a randomized design to be the best method for achieving balance in unobserved confounding factors that otherwise could bias the test results. Randomized designs can be made better with stratification prior to random assignment to assure representation of population subgroups in the sample. Simple random assignment will ensure

[11] *http://datawarehouse.hrsa.gov/data/dataDownload/pcsa2010download.aspx.* Accessed Jan 13, 2016.

[12] Goodman, DC, et al. Primary Care Service Areas: A New Tool for the Evaluation of Primary Care Services. Health Services Research 2003:38:287–309.

[13] *https://www.federalregister.gov/articles/2015/11/24/2015–29438/medicare-program-comprehensive-care-for-joint-replacement-payment-model-for-acute-care-hospitals#h-32.* Accessed Jan 13, 2016.

[14] *http://datawarehouse.hrsa.gov/DataDownload/PCSA/2010/p_103113_1.dbf,* Accessed Jan 13, 2016.

[15] This initiative will update Maryland's 36-year-old Medicare waiver to allow the state to adopt new policies that reduce per capita hospital expenditures and improve health outcomes as encouraged by the Affordable Care Act. *https://innovation.cms.gov/initiatives/Maryland-All-Payer-Model/,* accessed Jan 13, 2016.

that each stratum contains the same proportion of PCSAs in each treatment arm. Strata are mutually exclusive temporarily defined groups of PCSAs proposed to be randomly assigned in equal proportions to the control and three model test arms.

The current strata proposed are defined by the number of Medicare beneficiaries being furnished Part B drugs in each PCSA and the mean Part B drug expenditures per beneficiary. These two factors drive the differences among PCSAs for the purpose of this model test and both factors have a significant number of outliers that must be evenly distributed to each arm. Stratification gains are obtained with six or fewer strata within each factor. In this proposed rule, based upon an analysis of the CY 2014 claims for Part B drugs included in this model, we propose to use a single cut point of Part B drug beneficiary counts per PCSA at 1,500 and two cut points for the distribution of mean dollars expended for Part B drugs per beneficiary per PCSA of $500 and $3,000. These three cut points in two factors result in six strata from which the PCSAs will be assigned to the one control and three test arms of the model in equal numbers by simple randomization. We solicit comment from the public regarding additional factors or cut points that may be necessary to achieve balance across the three test arms and the control arm in this model test.

Because we propose to randomly assign PCSAs within each stratum in equal proportion to the one control and three model test arms, the randomized assignment should account for unobservable confounding factors that may affect outcomes of interest while simultaneously assuring that population subgroups are equally represented within each arm of the model. After randomization of the PCSAs, we can adjust our analyses of the model test results to account for any imbalance across the arms of the model in observable characteristics that were not the basis of stratification, such as the beneficiary population's average socio-economic status in a PCSA.

The stratified random sample design cannot support analyses of all potential sub-groups of providers and suppliers, patients, and drugs at the same level of precision or with the same statistical power as it supports the primary analysis of a model test. However, we believe stakeholders will be interested in impacts of the model's interventions on these subgroups. We expect the model evaluation will employ a range of appropriate analytic methods to address questions of interest to stakeholders and to provide additional support to the overall model test analyses. We seek information on which sub-group analyses might be of more interest and which additional analytic methods may be most appropriate. New section 511.105 reflects our proposed definition of geographic areas.

III. Payment Methodology

CMS is required to reduce Medicare payments for Part B drugs under the Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA), as amended by the Budget Control Act of 2011. The application of the sequestration requires the reduction of Medicare payments by two percent for many Medicare FFS claims with dates-of-service on or after April 1, 2013. The discussion in this proposed rule does not consider reductions applied to Medicare payment under sequestration, which is independent of Medicare payment policy.

A. Phase I: Proposed Modifications to the ASP Add-On Percentage for Drugs Paid Under Part B

In general, payment for drugs paid under Part B varies over a wide range; drugs may be paid between several dollars per dose to thousands of dollars per dose. Drug therapy may require one or a few doses, or it may require many doses over a long time period, sometimes indefinitely. As we developed potential approaches for evaluating changes to the add-on percentage, we considered the effect of a proposal on the drug price points (that is, high, medium and low cost Part B drugs), as well as the types of drugs that are paid for under Part B. We also considered the effects on entities within the drug supply chain (for example, manufacturers and wholesalers), beneficiaries, providers, suppliers, and the Medicare program. Overall, we believe that phase I of this model will not change how Part B drugs are acquired by providers or suppliers, or how drug manufacturers sell their products to providers, suppliers, or intermediaries such as wholesalers. As discussed in the paragraphs below, phase I would establish payment at ASP plus a 2.5 percent add-on percentage and a flat fee per administration day as a budget neutral test. We propose to derive the flat fee from the difference in total payment between total payments with a 6 percent add-on percentage across Part B drugs in the most recently available calendar year claims', which is CY 2014, and total estimated payment for Part B drugs in the same set of claims with a 2.5 percent add-on percentage to the flat fee. We propose to divide this difference by the total number of encounters per day per drug in the CY 2014 claims data. Because total payments made under this phase are not expected to change considerably, we anticipate that providers or suppliers will continue to buy and bill for Part B drugs that they furnish to their patients. Having established the flat fee for the initial year in 2016, we propose to update the flat fee amount each year by the percentage increase in the consumer price index (CPI) for medical care for the most recent 12-month period. The dollar value of the 2.5 percent add-on percentage would automatically adjust to changes in price levels as ASP changes. The modeling methodology is discussed in section 1 below.

We are proposing a budget neutral approach to isolate the impact of changes to the ASP add-on amount without introducing additional savings as a second potential source of behavioral adjustments. We do not expect a sizable overall reduction in Part B drug spending associated with phase I of this model, but we do anticipate an incentive to use higher value drugs.

In sections 2 and 3, we describe the proposed approaches for modifying the ASP add-on amount. The approaches discussed below are intended to minimize the risk of excessively large or small add-on payments for individual Part B drugs across the range of Part B drug prices. At the same time, our goal is to minimize providers' and suppliers' (including physicians') financial incentives to prescribe more expensive drugs. This phase of the model would not affect other payments that are associated with furnishing a drug such as the clotting factor furnishing fee, or supplying and dispensing fees that are authorized under section 1842(o) of the Act.

1. Methodology for Creating Modeling Data Set

To determine the initial aggregate Part B drug annual spending for the implementation of phase I in 2016, we are proposing to use CY 2014 utilization for drugs paid under Part B to calculate the amount of payments that were associated with the 6 percent ASP add-on percentage. For a detailed discussion of those drugs, please see section II.B. of this proposed rule. The data set includes drugs that are in the model.

We begin with CY 2014 Part B institutional hospital outpatient claims and Part B supplier claims data processed through June 30, 2015. We note that the payment amounts on the CY 2014 claims include the effect of sequestration. Therefore, to establish

baseline payment at ASP+6 percent within the Part B Drug Payment model, we first calculate ASP+0 percent by dividing the line payments by 1.043 and then the full ASP+6 payment by multiplying by 1.06.

We propose the following approach to develop the supplier and outpatient hospital claims dataset for modeling purposes; this approach is intended to remove unusable data, errors and inconsistencies in the data set. We propose to exclude all claims billed by providers and suppliers in the state of Maryland as hospital outpatient services are paid under the Maryland All-Payer Model and not at ASP+6 percent. We also propose to exclude claims from American Samoa, Virgin Islands, and Guam because hospitals in these locations are paid at reasonable cost. We propose to remove Medicare secondary payer claims from the modeling dataset because the payment amounts in situations where Medicare is secondary may not reflect the Medicare payment amounts that are determined under statutory authority, such as the methodology in section 1847A of the Act, and used when Medicare is the primary payer. We propose to remove individual lines with units three standard deviations outside the geometric mean units billed by HCPCS, specific to the applicable portion of the dataset (supplier or hospital claims) because we believe that payments deviating from the mean by this amount are likely errors and they do not represent payment amounts that are determined and published in our price files. Additionally, we propose to remove claim lines that were rejected or denied by the claims systems for not meeting the Medicare requirements for payment and restrict the dataset to drugs that we are proposing to include in phase I of the model.

OPPS claims will be handled in a manner that is similar to what we apply in the OPPS rates setting process; the process was established in 2000 and has been updated annually (*https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalOutpatientPPS/Hospital-Outpatient-Regulations-and-Notices.html*). We propose to include hospital bill types 12X (Hospital Inpatient (Medicare Part B only)), 13X (Hospital Outpatient), 14X (Hospital—Laboratory Services Provided to Nonpatients), which are paid under the OPPS. We propose to exclude claims not paid under the OPPS based on provider type, similar to the standard OPPS rate setting process, including those from all-inclusive hospitals, Religious Nonmedical Health Care Institutions, and critical access hospitals. We are proposing to exclude certain OPPS claims: claims with more than 100,000 units on a service line, claims with condition codes '04' (HMO enrollee—information only bill), '20' (beneficiary requested billing), '21' (billing for denial notice), and '77' (payer fully paid claims), claims with more than 30 related condition codes, claims with more than 300 revenue lines on the claim, and claims where the revenue center payment is equal to the charge amount. Those claims are either not paid or may contain aberrant data. We also would exclude claim lines for hospitals with erroneous cost-to-care ratios (CCRs) (greater than 90 or less than 0.0001) on their cost reports. We propose to exclude all claim lines for packaged drugs in the hospital outpatient setting because such items are not paid separately and are not subject to the 6 percent add-on.

We propose a number of exclusions that would apply specifically to supplier claims. We propose to exclude claims with the following facility place of service codes because these places of service are not typically associated with the use of ''incident to'' drugs: '21' (Inpatient Hospital), '22' (Outpatient Hospital), '23' (Emergency Room-Hospital), '24' (Medicare-participating Ambulatory Surgical Center (ASC) for a HCPCS code included on the ASC approved list of procedures), '26' (Military Treatment Facility), '31' (Skilled Nursing Facility (SNF) for a Part A resident), '34' (Hospice—for inpatient care), '41' (Ambulance—Land), '42' (Ambulance—Air or Water), '51' (Inpatient Psychiatric Facility), '52' (Psychiatric Facility—Partial Hospitalization), '53' (Community Mental Health Center), '56' (Psychiatric Residential Treatment Center), and '61' (Comprehensive Inpatient Rehabilitation Facility) because the proposed Part B Drug Payment Model would not apply. We propose to remove claims with Carrier number ''00882'' which are those associated with the Railroad Retirement Board benefit since they are paid under a separate payment methodology.

We propose to exclude DME MAC claims for drugs infused through a covered item of DME from our modeling dataset. As discussed in section II.B. of this proposed rule, we propose to exclude drugs infused with a covered item of DME from phase I of the Part B Drug Payment Model. Therefore, we also propose to remove claim lines for these codes from the set of DME MAC claims to establish the flat fee amount.

In addition to soliciting comment on our proposal to exclude the data that is described above, we are interested in stakeholder comments on whether the CY 2015 claims updated as of March might be appropriate as an alternative dataset to establish the CY 2016 flat fee amount in the final rule. We note that for the final rule, more CY 2014 claims data would be available due to additional claims processing, which we would include in modeling the final rule.

We provide a summary file containing the Part B drug model payment and utilization data used to calculate the flat fee amount on the CMS Web site with display of this proposed rule. The summary file contains no personally identifiable information and we exclude drug codes with low beneficiary volume from the summary file.

2. Add-On Proposal: Percentage Plus a Flat Fee

As discussed previously, a flat percentage, like the current 6 percent add-on percentage to ASP, may create an incentive for using more expensive drugs because the add-on portion of the payment amount is higher for more expensive products (MedPAC Report to the Congress Medicare and the Health Care Delivery System June 2015, page 68). A flat add-on fee alone, for example $30 per prescribed dose, that does not vary with the cost of the drug may potentially increase the risk of having payments fall below acquisition costs for expensive drugs, particularly for providers and suppliers whose acquisition costs are near or above a drug's ASP. Also, without any sort of limits or constraints, a flat add-on fee that is large (relative to the cost of an inexpensive drug) may also promote the overuse of inexpensive drugs like intravenous fluids and antihistamine injections by creating a profit incentive for overprescribing inexpensive drugs that may be associated with little risk of audits or claim denials.

Changing the add-on amount from a percentage that applies in all circumstances to a lower percentage plus a flat fee that is limited could minimize the potential for underpayment or overpayment across the entire range of prices for Part B drugs. For example, the add-on payment for high cost drugs could be lowered by decreasing the add-on percentage to an amount that minimizes the risk for providers and suppliers losing money on expensive drugs, and the add-on payment for inexpensive drugs could be preserved through the use of a flat fee that covers expected price variations among inexpensive drugs and decreases the risk for underpayment. For inexpensive drugs, inappropriate

incentives that could lead to over utilization could also be mitigated by a limit on the flat fee to decrease the motivation for profit-oriented overprescribing of very inexpensive drugs that are not typically subject to medical review.

A specific approach for the use of an add-on percentage with a flat fee was described by the MedPAC in a recent report (MedPAC Report to the Congress Medicare and the Health Care Delivery System June 2015, pages 65–72). MedPAC modeled this add-on approach as budget neutral in aggregate, meaning that it would not change total Medicare Part B spending. MedPAC evaluated changing the add-on to 2.5 percent of ASP plus a budget neutral flat fee per dose of $14. The result redistributed add-on payments by decreasing payments for expensive drugs in favor of drugs that are paid at lower amounts. Redistribution under this approach favors the provider specialties and suppliers that utilize relatively inexpensive drugs. The June 2015 MedPAC report determined that under this approach physician specialties that heavily utilize drug therapy would see a decrease in drug revenues while specialties that utilize fewer drugs like primary care would see an increase in drug revenue.

We propose to utilize the same basic approach that was described in the June 2015 MedPAC report: A fixed percentage with a flat fee, specifically, a fixed percentage of 2.5 percent and a flat fee of $16.80 per drug per day administered (an example of the approach appears at the end of this paragraph). We propose to update the flat fee amount annually. The flat fee amount of $16.80 was determined using the data set described in section III.A.1. We agree with MedPAC that this approach limits financial incentives for overuse across the range of Part B drugs and the values that we are proposing are similar to those in the MedPAC report. We have chosen a 2.5 percent starting point because we agree with MedPAC's assessment that this value should be sufficient to cover markups from wholesalers, such as prompt pay discounts that are not passed on to purchasers. In the June 2015 report that is cited in this proposed rule, MedPAC stated that there is anecdotal evidence that such markups are between 1 and 2 percent, but MedPAC was not aware of data that could verify this estimate. We are not aware of information that conflicts with the assessment. The proposed add-on fee of $16.80 is also comparable to the MedPAC determined value of $14. In the Part B Drug Payment Model, application of the flat fee would result in the following: a primary care provider would receive $33.60 ($16.80 per drug) for two model drugs given during an office visit in addition to 2.5 percent of the ASP for each of the drugs. If another practitioner, such as a rheumatologist, saw the patient later in the day, and administered one model drug, that practitioner would receive $16.80 in addition to 2.5 percent of the ASP for the prescribed drug.

We propose to keep the 2.5 percent add-on constant over the duration of the model, but propose to update the flat fee each year based on the percentage increase in the CPI Medical Care (MC) for the most recent 12-month period. This update method is stipulated in section 1842(o)(5)(C) of the Act for use with the blood clotting factor furnishing fee. We considered several potential updates including the producer price index for Pharmaceuticals for Human Use (Prescription) or an inflation factor derived from changes in ASP for Part B drugs. We propose the CPI MC because we believe that the flat fee addresses many different services included in drug acquisition activities similar to the services including in furnishing clotting factors. The CPI MC is both widely available and based on an accepted methodology. We solicit comment on whether a different update factor would be more appropriate.

For 2016, we would establish alternative ASP pricing under phase I of the model so that total spending for Part B drugs included in the model under phase I would be equal to aggregate spending for the same set of drugs in our CY 2014 claims data. The dollar value of the flat fee of $16.80 is proposed, but we may refine this figure for the final rule if we use more recent versions of the claims data, which would include additional utilization and payment information. We would plan to update the flat fee for January 2017 using the CPI MC and annually thereafter. We anticipate using a G-code, that providers and suppliers billing in geographic areas assigned to this approach (ASP+2.5 percent + flat fee) would use to bill for the flat fee portion of the payment. We propose to continue our standard practice of updating the weighted average portion of drug payment amount (that is, the ASP+0 portion of the payment) on a quarterly basis using the manufacturers' sales data and the weighted average calculations that are used when determining payment amounts that are set forth in section 1847A(c)(5) of the Act.

We believe that the per drug per day administered limit will mitigate profit-oriented overprescribing of inexpensive drugs, but we are concerned that an add-on that is roughly equal to or slightly more than the cost of a drug may still leave some incentive for overusing some inexpensive drugs. While we expect that contractors will continue to examine claims (as well as patterns of claims) for potentially unnecessary use (that is use that is not reasonable or necessary), we also seek comment on whether additional measures should be taken to limit add-on amounts, especially for very low cost drugs, or whether an alternative approach to calculating the percent and flat fee should be considered, such as an additional one to three tiers of decreasing flat dollar amounts that would provide lower flat fees for very inexpensive drugs, while still maintaining overall budget neutrality.

3. Comment Solicitation: Additional Tests of Add-On Modifications

In addition to MedPAC's discussion for pairing a reduced percentage add-on with a flat fee per drug per day administered, we considered whether it would be helpful to test additional variations of the ASP add-on. As proposed, the model would have four arms: a control and three test arms including, modified ASP add-on only, VBP only, and modified ASP add-on and VBP. However, we are concerned that adding another variation in phase I would increase the number of arms in the model which may negatively impact the statistical power of this model.

We also considered whether other variations of the ASP add-on percentage would be a useful complement to the proposed ASP+2.5 percent + flat fee, such as a higher starting percentage, (instead of 2.5 percent, using 3 percent or 3.5 percent), a flat fee without a percentage add-on in lower quartiles, or a tiered approach in which we would vary the percentage or flat fee add-on across several tiers of drugs defined based on cost.

We considered defining tiers for an alternative approach based on quartiles because they create several steps between the highest and lowest add-on values; however, we also considered whether a different number of steps, such as deciles, or a gradient approach would result in more consistent payments for groups of similar drugs. One method that we considered to create the quartiles was to array the annual payment per beneficiary for each drug from lowest to highest annual payment and then divide the distribution into quartiles based on relatively even number of doses. We established quartiles for drugs with annual per beneficiary payment of greater than $1,000, $50.01 to $1,000,

$10.01 to $50, and less than or equal to $10 and distributed the aggregate add-on amount among the tiered quartiles. Like the percentage plus flat fee option, a tiered add-on could redistribute the add-on payments toward less expensive drugs based on quartiles developed from annual per beneficiary spending for each drug. However, a budget neutral redistribution across quartiles also resulted in very high add-ons for inexpensive drugs (for example, under an approach in which a different add-on percentage was set for each tier, add-on percentages for drugs with as ASP of less than $10 exceeded 200 percent).

Ultimately, we were concerned that testing another variation of the add-on percentage modification in phase I would not provide us with significant additional information. We are requesting comments from the public on whether the tiered approach described above, a variation (such as using deciles or a gradient) or another approach for modifying the add-on would be a useful complement to the percentage and flat fee approach that is proposed in section III.A.2. We are interested in gaining perspective on whether the approaches are sufficiently different to justify testing them, noting that adding arms to the study will likely impact the statistical power of this model and other overlapping models, especially the OCM.

We are also interested in understanding whether any advantages from testing these approaches are sufficient to overcome the potentially significant disadvantages of these approaches. In particular, we are concerned that tiered approaches could set a very different add on amounts for each of the four quartiles. This could create large changes (''cliffs'') in payment amounts at the boundaries between quartiles. In addition, tiered approaches that specify varying percentage add-ons by quartile could generate very high percentage add-ons for the bottom three quartiles. This could create incentives for manufacturers and suppliers to vary prices of drugs near the quartile boundaries in order to increase Medicare's payment rate. We are also concerned about the potentially high add-on payments for inexpensive drugs, their impact on providers, suppliers, and patients, and if such an approach were tested, whether additional steps to limit such payments should be considered.

Finally, we are also interested in receiving comment on whether there are any common elements within groups of drugs that might provide a basis for varying the flat fee across groups of drugs that would justify higher payments, such as requirements for cold handling, special packaging, or other contributors to costs. If such factors could be identified, we could also use this information to vary the flat fee appropriately under the ASP+2.5 percent + flat fee proposal.

B. Phase II: Applying Value-Based Purchasing Tools

1. Introduction

In the second phase of this model, we propose to implement VBP tools for Part B drugs using value-based pricing and clinical decision support tools—tools often used collectively to manage a prescription drug benefit by commercial health plans, PBMs, hospitals, and other entities that manage health benefits and drug utilization. Medicare Part D plans and the commercial insurance sector have used these tools for years to successfully manage health benefits and drug utilization, and we believe that the approaches, when appropriately structured, may be adaptable to Part B to improve patient care and manage drug spending. The revision to the 6 percent ASP add-on percentage proposed for phase I of this model broadly addresses financial incentives that may affect prescribing. However, these revisions do not directly address differences in payment when there is a group of therapeutically similar drugs, nor are they able to test the benefits of using alternative incentives to improve the effectiveness, safety, and quality of physician prescribing patterns for Part B drugs.

Medicare Part D plans, PBMs, other third party payers, and entities like hospitals use a variety of VBP tools, such as value-based pricing, clinical decision support tools, and rebates and discounts, to improve patient outcomes and manage drug costs.[16] The VBP tools vary in commercial implementation by scope and intensity; however, many of the tools, particularly those used by PBMs, are applied primarily in the retail pharmacy setting. PBMs and third party payers also agree on discounts and rebates for placement of drugs on a tiered formulary or for volume of business provided to a specific manufacturer. The application of these tools to drugs that are typically paid for under a medical benefit, such as physician administered drugs, has the potential to result in significant savings.[17] Based on background work done on this model, we believe private payers are currently using these tools to manage drugs under a medical benefit.

Below, we propose the types of VBP tools that potentially could be used in the Part B Drug Payment Model to improve patient outcomes and manage drug costs. We propose to implement one or more of the following value-based pricing strategies, including reference pricing, pricing based on safety and cost-effectiveness for different indications, outcomes-based risk-sharing agreements, and discounting or elimination of patient coinsurance amounts. We also propose to implement a tool to support clinical decisions for appropriate drug use and safe prescribing. The tool would provide education and data on the use of certain Part B drugs to prescribers; such information would not be meant to interfere or substitute for medical decision making. New section 511.305 reflects our proposed VBP model requirements. We are mindful that, in particular circumstances, the arrangements discussed here, if not properly structured and operated, could pose a risk of abuse. In adapting and using VBP tools in the Part B Drug Payment Model, one of our goals is to ensure that the model promotes integrity, transparency, and accountability. Finally, we note that we would implement these proposed tools through a contractor, as we do with many Medicare programs. We would retain final review and authority over the final version of any VBP tools implemented under phase II.

2. Value-Based Pricing Strategies

The application of the value-based pricing strategies discussed in this section would be limited. We are proposing value-based pricing strategies that include one or more of the following specific tools: reference pricing, indications-based pricing, outcomes-based risk-sharing agreements, and discounting or eliminating patient coinsurance amount. This group of tools would serve as a framework for interventions for selected Part B drugs. We would gather additional information on the proposed tools, including which specific Part B drugs are suitable candidates for the application of specific tools within the group. We would finalize the implementation of specific tools for specific HCPCS codes after soliciting

[16] Hoadley J. Adapting Tools from Other Nations to Slow U.S. Prescription Drug Spending. NIHCR Policy Analysis No. 10. Aug. 2012. National Institute for Health Care Reform. *http://www.nihcr.org/Drug_Spending.*

[17] Dorholt M. Advancing Drug Trend Management in the Medical Benefit. Managed Care. June 2014. *http://managedcaremag.com/archives/2014/6/advancing-drug-trend-management-medical-benefit.*

public input on each proposal by posting on the CMS Web site, and we would allow 30 days for public comment. We would provide a minimum of 45 days public notice before implementation. Under phase II, we do not intend to apply these tools to all Part B drugs; we plan to implement the use of the tools in a limited manner for certain drug HCPCS codes after considering these tools' appropriateness to specific Part B drugs within those codes.

Value-based pricing for pharmaceuticals involves linking payment for a medicine to patient outcomes and cost-effectiveness rather than solely the volume of sales.[18] Under phase II of this model, we seek to test approaches for transitioning from a volume-based payment system into one that encourages or even rewards providers and suppliers who maintain or achieve better patient outcomes while lowering Part B drug expenditures. The market today uses the term ''value-based'' to encompass a wide variety of different options designed to improve clinical results, quality of care provided, and reduce costs.[19] The following examples highlight the range of value-based pricing tools currently in use, and we propose the testing of one or more of these tools during phase II of the model.

First, providing equal payment for therapeutically similar drug products [20] is one form of value-based pricing that we propose to implement as part of phase II of the model. The private market capitalizes on this concept through reference pricing, which refers to a standard payment rate—a benchmark—set for a group of drugs.[21] A benchmark is set based on the payment rate for the average price [22] for drugs in a group of therapeutically similar drug products, the most clinically effective drug in the group,[23] or another threshold that is specifically developed for such drug products, like a specified percentile of the current price distribution; and all drugs from the group are then paid based on this amount. For example, if sodium hyaluronates used for intra-articular injection were chosen as candidates for reference pricing, each of the HCPCS codes determined to fall into this group would be paid a benchmark rate based on the current payment rate for a product or products in this group. Based on a review of the evidence, we may determine that the specific benchmark for this group should be the current payment rate for the HCPCS code including the most effective drug in the group. Individual characteristics of each group of drugs considered for reference pricing, such as relative effectiveness demonstrated in competent and reliable scientific evidence, would be taken into account before selecting a benchmark rate. Reference pricing eliminates the direct link between the purchase prices paid by suppliers and providers for Part B drugs and payment rates for those drugs from insurers, thereby providing stronger incentives to evaluate outcomes and cost together when determining treatment regimens. When multiple drugs in a group have varying levels of effectiveness, the payment for the most clinically effective drug in the group could be paid based on a benchmark while the payment for the remaining products could be adjusted downward based on their effectiveness in relation to the most clinically effective drug. We propose to include reference pricing in phase II.

We understand that some insurance plans allow providers and suppliers to hold the patient responsible for paying the difference between their prescribed drug and the benchmark set for the group of therapeutically similar drugs. We propose that any version of reference pricing implemented would not allow for balance billing of the beneficiary for any differences in pricing. For example, if reference pricing was implemented for the sodium hyaluronates mentioned previously and the particular sodium hyaluronate product selected by the prescriber had a cost above the reference price defined by CMS for the sodium hyaluronates included in the reference pricing arrangement, the patient could not be held responsible for paying the difference between the reference price and either the statutory payment amount or the cost for the selected drug. By grouping similar drugs into a single payment rate, we give prescribers incentives to use the drug product that provides the most value for the patient.

Second, we propose using value-based pricing to vary prices for a given drug based on its varying clinical effectiveness for different indications that are covered under existing Medicare authority, specifically section 1861(t) of the Act, and existing national and local coverage determinations. This is often called ''indications-based pricing.'' Drugs are often indicated for more than one condition and may be more effective when used in one condition than another. For example, if a new drug is introduced with indications for treating two types of cancer and this drug did no better in clinical trials than existing treatments for the first type of cancer and significantly better than existing treatments for the second, our use of indications-based pricing might result in lower payments when the drug is used to treat the first type of cancer and higher payments when the drug is used to treat the second type. The Institute for Clinical and Economic Review (ICER) is currently producing reports on high-impact drugs that analyze comparative effectiveness and cost-effectiveness before calculating a benchmark price for each drug.[24] ICER's reports reflect the dependence of the value of medications on evidence available for certain target populations.[25]

We propose to use indications-based pricing where appropriately supported by published studies and reviews or evidenced-based clinical practice guidelines, such as the ICER reports, to more closely align drug payment with outcomes for a particular clinical indication. Indications-based pricing decisions would reflect the clinical evidence available and strive to rely on competent and reliable scientific

[18] Deloitte. Issue Brief: Value-Based Pricing for Pharmaceuticals: Implications of the Shift from Volume to Value. 2012. Web. 17 Dec. 2015. *http://www.converge-health.com/sites/default/files/uploads/resources/white-papers/valuebasedpricingpharma_060412.pdf.*

[19] Pharmacy Benefit Management Institute. 2013–2014 Prescription Drug Benefit Cost and Plan Design Report. 2013. Web. 17 Dec. 2015. *http://reports.pbmi.com/report.php?id=4.*

[20] Therapeutically similar drug products are generally members of the same drug class that work on the same biochemical processes but have different chemical structures. For example, the HMG-CoA reductase inhibitors, also known as statins, include the drugs atorvastatin and simvastatin. Both of these drugs lower cholesterol by inhibiting the same enzyme, but they are unique chemical entities. While these therapeutically similar drug products are not automatically interchangeable, the therapeutic effects achieved are generally similar from one member of the drug class to another.

[21] Partnership for Sustainable Health Care. Strengthening affordability and quality in America's health care system. Apr. 2013. Web. 17 Dec. 2015. *http://www.rwjf.org/content/dam/farm/reports/reports/2013/rwjf405432.*

[22] Boynton A, Robinson JC. Appropriate Use of Reference Pricing Can Increase Value. Health Affairs. 7 July 2015. *http://healthaffairs.org/blog/2015/07/07/appropriate-use-of-reference-pricing-can-increase-value/.*

[23] A determination of clinical effectiveness would be based on published studies and reviews, such as those produced by ICER as described below, and evidence-based clinical practice guidelines located at AHRQ's National Guideline Clearinghouse: *www.guideline.gov.*

[24] Institute for Clinical and Economic Review. Emerging Therapy Assessment and Pricing: Transforming the Market for New Drugs. Web. 17 Dec. 2015. *http://www.icer-review.org/etap/.*

[25] Institute for Clinical and Economic Review. 17 Dec. 2015. *http://ctaf.org/sites/default/files/u148/CHF_Final_Report_120115.pdf* and *http://cepac.icer-review.org/wp-content/uploads/2015/04/Final-Report-for-Posting-11-24-15.pdf.*

evidence from neutral and/or independent sources. We understand that the quality of available evidence can vary for any given drug or indication. High quality evidence is comprehensive, relies on randomized trial designs where possible, and measures outcomes. Research findings should be valid, competent, reliable, and generalizable to the Medicare population.

Third, we propose to allow CMS to enter into voluntary agreements with manufacturers to link health care outcomes with payment. This method is sometimes used in the private sector when relatively few published studies or other pieces of evidence are available to establish a drug's long-term value with regard to the magnitude of patient health outcomes. Payers and pharmaceutical manufacturers contract in outcomes-based risk-sharing agreements to link payment for drugs to patient health outcomes.[26] These agreements tie the final price of a drug to results achieved by specific patients rather than using a predetermined price based on historical population data.[27] Manufacturers agree to provide rebates, refunds, or price adjustments if the product does not meet targeted outcomes.[28] The University of Washington's School of Pharmacy maintains the Performance Based Risk Sharing Database, which currently lists detailed information on 311 risk-sharing arrangements subject to participation fees and licensing agreements.[29] VBP arrangements with manufacturers are discussed in more detail in a later section.

We propose that any outcomes-based risk-sharing agreements that we enter into would require a clearly defined outcome goal. We seek comment on methods to collect and measure outcomes, including parameters around standardizing value metrics based on differences in drug treatments and their targeted patient subpopulations. At a minimum, and in addition to sources such as evidence-based literature and best practices, we propose manufacturers provide all competent and reliable scientific evidence to create an accurate picture regarding clinical value for a specific drug; and we also propose that manufacturers provide outcome measures for any outcome-based risk-sharing pricing agreement.[30] We set forth our thinking on competent and reliable scientific evidence for the purpose of establishing value-based pricing and the clinical decision support (CDS) tool in the next section. We are seeking comments on the level of transparency that would be required or desired for outcomes-based risk-sharing agreements while recognizing the need to protect proprietary information. Finally, we seek comment on methods for establishing patient-specific pricing contingent on response to therapy.

In addition to proposals specifically aimed at improving quality and outcomes and reducing the costs of purchasing for the payer, we also propose a value-based pricing strategy that involves discounting or eliminating patient coinsurance amounts for services that are determined to be high in value in an attempt to tailor incentives. Although many Medicare beneficiaries have wrap-around coverage (which reduces or eliminates cost sharing), reducing cost sharing for certain products can still provide an effective incentive for a subset of the population to encourage use of high-value drug products. Therefore, we propose to waive beneficiary cost sharing from the current 20 percent, meaning that the copayment that is associated with a HCPCS code in phase II of the model could be reduced by CMS to a value that is less than 20 percent and could be waived completely. In addition, consistent with cost sharing approaches for Part B drugs, we propose that beneficiary cost sharing will not exceed 20 percent of the total model-based payment amount for the Part B drug. In other words, this model does not seek to increase cost sharing percentages beyond 20 percent for low-value drugs. We would also like to make clear that cost sharing changes will be applied at the HCPCS level to all drugs NDCs in a HCPCS code; we are not proposing manufacturer-specific or NDC-specific cost sharing amounts, nor are we proposing that providers or suppliers would have flexibility to change or waive cost sharing amounts. By itself, value-based pricing that involves discounting or eliminating patient coinsurance would not be expected to change the overall payment amount. In other words, we are proposing to increase Medicare's payment percentage while maintaining the total allowed charges for the drug using this tool. However, we seek comments on whether more targeted modifications of cost sharing should be considered and how such modifications would avoid creating unintended competitive advantages for drugs within the same HCPCS code or other similar drugs that are paid under other HCPCS codes.

We propose to solicit public feedback on specific pricing proposals for use of all VBP tools. We propose that any CMS approved pricing changes under phase II would allow for the public to provide feedback and would be made public 45 days ahead of implementation . Proposed new § 511.305 reflects these proposals.

We would also engage in educational activities to support implementation and testing of the value-based pricing strategies. We seek comment to define the parameters of these educational activities.

While all proposed Part B drugs would be potentially subject to the value-based pricing strategies outlined here, we seek comment on the potential groups of Part B drugs most suitable for each of the proposed approaches to value-based pricing. We also seek comment on any additional types of value-based pricing that could be considered for future rulemaking for the Medicare Part B Drug Payment Model.

To protect beneficiaries and to allow for the consideration of special circumstances that may warrant the use of non-model payments in certain situations, we are proposing a Pre-Appeals process for certain value-based pricing strategies. The process is discussed in section IV. of this proposed rule.

As noted, we are aware that the value-based pricing tools discussed here could pose a risk of abuse if not properly structured and operated. It is our goal that the Medicare Part B Drug Payment Model promotes integrity, transparency, and accountability. We seek comment on potential safeguards that could be implemented with each of these tools to make certain that the intent of the policy is not undermined.

3. Development of a Clinical Decision Support Tool

Another potential component of VBP is the support of accurate clinical decision-making that is based on up-to-date scientific and medical evidence,

[26] Neumann PJ, et al. Risk-Sharing Arrangements That Link Payment For Medications To Health Outcomes Are Proving Hard To Implement. *Health Affairs.* 2011;30(12):2329–2337.

[27] Garrison L, Carlson J. Performance-Based Risk-Sharing Arrangements for Drugs and Other Medical Products. Web. 12 Jan. 2016. *https://depts.washington.edu/pbrs/PBRS_slides.pdf.*

[28] Garrison LP, et al. Private Sector Risk-Sharing Agreements in the United States: Trends, Barriers, and Prospects. Am J Manag Care. 2015;21(9):632–640. Web. 17 Dec. 2015. *http://www.ajmc.com/journals/issue/2015/2015-vol21-n9/private-sector-risk-sharing-agreements-in-the-united-states-trends-barriers-and-prospects.*

[29] University of Washington School of Pharmacy. Performance-Based Risk-Sharing Database. Web. 17 Dec. 2015. *https://depts.washington.edu/pbrs/index.php#sthash.g3bTvMFA.dpuf.*

[30] We discuss evidence further in section III.B.3 (Development of a Clinical Decision Support Tool) of this proposed rule.

such as well-designed and conducted clinical trials, updated information on drug safety, and practice guidelines. Clinical decision support (CDS) can assist physicians and other health professionals with clinical decision-making tasks, including prescribing. Information that is delivered to the clinician can include general clinical knowledge and guidance (such as updated guidelines for the clinical use of drugs, updated safety information, etc.), processed patient data, or a mixture of both. The Agency for Healthcare Research and Quality (AHRQ) defines CDS tools as a system that ensures timely clinical information at the point of care by focusing on patient-specific information in real time to help physician and clinical care teams proactively identify early warnings of potential problems, or providing suggestions for the clinical team and patient to consider.[31] Other examples of CDS tools include standardized drug and test orders that are developed from evidence-based medical guidelines when prescribing for particular conditions or types of patients; preventive care reminders; and alerts about potentially dangerous situations such as adverse drug events.[32]

We are aware of reports that CDS tools can be effective in changing practice patterns to better align with evidence-based developments and best practices.[33] [34] [35] CDS tools enable physicians to improve patient safety and quality of care by improving patient-specific drug dosing, reducing the risk of toxic drug levels, reducing the time to achieve therapeutic drug levels, decreasing medication errors, and changing prescribing patterns in accordance with evidence-based clinical guideline recommendations.[36] For example, one study showed that CDS activity supporting the use of an injectable antibiotic altered prescribing of the drug such that prescribing better matched appropriate use guidelines from the Centers for Disease Control and Prevention.[37] Similarly, CDS tools could help guide physicians to more efficiently utilize companion diagnostic tests such as testing for HER2 expression in certain tumors prior to beginning chemotherapy. We are also aware that CDS feedback on practice patterns can encourage physicians to improve their practice patterns.[38]

We propose a two component CDS tool that consists of an online tool that supports clinical decisions through education and provides feedback based on drug utilization in Medicare claims. The educational tool would be developed by CMS with support from the VBP contractor and would be available to physicians in the VBP arms of the model (see Table 1). Physicians participating in the model would voluntarily access the education tool, meaning that they would have a choice about whether to use the tool and how they would apply information from the tool to their practice. This tool is not intended to act as or replace, in any way, the physician's medical judgment for the treatment of patient-specific clinical conditions nor is the tool intended to replace a practitioner's ability to order reasonable and necessary Part B drugs as appropriate. Rather, the tool is intended to provide information on prescribing for specific indications that reflects up-to-date literature and consensus guidelines. We believe that the availability of this tool could provide physicians with better access to up-to-date information such as guidelines for effective treatments as well as safe and appropriate drug use for specific diagnoses. We anticipate that information would be listed and indexed to correspond to drugs and disease states or conditions that are commonly treated in Part B. However, we would consider alternative approaches for presenting the data, such as the use of a decision-tree format. We seek comment on how to format the educational information. We also envision that the tool would provide information on Part B claim payment patterns for specific drugs and/or indications. This part of the tool could be utilized nationally or within specific geographic areas and could provide feedback on how an individual physician's drug claim patterns compare with local or national data or even recommended guidelines. This information would be solely for feedback and to support a physician's interest in mindful prescribing. We believe that the concept of this tool is consistent with the proposed model's aim as discussed in the introduction to the preamble, to achieve high quality and smarter spending on drugs and biologicals paid under Part B.

We propose the evidence-based part of the CDS tool would encompass specific drugs, groups of similar drugs, or diagnoses that are typically encountered in Part B. The tool would be available online and readily available to participants in the VBP arm of the model and would provide pertinent up-to-date information on drug therapies and treatments for a specific condition. The tool would provide information such as links to evidence-based guidelines for appropriate drug use and updated information on drug safety.

A CDS tool is more likely to be effective in improving the value of payment for prescribed drugs if it adequately reflects the clinical evidence available and strives to rely on objective, high quality evidence from neutral and/or independent sources. We understand that the quality of available evidence can vary for any given drug or indication. High quality evidence is comprehensive, relies on randomized trial designs where possible, and measures outcomes. Research findings should be valid, reliable, and generalizable to the Medicare population. To incorporate information in the CDS tool, we propose that we would follow a hierarchy of evidence review similar to that followed by our Medicare Coverage Advisory Committee, the AHRQ, or the United States Preventive Services Task Force, as well as numerous private bodies such as the National Comprehensive Cancer Network.[39] [40] [41] These entities and others

[31] Clinical Decision Support. June 2015. Agency for Healthcare Research and Quality, Rockville, MD. *http://www.ahrq.gov/professionals/prevention-chronic-care/decision/clinical/index.html.*

[32] Ibid.

[33] Moxey, A., Robertson, J., Newby, D., Hains, I., Williamson, M., & Pearson, S.-A. (2010). Computerized clinical decision support for prescribing: provision does not guarantee uptake. Journal of the American Medical Informatics Association: JAMIA, 17(1), 25–33. *http://doi.org/10.1197/jamia.M3170.*

[34] Bates, D. W., Kuperman, G. J., Wang, S., Gandhi, T., Kittler, A., Volk, L., . . . Middleton, B. (2003). Ten Commandments for Effective Clinical Decision Support: Making the Practice of Evidence-based Medicine a Reality. Journal of the American Medical Informatics Association: JAMIA, 10(6), 523–530. *http://doi.org/10.1197/jamia.M1370.*

[35] Kevin M. Terrell DO, MS, Anthony J. Perkins MS, Paul R. Dexter MD, Siu L. Hui Ph.D., Christopher M. Callahan MD and Douglas K. Miller MD. Computerized Decision Support to Reduce Potentially Inappropriate Prescribing to Older Emergency Department Patients: A Randomized, Controlled Trial. J Am Geriatr Soc. 2009 Aug;57(8):1388–94.

[36] Moxey, A., Robertson, J., Newby, D., Hains, I., Williamson, M., & Pearson, S.-A. (2010). Computerized clinical decision support for prescribing: provision does not guarantee uptake. Journal of the American Medical Informatics Association: JAMIA, 17(1), 25–33. *http://doi.org/10.1197/jamia.M3170.*

[37] Shojania, K. G., Yokoe, D., Platt, R., Fiskio, J., Ma'luf, N., & Bates, D. W. (1998). Reducing Vancomycin Use Utilizing a Computer Guideline: Results of a Randomized Controlled Trial. Journal of the American Medical Informatics Association: JAMIA, 5(6), 554–562.

[38] Stammen LA, Stalmeijer RE, Paternotte E, et al. Training Physicians to Provide High-Value, Cost-Conscious Care: A Systematic Review. JAMA. 2015;314(22):2384–2400. doi:10.1001/jama.2015.16353.

[39] Medicare Coverage Advisory Committee; Operations and Methodology Subcommittee. *Process for Evaluation of Effectiveness and Committee Operations.* July 21, 2005.

Continued

favor peer reviewed scientific literature and randomized control trial research designs over other types of evidence, but provide a process that allows for consideration of many types of evidence.

In addition to prioritizing review of high quality evidence, CMS would post the evidence base that supports information that is included in the online CDS, and consider feedback from the public on that evidence basis for 30 days before finalizing a CDS tool for a specific indication. We propose that the public would be able to provide feedback on the evidence basis proposed for information that is included in the CDS tool before CMS finalizes the information. We plan to implement the CDS tool incrementally, that is, to begin with a limited number of drugs and/or disease states. We seek comment on which Part B drugs and conditions that are commonly treated by drug therapy would be good candidates for inclusion. We also would allow for feedback on any substantial refinements to an online tool.

In addition to developing an evidence-based component for the tool, we propose creating an online source of data under our section 1115A authority that would provide feedback to physicians in the VBP arms of the model. We propose to use a process similar to that already established for reporting programs such as the Quality and Resource Use Reports (QRURs) that physician group practices and solo practitioners receive nationwide. At this time, we make QRURs available to groups and solo practitioners that participate in the Medicare Shared Savings Program, the Pioneer Accountable Care Organization (ACO) Model, or the Comprehensive Primary Care Initiative. We propose that this online tool under the Part B Drug Payment Model would allow providers and suppliers to access reports on their Medicare Part B drug claims as well as claims patterns in their geographic area and national patterns. We intend for this feedback to allow providers and suppliers to better understand Part B claim payment patterns and identify opportunities for individual improvement. We also believe that this activity will align with our efforts to provide regularly updated feedback to providers and suppliers on metrics such as cost and quality measures. We propose that the CDS tool will be available to physicians (that is, internal use only and non-publicly available) for informational purposes only and will not impact participating physician group practices and solo practitioners' Part B drug payments.

In summary, we are proposing a two-component CDS tool for physicians in the VBP arms of the model. The tool will use high quality evidence to educate physicians on best practices. The tool also would rely on regularly updated claims data reports to provide feedback on prescribing patterns. We seek comments on our proposed approach for identifying high-quality evidence and allowing for public feedback on the evidence basis; the online format of this proposed support tool; the most effective method for physicians to access their reports on prescribing patterns, identifying what content should be included (for example, claim payment/prescribing patterns, resource use, clinical and cost domains, patient clinical and demographic information, information about drug-drug and drug-disease interactions and clinical support guidelines for these interactions, among other factors). We also solicit comment on the level of feedback, and whether personalized reports are necessary. To the extent that such feedback includes personally identifiable information, we would provide such information through the proposed support tool consistent with applicable privacy laws, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule. We solicit comment concerning privacy issues with respect to the proposed support tool.

C. Comment Solicitation

We are considering the three approaches discussed below: Creating value-based purchasing arrangements for Part B drugs directly with manufacturers, the Part B Drug CAP, and an episode-based or bundled pricing approach for Part B drugs, as potential areas of interest in furthering value for Part B drugs. We solicit comments to determine if any or all are appropriate to pursue as part of the Part B Drug Payment Model or in the near future.

1. Creating Value-Based Purchasing Arrangements Directly With Manufacturers: Solicitation of Comments

We have received inquiries from manufacturers interested in testing new approaches to paying for medications under Part B that are not accommodated within the current payment system. These approaches are generally built around achievement of clinical outcomes and a new payment flow between CMS and the manufacturer, using a mechanism such as a rebate.

Outcomes-based rebates, for example, appear to be used by industry to measure and reward quality and clinical effectiveness for new drug products. Ideally, outcomes-based rebates lead to payers realizing a reduction in the uncertainty that is associated with a new drug's clinical value, performance, and financial impact, while manufacturers are able to better differentiate and demonstrate the value and effectiveness of their product.[42] Value is measured through data collection likely, though not necessarily, provided by the prescriber and intended to address factors such as long-term safety and outcomes, effect on an individual patient, patient adherence, or impact on utilization and costs. The product's final price or rebate amount is linked to its actual effect on these measured outcomes.

One example of a potential structure would be a ''try before you buy'' arrangement. For example, for a product that works for some but not all beneficiaries, a manufacturer might offer to provide a partial or full rebate to CMS for the costs of product purchased for patients that do not ultimately benefit from therapy. Because of the time lag involved in assessing response to therapy from claims data sources, a rebate might be the most efficient way to implement such a purchasing agreement.

We solicit comment on the approach described above and on implementing a program to incorporate VBP arrangements created with manufacturers as a part of the VBP tools that will be tested in this model. We also seek comment on a number of specific issues, discussed below, surrounding rebate-based payment structures.

CMS is currently considering whether rebate distributions could be returned to the Medicare Part B Trust Fund, the beneficiary, the provider or supplier, or a combination of the three. Any rebate arrangement would have to conform to the requirements of the Act and federal appropriations law. Comments regarding the construction of these rebate arrangements are especially

[40] Agency for Healthcare Research and Quality. *Methods Guide for Effectiveness and Comparative Effectiveness Reviews.* January 2014.

[41] National Comprehensive Cancer Network (NCCN). NCCN Categories of Evidence and Consensus. *http://www.nccn.org/professionals/physician_gls/categories_of_consensus.asp.*

[42] Garrison, Louis, et al. Private Sector Risk-Sharing Agreements in the United States: Trends, Barriers, and Prospects. *Am J Manag Care.* 21(9) Sep. 2015: 632–640. Web. 16 Dec. 2015. *http://www.ajmc.com/journals/issue/2015/2015-vol21-n9/private-sector-risk-sharing-agreements-in-the-united-states-trends-barriers-and-prospects.*

welcome. We seek comment on the value of and potential approaches for sharing rebates by providing incentive payments to beneficiaries and prescribers. We solicit comments on how to incorporate rebates into claims payment for prescribers or potentially the use of payments made outside of the claims processing system. Additionally, we seek comment on the value and potential methods for sharing rebates with beneficiaries through reduced cost sharing or other incentives. As we are aware that the incentives discussed here could pose a risk of abuse if not properly structured and operated, we also seek comment on the appropriate amount for any rebate sharing and other potential safeguards that could be implemented to make certain that the intent of the policy is not undermined. It is our goal that the Medicare Part B Drug Payment Model promotes integrity, transparency, and accountability. Further, we seek comment on the basis for potential voluntary rebates other than the proposed value-based pricing, CDS tool, or other educational activities as discussed earlier in this proposed rule for future rulemaking. We are particularly interested in whether and to what extent other payers base rebates on tools other than those we have listed here. We are interested in specific examples of rebate agreements appropriate for this proposed model that manufacturers might be interested in creating. We recognize that manufacturers are much more likely to offer rebates for drugs where potential therapeutically similar drug alternatives are available. We also seek comments that identify examples of groups of therapeutically similar Part B drugs that are potential candidates for rebate arrangements, as well as industry examples of rebates for drugs paid for by Medicare Part B, including drugs that are used in physicians' offices and outpatient hospital settings. We are particularly interested in how significant an effort might be required to establish and execute risk sharing for outcomes-based rebates compared to volume-based rebates.

Finally, we seek comment on specific approaches that could be used to define rebates, details on how these arrangements could be created, mechanisms that could be used to calculate and distribute rebate amounts, the amount of transparency in any arrangement, how the rebates should be accounted for in manufacturers' ASP reports, other applicable pricing information reported to CMS (for example, for Medicaid purposes), and how we might monitor the prices paid by suppliers and providers for Part B drugs under the proposed model.

2. The Part B Drug Competitive Acquisition Program (CAP): Solicitation of Public Comments

Section 1847B of the Act required the implementation of the CAP for drugs that are not paid on a cost or prospective payment basis. The CAP was an alternative to the ASP method that is used to pay for the majority of Part B drugs, particularly drugs that are administered during a physician's office visit. Instead of buying drugs for their offices, physicians who chose to participate in the CAP would place a patient-specific drug order with an approved CAP vendor; the vendor would provide the drug to the office and then bill Medicare and collect cost sharing amounts from the patient. Drugs were supplied in unopened containers (not pharmacy-prepared individualized doses like syringes containing a patient's prescribed dose). Most Part B drugs used in physicians' offices were supplied by the approved CAP vendor. Unlike the ''buy and bill'' process that is still used to obtain many Part B drugs, physicians who participated in the CAP did not buy or take title to the drug. Physician participation in the CAP was voluntary, but physicians had to elect to participate in the CAP. CAP drug claims were processed by a designated carrier.

We conducted bidding for CAP vendors in 2005. The first CAP contract period ran from July 1, 2006 until December 31, 2008. One drug vendor participated in the program, providing drugs that included approximately 180 HCPCS billing codes (including heavily utilized drugs in Part B) to physicians across the United States and its territories. The parameters for the second round of the vendor contract were essentially the same as those for the first round. While we received several qualified bids for the subsequent contract period, shortly before the second contract period began, contractual issues with the successful bidders led to the postponement of the program, and the CAP has been suspended since January 1, 2009. Details are available in the links at the end of this section.

After the CAP was suspended, we sought additional input from physicians and interested parties about further improvements to the program. For example, we held Open Door Forums, met with stakeholders and encouraged correspondence from stakeholders and physicians who participated in the CAP. Although we received some useful suggestions, several significant concerns could not be addressed under the existing statutory requirements. These concerns included uncertainty about the participation of non-pharmacy entities like wholesalers as approved CAP vendors, and the requirement for a beneficiary-specific order which impacts the use of a consignment model to facilitate emergency deliveries and to manage inventory through automated dispensing systems in the office. Many commenters were also concerned about the complexity of the program and the level of financial risk, particularly for vendors. Also, an evaluation of the program found that it was not associated with savings (*https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/Reports/Research-Reports-Items/CMS1234237.html*).

More detailed information about the CAP is available on the following CMS Web page and links within the Web page: *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Part-B-Drugs/CompetitiveAcquisforBios/index.html.* The downloads section of the following CMS Web page includes information about CAP vendor bidding, physician participation, and drugs provided under the CAP: *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Part-B-Drugs/CompetitiveAcquisforBios/vendorbackground.html.*

The Part B drug market has evolved significantly since the CAP was suspended in 2009. For example, there has been enormous growth in specialty drugs, both by the number of drugs available and the cost of the products; acquisition of specialty drugs may utilize restricted distribution channels (like specialty distributors or pharmacies as opposed to buying drugs from wholesalers and the manufacturer); and health information technology also has changed the way physicians and distributers manage many drug products.

Although we are not proposing to include a CAP-like alternative in this model at this time, we are interested in receiving comments that would help us determine whether sufficient interest in such a program is present for us to consider developing and testing such an alternative as a part of a future model. We are specifically interested in comments on whether there is a role for a CAP-like alternative to the ASP (buy and bill) process for obtaining drugs that are billed under Part B in the physician's office. Given the length of time that has elapsed since the last solicitation for comments about the CAP in 2010, we are also interested in updated perspectives on issues such as smaller geographic areas, smaller scope

of drugs included in the program, the role of wholesalers and consignment in the program, the drug ordering process, risk sharing, impact on physician negotiated volume discounts when CAP would be used for Medicare patients, and how these issues could be addressed if we were to consider developing and testing a phase of this model in the future that is based on the CAP.

3. Episode-Based or Bundled Pricing Approach: Solicitation of Public Comments

Under the current FFS structure, Medicare makes separate payments for drugs based primarily on the manufacturer's pricing. Medicare also makes separate payments for the administration of these drugs to hospital outpatient settings and physician offices. This payment approach may not encourage practitioners in the physician office or in outpatient hospital settings to consider the total cost of care for treating a beneficiary. Instead, the current FFS drug payment structure may provide an incentive to increase the volume of drugs furnished to beneficiaries and to prescribe more expensive drugs without considering the total cost of care for treating a beneficiary with a particular drug regimen across the episode of care. MedPAC, in its June 2015 report, discussed bundled payments for Part B drugs as a potential approach to obtain better pricing for Part B drugs for beneficiaries compared to current pricing under the FFS system.

In the absence of an episode-based or bundled pricing model for Part B drugs, provider and practitioner prescribing patterns for a given drug treatment regimen under the current FFS payment system may unintentionally de-emphasize the value of drug regimens beyond the immediate care setting and throughout the course of drug therapy. For instance, in situations where drugs represent a small portion of the total cost of the patient's overall treatment therapy across multiple settings, particular attention may not be given to the financial impact of the cost of the drugs relative to the total cost of a patient's care or to the interaction of drug therapy with other aspects of the patient's care.

As part of this proposed rule, we are soliciting comments and suggestions to consider in future rulemaking related to an episode-based or bundled pricing approach for Part B drugs in both physician offices and hospital outpatient settings. The intent of this comment solicitation is to explore an initial framework that could promote greater incentives for improved patient outcomes and financial accountability for episodes of care surrounding particular courses of treatment using particular Part B drugs. CMS is pursuing bundled and episode payments through models such as the BPCI initiatives,[43] the OCM,[44] and CJR.[45] As evidenced by the BPCI initiative and the OCM, we have demonstrated interest in developing models that utilize aligned financial incentives, including performance-based payments, to improve care coordination, appropriateness of care, and access for beneficiaries. As part of this proposed rule, we are specifically seeking comment on issues related to an episode-based or bundled pricing approach for Part B drugs, including, but not limited to:

- How CMS could identify groups of similar drugs for inclusion in an episode (for example, are drugs used to treat certain types of arthritis suitable candidates for inclusion in an episode-based or bundled payment model).
- The care settings (for example physician office, outpatient hospital) and disease states that we should consider for an episode-based or bundled pricing model.
- What types of entities/providers and suppliers would be responsible for care under the program and the types of financial relationships would there be if shared savings were considered.
- Measuring and setting outcomes, including parameters around standardizing value metrics based on differences in drug treatments and their targeted patient subpopulations, as well as measures of total cost of care and adjustments for case-mix.
- The scope of the bundle or episode of care, if not considering total cost of care.
- The provider or entity that is responsible for the bundle.
- The length of time the episode should cover.
- The best way to establish pricing for a bundle and whether sharing risk and savings should be considered.
- Whether the bundles should be established prospectively or calculated retrospectively.

D. Interactions With Other Payment Provisions

1. Overview

We acknowledge that there may be circumstances where a Medicare beneficiary whose Part B drug therapy is paid under the Part B Drug Payment Model may also be assigned to or otherwise accounted for in other payment models, demonstrations, programs, or other initiatives that are being tested by the Innovation Center. In this proposed rule, the term shared savings refers to models in which the payment structure includes a calculation of total savings with CMS and the model participants each retaining a particular percentage of that savings. We note that there is a potential for overlap between the Part B Drug Payment Model and the Medicare Shared Savings Program, the IVIG Demonstration, Innovation Center shared savings models, and other Innovation Center payment models, such as the OCM and the BPCI initiative. For other models tested by the Innovation Center, we have worked to prevent duplication and to monitor arrangements that minimize duplication of effort. We anticipate undertaking similar efforts for the Part B Drug Payment Model.

2. Most Shared Savings Programs and Models

Unlike the Medicare Shared Savings Program and shared savings models such as the Next Generation ACO model or the Comprehensive ESRD Initiative where performance is measured using expansive measures that examine many facets of a patient's care, the Part B Drug Payment Model is limited to payments for drug therapy. Also, the Part B Drug Payment Model as it is proposed does not define episodes of care and instead makes payments for specific drug claims that are submitted by provider or supplier to the Medicare Administrative

[43] The BPCI initiative comprises four broadly defined models of care, which link payments for the multiple services beneficiaries receive during an episode of care. Under the initiative, organizations enter into payment arrangements that include financial and performance accountability for episodes of care. These models may lead to higher quality and more coordinated care at a lower cost to Medicare. More information on the four models can be accessed at the CMS Innovation Center: *https://innovation.cms.gov/initiatives/Bundled-Payments/*.

[44] OCM is an innovative multi-payer model in which practices enter into payment arrangements that include financial and performance accountability for episodes of care surrounding chemotherapy administration to cancer patients. This model aims to provide higher quality, more highly coordinated oncology care at a lower cost. OCM is a 5-year model and will begin in spring 2016. More information on the four models can be accessed at the CMS Innovation Center: *https://innovation.cms.gov/initiatives/Oncology-Care/*.

[45] The Comprehensive Care for Joint Replacement (CJR) model aims to support better and more efficient care for beneficiaries undergoing hip and knee replacements. This model tests bundled payment and quality measurement for an episode of care associated with hip and knee replacements to encourage hospitals, physicians, and post-acute care providers to improve the quality and coordination of care from the initial hospitalization through recovery. *https://innovation.cms.gov/initiatives/cjr.*

Contractors (MACs) that typically process their current drug claims. We believe that the adjustments made to the ASP add-on and other Part B payment amounts will typically represent a small proportion of the beneficiary's total payments for care, and thus we propose not to exclude beneficiaries assigned to ACOs in the Medicare Shared Savings Program or otherwise accounted for in shared savings models from inclusion in the Part B Drug Payment Model. Also, we do not propose a separate reconciliation process or modification to the reconciliation process for these beneficiaries. This means that with the exception of the OCM discussed in the next section, we do not plan to exclude or apply reconciliation processes to other shared savings programs or models.

3. Oncology Care Model

OCM evaluates the impact of appropriately aligned financial incentives to improve care coordination, appropriateness of care, and access to care for beneficiaries undergoing chemotherapy. Under OCM, practices will enter into payment arrangements that include financial and performance accountability for episodes of care surrounding chemotherapy administration to cancer patients. The OCM is one of our key initiatives on alternative payment models, and we are preparing for implementation later this year.

OCM incorporates a two-part payment system for participating practices, creating incentives to improve the quality of care and furnish enhanced services for beneficiaries who undergo chemotherapy treatment for a cancer diagnosis. The two forms of payment include a monthly per-beneficiary-per-month (PBPM) payment for the duration of the episode and the potential for a performance-based payment for episodes of chemotherapy care. The monthly PBPM care management payment supports infrastructure and organizational change to meet the OCM requirements, such as 24/7 access to care, and assists participating practices in effectively managing and coordinating care for oncology patients during episodes of care, while the potential for performance-based payment will give practices incentives to lower the total cost of care and improve care for beneficiaries during treatment episodes.

There will be overlap between the Part B Drug Payment Model presented in this proposed rule and OCM in that both models will affect providers' and suppliers' incentives for the use of oncology drugs, but in different ways. Oncology drugs represent a significant portion of Part B claims and include many high cost drugs. Drug claims under the OCM are paid under the ASP methodology and costs associated with therapy (including drugs) are evaluated periodically. In the impact section to this proposed rule, section IX, we note the percent of total spending attributable to Part B drugs by specialty. Almost 80 percent of oncology practice Medicare FFS revenue is from Part B drugs.

We plan to proceed with both models, and we propose to include OCM practices in all arms of the Part B Drug Payment Model. That is, we would not alter the sampling plan discussed in section II of this proposed rule to exclude practices choosing to participate in OCM or practices that we might identify as the comparison group for OCM. In particular, as described above, the Part B Drug Payment Model is proposed as a national mandatory model so that all practices in selected PCSAs will participate in the Part B Drug Payment Model whether or not they elect to participate in any voluntary models. Selected OCM practices and matched comparison group practices could account for up to almost 40 percent of total Part B drug spending and for 70 percent of Part B spending on oncology drugs depending upon the actual enrollment of number and type of practices in the model. For this reason, we also believe that the remaining oncology spending would not be representative of Part B spending overall and Part B oncology spending in particular. Therefore we are proposing to include all OCM practices, both intervention and comparison group practices, in this model.

We believe that including OCM practices in the Part B Drug Payment Model will not compromise our ability to evaluate effectively the effects of either model. In particular, the stratified random assignment approach used to allocate PCSAs to the treatment and control arms of the Part B Drug Payment Model will ensure that each arm of the Part B Drug Payment Model contains an approximately equal number of OCM participating practices. Since the number of OCM participants will be approximately the same in all arms of the Part B Drug Payment Model, the existence of the OCM should not bias comparisons of outcomes across arms of the Part B Drug Payment Model; thus, the existence of the OCM should not affect our ability to identify the independent effect of the Part B Drug Payment Model (that is, the effect of the Part B Drug Payment Model holding the level of OCM participation constant). Similarly, the stratified random assignment approach used in the Part B Drug Payment Model will ensure that OCM participant and comparison practices are each allocated approximately evenly across the arms of the Part B Drug Payment Model. Since the share of practices allocated to each Part B Drug Payment Model treatment arm will be approximately the same across both the OCM participant and comparison groups, the existence of the Part B Drug Payment Model should not bias comparisons between OCM participants and non-participants and thus should not affect our ability to identify the independent effect of the OCM (that is, the effect of the OCM holding Part B Drug Payment Model activities constant). We seek comment on these conclusions.

The agency continues to assess best methods for addressing the overlap between the two models. We solicit comments on why practices choosing to participate in the OCM should or should not be included in the Part B Drug Payment Model. Should OCM practices be included in this Part B Drug Payment Model as we propose, we solicit comment on the best mechanism to account for the overlap between these two models. We also solicit comments on the generalizability of the results of the Part B Drug Payment Model if the OCM practices and their matched comparison practices are excluded; specifically, on whether the model will produce usable information without the OCM practices and their comparison practices. As we move forward to implement OCM, we will work closely with OCM practices within the context of that voluntary model to adapt to the Part B Drug Payment Model if necessary, for example through modifications to the financial reconciliation methodology.

4. Intravenous Immune Globulin (IVIG) Demonstration

The Medicare IVIG Demonstration evaluates the benefits of providing payment and items for services needed for the in-home administration of intravenous immune globulin for the treatment of primary immune deficiency disease (PIDD).

Services and items covered under the demonstration are provided and billed by the suppliers that provide the IVIG, which is already covered under Medicare Part B. The demonstration-covered services and items are paid as a single bundle and will be subject to coinsurance and deductible in the same manner as other Part B services. Home health agencies are not eligible to bill for services covered under the

demonstration but may still bill for services related to the administration of IVIG that are covered under the payment for a home health episode of care.

This IVIG demonstration encompasses only the items and services that are needed for the in-home administration of IVIG; payments for IVIG are not changed. We therefore propose not to exclude patients in the IVIG demonstration from inclusion in this model. We seek comment on our proposed approach and the potential interactions with existing models and payment provisions.

IV. Provider, Supplier, and Beneficiary Protections

Providers, suppliers, and beneficiaries who are included in the model will have access to the existing claims appeals process, as well as a proposed Pre-Appeals Payment Exceptions Review process, to resolve disputes arising from the policies implemented by this model. The process will be developed and finalized by CMS. The phase II contractor's scope of work will also include day-to-day operation of this process. The Payment Exceptions Review process will precede the formal Part B claims appeals process in existing 42 CFR part 405 subpart I and will allow a provider, supplier, or beneficiary to raise issues regarding payment that are included in the VBP tools under phase II before submitting a claim. We anticipate the Payment Exceptions Review process will give providers, suppliers, or beneficiaries the opportunity to preempt potential disputes regarding a model payment, prior to filing a Medicare Appeal under 42 CFR part 405 subpart I.

A. Pre-Appeals Payment Exceptions Review Process

We propose to establish this Pre-Appeals Payment Exceptions Review process for pricing established under the value-based pricing section of phase II of this model only in order to allow the provider, supplier, or beneficiary an opportunity to dispute payments made under phase II. This process would be in addition to, not in lieu of, the current appeals process, and would be available to any providers, suppliers, or beneficiaries receiving services in PCSAs assigned to one of the VBP arms. Providers, suppliers, and beneficiaries would have the opportunity to appeal any payment determination via the appeals mechanism that currently exist outside of this model.

We propose that the Payment Exceptions Review process would be applicable to phase II payments, described in section III.B of this proposed rule, and would not include modifications to the ASP add-on, described in section III.A of this proposed rule. The Pre-Appeals Payment Exception Review process would allow the provider, supplier, or beneficiary to contact the contractor, before submitting a claim, and explain why an exception to Medicare's pricing policy, as described in section II.B, is warranted in the beneficiary's situation, and explain why the price provided under the phase II pricing policy does not provide accurate compensation for the prescribed drug. The Payment Exceptions decisions would be issued, in writing, within 5 business days of receipt of the request for a payment exception. While a payment exception decision would not confer appeal rights, a provider, supplier, or beneficiary dissatisfied with a payment exception decision or a pricing decision, may still utilize the current appeals process in 42 CFR part 405 subpart I following submission of a claim. Throughout this process, providers and suppliers would be prohibited from charging a beneficiary more than the applicable cost sharing as explained in Section III.B.2, above, even if a payment exceptions request is not approved by the contractor or the payment amount determined by the contractor remains unchanged as a result of the appeals process.

All of the current claims appeals rights will remain in place regardless of participation in this model or the choice to utilize the Pre-Appeals process. We discuss the current appeals process below.

B. Current Appeals Procedure

As stated above, the Pre-Appeals process is intended as an option that would precede, not replace, the Medicare claims appeals process that is currently in place. The Pre-Appeals process is voluntary and intended to resolve payment disputes before the appeals process is needed, to minimize the number of formal Medicare appeals. Utilizing, or bypassing, the Pre-Appeals process will not affect the right of a provider, supplier, or beneficiary to access the current appeals process, following submission of a claim. In either the situation where the provider, supplier, or beneficiary submits a request for a Payment Exception, and that request is denied, or where the provider, supplier, or beneficiary does not choose to go through the Pre-Appeals process, the amount that will be paid on a submitted claim is that amount established through phase II pricing policy. The provider, supplier, or beneficiary may choose to appeal the payment amount, under 42 CFR part 405 subpart I, after the phase II price has been paid for a drug.

Under 42 CFR part 405 subpart I, MACs make an initial determination in response to a claim for benefits submitted by a provider, supplier, or beneficiary. We propose that the phase II pricing policy established by Medicare, which is proposed in § 511.305 of this proposed rule, and discussed in section III.B of this proposed rule, and any pricing determination rendered through the Pre-Appeals process will be given substantial deference, but will not be binding on any appeals adjudicator, regardless of whether the party requesting an appeal first utilized the Pre-Appeals process. If the provider, supplier, or beneficiary is dissatisfied with the MAC's initial determination, they may request that the MAC perform a redetermination under 42 CFR 405.940. If the provider, supplier, or beneficiary is dissatisfied with the redetermination, they may then request a reconsideration by the Qualified Independent Contractor (QIC) under 42 CFR 405.960. A provider, supplier, or beneficiary may then request a hearing before an Administrative Law Judge (ALJ) under 42 CFR 405.1000, if the claim(s) at issue meet the amount in controversy requirement ($150 for CY2016). Finally, a provider, supplier or beneficiary may request Appeals Council review under 42 CFR 405.1100, *et seq.,* and then, in certain circumstances, request judicial review in Federal district court under 42 CFR 405.1132, if the amount in controversy requirement is satisfied ($1,500 for CY 2016).

V. Proposed Waivers of Medicare Program Rules

Section 1115A(d)(1) of the Act provides the Secretary with broad authority to waive the statutory requirements titles XI and XVIII and of sections 1902(a)(1), 1902(a)(13), and 1903(m)(2)(A)(iii) of the Act as may be necessary solely for purposes of carrying out section 1115A of the Act with respect to testing models, described in section 1115A(b) of the Act. To test alternative approaches for Part B drug payments, we propose to use the waiver authority provided to the Secretary under section 1115A of the Act. The purpose of this flexibility would be to allow Medicare to test approaches described in this proposed rule with the goal of increasing the value of drug therapy that is paid under Medicare Part B while improving, or maintaining, the quality of beneficiaries' care as we

implement and test this model. We believe that these waivers are necessary and appropriate to test whether the alternative drug payment designs discussed in this proposed rule will lead to better value for drugs paid under Part B, that is, a reduction in Medicare expenditures, while preserving or enhancing quality of care provided to Medicare beneficiaries.

First, we propose to waive portions of section 1847A(b)(1) of the Act which specify the 6 percent add-on percentage for payments determined under section 1847A of the Act. Waiving the fixed add-on percentage will allow the agency to modify the add-on percentage for payment determinations made under section 1847A of the Act to test whether modifying the add-on percentage improves provider and supplier financial incentives associated with Part B drug payment. The waiver for the add-on encompasses single source drugs, biologicals, multiple source drugs and biosimilars as described in section 1847A of the Act. The 6 percent add-on is typically used for payments based on the manufacturer's ASP, but as discussed in the CY 2011 PFS rule, the ASP price files also include payments that use 106 percent of WAC. This percentage is consistent with sections 1847A(c)(4)(A) and 1847A(b) of the Act.

We also propose to waive the definitions of single source drug or biological, multiple source drug, and biosimilar biological product in section 1847A(c)(6) of the Act to determine payment for Part B drugs, which are grouped in a way that is different from how they are grouped in the statute. We propose to waive these definitions to test whether paying these types of drugs and biologicals using the pricing approaches described in this proposed rule will reduce expenditures while maintaining or improving quality of care. Alternative payment amounts proposed in this model may involve assigning a HCPCS code payment value with a different payment amount, than what would be determined under section 1847A of the Act. For example, under value-based pricing (Section II.B.2), equal or benchmarked payment for therapeutically similar drug products that are used for a given indication like osteoarthritis is unlikely to be consistent with the statutory definitions of single source drug or biological, multiple source drug, and biosimilar biologicals.

We also propose to waive provisions in section 1847A(b) of the Act that require the assignment of NDCs to HCPCS codes based on whether a drug meets the definition of single source drug or biological, multiple source drug, or biosimilar, which this section defines, and requires the agency to base the determination of the ASP (that is, the ASP+0 percent) on the NDCs from this assignment. We are proposing to waive this statutory requirement for the required approach of assigning NDC's to HCPCS to test changes in these payment limits. As stated in the preceding paragraph, the determination of the model's payment amounts may not be consistent with the statutory definitions of single source drug or biological, multiple source drug, and biosimilar biologicals.

Furthermore, we propose to waive section 1847A(b)(6) of the Act, which specifies how the volume-weighted average sales price is to be used in the calculation of average sales price, so that we can test alternatives to the ASP+6 percent methodology in this model, irrespective of the volume-weighted average payment amount determination. This subsection provides the formula for using volume as a factor for determining the average sales price. Waiving this provision is necessary to test changes to the payment determination methodology that is described in section 1847A of the Act. Consistent with the statutory provisions discussed above, we also propose to waive applicable portions of § 414.904–906 which define and implement payment provisions associated with section 1847A of the Act.

The waiver should also encompass other Part B drug payment methodologies that are used to pay for Part B drugs which are described in section 1842(o) of the Act. Section 1842(o)(1)(D) of the Act requires that infusion drugs furnished through an item of DME be paid at 95 percent of the AWP in effect on October 1, 2003. We are proposing to waive this section to include infusion drugs that are furnished through covered DME items in the model. Immunosuppressive drug supplying fees, inhalation drug dispensing fees and the clotting factor furnishing fees are described in sections 1842(o)(2), 1842(o)(5), 1842(o)(6) of the Act. We propose to waive these provisions to include modifications to the fees in the model. Section 1842(o)(2) of the Act allows Medicare to pay a dispensing fee (less the applicable deductible and coinsurance amounts) to the supplier for certain drugs that are dispensed and then paid under Part B. Section 1842(o)(5) of the Act requires the Secretary to provide a separate payment for items and services related to the furnishing of blood clotting factors. Finally, section 1842(o)(6) of the Act requires the Secretary to pay a supplying fee to pharmacies for certain immunosuppressive, oral anticancer and oral antiemetic drugs (less the applicable deductible and coinsurance amounts).

Further, we propose to waive portions of section 1833 of the Act. Specifically, we propose to waive section 1833(t)(14) of the Act in its entirety, which specifies that the OPPS pays for certain outpatient drugs at acquisition cost plus an adjustment for overhead and handling; this payment is currently set to ASP+6 percent. We propose to waive this provision to test the proposed changes to the ASP+6 percent methodology calculation for drugs and biologicals in the hospital outpatient department setting. Some drugs and biologicals, including certain diagnostic radiopharmaceuticals receive packaged payment. We would not revise our policy for packaging drugs and biologicals with per day costs below a certain threshold at this time for those drugs and biologicals that meet OPPS packaging criteria (we discuss episodes of care in this proposed rule, but do not propose to include episodes or other bundles at this time). We also propose to waive section 1833(t)(6) of the Act, which requires the Secretary to furnish additional pass through payments for certain drugs that are covered under the OPD service or group of services described under this section. This includes orphan drugs, cancer therapy drugs and brachytherapy, radiopharmaceuticals, and certain new drugs. We would waive the requirement that drugs and biologicals with pass-through status receive payment at ASP+6 percent to test changes with either alternative under either phase of the model. We propose to waive these sections of section 1833 of the Act, as well as related regulation text at § 419.64, which provides definitions of terms used in the statute, including cancer therapy drugs, orphan drugs, and radiopharmaceutical drugs. We are waiving these regulatory definitions of terms described in section 1833 of the Act to achieve a waiver of the statutory requirement for pass through payment.

We further propose to waive section 1847B of the Act and portions of § 414.906 through § 414.920 which implement the Part B drug CAP. This section requires the establishment of a CAP and sets forth detailed requirements for the program. We have discussed an alternative to the CAP in this rule and solicited comments about how a similar program may be implemented, but we are not proposing the implementation of the CAP as described in section 1847B of the Act at this time.

Providers and suppliers who participate in this model must comply with all applicable laws and regulations not explicitly waived in this document. We also seek comment on any additional Medicare program rules that it may be necessary to waive using our authority under section 1115A of the Act to effectively test the payment changes, described in this model, as it has been proposed, which we could consider in the context of our early model implementation experience to inform any future proposals we may make.

VI. Evaluation

Our evaluation of the Part B Drug Payment Model would test the proposed innovative health care payment model in this proposed rule to examine its potential to lower program expenditures while maintaining or improving the quality of care furnished to Medicare Program beneficiaries. Under this proposal, the Innovation Center would exercise its authority under section 1115A of the Act to test alternative payment designs for Part B drugs. The evaluation would collect and analyze data primarily to test the hypothesis that these alternative payment designs would lead to both higher quality and more affordable care for Part B Medicare enrollees and reduced Medicare expenditures. Our evaluation of the Part B Drug Payment Model would be used to inform the Secretary and policymakers about the impact of the alternatives tested relative to payment under the traditional Part B drug payment system in the absence of such alternatives. We propose to evaluate this model in a manner similar to other models developed and tested under the Innovation Center authority.

Obtaining information that is representative of a wide and diverse group of providers, suppliers, and beneficiaries will best inform us on about how such a payment model might function were it to be more fully integrated within the Medicare program. Our evaluation approach will compare historic patterns of Part B drug use and Medicare program costs for providers and suppliers, and health outcomes for beneficiaries in response to the alternative interventions proposed in this model (see section III. of this proposed rule).

We propose to apply the model interventions based upon a stratified random assignment of PCSAs, the unit of analysis for the model test (see section II.C. of this proposed rule). Researchers would evaluate separately the impacts of the test interventions by comparing Part B drug use, program costs, and the quality of care for providers, suppliers, and beneficiaries in the areas assigned to each model test arm to those in areas assigned to the control arm. The evaluation will include a range of analytic methods, including regression and other multivariate analyses.

In our design, we primarily examine the impact of the proposed model interventions at the PCSA level. However, to address a broader variety of stakeholders and topics, we also propose to examine the model impact at the provider and supplier level and at the beneficiary level. We anticipate using various statistical methods to address observable factors that could confound or bias our results. We also plan, to the extent possible, to examine and account for the interactions of this model with other ongoing interventions such as the OCM, BPCI, the Pioneer ACO Models, and the Medicare Shared Savings Program. For example, the evaluation of this model may require excluding areas, providers, suppliers, or beneficiaries if including them has the potential to seriously bias the results of an existing model. Alternatively, statistical and other data analytic techniques could help to adjust for the effects of adding the Part B drug model in areas where providers, suppliers, or patients are participating in these other interventions.

Although, we expect to base many of our analyses on secondary data sources such as Medicare FFS claims, we may consider a survey of beneficiaries, suppliers, and providers to provide insight on beneficiaries' experience under the model and additional information on any strategies undertaken by those providing drugs included under this model.

Our evaluation will focus upon whether the intervention reduces costs while improving quality of care. It also could include assessments of patient experience of care, prescribing and utilization patterns, health outcomes, Medicare expenditures, provider and supplier costs, and other potential impacts of interest to stakeholders. Our key evaluation questions would include, but are not limited to, the following:

- *Payment.* Is there a reduction in Part B drug spending, as well as total Part B and total Medicare program expenditures, in absolute terms or for subcategories of providers and suppliers (for example, physician office vs hospital outpatient department, or rural vs urban settings)?
- *Prescribing Patterns.* Are there any observed changes in utilization (measure number of doses/refill patterns) and prescribing patterns overall and for specific types of providers and suppliers? How do these patterns compare to the control or historic patterns, potentially including longitudinal patterns and, if data permit, before and after the budget sequester that began in 2013? How are these patterns of changing utilization associated with the different Medicare payment alternatives?
- *Prescriber Acquisition Prices.* Is there any change in the prices at which providers and suppliers are able to obtain Part B drugs depending upon the payment environment that applies in a particular area?
- *Outcomes/Quality.* What is the impact on quality of care, access to care, timeliness of care, and the patient experience of care?
- *Unintended Consequences.* Did the model result in any observable unintended consequences? If so, how, to what extent, under which conditions, and for which beneficiaries, or providers and suppliers?
- *Variable Model Effects.* Was each intervention tested in the model more or less successful under some conditions compared to others, for example, in certain types of markets, geographic areas, or for certain categories of drugs?

In addition, we seek comments on other potential questions for inclusion in the evaluation of the Part B Drug Payment Model.

VII. Collection of Information Requirements

As stated in section 1115A(d)(3) of the Act, Chapter 35 of title 44, United States Code, shall not apply to the testing and evaluation of models under section 1115A of the Act. As a result, the information collection requirements contained in this proposed rule need not be reviewed by the Office of Management and Budget. However, costs incurred through information collections are included in the Regulatory Impact Analysis.

VIII. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the ''DATES'' section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

IX. Regulatory Impact Analysis

A. Introduction

We have examined the impacts of this proposed rule, as required by Executive

Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (March 22, 1995, Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Contract with America Advancement Act of 1996 (Pub. L. 104–121) (5 U.S.C. 804(2)). This section of the proposed rule contains the impact and other economic analyses for the provisions that we are proposing.

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been designated as an economically significant rule under section 3(f)(1) of Executive Order 12866 and a major rule under the Contract with America Advancement Act of 1996 (Pub. L. 104–121). Accordingly, this proposed rule has been reviewed by the Office of Management and Budget. We have prepared a regulatory impact analysis that, to the best of our ability, presents the costs and benefits of this proposed rule. We solicit comments on the regulatory impact analysis in the proposed rule.

B. Statement of Need

This proposed rule is necessary to implement and test a new payment and service delivery model under the authority of section 1115A of the Act, which allows the Innovation Center to test innovative payment and service delivery models to reduce program expenditures while preserving or enhancing the quality of care furnished to individuals. The underlying issue addressed by the Part B Drug Payment Model is whether the FFS payment amount for drugs furnished in physician offices and hospital outpatient departments at ASP+6 percent encourages the use of more expensive drugs because the 6 percent add-on generates more revenue for more expensive drugs (see MedPAC Report to the Congress: Medicare and the Health Care Delivery System June 2015, pages 65–72). Medicare pays this price regardless of the price a provider pays to acquire the drug. The ASP methodology does not take into account the effectiveness of a particular drug, nor the cost of comparable drugs, when determining the Medicare payment amount.

This proposed rule creates and tests one alternative payment approach to the ASP add-on amount and whether a combination of value-pricing and clinical decision support tools can change physician and hospital outpatient prescribing patterns. With minor exclusions, we propose to include the vast majority of Part B drugs in this proposed model, and we are requiring all providers and suppliers that furnish those Medicare Part B drugs to beneficiaries in selected geographic areas to participate. Some providers and suppliers will be included in the control group continuing to receive payment at ASP+6 percent. Testing the model in this manner will allow us to learn more about how best to structure FFS incentives for Part B drug payment and whether managing aspects of the Part B drug benefit can improve the value of Medicare spending on drugs. This learning could inform future Medicare payment policy.

C. Overall Impacts for the Proposed Part B Drug Payment Model

As detailed in section III of this proposed rule, we are proposing to establish the CY 2016 alternative ASP add-on amount in phase I as budget neutral to Part B spending using CY 2014 claims data. We propose to update the flat fee amount each year based on the CPI MC. We intend to achieve savings through behavioral responses to the revised pricing, as we hope that the revised pricing removes any excess financial incentive to prescribe high cost drugs over lower cost ones when comparable low cost drugs are available. In other words, we believe that removing the financial incentive that may be associated with higher add-on payments may lead to some savings during phase I of the proposed model. We do not have an exact estimate of the amount of savings that might be achieved through behavioral responses. However, prior research suggests that changes in the 6 percent add-on percentage can change prescribing behavior. For example, in one study, the implementation of ASP+6 percent resulted in providers shifting patients to newer, more expensive drugs which had a higher profit margin under the ASP+6 percent methodology.[46] For urologists, rheumatologists, infectious disease specialists, and medical oncologists, Medicare billing decreased for Part B drugs but increased for other services (for example, drug administration and testing) between 2004 and 2005, when ASP+6 percent went into effect.[47]

In phase II, we are proposing that the VBP component of the model would not be budget neutral. We intend to achieve savings in phase II through the use of value-pricing tools. We invite extensive comment throughout this proposed rule on the applicability of various VBP tools to the Part B and hospital outpatient drug benefit. We do not believe that we have enough detail on the structure of the final value-based purchasing component to quantify potential savings. As with phase I, we note evidence that changes in drug margin and the +6 percent add-on amount have correlated with changes in prescribing patterns. We cannot gauge the magnitude of savings for either proposed phase of the model at this time but we expect both to produce savings. We invite comment on the extent of savings that might be achieved based on commenter experience.

Part B and hospital outpatient spending for separately paid drugs and biologicals is estimated at $21 billion for CY 2016. We propose to assign through the stratified random sample one-half of the PCSAs to the phase I model arms testing payment at ASP+2.5 percent plus a flat fee and that should include roughly one-half of that estimated spending amount within those arms. We estimate that the flat fee would account for roughly $675 million of total Part B drug spending if calculated nationally. In addition to any changes in spending introduced through phase II, we believe that the model's effects will trigger the threshold of ''an annual effect on the economy of $100 million or more'' under E.O. 12866.

D. Detailed Economic Analyses

1. Estimated Effect of Part B Drug Payment Model Changes in This Proposed Rule

a. Limitations of Our Analysis

The distributional impacts presented here are the projected effects of phase I of the proposed Part B Drug Payment Model implementing alternative ASP

[46] Medicare Payment Advisory Commission. (2006). Report to the Congress: Effects of Medicare payment changes on oncology. Washington, DC: MedPAC.

[47] Medicare Payment Advisory Commission. (2007). Report to the Congress: Impact of changes in Medicare payments for Part B drugs. Washington, DC: MedPAC.

add-on amounts to drug payment by various hospital categories and physician specialties, where applicable. We estimate the effects of the policy changes by categorizing drug payment and other factors from the provider and supplier claims into the appropriate categories and then recalculating payment based on the characteristics of proposed pricing under the Part B Drug Payment Model. In developing the budget neutral Part B Drug Payment Model and the corresponding impact tables, we use the best data available, but do not attempt to predict behavioral responses to our policy changes. In addition, we have not made adjustments for future changes in variables such as service volume, service-mix, or number of encounters. The impact tables included in this proposed rule display the estimated effects if the Part B Drug Payment Model were to apply to all providers. Since we propose to randomly assign PCSAs to one of three model test arms or a control group, we believe that including all providers is a fair representation of the impact. We also note that we included all providers and suppliers in our calculation of the proposed flat fee amount. In this proposed rule, we are soliciting public comment and information about the anticipated effects of our proposed changes on providers and suppliers and the methodologies used to develop the Part B Drug Payment Model. Any public comments that we receive will be addressed in the applicable section(s) of the final rule with comment period.

For phase II of this model we do not present distributional impacts. This phase of the proposed model is not budget neutral, and as discussed in section II.B.1., evidence generally suggests that utilizing approaches employed by commercial and Part D plans to contain drug costs and improve value should lead to savings in Part B drug spending. However, the proposed rule invites extensive comment on which VBP tools are appropriately applied to the Part B and hospital outpatient drug benefit. We cannot yet quantify the overall impact of VBP. We invite comment on the extent of savings that might be achieved based on commenter experience, and we anticipate being able to better estimate the probability and magnitude of savings from those comments.

b. Estimated Effects of Phase I

i. Estimated Effects of Phase I: Changes to ASP Add-on Amount on Physicians, Practitioners, and other Suppliers

Table 2 shows the estimated impact of this proposed rule on physicians, practitioners, and other suppliers. Table 2 does not show specialties with less than $10 million in total drug spending and includes outpatient hospital spending as a specialty to demonstrate budget neutrality. Overall, Part B drug payment to practitioners, pharmacies, and hospitals by specialty in phase I of this proposed model will not change, as the ASP add-on revision is proposed to be budget neutral.

- *Column 1: Physician Specialty Descriptor:* Column 1 displays the physician specialty categories in the Part B drug claims. We do not show specialties with aggregate drug spending less than $10 million.
- *Column 2: Total Medicare Payment for Specialty (in millions):* Column 2 displays total Medicare payment (in millions) for physician/supplier specialties in the model, including both the Medicare program and beneficiary share, based on CY 2014 claims with proposed trims and exclusions as discussed in the proposed rule. These payment values are included to provide context for the Part B Drug Payment Model changes in the broader context of overall payment. The first line in Column 2 in Table 3 shows the total Medicare payment for all hospital and physician/supplier specialties (approximately $127 billion). The second line in Column 2 shows the total Medicare payment for all hospitals. The third line in Column 2 shows the total Medicare payment for all specialties with drugs included in the proposed Part B drug payment model.
- *Column 3: Total Medicare Payment-Physician Specialty Percent Change:* Column 3 displays the estimated impact of the ASP+2.5 percent and flat fee model within the context of overall Medicare payment to physician/supplier specialties. Under the proposed rule the estimated overall percent change for specialties ranges from −2.9 percent to 3.2 percent.
- *Column 4: Total Medicare Payment-Urban Area Percent Change:* Column 4 displays the estimated impact of the ASP+2.5 percent and flat fee model within the context of overall Medicare payment to urban geographic areas. Under the proposed rule the estimated overall percent change for physician/supplier specialties ranges from −2.9 percent to 3.4 percent.
- *Column 5: Total Medicare Payment-Rural Area Percent Change:* Column 5 displays the estimated impact of the ASP+2.5 percent and flat fee model within the context of overall Medicare payment in rural geographic areas. Under the proposed rule the estimated overall percent change for physician/supplier specialties in rural areas ranges from −2.4 percent to 2.6 percent.
- *Column 6: Total Drug Payment at ASP+6 percent for Specialty (in millions):* Column 6 displays total drug payment at the full ASP+6 percent based on CY 2014 claims, with proposed trims and exclusions as discussed in the proposed rule.
- *Column 7: ASP+2.5 percent plus Flat Fee—Physician Specialty Percent Change in Drug Payment:* Column 7 displays the estimated impact of the ASP+2.5 percent + flat fee model within the context of drug payment to physician/supplier specialties, from ASP+6 percent to ASP+2.5 percent + flat fee. The proposed flat fee amount is calculated as $16.80, and applies per drug per day administered. Under the proposed rule, Part B drug payments to physician/supplier specialties are expected to decrease and increase in the range of −3.3 to 50.2 percent. We note that the specialty impacts will vary based on the share that Part B drug payment represents as a portion of overall practice revenue for that category. We note that the proposed changes are budget neutral across Part B drug spending hospitals and physician offices.
- *Column 8: ASP+2.5 percent + Flat Fee—Urban Area Percent Change in Drug Payment:* Column 8 displays the estimated impact of the ASP+2.5 percent and flat fee model within the context of Medicare payment in urban geographic areas. Under the proposed rule the estimated overall percent change for Part B drug payments to physician/supplier specialties in urban areas ranges from −3.3 percent to 50.2 percent.
- *Column 9: ASP+2.5 percent + Flat Fee—Rural Area Percent Change in Drug Payment:* Column 9 displays the estimated impact of the ASP+2.5 percent + flat fee model within the context of Medicare payment in rural geographic areas. Under the proposed rule the estimated overall percent change for Part B drug payments to physician/supplier specialties in rural areas ranges from −3.2 percent to 82.1 percent.

TABLE 2—IMPACT OF PART B DRUG PAYMENT MODEL ON HOSPITALS, PRACTITIONERS, AND PHARMACIES BY SPECIALTY*

Rows	Specialty	Physician specialty descriptor	Total Medicare payment				Total drug payment			
			Total Medicare payment for specialty (in millions)	Physician specialty % change	Urban % change	Rural % change	Total drug payment at ASP+6 percent for specialty (in millions)	Physician specialty % change	Urban % change	Rural % change
1	All	Hospital OPPS and MPFS	$127,417	0.0	0.0	0.3	$20,391	0.0	−0.3	2.1
2	Hospital	Hospital	50,043	−0.3	−0.3	−0.3	7,209	−2.3	−2.3	−2.2
3	Total**	All Specialties	77,374	0.2	0.2	0.6	13,181	1.3	0.9	4.8
4	83	Hematology/Oncology	5,150	−0.4	−0.5	−0.2	4,059	−0.6	−0.6	−0.2
5	18	Ophthalmology	6,234	−0.6	−0.7	−0.4	2,387	−1.7	−1.7	−1.4
6	A5	Pharmacy	3,316	1.8	1.5	2.6	1,432	4.2	3.4	6.2
7	66	Rheumatology	1,699	−1.1	−1.1	−1.0	1,205	−1.5	−1.5	−1.5
8	90	Medical Oncology	1,499	−0.5	−0.5	−0.4	1,193	−0.7	−0.7	−0.5
9	87	Other	486	−2.9	−2.9	−2.4	429	−3.3	−3.3	−3.2
10	11	Internal Medicine	6,266	0.6	0.5	1.0	412	9.1	8.1	17.5
11	34	Urology	1,619	0.1	0.1	0.2	349	0.4	0.4	0.7
12	13	Neurology	1,162	−0.3	−0.3	−0.1	231	−1.4	−1.4	−0.5
13	20	Orthopedic Surgery	1,792	1.9	1.9	2.0	223	15.0	14.9	16.2
14	82	Hematology	206	−0.5	−0.5	−0.3	164	−0.6	−0.6	−0.4
15	50	Nurse Practitioner	1,444	0.8	0.5	2.1	136	8.7	5.2	27.1
16	08	Family Practice	4,825	1.1	0.9	1.6	119	43.6	38.2	62.1
17	06	Cardiovascular Disease (Cardiology).	3,850	0.3	0.3	0.2	113	9.3	9.3	8.6
18	97	Physician Assistant	879	1.1	1.0	1.4	79	12.3	11.5	15.9
19	10	Gastroenterology	658	−0.2	−0.2	0.0	76	−1.5	−1.6	−0.5
20	44	Infectious Disease	177	3.2	3.4	−0.2	71	8.1	8.3	−0.6
21	03	Allergy/Immunology	270	−0.3	−0.3	−0.3	66	−1.4	−1.4	−1.3
22	25	Physical Medicine And Rehabilitation.	589	1.0	1.0	1.1	57	10.3	10.0	16.0
23	98	Gynecological/Oncology	85	0.6	0.6	0.6	51	1.0	1.0	2.1
24	39	Nephrology	1,357	0.2	0.2	0.1	50	4.7	4.9	3.3
25	07	Dermatology	3,036	0.0	0.0	0.1	30	4.5	4.4	4.7
26	29	Pulmonary Disease	665	0.3	0.2	0.3	28	5.9	6.0	5.4
27	46	Endocrinology	410	0.1	0.1	0.1	25	1.7	1.7	1.1
28	37	Pediatric Medicine	58	−0.4	−0.6	1.5	21	−1.1	−1.5	81.0
29	92	Radiation Oncology	1,489	0.0	0.0	0.0	18	−1.2	−1.3	−0.5
30	16	Obstetrics/Gynecology	419	0.3	0.3	0.3	17	6.4	6.8	4.5
31	09	Interventional Pain Management	390	2.0	2.0	1.8	16	46.9	45.2	82.1
32	72	Pain Management	253	1.7	1.7	1.5	13	33.7	32.6	58.9
33	05	Anesthesiology	343	1.7	1.7	1.6	12	50.2	50.2	47.4
34	01	General Practice	404	1.2	1.0	1.9	11	44.5	42.1	51.9

*Table does not display specialties with less than $10 million in total drug spending. Identification of geographic location was based on the performing NPI's ZIP code for the line item. We note that this represented approximately 0.2% of NPI's included in this table and an estimated $2.5 million in total drug spending.

**This row includes all specialty information for drugs included in the proposed Part B drug payment model.

ii. Changes to ASP Add-On Amount on Hospitals

Table 3 shows the estimated impact of this proposed rule on hospitals. The table includes cancer and children's hospitals, which are held harmless to their amount prior to the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33). These providers are part of OPPS budget neutrality but would not be affected by the proposed Part B Drug Payment Model due to their hold harmless status. Overall, Part B drug payment to hospitals in the ASP+X phase of the Part B Drug Payment Model, phase 1, will decrease by an estimated 2.3 percent within the context of ASP based drug payment, and by an estimated 0.3 percent in overall hospital spending.

As discussed in section III.B. of this proposed rule, payment to hospitals for low cost drugs is included in the OPPS payment for primary services. We likely overestimate the cost of these drugs in our OPPS rate setting methodology due to our use of an average CCR in our cost estimation methodology. It is important to note that hospitals already receive robust payment for low cost drugs under a different payment methodology in light of the Table 3 conclusion demonstrating an overall −0.3 distribution away from hospitals.

• *Column 1: Total Number of Hospitals:* The first line in Column 1 in Table 3 shows the total number of hospitals in the Part B Drug Payment Model (3,204), including designated cancer and children's hospitals, for which we were able to use CY 2014 hospital outpatient claims data to extract actual CY 2014 ASP based drug payments. We excluded hospitals and entities that are not paid under the OPPS. The latter entities include CAHs, all-inclusive hospitals, and hospitals located in Guam, the U.S. Virgin Islands, Northern Mariana Islands, American Samoa, and the State of Maryland. At this time, we are unable to calculate a disproportionate share hospital (DSH) variable for hospitals that are not also paid under the IPPS, since DSH payments are only made to hospitals paid under the IPPS. Hospitals for which we do not have a DSH variable are grouped separately and generally include freestanding psychiatric hospitals, rehabilitation hospitals, and long-term care hospitals. We included cancer and children's hospitals because they are considered in OPPS budget neutrality. However, section 1833(t)(7)(D) of the Act permanently holds harmless cancer hospitals and children's hospitals to their ''pre-BBA amount'' as specified under the terms of the statute, and therefore, they would not be affected by these proposed models.

• *Column 2: Total Drug Payment at ASP+6 percent (in millions):* Column 2 shows the total drug payment for separately payable drugs included in the model, calculated at the full ASP+6 percent for each category based on CY 2014 claims with trimming and

exclusions as discussed in the proposed rule.

• *Column 3: Total Medicare Payment (in millions):* Column 3 displays Medicare payment for hospitals in the model, including both the Medicare program and beneficiary share, based on CY 2014 claims with proposed trims and exclusions. These payment numbers are included to provide context for the Part B Drug Payment Model changes in the broader context of overall payment to classes of hospitals.

• *Column 4: ASP+2.5 percent + Flat Fee—Revised Payment (in millions):* Column 4 displays total estimated revised payment under the ASP+2.5 percent and flat fee model. The proposed flat fee amount is calculated as $16.80, and applies per drug per day administered.

• *Column 5: ASP+2.5 percent + Flat Fee—Percent Change:* Column 5 column displays the estimated impact of the model within the context of drug payment, from ASP+6 percent to ASP+2.5 percent + flat fee of $16.80. Part B drug payments to hospitals based on the various categories are estimated to experience decreases in the range of −2.5 to −2.0 percent, under this proposed ASP+2.5 percent + flat fee model. We note that the proposed changes are budget neutral across Part B drug spending hospitals and physician offices.

• *Column 6: ASP+2.5 percent + Flat Fee—Estimated Percent Change in Overall Spending:* Column 6 displays the estimated impact of the model within the context of overall Medicare payment to hospitals. Under the proposed rule the estimated overall percent change for overall Medicare payments to outpatient hospitals ranges from −0.9 percent to −0.1 percent.

TABLE 3—OUTPATIENT IMPACT ANALYSIS OF THE PART B DRUG PAYMENT MODEL

Row		Number of hospitals	Total drug payment at ASP+6 percent (in millions)	Total medicare payment (in millions)	ASP+2.5 percent + Flat Fee		
					Revised payment (in millions)	% Change in drug spending	Estimated overall % change
		(1)	(2)	(3)	(4)	(5)	(6)
1	ALL PROVIDERS *	3,204	$7,209	$50,043	$7,044	−2.3	−0.3
2	URBAN HOSPITALS	2,412	6,390	43,887	6,242	−2.3	−0.3
3	LARGE URBAN (GT 1 MILL.)	1,324	3,564	23,730	3,481	−2.3	−0.4
4	OTHER URBAN (LE 1 MILL.)	1,088	2,826	20,157	2,761	−2.3	−0.3
5	RURAL HOSPITALS	792	819	6,156	801	−2.2	−0.3
6	SOLE COMMUNITY	371	491	3,310	480	−2.2	−0.3
7	OTHER RURAL	421	328	2,845	322	−2.1	−0.2
	BEDS (URBAN)						
8	0–99 BEDS	592	434	3,668	424	−2.3	−0.3
9	100–199 BEDS	737	915	8,078	894	−2.2	−0.3
10	200–299 BEDS	450	1,066	8,248	1,042	−2.2	−0.3
11	300–499 BEDS	416	1,716	12,002	1,677	−2.3	−0.3
12	500 + BEDS	217	2,260	11,891	2,206	−2.4	−0.5
	BEDS (RURAL)						
13	0–49 BEDS	289	98	906	96	−2.1	−0.2
14	50–100 BEDS	305	285	2,196	279	−2.1	−0.3
15	101–149 BEDS	111	157	1,180	153	−2.1	−0.3
16	150–199 BEDS	48	111	879	109	−2.1	−0.3
17	200 + BEDS	39	168	995	164	−2.3	−0.4
	REGION (URBAN)						
18	NEW ENGLAND	131	542	3,362	529	−2.3	−0.4
19	MIDDLE ATLANTIC	308	981	5,924	958	−2.4	−0.4
20	SOUTH ATLANTIC	407	1,116	8,069	1,091	−2.3	−0.3
21	EAST NORTH CENT	393	1,106	7,616	1,081	−2.3	−0.3
22	EAST SOUTH CENT	147	456	2,739	446	−2.3	−0.4
23	WEST NORTH CENT	165	541	3,471	529	−2.3	−0.4
24	WEST SOUTH CENT	349	539	4,694	527	−2.3	−0.3
25	MOUNTAIN	158	356	2,466	347	−2.4	−0.3
26	PACIFIC	330	751	5,516	733	−2.3	−0.3
27	PUERTO RICO	24	2	30	2	−2.5	−0.2
	REGION (RURAL)						
28	NEW ENGLAND	21	75	401	74	−2.4	−0.4
29	MIDDLE ATLANTIC	56	60	450	58	−2.2	−0.3
30	SOUTH ATLANTIC	123	117	946	114	−2.1	−0.3
31	EAST NORTH CENT	114	143	1,168	140	−2.1	−0.3
32	EAST SOUTH CENT	149	121	959	118	−2.2	−0.3
33	WEST NORTH CENT	95	145	897	142	−2.1	−0.3
34	WEST SOUTH CENT	152	41	676	40	−2.0	−0.1
35	MOUNTAIN	58	70	366	68	−2.3	−0.4
36	PACIFIC	24	47	293	46	−2.3	−0.4
	TEACHING STATUS						
37	NON-TEACHING	2,130	2,371	21,298	2,318	−2.2	−0.2
38	MINOR	712	2,162	15,739	2,112	−2.3	−0.3
39	MAJOR	362	2,677	13,006	2,613	−2.4	−0.5
	DSH PATIENT PERCENT						
40	0	9	3	33	3	−2.2	−0.2
41	GT 0–0.10	283	347	3,326	340	−2.3	−0.2
42	0.10–0.16	288	419	4,178	410	−2.2	−0.2

TABLE 3—OUTPATIENT IMPACT ANALYSIS OF THE PART B DRUG PAYMENT MODEL—Continued

Row		Number of hospitals	Total drug payment at ASP+6 percent (in millions)	Total medicare payment (in millions)	ASP+2.5 percent + Flat Fee		
					Revised payment (in millions)	% Change in drug spending	Estimated overall % change
		(1)	(2)	(3)	(4)	(5)	(6)
43	0.16–0.23	639	1,063	9,929	1,039	−2.3	−0.2
44	0.23–0.35	1,096	2,863	19,051	2,798	−2.3	−0.3
45	GE 0.35	774	2,055	12,308	2,007	−2.3	−0.4
46	DSH NOT AVAILABLE*	115	459	1,218	448	−2.4	−0.9
	TYPE OF OWNERSHIP						
47	VOLUNTARY	1,934	5,535	36,228	5,407	−2.3	−0.4
48	PROPRIETARY	799	428	6,753	419	−2.1	−0.1
49	GOVERNMENT	471	1,246	7,062	1,217	−2.3	−0.4

*Complete DSH numbers are not available for providers that are not paid under IPPS, including rehabilitation, psychiatric, and long-term care hospitals.

c. Estimated Effect of Part B Drug Payment Model Changes on Beneficiaries

For phase I of this model, we estimate that the aggregate beneficiary share within the context of the model will remain unchanged as we are establishing the alternative ASP add-on amounts to be budget neutral. Coinsurance for most separately payable drugs is set at 20 percent of the payment rates, while payment for new drugs would also be set at 20 percent of payment based on the OPPS and Part B drug coinsurance requirements. As noted above, we intend to achieve savings through anticipated behavioral response to price changes, although we cannot quantify the amount. To the extent that prescribing patterns do shift toward lower cost drugs under phase I, in aggregate, beneficiaries would benefit along with the Medicare program. We note that individual beneficiaries may see increases or decreases in their cost-sharing responsibility consistent with any redistribution in payment.

For phase II of this model, commercial experience suggests that some savings could be achieved, but we cannot anticipate the magnitude of changes in spending as already discussed. To the extent that savings ultimately are realized, both the beneficiary and Medicare program would benefit. Further, we have proposed in our value-based pricing discussion in section III.A. of this proposed rule, consistent with cost sharing approaches for Part B drugs, that beneficiary cost sharing will not exceed 20 percent of the total model-based payment amount for the Part B drug.

d. Alternative Part B Drug Payment Proposed Policies Considered

Alternatives to the Part B Drug Payment Model changes that we are proposing and the reasons for our selected alternatives are discussed throughout this proposed rule. In this section, we discuss some of the significant issues and the alternatives considered.

In the context of phase I, we considered several alternative structures for the ASP add-on amount. We first considered proposing a flat fee with no percent add-on. MedPAC discussed this alternative among several in their June 2015 report on Part B drug payment (MedPAC Report to the Congress: Medicare and the Health Care Delivery System June 2015, pages 65–72). Under such an approach, we would pay for an individual drug using baseline ASP amount and redistribute the entire +6 percent add-on amount in the form of a flat fee divided equally among doses of all drugs. This would shift an even greater portion of payments from the high cost drugs to the lower cost drugs even more aggressively than the proposed redistribution of ASP+2.5 percent plus a flat fee of $16.80. Like MedPAC, we believe that some amount of percentage add-on is required to address distribution channel costs associated with wholesalers and others between the manufacturer sales price and the physician purchase of a drug. Converting the ASP add-on payment to a complete flat fee might limit providers' ability to purchase expensive drugs as well as overly incentivize payment for the low cost drugs. We chose not to propose such a payment structure. We also have discussed additional tests of add-on modifications in section III.A.3 of this proposed rule. However, we believe that these approaches are not sufficiently different from the proposed approach to warrant proposal. We also were concerned that additional arms in the model could reduce statistical power. We invited comments on the decision to test one approach, ASP+2.5 percent + flat fee of $16.80.

Regarding the proposed Part B VBP model and its component tools, an alternative that we had considered was establishing episode of care based payments, potentially focused on specific drug treatments. There are a variety of ways to remove financial incentives from the prescribing decision. Clearly embedding decisions about prescribing within a model that pays for care management or rewards changes in total cost of care could create incentives for better quality and lower cost care. We are testing such an approach under the OCM, which we discuss in greater detail under section III. E. of this proposed rule. We chose not to explore an episode of care approach under this proposed Part B Drug Payment Model because of our immediate interest in addressing current incentives in Part B payment for the full range of Part B drugs. Rather than proposing an episode of care based payment built upon drug treatments, we are soliciting comments on an episode approach in section III.D. of this proposed rule for future consideration. We also plan to monitor experiences under the OCM closely to identify other opportunities for similar models that include drug therapies.

e. Accounting Statements and Table

As required by OMB Circular A–4 (available on the Office of Management and Budget Web site at *http://www.whitehouse.gov/sites/default/files/omb/assets/regulatory_matters_pdf/a-4.pdf*), we have prepared an accounting statement to illustrate the estimated impact of this proposed rule. The accounting statement, Table 4, illustrates the classification of expenditures for providers and

suppliers paid under the OPPS or MPFS, based on the estimated impacts in this proposed rule. Table 4 classifies most estimated impacts as transfers.

TABLE 4—ACCOUNTING STATEMENT: CY 2016 ESTIMATED HOSPITAL OPPS AND MPFS TRANSFERS AS A RESULT OF CHANGES IN THIS PROPOSED RULE

Category	Transfers
Annualized Monetized Transfers	$0 million.
From Whom to Whom	Federal Government to outpatient providers, physicians, other practitioners and providers and suppliers who receive OPPS or MPFS payment.
Total	$0 million.

E. Regulatory Flexibility Act (RFA) Analysis

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, most hospitals, practitioners, and most other providers and suppliers are small entities, either by nonprofit status or by having annual revenues that qualify for small business status under the Small Business Administration standards. For details, see the Small Business Administration's ''Table of Small Business Size Standards'' at *http://www.sba.gov/content/table-smallbusiness-size-standards.*

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has 100 or fewer beds. We estimate that this proposed rule may have a significant impact on small rural hospitals selected for the model. Therefore, we have prepared a regulatory impact analysis that includes the effects of the proposed rule on small rural hospitals.

F. Unfunded Mandates Reform Act Analysis

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately $144 million. This proposed rule does not mandate any requirements for State, local, or tribal governments, or for the private sector.

G. Federalism Analysis

Executive Order 13132 establishes certain requirements that an agency must meet when it issues a proposed rule (and subsequent final rule) that imposes substantial direct costs on State and local governments, preempts state law, or otherwise has Federalism implications. We have examined the OPPS and MPFS provisions in the Part B Drug Payment Model included in this proposed rule in accordance with Executive Order 13132, Federalism, and have determined that they will not have a substantial direct effect on state, local or tribal governments, preempt state law, or otherwise have a Federalism implication. As reflected in Table 3 of this proposed rule, we estimate that OPPS payments to governmental hospitals (including state and local governmental hospitals) would decrease payment by 0.4 percent under this proposed rule. While we do not know the number of physician offices with government ownership, we anticipate that it is small. The analyses we have provided in this section of this proposed rule, in conjunction with the remainder of this document, demonstrate that this proposed rule is consistent with the regulatory philosophy and principles identified in Executive Order 12866, the RFA, and section 1102(b) of the Act.

H. Conclusion

The changes we are proposing to make in this proposed rule will affect all categories of outpatient providers, physicians, practitioners, and other suppliers who furnish drugs that we are proposing to include in the Part B Drug Payment Model. We estimate that the effect of this proposal on physician specialties changes will vary, depending on what drugs they furnish and their clinical patterns. Table 2 demonstrates the estimated impact of the proposal on physician and supplier specialties, which for most would result in changes in drug payments in the range of −3.3 to 50.2 percent and −2.9 to 3.2 percent for overall Medicare payments. We estimate that most classes of hospitals paid under the OPPS will experience a minimal decrease in overall payment related to the proposed Part B Drug Payment Model. Table 3 demonstrates the estimated impact of the proposal, which for most hospital categories would result in decreases in payments for separately paid drugs in the range of −2.5 to −2.0 percent and −0.9 to −0.1 percent for overall Medicare payments. The effect of this proposal on an individual hospital, physician, practitioner, or other supplier will depend on its individual practice patterns.

List of Subjects in 42 CFR Part 511

Administrative practice and procedure, Health facilities, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, under the authority at section 1115A of the Social Security Act, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR Chapter IV by adding Part 511 to Subchapter H to read as follows:

PART 511—PART B DRUG PAYMENT MODEL

Sec.

Subpart A—General Provisions

511.1 Basis and scope.
511.2 Abbreviations and definitions.

Subpart B—Part B Drug Payment Model Participants

511.100 Included providers and suppliers.
511.105 Geographic areas.

Subpart C—Scope

511.200 Part B drugs and related fees included in the model.
511.205 Model structure and duration.

Subpart D—Pricing and Payment

511.300 Determination of model-based ASP payment (Phase I).
511.305 Determination of VBP tools (Phase II).
511.315 Pre-appeals Payment Exceptions Review Process.

Subpart E—Waivers

511.400 Waiver of certain ASP payment methodologies, requirements, and definitions for certain Medicare Part B drugs.
511.405 Waiver of other Part B drug payment methodologies.
511.410 Waiver of CAP.

Authority: Secs. 1102, 1115A, and 1871 of the Social Security Act (42 U.S.C. 1302, 1315(a), and 1395hh).

Subpart A—General Provisions

§ 511.1 Basis and scope.

(a) *Basis.* This part implements the test of the Part B Drug Payment Model under section 1115A of the Act. Except as specifically noted in this part, the regulations under this part must not be construed to affect the payment, coverage, program integrity, and other requirements (such as those in parts 412 and 482 of this chapter) that apply to providers and suppliers under this chapter.

(b) *Scope.* This part sets forth the following:

(1) The participants in the model.

(2) The drugs being tested in the model.

(3) The methodologies for pricing and payment under the model.

(4) Safeguards to ensure preservation of beneficiary choice and beneficiary notification.

§ 511.2 Abbreviations and definitions.

For the purposes of this part, the following definitions are applicable:

AMP stands for Average Manufacturer Price.

ASP stands for Average Sales Price.

ASP drug pricing files means the drug pricing files that contain the payment amounts that contractors use to pay for Part B covered drugs. They are updated quarterly and each year's files are available to the public through links at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Part-B-Drugs/McrPartBDrugAvgSalesPrice/index.html.*

AWP stands for Average Wholesale Price.

CAP stands for Competitive Acquisition Program.

CCN stands for CMS certification number.

DME stands for Durable Medical Equipment.

FFS stands for fee for service.

Hospital means a hospital as specified in section 1861(e) of the Act.

MAC stands for Medicare Administrative Contractor.

Maryland All-Payer Model means the CMS initiative to modernize Maryland's unique all-payer rate-setting system for hospital services that will improve patient health and reduce costs.

NCD which stands for National Coverage Determination.

NPI stands for National Provider Identifier.

OIG stands for the Department of Health and Human Services', Office of the Inspector General.

OPPS stands for Outpatient Prospective Payment System under section 42 CFR part 419.

OPD which means outpatient department.

Participant means any provider or supplier operating in an identified geographic area.

PBM stands for pharmacy benefit manager.

PBPM stands for per-beneficiary-per-month.

PCSA stands for primary care service area as defined and updated under contract to the Health Resources and Services Administration (HRSA) by the Dartmouth Institute.

Provider has the same meaning as a ''provider of services'' under section 1861(u) of the Act and includes a hospital, critical access hospital, skilled nursing facility, comprehensive outpatient rehabilitation facility, home health agency, or hospice program.

Supplier has the same meaning as defined in section 1861(e) of the Act and unless the context otherwise requires, a physician or other practitioner, a facility, or other entity (other than a provider of services) that furnishes items or services under this title.

TIN stands for Taxpayer Identification Number.

United States means the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands (42 CFR 400.200).

VBP stands for value-based purchasing, which refers to a suite of tools emphasizing beneficiary outcomes, education and feedback, and price used to manage a prescription drug benefit.

VBP contractor means the entity with which CMS will contract to assist in implementation of the tools included in phase II of the Part B Drug Payment Model

WAC stands for wholesale acquisition cost.

Subpart B—Part B Drug Payment Model Program Participants

§ 511.100 Included providers and suppliers.

General. This model requires mandatory participation for the providers and suppliers (including physicians) who furnish Part B drugs that are included in the model if the provider or supplier is located (or services are billed) in the geographic areas that are selected for inclusion in the model. This includes physicians, DME suppliers (including certain pharmacies that furnish Part B drugs), and hospital outpatient departments that furnish and bill for Part B drugs.

§ 511.105 Geographic areas.

(a) *General.* The geographic areas for inclusion in the Part B Drug Payment Model are obtained through stratified random assignment of PCSAs to each model arm.

(b) *Exclusions.* PCSAs with any ZIP code located in the state of Maryland are excluded from this model.

Subpart C—Scope

§ 511.200 Part B drugs and related fees included in the model.

(a) *General:* The model includes separately paid drugs and biologicals under Medicare Part B including those with ASP and WAC based payment amounts, AMP-based substitutions of ASP payment amounts, and certain drug-related fees.

(b) *Drugs, biologicals, and fees subject to inclusion.* (1) Single source drugs, biologicals, multiple source drugs, and biosimilars receiving distinct and separate payments in accordance with section 1842(o) of the Act, including drugs and biologicals paid under sections 1847A, 1847B or 1833(t) of the Act,.

(2) Specified fees paid in accordance with section 1842(o) of the Act, including those paid for immunosuppressive drugs, inhalation drugs and clotting factors under sections 1842(o)(6), 1842(o)(2), 1842(o)(5) of the Act.

(c) *Drugs and biologicals subject to exclusion.* (1) MAC/Contractor priced drugs and biologicals that do not appear on the quarterly national ASP Drug Pricing Files.

(2) ESRD drugs paid under the authority in section 1881 of the Act.

(3) Influenza, pneumococcal pneumonia and Hepatitis B vaccines paid under the benefit described in section 1862(s)(10) of the Act.

(4) OPPS drugs that receive packaged payment.

(5) Blood and blood products.

§ 511.205 Model structure and duration.

(a) *General.* There will be 3 different arms and one control in this model.

(b) *Random assignment.* Geographic areas are randomly assigned within six strata to one of three model arms or control.

(c) *Model arms defined.* The model arms contain the following ASP payment for separately paid drugs under the Part B benefit or hospital outpatient prospective payment system and application of a suite of value-based purchasing tools.

(1) ASP+6 percent [control].

(2) ASP+2.5 percent plus a flat fee.

(3) Value-based purchasing.

(4) ASP+2.5 plus a flat fee and value-based purchasing.

(d) *Duration and phased in implementation.* (1) The duration of the model is 5 years from implementation. Implementation will be on or after August 1, 2016.

(2) ASP add-on will be tested in phases I and II and will be implemented no sooner than 60 days after the rule is finalized. VBP arms are tested in conjunction with ASP add-on in phase II. Phase II will be implemented on or after January 1, 2017.

(e) *Use of contractor.* One or more contractors will be utilized to implement CMS approved VBP tools described in § 511.305(b).

Subpart D—Pricing and payment

§ 511.300 Determination of model-based ASP payment (Phase I).

(a) *General.* The ASP portion of the model encompasses testing of modifications to the 6 percent add-on for Part B drug payments. ASP model based payment rates are determined based upon values published in the quarterly ASP Drug Pricing Files per § 414.904 of this chapter, except the 6 percent add-on is replaced with a fixed percentage of 2.5 percent and a flat fee. The add-on is based on the total add-on payment for all Part B drugs that are included in the model for the most recently available complete set of Part B calendar year claims. For 2016, alternative ASP pricing add-on under phase I of the model will be equal to aggregate add-on spending in a model CY 2014 claims data set.

(b) *Payment updates.* (1) The flat fee will be updated every calendar year based on the percentage increase in the consumer price index for medical care.

(2) The ASP+0 portion of the model payment rates are updated quarterly concurrently with determinations made under § 414.904 of this chapter.

(c) *Special circumstances*—(1) *Shortages.* For drugs that are reported by the FDA to be in short supply at the time that ASP payment amounts are being finalized for the next quarter, payments are made using the amount determined under section 1847A of the Act.

(2) *AMP-based price substitutions:* For HCPCS codes with AMP-based substitutions determined under § 414.904(d)(3) of this chapter, the lower of the quarter's AMP-based substitution or the model ASP amount as determined under § 511.300 will be used.

§ 511.305 Determination of VBP tools (phase II).

(a) *General.* The model includes a VBP program which uses the tools approved for applicable Part B drugs as noted in paragraph (b) of this section.

(b) *Approved tools.* The following tools will be available to implement VBP:

(1) *Value-based pricing strategies.* Value-based pricing strategies include:

(i) *Reference pricing.* Reference pricing sets a benchmark rate based on the current payment rate for a drug or drugs in a class that may be used as the basis of payment for all other therapeutically similar drug products in a group. Medicare providers and suppliers may not bill the beneficiary for any difference in pricing between the benchmark rate and the statutory payment rate or the provider or supplier's charge for the drug prescribed.

(ii) *Indications-based pricing.* A drug's price may be adjusted based on the product's safety and cost-effectiveness for a specific indication as evidenced by published studies and reviews or evidence-based clinical practice guidelines that are competent and reliable.

(iii) *Outcomes-based risk-sharing agreements.* CMS may enter into outcomes-based risk-sharing contracts with pharmaceutical manufacturers to link price adjustments for a drug or drugs to clearly defined patient health outcome goals. CMS may base these goals on outcome measures submitted as part of a package of competent and reliable scientific evidence regarding the clinical value of a drug by the manufacturer.

(iv) *Discounting or eliminating patient coinsurance amounts.* Beneficiary cost-sharing may be reduced for Part B drugs deemed to be high in value. Any reductions in beneficiary cost-sharing may not change the overall payment amount.

(2) *Clinical decision support.* Clinical decision support policies are developed based on one or more of the following: competent and reliable scientific evidence, clinical guidelines, and Part B claims data.

(c) *Beneficiary cost-sharing.* Beneficiary cost-sharing must not exceed 20 percent of the total model-based payment amount for the applicable Part B drug.

(d) *Public feedback.* CMS will solicit public input for 30 days on the specific application of a proposed VBP tool.

(e) *Public notification.* CMS will notify the public by posting on the CMS Web site of application of any VBP tools 45 days before implementation.

§ 511.315 Pre-appeals Payment Exceptions Review Process.

(a) *General.* This process precedes the current appeals process in 42 CFR part 405 subpart I, and allows providers, suppliers, and beneficiaries the option to dispute pricing decisions, made under § 511.305 (phase II of the model) before the claim is submitted.

(b) *Payment Exceptions Review Process.* This process will be conducted by the VBP contractor. A provider, supplier, or beneficiary may file a payment exception request regarding a pricing policy for a drug furnished to a beneficiary.

(c) *Requirements of the Payment Exceptions Review Process.* The provider, supplier, or beneficiary may submit pertinent information to the VBP contractor with the exceptions request to explain why a payment exception is appropriate, given the beneficiary's circumstances.

(d) *Rendering a decision.* A decision regarding a request for a payment exception shall be issued by the VBP contractor within 5 business days of receipt of the request.

(e) *Current appeals process.* The provider, supplier, or beneficiary retain their right to utilize the current appeals process, regardless of whether they first utilize the Pre-Appeals process, once they have submitted a claim.

Subpart E—Waivers

§ 511.400 Waiver of certain ASP payment methodologies, requirements, and definitions for certain Medicare Part B drugs.

(a) *Waiver of 6 percent add-on percentage for certain Medicare Part B drugs.* We waive portions of section 1847A (b) (1) of the Act which specify the 6 percent add-on percentage for payments determined under section 1847A of the Act.

(b) *Waiver of how the volume-weighted ASP is to be used in the calculation of average sales price.* We waive portions of section 1847A(b)(6) of the Act, which specifies how the volume-weighted average sales price is to be used in the calculation of ASP.

(c) *Waiver of definitions of single source drug or biological, multiple source drug and biosimilar.* We waive definitions of single source drug or biological, multiple source drug and

biosimilar in section 1847A (c) of the Act

(d) *Waiver of the NDC assignment requirement.* We waive provisions in section 1847A(b) of the Act that require the assignment of NDCs to HCPCS codes based on whether a drug meets the definition of single source drug, multiple source drug, biological or biosimilar and to base the determination of the ASP (that is, the ASP+0 percent) on the NDCs from this assignment.

(e) *Waiver of OPPS requirement to pay for drugs acquisition cost plus an overhead adjustment or by default, to ASP+6 percent.* We waive section 1833 (t)(14) of the Act which specifies that the Outpatient Prospective Payment System pays for certain outpatient drugs at acquisition cost plus an adjustment for overhead and handling, or by default, to ASP+6 percent.

(f) *Waiver of OPPS pass through payment for outpatient drugs.* We waive section 1833(t)(6) of the Act, which requires the Secretary to furnish additional pass through payments for certain drugs that are covered under the OPD service (group of services).

§ 511.405 Waiver of other Part B drug payment methodologies.

(a) *Waiver of specified payment methodology for certain infusion drugs.* We propose to waive section 1842 (o)(1)(D) of the Act, which requires that infusion drugs furnished through an item of DME be paid at 95 percent of the AWP in effect on October 1, 2003.

(b) *Waiver of specified fees for immunosuppressive drugs, inhalation drugs and clotting factors.* We waive sections 1842(o)(6), 1842(o)(2), 1842(o)(5) of the Act that state the immunosuppressive drug supplying fees, inhalation drug dispensing fees and the clotting factor furnishing fees.

§ 511.410 Waiver of CAP.

We waive section 1847B of the Act and portions of §§ 414.906 through 414.920 of this chapter which implement the Part B drug competitive acquisition program (CAP).

Dated: February 24, 2016.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: February 26, 2016.

Sylvia M. Burwell,

Secretary, Department of Health and Human Services.

[FR Doc. 2016–05459 Filed 3–8–16; 4:15 pm]

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