AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO



FEDERAL REGISTER

Vol. 78 Wednesday,

No. 191 October 2, 2013

Pages 60653–61152

OFFICE OF THE FEDERAL REGISTER

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

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

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

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

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

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

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

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

How To Cite This Publication: Use the volume number and the page number. Example: 77 FR 12345.

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

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

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

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, October 22, 2013
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

Contents

Federal Register

Vol. 78, No. 191

Wednesday, October 2, 2013

Agency for International Development
NOTICES
Senior Executive Services Performance Review Board; Update, 60816

Agriculture Department
See Forest Service
See Grain Inspection, Packers and Stockyards Administration
See Rural Business-Cooperative Service

Alcohol and Tobacco Tax and Trade Bureau
RULES
Viticultural Areas:
Ballard Canyon; Establishment, 60693–60695
Big Valley District–Lake County and Kelsey Bench–Lake County, Establishment; Red Hills Lake County, Modification, 60686–60690
Moon Mountain District Sonoma County; Establishment, 60690–60693

Army Department
NOTICES
Meetings:
Army Science Board, 60864

Bureau of the Fiscal Service
RULES
Regulatory Reorganization:
Administrative Changes to Regulations Due to the Consolidation of the Financial Management Service and the Bureau of the Public Debt into the Bureau of the Fiscal Service, 60695–60697

Centers for Disease Control and Prevention
NOTICES
Meetings:
Advisory Committee on Immunization Practices, 60877–60878
Advisory Committee to the Director, 60876
Disease, Disability, and Injury Prevention and Control Special Emphasis Panel; Initial Review, 60875–60879

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
ACF Program Instruction: Children's Justice Act, 60879–60880
Statements of Organization, Functions, and Delegations of Authority, 60880–60883

Coast Guard
RULES
Safety Zones:
Lucas Oil Drag Boat Racing Series, Thompson Bay, Lake Havasu City, AZ, 60698–60700
NOTICES
Requests for Applications:
Towing Safety Advisory Committee; Vacancies, 60890–60891

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration
See National Telecommunications and Information Administration
See Patent and Trademark Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 60824–60826

Defense Department
See Army Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 60863
Meetings:
Native American Tribal Insignia Database, 60863–60864

Department of Transportation
See Pipeline and Hazardous Materials Safety Administration

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Integrated Postsecondary Education Data System 2013–2016, 60864–60865
Title V Developing Hispanic-Serving Institutions Application, 60865

Energy Department
NOTICES
Meetings:
Hydrogen and Fuel Cell Technical Advisory Committee, 60866
National Coal Council, 60866

Environmental Protection Agency
RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Illinois; Redesignation of the Chicago Area to Attainment of the 1997 Annual Fine Particulate Matter Standard, 60704–60707
National Oil and Hazardous Substances Pollution Contingency Plan:
National Priorities List; Deletion of the Ludlow Sand and Gravel Superfund Site, 60721–60726
Pesticide Tolerances:
Glyphosate, 60707–60709
Methoxyfenozide, 60709–60715
Sedaxane, 60715–60720
Removal of Expired Tolerances:
Methyl Parathion, 60720–60721
Source Specific Federal Implementation Plans:
Implementing Best Available Retrofit Technology for Four Corners Power Plant; Navajo Nation, 60700–60704

PROPOSED RULES
National Oil and Hazardous Substances Pollution Contingency Plan:
National Priorities List; Deletion of the Ludlow Sand & Gravel Superfund Site, 60809–60810
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 60867–60868
Amendment of the Federal Docket Management System, 60868–60870
Meetings:
Exposure Modeling, 60870–60871
Pesticide Experimental Use Permits; Applications, 60871–60872

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness Directives:
Airbus Airplanes, 60667–60670
Eurocopter France (Eurocopter) Helicopters, 60681–60683
Rolls-Royce plc Turbofan Engines, 60658–60660
Sikorsky Aircraft Corporation Helicopters, 60656–60658
The Boeing Company Airplanes, 60660–60667, 60670–60681
Amendment of Class E Airspace:
Mandan, ND, 60683–60684
PROPOSED RULES
Airworthiness Directives:
Airbus Airplanes, 60798–60800
Bombardier Inc., Airplanes, 60800–60804
The Boeing Company Airplanes, 60804–60809
NOTICES
Meetings:
Aviation Rulemaking Advisory Committee on Transport Airplane and Engine Issues; Rescheduled, 60995
Petitions for Exemptions; Summaries, 60995–60996

Federal Financial Institutions Examination Council
NOTICES
Meetings:
Appraisal Subcommittee, 60872–60873

Federal Highway Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 60996–60997

Federal Register Office
PROPOSED RULES
Incorporation By Reference, 60784–60798

Federal Register, Administrative Committee
See Federal Register Office

Federal Reserve System
NOTICES
Changes in Bank Control:
Acquisitions of Shares of a Bank or Bank Holding Company, 60873

Fiscal Service
RULES
Regulatory Reorganization:
Administrative Changes to Regulations Due to the Consolidation of the Financial Management Service and the Bureau of the Public Debt into the Bureau of the Fiscal Service, 60695–60697

Fish and Wildlife Service
RULES
Endangered and Threatened Wildlife and Plants:
Endangered Species Status for the Florida Bonneted Bat, 61004–61043
Threatened Species Status for Spring Pygmy Sunfish, 60766–60783
PROPOSED RULES
Endangered and Threatened Wildlife and Plants:
12-Month Finding on a Petition to List the Eastern Small-Footed Bat and the Northern Long-Eared Bat as Endangered or Threatened Species; Listing the Northern Long-Eared Bat as an Endangered Species, 61046–61080
Listing of Coral Pink Sand Dunes Tiger Beetle and Designatation Critical Habitat; Withdrawal, 61082–61112
Removing the Gray Wolf (Canis lupus) from the List of Endangered and Threatened Wildlife and Maintaining Protections for the Mexican Wolf (Canis lupus baileyi) by Listing It as Endangered, 60813–60815

Food and Drug Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Infant Formula Requirements, 60883–60884
Meetings:
Vaccines and Related Biological Products Advisory Committee, 60884–60885

Foreign Assets Control Office
NOTICES
Blocking or Unblocking of Persons and Property, 61000–61001

Foreign-Trade Zones Board
NOTICES
Production Activities:
Caterpillar, Inc., Foreign-Trade Zone 155, Calhoun/Victoria Counties, TX, 60826–60827

Forest Service
NOTICES
Proposed Directive for Additional Seasonal or Year-Round Recreation Activities at Ski Areas, 60816–60820

Grain Inspection, Packers and Stockyards Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 60820–60821
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Clear Title Program, 60821–60822

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health
PROPOSED RULES
Change to the Definition of Human Organ under the National Organ Transplant Act, 60810–60813
NOTICES
Findings of Research Misconduct, 60873–60874

National Institute for Occupational Safety and Health Personal Protective Technology Program and National Personal Protective Technology Laboratory Conformity Assessment, 60874–60875
Sole Source Cooperative Agreement Awards, 60875

Homeland Security Department
See Coast Guard
NOTICES
Expressions of Interest for Chemical Defense Demonstration Projects, 60887–60888
Privacy Act; Systems of Records, 60888–60890

Interior Department
See Fish and Wildlife Service
See Ocean Energy Management Bureau
See Surface Mining Reclamation and Enforcement Office

International Trade Administration
NOTICES
Antidumping and Countervailing Duty Investigations; Results, Extensions, Amendments, etc.:
Steel Concrete Reinforcing Bar from Mexico and Turkey, 60827–60831
Steel Concrete Reinforcing Bar from Turkey, 60831–60834
Antidumping and Countervailing Duty Orders; Results, Extensions, Amendments, etc.:
Administrative Reviews and Requests for Revocations, 60834–60844
Antidumping Duty Administrative Reviews; Results, Extensions, Amendments, etc.:
Wooden Bedroom Furniture from the People's Republic of China, 60844–60846
Antidumping Duty Orders; Results, Extensions, Amendments, etc.:
Silicomanganese from India, Kazakhstan, and Venezuela, 60846–60847
Antidumping or Countervailing Duty Orders, Findings, or Suspended Investigations; Results, Extensions, Amendments, etc.:
Opportunity to Request Administrative Review, 60847–60849
Countervailing Duty Orders; Results, Extensions, Amendments, etc.:
Carbon and Certain Alloy Steel Wire Rod from Brazil, 60850
Circular Welded Carbon Quality Steel Pipe from the People's Republic of China, 60849–60850

International Trade Commission
NOTICES
Complaints:
Certain Handheld Magnifiers and Products Containing Same, 60896–60897
Determinations:
Certain Welded Large Diameter Line Pipe from Japan, 60897

Labor Department
See Occupational Safety and Health Administration
See Workers Compensation Programs Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Employer Children's Health Insurance Program Notice, 60897–60898

National Archives and Records Administration
See Federal Register Office

National Institutes of Health
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application Process for Clinical Research Training and Medical Education at the Clinical Center and its Impact on Course and Training Program Enrollment and Effectiveness, 60885–60886
Quantification of Behavioral and Physiological Effects of Drugs Using a Mobile Scalable Device, 60886–60887
Meetings:
National Cancer Institute, 60887

National Oceanic and Atmospheric Administration
NOTICES
Endangered and Threatened Species:
Main Hawaiian Islands Insular False Killer Whale Distinct Population Segment; Recovery Plan, 60850–60851
Meetings:
Science Advisory Board, 60851–60852
Permits:
Marine Mammals; File Nos. 16239 and 17312, 60852
Taking of Marine Mammals Incidental to Specified Activities:
Construction of the East Span of the San Francisco–Oakland Bay Bridge; Incidental Harassment Authorization, 60852–60860

National Science Foundation
NOTICES
Meetings:
Committee on Equal Opportunities in Science and Engineering, 60918
Innovation Corps Advisory Committee, 60918
Permit Applications under the Antarctic Conservation Act, 60918–60919

National Telecommunications and Information Administration

NOTICES
Requests for Applications:
Commerce Spectrum Management Advisory Committee, 60860–60861

Nuclear Regulatory Commission
NOTICES
Orders Imposing Additional Security Measures:
Licensees Authorized to Possess and Transfer Items Containing Radioactive Material Quantities of Concern, 60919–60928
Requests to Amend Licenses to Export High-Enriched Uranium, 60928

Occupational Safety and Health Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Definition and Requirements of a Nationally Recognized Testing Laboratory, 60898–60900
Applications:
Kiewit Power Constructors Co., et al.; Permanent Variance, 60900–60918

Ocean Energy Management Bureau
NOTICES
Proposed Oil and Gas Lease Sales:
Outer Continental Shelf, Alaska Region, Chukchi Sea Planning Area; Call for Information and Nominations; Correction, 60892–60895

Patent and Trademark Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Native American Tribal Insignia Database, 60861–60862

Personnel Management Office
RULES
Federal Employees Health Benefits Program:
Members of Congress and Congressional Staff, 60653–60656

Pipeline and Hazardous Materials Safety Administration
RULES
Fireworks Policy Regarding Approvals or Certifications for Firework Series, 60763–60766
Fireworks Policy Regarding Approvals or Certifications for Specialty Fireworks Devices, 60766
Hazardous Materials:
Enhanced Enforcement Procedures; Resumption of Transportation, 60755–60763
Minor Editorial Corrections and Clarifications, 60745–60755
Penalty Guidelines, 60726–60745

Postal Service
NOTICES
Transfer of Post Office Box Section 21412 to Competitive Fee Group, 60928–60929

Presidential Documents
PROCLAMATIONS
Special Observances:
National Hunting and Fishing Day, 2013, 61149–61152

Presidio Trust
NOTICES
Meetings:
Fort Scott Council, 60929

Public Debt Bureau
See Fiscal Service

Research and Innovative Technology Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Report of Passengers Denied Confirmed Space, 60997–60998

Rural Business-Cooperative Service
NOTICES
Funding Availability for the Biorefinery Assistance Program, 60822–60824

Securities and Exchange Commission
RULES
Adoption of Updated EDGAR Filer Manual, 60684–60686
NOTICES
Applications:
Guinness Atkinson Asset Management, Inc., et al., 60929–60937
Joint Industry Plans:
Order Approving the Fifth Amendment to the National Market System Plan to Address Extraordinary Market Volatility, 60937–60939
Self-Regulatory Organizations; Proposed Rule Changes:
BATS Exchange, Inc., 60973–60975
BATS Y-Exchange, Inc., 60963–60964
C2 Options Exchange, Inc., 60947–60950
Chicago Board Options Exchange, Inc., 60971–60973, 60978–60982
Chicago Stock Exchange, Inc., 60945–60946
EDGA Exchange, Inc., 60965–60966
EDGX Exchange, Inc., 60941–60943
Financial Industry Regulatory Authority, Inc., 60952–60954, 60982–60985
International Securities Exchange, LLC, 60991–60993
Miami International Securities Exchange, LLC, 60966–60969
Municipal Securities Rulemaking Board, 60956–60962, 60985–60991
NASDAQ Stock Market LLC, 60977–60978
National Stock Exchange, Inc., 60954–60956
New York Stock Exchange, LLC, 60969–60971
NYSE Arca, Inc., 60939–60941, 60950–60952, 60975–60976
NYSE MKT, LLC, 60943–60945
Trading Suspension Orders:
China Ruitai International Holdings Co., Ltd., 60993

Small Business Administration
RULES
Acquisition Process:
Task and Delivery Order Contracts, Bundling, Consolidation, 61114–61148

State Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application to Determine Returning Status, 60993–60994
Culturally Significant Objects Imported for Exhibition:
Christopher Wool, 60994
In Grand Style: Celebrations in Korean Art during the Joseon Dynasty, 60994
Meetings:
U.S. National Commission for UNESCO; Teleconference, 60994–60995

Surface Mining Reclamation and Enforcement Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 60895–60896

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Pipeline and Hazardous Materials Safety Administration
See Research and Innovative Technology Administration

Treasury Department
See Alcohol and Tobacco Tax and Trade Bureau
See Bureau of the Fiscal Service
See Fiscal Service
See Foreign Assets Control Office

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Sale and Issue of Marketable Book-Entry Securities, 60998
Strategies to Accelerate the Testing and Adoption of Pay for Success Financing Models; Request for Information, 60998–61000

Veterans Affairs Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 61002
Loan Guaranty:
Assistance to Eligible Individuals in Acquiring Specially Adapted Housing; Cost-of-Construction Index, 61002

Workers Compensation Programs Office
RULES
Black Lung Benefits Act:
Determining Coal Miners and Survivors Entitlement to Benefits; Correction, 60686

Separate Parts In This Issue

Part II
Interior Department, Fish and Wildlife Service, 61004–61043

Part III
Interior Department, Fish and Wildlife Service, 61046–61080

Part IV
Interior Department, Fish and Wildlife Service, 61082–61112

Part V
Small Business Administration, 61114–61148

Part VI
Presidential Documents, 61149–61152

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

1 CFR

Proposed Rules:

51 60784

3 CFR

Proclamations:

9026 61151

5 CFR

890 60653

13 CFR

121 61114
124 61114
125 61114
126 61114
127 61114

14 CFR

39 (9 documents) 60656, 60658, 60660, 60667, 60670, 60673, 60676, 60679, 60681
71 60683

Proposed Rules:

39 (4 documents) 60798, 60800, 60804, 60807

17 CFR

232 60684

20 CFR

718 60686
725 60686

27 CFR

9 (3 documents) 60686, 60690, 60693

31 CFR

Ch. II 60695

33 CFR

165 60698

40 CFR

49 60700
52 60704
81 60704
180 (4 documents) 60707, 60709, 60715, 60720
300 60721

Proposed Rules:

300 60809

42 CFR

Proposed Rules:

121 60810

49 CFR

107 (2 documents) 60726, 60745
109 60755
130 60745
171 60745
172 60745
173 (3 documents) 60745, 60763, 60766
174 60745
177 60745
178 60745
179 60745
180 60745

50 CFR

17 (2 documents) 60766, 61004

Proposed Rules:

17 (3 documents) 60813, 61046, 61082

Rules and Regulations

Federal Register
Vol. 78, No. 191
Wednesday, October 2, 2013

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206–AM85

Federal Employees Health Benefits Program: Members of Congress and Congressional Staff

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is issuing a final rule to amend the Federal Employees Health Benefits (FEHB) Program regulations regarding coverage for Members of Congress and congressional staff.

DATES: *Effective Date:* October 2, 2013.

FOR FURTHER INFORMATION CONTACT: Chelsea Ruediger at (202) 606–0004.

SUPPLEMENTARY INFORMATION: This final rule amends Federal Employees Health Benefits (FEHB) Program regulations to comply with Section 1312 of the Patient Protection and Affordable Care Act, Public Law 111–148, as amended by the Health Care and Education Reconciliation Act, Public Law 111–152 (the Affordable Care Act or the Act).

On August 8, 2013, the Office of Personnel Management (OPM) published a proposed rule inviting comments on amendments to the FEHB Program regulations. The 30-day comment period ended on September 9, 2013. In response to this proposed rule, OPM received nearly 60,000 comments. The comments are summarized and discussed below. OPM will provide additional guidance as deemed necessary.

Comments on Section1251(a) of the Affordable Care Act

Several commenters requested that OPM review Section 1251(a) of the Affordable Care Act, which provides continuity of coverage for individuals covered under a group health plan. These commenters suggested that Section 1251(a) provides grounds for ''grandfathering'' current FEHB-eligible Members of Congress and congressional staff members into their current coverage and applying the requirements of Section 1312 only to Members of Congress and congressional staff hired on or after January 1, 2014.

OPM is not amending the rule in response to these comments. While OPM acknowledges that, in general, the Affordable Care Act did not intend to disrupt existing health insurance coverage, in this context, the Act included clear and unambiguous language providing that all Members of Congress and congressional staff employed by the official office of a Member of Congress be subject to the terms of Section 1312 regardless of their dates of employment. Thus, the final rule implements Section 1312 of the Affordable Care Act as written.

Comments About the Method by Which Congressional Staff Are Designated as Covered by § 1312 of the Affordable Care Act

OPM received several comments related to health care coverage for congressional staff and how staff will be designated for the purpose of determining which individuals are required to purchase their health insurance coverage from an Exchange.

OPM has not amended the final rule on the basis of these comments. OPM continues to believe that individual Members or their designees are in the best position to determine which staff work in the official office of each Member. Accordingly, OPM will leave those determinations to the Members or their designees, and will not interfere in the process by which a Member of Congress may work with the House and Senate Administrative Offices to determine which of their staff are eligible for a Government contribution towards a health benefits plan purchased through an appropriate Small Business Health Options Program (SHOP) as determined by the Director. Nothing in this regulation limits a Member's authority to delegate to the House or Senate Administrative Offices the Member's decision about the proper designation of his or her staff. The final rule has been amended to provide an extension for staff designations affecting plan year 2014 only. Designations for individuals hired throughout the plan year should be made at the time of hire.

Comments on Incorporating Exchange Plans Under the § 8901 (6) Definition of ''Health Benefit Plan Under This Chapter''

Some commenters questioned OPM's decision to incorporate Exchange qualified health plans into the Section 8901(6) definition of a health benefits plan. OPM maintains its position that, because the Affordable Care Act did not alter the definition of ''health benefits plan'' under 5 U.S.C. 8901(6) and because the statutory definition of ''health benefits plan'' would otherwise apply to an Exchange qualified health plan, this regulation is an appropriate exercise of OPM's interpretive authority under Chapter 89.

OPM has been provided the statutory authority to administer health benefits to Federal employees (as defined in 5 U.S.C. 8901(1)). Because Section 1312 of the Affordable Care Act did not remove Members of Congress or congressional staff from the Chapter 89 definition of ''employee,'' it is within OPM's interpretive authority under Chapter 89 to clarify that a Government contribution may be provided to, and to establish the means for a Government contribution towards health benefits for, Members of Congress and congressional staff, just as we do for other Federal employees.

Comments on Government Contributions

Numerous commenters questioned OPM's proposal to extend a Government contribution for Members of Congress and congressional staff purchasing health plans through the individual market Exchanges. Many commenters expressed their view that a Government contribution is antithetical to the intent of Section 1312 of the Affordable Care Act, which they interpret to require Members of Congress and congressional staff to purchase the same health insurance available to private citizens on the Exchanges. Commenters asserted that Members of Congress and congressional staff should be subject to the same requirements as citizens purchasing insurance on the Exchanges, including individual responsibility for

premiums and income restrictions for premium assistance.

As described in the proposed rule, because there are now employees covered by chapter 89 who will be purchasing health benefits plans on Exchanges, we believe that it is appropriate that the provisions that authorize an employer contribution for ''health benefits plans under this chapter'' includes health benefits plans fitting within the definition set forth in Section 8901(6). Nothing in this rule or the law prevents a Member of Congress or designated congressional staff from declining a Government contribution for himself or herself by choosing a different option for his/her health insurance coverage.

The proposed rule was silent on whether eligible individuals would select qualified health plans through an Exchange in the individual or small group market by way of the SHOP. Because a Government contribution is, in essence, an employer contribution, the final rule clarifies that Members of Congress and designated congressional staff must enroll in an appropriate SHOP as determined by the Director in order to receive a Government contribution. SHOPs are designed to provide employer-sponsored group health benefits and are, therefore, the appropriate environment in which to provide an employer contribution to Members of Congress and congressional staff. Further, this ensures that Members of Congress and congressional staff do not have additional choices in the individual Exchanges with a Government contribution that other individuals lack. Given the location of Congress in the District of Columbia, OPM has determined that the DC SHOP, known as the DC Health Link Small Business Market administered by the DC Health Benefit Exchange Authority, is the appropriate SHOP from which Members of Congress and designated congressional staff will purchase health insurance in order to receive a Government contribution. OPM intends to work with the DC Health Benefits Exchange to implement this rule.

Nothing in the final rule limits an individual from purchasing health insurance through other methods including the individual market Exchanges. Members of Congress and designated congressional staff are subject to the same requirements as citizens purchasing insurance on the Exchanges, including individual responsibility. Access to the Government contribution through the SHOP limits their eligibility for premium tax credits available through the individual market Exchanges.

OPM was also asked to provide additional details on how the Government contribution will be calculated. The formula for Government contributions is set forth in 5 U.S.C. Section 8906.

Comments on Retirement

Numerous commenters have urged OPM to reconsider its position that Section 1312 affects annuitant health insurance benefits.

Section 1312 only addresses the health benefits plans that the Federal Government may offer Members of Congress and congressional staff employed by the official office of a Member of Congress while they are employed in those positions. This provision neither amended any of the sections of Chapter 89 relating to annuitant health benefits nor otherwise indicated that the provision applies to annuitants. Because we agree with the central premise of these comments, we have deleted the proposed language in Section 890.501(h)(1) and (2) referring to annuitants. We make this change for the additional reason that, otherwise, Members of Congress and congressional staff would have broader health insurance options in the Exchange in retirement than are available to other Federal annuitants. Members of Congress and congressional staff will be subject to the same rules of participation in the FEHB Program in retirement as other Federal annuitants.

During the comment period, OPM was asked to clarify the effect of this regulation on current congressional retirees. Under the final rule, congressional retirees who are currently enrolled in plans contracted for and approved by OPM will not be affected and will continue enrollment in their current plans. In addition, OPM was asked if time covered under a plan purchased through the appropriate SHOP with a Government contribution would count towards the 5-year requirement to carry coverage into retirement. Time spent under a plan purchased on the appropriate SHOP as determined by the Director and purchased pursuant to Section 1312 of the Affordable Care Act will count towards the time requirement outlined in Chapter 89 Section 8905(b).

OPM was also asked to clarify the impact of this regulation on reemployed annuitants. This final rule does nothing to affect the choices available to a reemployed annuitant. As a general matter, upon reemployment an annuitant participating in the FEHB Program may choose either to continue that coverage without premium conversion through OPM or to have his/her enrollment transferred to his/her employing office.

Coverage of Abortion Services

OPM received over 59,000 comments regarding coverage of abortion services for Members of Congress and congressional staff. More than 51,000 of these requested that plans available to Members of Congress and congressional staff include abortion services.

Current law prohibits the use of Federal funds to pay for abortions, except in the case of rape, incest, or when the life of the woman is endangered, and the Smith Amendment in particular makes no funds available ''to pay for abortions or administrative expenses in connections with health plans under the FEHBP which provides any benefits or coverage for abortions.'' Neither the proposed nor final regulation alters these prohibitions. Under OPM's final rule, no Federal funds, including administrative funds, will be used to cover abortions or administer plans that cover abortions. Unlike the health plans for which OPM contracts pursuant to 5 U.S.C. 8902, 8903 and 8903a, OPM does not administer the terms of the health benefits plans offered on an Exchange. Consequently, while plans with such coverage may be offered on an Exchange, OPM can and will take appropriate administrative steps to ensure that the cost of any such coverage purchased by a Member of Congress or a congressional staffer from a designated SHOP is accounted for and paid by the individual rather than from the Government contribution, consistent with the general prohibition on Federal funds being used for this purpose.

Comments on Effective and Termination Dates

OPM was asked to clarify the termination date for current FEHB plan coverage. Current FEHB health plan enrollment for Members of Congress and congressional staff employed by the official office of a Member of Congress will terminate at midnight on December 31, 2013. Members of Congress and designated congressional staff who choose to purchase health insurance through the appropriate SHOP as determined by the Director may do so with an effective date of January 1, 2014. OPM will provide additional guidance regarding effective and termination dates as deemed necessary.

Comments on Eligibility for Other Federal Benefits

OPM received one comment requesting clarification on the eligibility of Members of Congress and

congressional staff to participate in other Federal benefits programs administered by OPM. Section 1312 and this rule only pertain to Members' or congressional staff's health benefits plans.

Comments About Insurance Coverage for Representatives of U.S. Territories

OPM received a comment from the representatives of U.S. Territories. Because these Members of Congress represent geographic areas where there may not be a health insurance Exchange, commenters expressed concern that these representatives would lose health coverage if removed from current FEHB plan eligibility. Three solutions were suggested: allow these Members and their staff to maintain current FEHB plan coverage, allow them to enroll in a DC-based or Federal Exchange, or allow them to enroll in a Federal Exchange established for territories for this purpose.

After reviewing these options, OPM has determined that, like other Members of Congress and congressional staff, representatives from the U.S. Territories and their staff who want to receive a Government contribution will enroll for coverage through the appropriate SHOP as determined by the Director.

Comments About the Affordable Care Act

OPM received several comments expressing opinions about the Affordable Care Act as a whole. Other comments more specifically addressed the requirement in Section 1312 to remove Members of Congress and congressional staff from current FEHB plan coverage. Some indicated that the decision to remove Members of Congress and congressional staff from current FEHB plan coverage would have detrimental effects to these individuals. Others felt that the provision should only apply to Members of Congress and not to congressional staff. Others indicated that Members of Congress should not be provided with employer-based health coverage at all. The majority of these comments have been addressed in the above discussion. The remaining comments regarding the Affordable Care Act are beyond the scope of this regulation and are not addressed.

Additional Comments

OPM received additional comments regarding coverage of pathology services, Health Reimbursement Arrangements, and employer shared responsibility. These comments have been deemed outside the scope of this regulation and are not addressed in the final rule. In addition, OPM received requests for operational details about the administration of benefits for Members of Congress and designated congressional staff. Most of these questions have been responded to in the final rule. In addition, OPM plans to provide operational guidance in future communications as deemed necessary.

In addition to the changes described above, the final rule includes non-substantive, editorial changes to improve clarity.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation only involves the issue of where Members of Congress and certain congressional staff may purchase their health insurance, and does not otherwise alter the FEHB program.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles, and responsibilities of State, local, or tribal governments.

List of Subjects in 5 CFR Part 890

Administration and general provisions, Health benefits plans, Enrollment, Temporary extension of coverage and conversion, Contributions and withholdings, Transfers from retired FEHB Program, Benefits in medically underserved areas, Benefits for former spouses, Limit on inpatient hospital charges, physician charges, and FEHB benefit payments, Administrative sanctions imposed against health care providers, Temporary continuation of coverage, Benefits for United States hostages in Iraq and Kuwait and United States hostages captured in Lebanon, Department of Defense Federal Employees Health Benefits Program demonstration project, Administrative practice and procedure, Employee benefit plans, Government employees, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.

Elaine Kaplan,

Acting Director.

Accordingly, OPM is amending chapter I, title 5, Code of Federal Regulations as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

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

Authority: 5 U.S.C. 8913; Sec. 890.301 also issued under sec. 311 of Pub. L. 111–03, 123 Stat. 64; Sec. 890.111 also issued under section 1622(b) of Pub. L. 104–106, 110 Stat. 521; Sec. 890.112 also issued under section 1 of Pub. L. 110–279, 122 Stat. 2604; 5 U.S.C. 8913; Sec. 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; Sec. 890.102 also issued under sections 11202(f), 11232(e), 11246 (b) and (c) of Pub. L. 105–33, 111 Stat. 251; and section 721 of Pub. L. 105–261, 112 Stat. 2061; Pub. L. 111–148, as amended by Pub. L. 111–152.

■ 2. Amend § 890.101 by adding definitions of ''Congressional staff member'', ''Member of Congress'', and ''Shop'' to paragraph (a) in alphabetical order to read as follows:

§ 890.101 Definitions; time computations.

(a) * * *

Congressional staff member means an individual who is a full-time or part-time employee employed by the official office of a Member of Congress, whether in Washington, DC or outside of Washington, DC.

* * * * *

Member of Congress means a member of the Senate or of the House of Representatives, a Delegate to the House of Representatives, and the Resident Commissioner of Puerto Rico.

* * * * *

SHOP has the meaning given in 45 CFR 155.20.

* * * * *

§ 890.102 Coverage.

■ 3. Amend § 890.102 by adding paragraph (c)(9) and revising paragraph (e) as follows:

* * * * *

(c) * * *

(9) The following employees are not eligible to purchase a health benefit plan for which OPM contracts or which OPM approves under this paragraph (c), but may purchase health benefit plans, as defined in 5 U.S.C. 8901(6), that are offered by an appropriate SHOP as determined by the Director, pursuant to section 1312(d)(3)(D) of the Patient Protection and Affordable Care Act, Public Law 111–148, as amended by the Health Care and Education Reconciliation Act, Public Law 111–152 (the Affordable Care Act or the Act):

(i) A Member of Congress.

(ii) A congressional staff member, if the individual is determined by the employing office of the Member of

Congress to meet the definition of congressional staff member in § 890.101 as of January 1, 2014, or in any subsequent calendar year. Designation as a congressional staff member shall be an annual designation made prior to November 2013 for the plan year effective January 1, 2014 and October of each year for subsequent years or at the time of hiring for individuals whose employment begins during the year. The designation shall be made for the duration of the year during which the staff member works for the Member of Congress beginning with the January 1st following the designation and continuing to December 31st of that year.

* * * * *

(e) With the exception of those employees or groups of employees listed in paragraph (e)(1) of this section, the Office of Personnel Management makes the final determination of the applicability of this section to specific employees or groups of employees.

(1) Employees identified in paragraph (c)(9)(i) and (ii) of this section.

(2) [Reserved].

* * * * *

■ 4. Amend § 890.201 to add a new paragraph (d) to read as follows:

§ 890.201 Minimum standards for health benefit plans.

(d) Nothing in this part shall limit or prevent a health insurance plan purchased through an appropriate SHOP as determined by the Director, pursuant to section 1312(d)(3)(D) of the Patient Protection and Affordable Care Act, Public Law 111–148, as amended by the Health Care and Education Reconciliation Act, Public Law 111–152 (the Affordable Care Act or the Act), by an employee otherwise covered by 5 U.S.C. 8901(1)(B) and (C) from being considered a ''health benefit plan under this chapter'' for purposes of 5 U.S.C. 8905(b) and 5 U.S.C. 8906.

* * * * *

■ 5. Amend § 890.303 by revising paragraph (b) as follows:

§ 890.303 Continuation of enrollment.

* * * * *

(b) *Change of enrolled employees to certain excluded positions.* Employees and annuitants enrolled under this part who move, without a break in service or after a separation of 3 days or less, to an employment in which they are excluded by § 890.102(c), continue to be enrolled unless excluded by paragraphs (c)(4), (5), (6), (7), or (9) of § 890.102.

* * * * *

■ 6. Amend § 890.304 by revising paragraph (a)(1)(iii) to read as follows.

§ 890.304 Termination of enrollment.

(a) * * *

(1) * * *

(iii) The last day of the pay period in which his or her employment status or the eligibility of his or her position changes so that he or she is excluded from enrollment.

* * * * *

■ 7. Amend § 890.501 to add a new paragraph (h) to read as follows:

§ 890.501 Government contributions.

* * * * *

(h) The Government contribution for an employee who enrolls in a health benefit plan offered through an appropriate SHOP as determined by the Director pursuant to section 1312(d)(3)(D) of the Patient Protection and Affordable Care Act, Public Law 111–148, as amended by the Health Care and Education Reconciliation Act, Public Law 111–152 (the Affordable Care Act or the Act) shall be calculated in the same manner as for other employees.

(2) Government contributions and employee withholdings for employees who enroll in a health benefit plan offered through an appropriate SHOP as determined by the Director, pursuant to section 1312(d)(3)(D) of the Patient Protection and Affordable Care Act, Public Law 111–148, as amended by the Health Care and Education Reconciliation Act, Public Law 111–152 (the Affordable Care Act or the Act) shall be accounted for pursuant to section 8909 of title 5 and such monies shall only be available for payment of premiums, and costs in accordance with section 8909(a)(2) of title 5.

[FR Doc. 2013–23565 Filed 9–30–13; 11:15 am]

BILLING CODE 6325–63–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0352; Directorate Identifier 2012–SW–063–AD; Amendment 39–17598; AD 2013–19–16]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Sikorsky Aircraft Corporation (Sikorsky) Model S–92A helicopters to require modifying the No. 1 engine forward firewall center fire extinguisher discharge tube (No. 1 engine tube) and inspecting the outboard discharge tube to determine if it is correctly positioned. This AD was prompted by the discovery that the No. 1 engine tube installed on the helicopters is too long to ensure that a fire could be effectively extinguished in the helicopter. The actions are intended to ensure the No. 1 engine tube allows for complete coverage of an extinguishing agent in the No. 1 engine compartment area, ensure that a fire would be extinguished and prevent the loss of helicopter control.

DATES: This AD is effective November 6, 2013.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of November 6, 2013.

ADDRESSES: For service information identified in this AD, contact Sikorsky Aircraft Corporation, Attn: Manager, Commercial Technical Support, mailstop s581a, 6900 Main Street, Stratford, CT 06614; telephone (800) 562–4409; email *tsslibrary@sikorsky.com;* or at *http://www.sikorsky.com.* You may review a copy of the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this 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: Michael Schwetz, Aviation Safety Engineer, Boston Aircraft Certification Office, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (781) 238–7761; email *michael.schwetz@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On April 22, 2013, at 78 FR 23698, 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 Sikorsky Model S–92A helicopters, serial numbers 920006 through 920169. The NPRM proposed to require modifying the No. 1 engine tube and inspecting the outboard discharge tube to determine if it is correctly positioned. The work required to modify the No.1 engine tube may dislocate the outboard discharge tube, which directs fire extinguishing agent to a specific area of the engine compartment. The NPRM was prompted because an extinguishing test at a Sikorsky plant showed that a No. 1 engine tube with the incorrect length had been put into production. Because of the incorrect tube length, the fire-extinguishing system may not discharge the agent completely throughout the compartment in the event of a fire. The proposed requirements were intended to ensure the No. 1 engine tube allows for complete coverage of an extinguishing agent in the No. 1 engine compartment area, ensure that a fire is extinguished and prevent the loss of helicopter control.

Comments

We gave the public the opportunity to participate in developing this AD, but we received no comments on the NPRM (78 FR 23698, April 22, 2013).

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 these same type designs and that air safety and the public interest require adopting the AD requirements as proposed.

Related Service Information

Sikorsky has issued Alert Service Bulletin 92–26–004 (ASB), dated June 4, 2012, to modify the No. 1 engine tube within 120 days. The ASB specifies procedures to cut two inches off the tube's discharge end, as well as how to inspect and reposition, if necessary, the outboard discharge tube.

Costs of Compliance

We estimate that this AD will affect 24 U.S. registered helicopters and that labor costs average $85 per work-hour. Based on these estimates, we expect the following costs:

• Modifying the No. 1 engine tube takes 2 work-hours for a labor cost of $170 per helicopter. No parts are needed, so the cost for the U.S. fleet totals $4,080.

• Inspecting the outboard discharge tube and ensuring that it is in the required position takes about 1 work-hour for a total labor cost of $85 per helicopter. No parts are needed for a total U.S. fleet cost of $2,040.

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):

2013–19–16 Sikorsky Aircraft Corporation Helicopters: Amendment 39–17598; Docket No. FAA–2013–0352; Directorate Identifier 2012–SW–063–AD.

(a) Applicability

This AD applies to Sikorsky Aircraft Corporation (Sikorsky) Model S–92A helicopters, serial numbers 920006 through 920169, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as failure of the No. 1 engine forward firewall center fire extinguisher discharge tube to discharge an extinguishing agent for complete coverage of the No. 1 engine compartment area. This condition could result in a fire not being extinguished and subsequent loss of helicopter control.

(c) Effective Date

This AD becomes effective November 6, 2013.

(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 120 days:

(1) Modify the No. 1 engine forward firewall center discharge tube in accordance with the Accomplishment Instructions, Paragraph B, of Sikorsky Alert Service Bulletin 92–26–004, dated June 4, 2012 (ASB).

(2) Inspect the outboard discharge tube and determine if it is correctly positioned as depicted in Figure 3 of the ASB. If it is not correctly positioned, correct the positioning in accordance with the Accomplishment Instructions, Paragraph D, of the ASB.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Boston Aircraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Michael Schwetz, Aviation Safety Engineer, Boston Aircraft Certification Office, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (781) 238–7761; email *michael.schwetz@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: 2620, Extinguishing System.

(h) 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) Sikorsky Alert Service Bulletin 92–26–004, dated June 4, 2012.

(ii) Reserved.

(3) For Sikorsky service information identified in this AD, contact Sikorsky Aircraft Corporation, Attn: Manager, Commercial Technical Support, mailstop s581a, 6900 Main Street, Stratford, CT 06614; telephone (800) 562–4409; email *tsslibrary@sikorsky.com;* or at *http://www.sikorsky.com.*

(4) You may view this service information at FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. 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 September 17, 2013.

Gwendolynne O'Connell,

Acting Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–23439 Filed 10–1–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0562; Directorate Identifier 2009–NE–29–AD; Amendment 39–17603; AD 2013–19–21]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding airworthiness directive (AD) AD 2012–04–13, for all Rolls-Royce plc (RR) model RB211 Trent 553–61, 553A2–61, 556–61, 556A2–61, 556B–61, 556B2–61, 560–61, and 560A2–61; and RB211 Trent 768–60, 772–60, and 772B–60; and RB211-Trent 875–17, 877–17, 884–17, 884B–17, 892–17, 892B–17, and 895–17; and RB211–524G2–T–19, –524G3–T–19, –524H–T–36, and –524H2–T–19 turbofan engines that have a high-pressure (HP) compressor stage 1 to 4 rotor disc installed, with a certain part number (P/N) installed. AD 2012–04–13 required repetitive inspections of the axial dovetail slots and follow-on corrective action depending on findings. This new AD expands the population of affected parts. This AD also changes, for the purposes of this AD, the definition of ''engine shop visit.'' This AD was prompted by reports of additional affected HP compressor rotor discs that require the same action. We are issuing this AD to detect cracks in the HP compressor stage 1 and 2 disc posts, which could result in failure of the disc post and HP compressor blades, damage to the engine, and damage to the airplane.

DATES: This AD is effective November 6, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 6, 2013.

ADDRESSES: The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

For service information identified in this AD, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, England, DE248BJ; phone: 011–44–1332–242424; fax: 011–44–1332–245418; email: *http://www.rolls-royce.com/contact/civil_team.jsp.* You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* 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 street address for the Docket Office (phone: 800–647–5527) is provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Frederick Zink, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7779; fax: 781–238–7199; email: *frederick.zink@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2012–04–13, Amendment 39–16969 (77 FR 13483, March 7, 2012), (''AD 2012–04–13''). AD 2012–04–13 applied to the specified products. The NPRM published in the **Federal Register** on May 14, 2013 (78 FR 28161). The NPRM proposed to continue to require repetitive inspections of the axial dovetail slots and follow-on corrective action depending on findings. The NPRM also proposed to expand the population of affected parts, and to change, for the purposes of this AD, the definition of ''engine shop visit.

Comments

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

Support for the Proposed AD

The Boeing Company supports the NPRM (78 FR 28161, May 14, 2013) as written.

We made no change to this AD.

Request To Revise Definition of Engine Shop Visit

American Airlines (AAL) and RR requested that we change the definition of engine shop visit. The commenters noted that the definition of engine shop visit in the NPRM (78 FR 28161, May 14, 2013) differs from that in RR Alert Non-Modification Service Bulletin No. RB.211–72–AF964, Revision 3, dated January 11, 2013. AAL also indicated that the definition of engine shop visit in the NPRM, if adopted, would dramatically increase turn time and costs and affect availability of spare engines.

We agree. We revised this AD by changing the definition of engine shop visit to read: ''For the purpose of this AD, an ''engine shop visit'' is whenever the HP compressor rotor is accessible and the compressor blades have been removed.''

Request To Correct Paragraph Designations in Compliance Section

AAL requested that we correct references in the compliance section of the NPRM (78 FR 28161, May 14, 2013) that did not refer to the correct paragraph designation.

We agree. The references should be to ''paragraph (f)'' or ''paragraph (f)(2),'' as applicable, rather than to ''paragraph (e).'' We changed this AD by revising several references in the compliance section and the Credit for Previous Action paragraph from ''paragraph (e)'' to ''paragraph (f)'' or to ''paragraph (f)(2),'' as applicable.

Conclusion

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

Costs of Compliance

We estimate that this AD affects about 432 engines installed on airplanes of U.S. registry. We also estimate that it will take about 20 hours per product to comply with this AD. The average labor rate is $85 per hour. No parts are required. Based on these figures, we estimate the cost of the AD on U.S. operators to be $734,400.

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 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 removing airworthiness directive (AD) 2012–04–13, Amendment 39–16969 (77 FR 13483, March 7, 2012) and adding the following new AD:

2013–19–21 Rolls Royce plc: Amendment 39–17603; Docket No. FAA–2010–0562; Directorate Identifier 2009–NE–29–AD.

(a) Effective Date

This AD is effective November 6, 2013.

(b) Affected ADs

This AD supersedes AD 2012–04–13, Amendment 39–16969 (77 FR 13483, March 7, 2012).

(c) Applicability

This AD applies to the following Rolls-Royce plc (RR) model turbofan engines that have a high-pressure (HP) compressor stage 1 to 4 rotor disc installed, with a part number (P/N) listed in Table 1 to paragraph (c) of this AD:

(1) RB211 Trent 553–61, 553A2–61, 556–61, 556A2–61, 556B–61, 556B2–61, 560–61, and 560A2–61; and

(2) RB211 Trent 768–60, 772–60, and 772B–60; and

(3) RB211–Trent 875–17, 877–17, 884–17, 884B–17, 892–17, 892B–17, and 895–17; and

(4) RB211–524G2–T–19, –524G3–T–19, –524H–T–36, and –524H2–T–19.

TABLE 1 TO PARAGRAPH (c)—AFFECTED HP COMPRESSOR STAGE 1 TO 4 ROTOR DISC P/NS BY ENGINE MODEL

Engine model	HP Compressor stage 1 to 4 rotor disc P/N
1. RB211 Trent 553–61, 553A2–61, 556–61, 556A2–61, 556B–61, 556B2–61, 560–61, and 560A2-61.	FK30524 or FW88340.
2. RB211 Trent 768–60, 772–60, and 772B–60	FK22745, FK24031, FK23313, FK25502, FK26185, FK32129, FW20195, FW20196, FW20197, FW20638, FW23711, FW88695, FW88696, FW88697, FW88698, FW88699, FW88700, FW88701, FW88702, or FW88703.
3. RB211 Trent 875–17, 877–17, 884–17, 884B–17, 892–17, 892B–17, and 895–17.	FK24009, FK26167, FK32580, FW11590, FW61622, FW88723, FW88724, or FW88725.
4. RB211–524G2–T–19, –524G3–T–19, –524H–T–36, and –524H2–T–19.	FK25502, FW20195, FW23711, FW88695, FW88696, or FW88697.

(d) Unsafe Condition

We are issuing this AD to detect cracks in the HP compressor stage 1 and 2 disc posts, which could result in failure of the disc post and HP compressor blades, damage to the engine, and damage to the airplane.

(e) Compliance

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

(f) Cleaning and Inspection

(1) Clean and perform a fluorescent-penetrant inspection of the HP compressor stage 1 to 4 rotor disc at the first shop visit after accumulating 1,000 cycles since new (CSN) on the stage 1 to 4 rotor disc or at the next shop visit after the effective date of this AD, whichever occurs later.

(2) Use paragraphs 3.A. through 3.E.(11) of the Accomplishment Instructions of RR Alert Non-Modification Service Bulletin (NMSB) No. RB.211–72–AF964, Revision 3, dated January 11, 2013, to do the cleaning and inspection.

(3) Thereafter, at every engine shop visit, clean and inspect as required by paragraph (f)(2) of this AD.

(4) If on the effective date of this AD, an engine with an affected part has 1,000 CSN or more, and is in the shop, clean and inspect as required by paragraph (f)(2) of this AD before returning the engine to service.

(5) If cracks or anomalies are found during the inspection required by paragraph (f)(2) of this AD, accomplish the applicable corrective actions before returning the engine to service.

(g) Definition

For the purpose of this AD, an ''engine shop visit'' is whenever the HP compressor rotor is accessible and the compressor blades have been removed.

(h) Credit for Previous Action

If you performed cleanings and inspections before the effective date of this AD using RR NMSB No. RB.211–72–AF964, Revision 1, dated June 6, 2008, or Revision 2, dated June 8, 2011, then you met the requirements of paragraph (f) of this AD.

(i) 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.

(j) Related Information

(1) For more information about this AD, contact, contact Frederick Zink, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7779; fax: 781–238–7199; email: *frederick.zink@faa.gov.*

(2) Refer to European Aviation Safety Agency AD No. 2013–0042, dated February 26, 2013, for related information. You may examine this AD on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2010-0562-0023.*

(k) Material Incorporated by Reference

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

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

(i) Rolls Royce Alert Non-Modification Service Bulletin No. RB.211–72–AF964. Revision 3, dated January 11, 2013.

(ii) None.

(3) For service information identified in this AD, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, England, DE248BJ; phone: 011–44–1332–242424; fax: 011–44–1332–249936; email: *http://www.rolls-royce.com/contact/civil_team.jsp;* or download from *https://www.aeromanager.com.*

(4) You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803. 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 September 18, 2013.

Carlos A. Pestana,

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

[FR Doc. 2013–23432 Filed 10–1–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0155; Directorate Identifier 2009–NM–141–AD; Amendment 39–17581; AD 2013–18–08]

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) 2004–18–06 for certain The Boeing Company Model 737–200, –200C, –300, –400, and –500 series airplanes. AD 2004–18–06 required repetitive inspections to find fatigue cracking of certain upper and lower skin panels of the fuselage, and follow-on and corrective actions if necessary. AD 2004–18–06 also included a terminating action for the repetitive inspections of certain modified or repaired areas only. This new AD adds new inspections for cracking of the fuselage skin along certain chem-milled lines, and corrective actions if necessary. This new AD also reduces certain thresholds and intervals required by AD 2004–18–06. This AD was prompted by new findings of vertical cracks along chem-milled steps adjacent to the butt joints. We are issuing this AD to detect and correct fatigue cracking of the skin panels, which could result in sudden fracture and failure of the skin panels of the fuselage, and consequent rapid decompression of the airplane.

DATES: This AD is effective November 6, 2013.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of November 6, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in the AD as of October 13, 2004 (69 FR 54206, September 8, 2004).

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* 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: Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6447; fax: 425–917–6590; email: *wayne.lockett@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 to supersede AD 2004–18–06, Amendment 39–13784 (69 FR 54206, September 8, 2004). AD 2004–18–06 applied to the specified products. The SNPRM published in the

Federal Register on October 10, 2012 (77 FR 61550). We preceded the SNPRM with a notice of proposed rulemaking (NPRM) that published in the **Federal Register** on March 8, 2011 (76 FR 12619). The NPRM proposed to continue to require repetitive inspections to find fatigue cracking of certain upper and lower skin panels of the fuselage, and follow-on and corrective actions if necessary. The NPRM also included a terminating action for the repetitive inspections of certain modified or repaired areas only. The NPRM proposed to add new inspections for cracking of the fuselage skin along certain chem-milled lines, and corrective actions if necessary. The NPRM also proposed to reduce certain thresholds and intervals required by AD 2004–18–06. The SNPRM proposed to revise the NPRM by reducing the proposed repetitive inspection intervals.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the SNPRM (77 FR 61550, October 10, 2012) and the FAA's response to each comment.

Request To Change Certain Repetitive Inspection Intervals

Boeing asked that the repetitive inspection interval of 1,800 flight cycles or 1,800 flight hours, as specified in paragraph (r) of the SNPRM (77 FR 61550, October 10, 2012), be changed to eliminate the 1,800 flight-hour interval. Boeing stated that the longitudinal chem-milled cracks are driven primarily by hoop loading as a result of pressurization cycles, and added that the vertical chem-milled cracks are driven by both pressure and flight loads. Boeing added that the threshold and repetitive inspection intervals can be affected by this. Boeing noted that repeating the inspection at 1,800 flight cycles at the butt joints was a conservative estimate obtained from crack growth data of longitudinal chem-milled cracks; this is conservative because the stresses in the skins at the butt joints are lower than the hoop stresses, which cause the longitudinal cracks to develop and grow. Boeing concluded that a detailed analysis of the stresses on the vertical cracks compared with the horizontal cracks confirmed that repeating the inspections every 1,800 flight cycles is adequate to detect cracks before they spread and result in an unsafe condition.

We agree that eliminating the 1,800-flight-hour aspect of the repetitive inspection interval and the threshold is acceptable for the reasons provided by the commenter. We have determined that this change adequately addresses the identified unsafe condition. Therefore, we have changed paragraph (r) of this final rule accordingly.

Requests To Clarify Exception to Service Information

Boeing and Southwest Airlines (SWA) asked that we clarify the exception language identified in paragraph (o) of the SNPRM (77 FR 61550, October 10, 2012). Boeing and SWA both suggested language for changing that paragraph.

Boeing stated that the language in paragraph (o) of the SNPRM (77 FR 61550, October 10, 2012) gives relief for inspections under FAA-approved repair doublers that span the chem-milled step by a minimum of three rows of fasteners above and below the chem-milled step. Boeing added that paragraph (o) of the SNPRM does not distinguish the reason for the repair (i.e., cracks, dents, corrosion, etc.), but just specifies that a repair doubler exists and spans the chem-milled step with a sufficient number of fastener rows. Boeing asked that this same allowance be given to chem-milled steps under repairs that are accomplished according to the general skin repairs specified in paragraph (k) of the SNPRM. Boeing noted that paragraph (k) of the SNPRM already has language that terminates inspections under repairs accomplished according to paragraph (k) of the SNPRM; however, paragraph (k) of the SNPRM is for the repair of chem-milled step cracks only, so it would not terminate future chem-milled steps under a repair that is installed for some reason other than chem-milled cracking.

SWA stated certain conditions for external repairs are not stipulated in paragraph (o) of the SNPRM (77 FR 61550, October 10, 2012). SWA noted that for airplanes on which the repair does not meet these conditions, paragraph (o) of the SNPRM specifies that one option to comply with the inspections is to use the Work Instructions of Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009. SWA added that the option to use an alternate inspection is given in the notes section of Tables 1 through 6 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009, rather than in the Work Instructions of this service bulletin. SWA also asked that we change the language in paragraphs (p), (q), and (r) of the SNPRM for the alternate inspection given in Tables 1 through 6 of paragraph 1.E., ''Compliance'' of this service bulletin.

We agree that clarification of the language in paragraph (o) of this final rule is necessary to ensure that all inspection requirements are complied with as written. We have revised the language in paragraph (o) of this final rule to include the language ''or repairs that have a minimum of 2 rows of fasteners above and below the chem-milled step, and have been installed in accordance with the requirements of paragraph (k) of this final rule.'' We have also included language for repairs to the vertical chem-milled steps. In addition, we have revised paragraph (o) of this final rule to refer to the notes in Tables 1 through 6 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009, for the inspection requirements. With this clarification added to paragraph (o) of this final rule, it is not necessary to change the language in paragraphs (p) and (q) of this final rule. We have added the exception specified in paragraph (o) of this final rule to paragraphs (r), (s), (t), and (u) of this final rule.

Request To Clarify Certain Repetitive Inspection Intervals

SWA asked that we clarify the repetitive inspection intervals required by paragraph (h) of the SNPRM (77 FR 61550, October 10, 2012). SWA stated that paragraph (h) of the SNPRM includes a new repetitive inspection interval for doing the inspections of the lower lobe and section 41, and that repeating those inspections every 4,500 flight cycles is a new requirement. SWA added that paragraph (s) of the SNPRM introduces a new repetitive inspection interval of 1,800 flight cycles for the inspections of the lower lobe and section 41, which contradicts paragraph (h) of the SNPRM.

SWA stated that paragraph (s) of the SNPRM (77 FR 61550, October 10, 2012) introduces the terminology ''areas of known cracking'' and ''areas of no known cracking'' for inspections of the lower lobe and section 41. SWA added that, for areas of known cracking, the inspections are required at the latest of the times specified in paragraphs (s)(2)(i) and (s)(2)(ii) of the SNPRM. SWA stated that paragraph (s)(2)(i) of the SNPRM specifies inspections before the accumulation of 35,000 total flight cycles; paragraph (s)(2)(ii) of the SNPRM specifies inspections within 4,500 flight cycles after the most recent inspection required by paragraph (h) of the SNPRM or within 1,800 flight cycles after the effective date of the AD, whichever is earlier. SWA noted that although paragraph (h) of the SNPRM includes the new requirement of

repeating those inspections every 4,500 flight cycles, airplanes are still subject to the existing repetitive inspection interval of 9,000 flight cycles, as required by AD 2004–18–06, Amendment 39–13784 (69 FR 54206, September 8, 2004). SWA added that this is a significant conflict since airplanes on which the inspection threshold specified in paragraph (s)(2)(i) of the SNPRM has been surpassed ''will immediately be rendered out of compliance by paragraph (s)(2)(ii) if the most recent inspection was accomplished more than 4,500 flight cycles from the last inspection.'' SWA also asked that we clarify the inspection requirements for airplanes that have accumulated more than 35,000 total flight cycles as of the effective date of the AD.

Boeing stated that paragraph (s)(2)(ii) of the SNPRM (77 FR 61550, October 10, 2012) gives a grace period to start inspections in lower lobe and section 41 for areas of known cracking for airplanes that have exceeded the threshold of 35,000 total flight cycles. Boeing added that this grace period is 4,500 flight cycles from the previous inspections done in accordance with AD 2004–18–06, Amendment 39–13784 (69 FR 54206, September 8, 2004), which required that those areas be re-inspected at 9,000 flight-cycle intervals. Boeing noted that, as a result of this, it is likely that many airplanes will be grounded. Boeing asked that the grace period be changed to 9,000 flight cycles.

We agree that paragraphs (h) and (s) of this final rule should be changed since the new requirements could put airplanes out of compliance. We have revised paragraph (h) of this final rule to specify a repetitive inspection interval of 9,000 flight cycles, as required by AD 2004–18–06, Amendment 39–13784 (69 FR 54206, September 8, 2004), and have deleted paragraphs (h)(1) and (h)(2) of this final rule to eliminate those repetitive inspection intervals.

We have also revised paragraph (s)(2) of this final rule to include the existing repetitive inspection interval of 9,000 flight cycles so that no airplanes will be out of compliance with the inspection requirements carried over from AD 2004–18–06, Amendment 39–13784 (69 FR 54206, September 8, 2004).

Request To Update Structural Repair Manual (SRM) References

SWA asked that we update the SRM repair references in paragraphs (k)(2) and (k)(4) of the SNPRM (77 FR 61550, October 10, 2012). SWA stated that the references to Figure 229 for Revisions 92 and 70, both dated November 10, 2010, in those paragraphs is incorrect. SWA noted that the correct repair for those SRM revisions is Repair 31.

We agree that this final rule should refer to the latest repairs. We have determined that the SRM repair references specified in paragraphs (k)(2) and (k)(4) of the SNPRM (77 FR 61550, October 10, 2012), have been updated. The SRM repair reference in paragraph (k)(3) of the SNPRM also has been updated. Therefore, we have changed paragraphs (k)(2), (k)(3), and (k)(4) of this final rule to update the SRM references to include the appropriate repair.

Request To Clarify Terminating Action

SWA asked that we change paragraph (j)(1)(i) of the SNPRM (77 FR 61550, October 10, 2012) to reflect that the time-limited repair specified in that paragraph terminates the repetitive inspections required by paragraph (g) of the SNPRM. SWA also asked that, if we do not change that paragraph, we provide clarification that accomplishment of the repair specified in paragraph (v) of the SNPRM terminates those repetitive inspections. SWA stated that paragraph (j) of the SNPRM addresses retained corrective actions for cracking found during the inspections required by paragraphs (g), (h), (p), (q), (r), and (s) of the SNPRM. SWA added that paragraph (v) of the SNPRM specifies that accomplishment of the permanent repair specified in Part 5, or the time-limited repair specified in Part 6, of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009, terminates the repetitive inspections required by paragraphs (p), (q), (r), and (s) of the SNPRM for the repaired area only. SWA noted that paragraph (j)(1)(i) of the SNPRM specifies that installation of a permanent repair terminates the repetitive inspections required by paragraph (g) of the SNPRM for the repaired area only; however, paragraph (j)(1)(i) of the SNPRM does not indicate that accomplishing the time-limited repair terminates the repetitive inspections.

We agree that clarification is necessary. Since the crack at the chem-milled step has been trimmed out during installation of the time-limited repair in accordance with Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009, the inspections required by paragraph (g) of this final rule cannot be accomplished. We have changed paragraph (j)(1)(i) of this final rule to specify ''Installation of a time-limited repair ends the repetitive inspections required by paragraph (g) of this final rule for the repaired area only.'' We have also added a reference to paragraph (j)(1)(i) of this final rule in paragraph (g) of this final rule to specify that the actions specified in paragraph (j)(1)(i) of this final rule terminate the repetitive inspections.

Additional Changes Made to This Final Rule

We have removed paragraph (b)(2) of the SNPRM (77 FR 61550, October 10, 2012) from this final rule, because the ADs that were identified in paragraph (b)(2) of the SNPRM are not ''affected'' by this AD. We have also redesignated paragraph (b)(1) of the SNPRM as paragraph (b) of this final rule. These changes do not affect the intent of this AD.

We have revised the wording in paragraph (n) of this AD; this change has not changed the intent of that paragraph.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously—and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the SNPRM (77 FR 61550, October 10, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the SNPRM (77 FR 61550, October 10, 2012).

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

Costs of Compliance

We estimated that 903 airplanes of U.S. registry are affected by AD 2004–18–06, Amendment 39–13784 (69 FR 54206, September 8, 2004).

The inspections of the crown area that are retained from AD 2004–18–06, Amendment 39–13784 (69 FR 54206, September 8, 2004), take about 94 work-hours per airplane to accomplish, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the retained inspections is $7,990 per airplane, per inspection cycle.

The inspections of the lower lobe area that are retained from AD 2004–18–06, Amendment 39–13784 (69 FR 54206, September 8, 2004), take about 96 work-hours per airplane to accomplish, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the retained inspections is

$8,160 per airplane, per inspection cycle.

Should an operator elect to install the preventive modification specified in AD 2004–18–06, Amendment 39–13784 (69 FR 54206, September 8, 2004), it will take about 108 work-hours per airplane to accomplish, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the modification is $9,180 per airplane.

We estimate that this AD affects about 701 airplanes of U.S. registry.

The new inspections take about 27 work-hours per airplane, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the new actions specified in this AD for U.S. operators is $1,608,795, or $2,295 per airplane, per inspection cycle.

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 the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2004–18–06, Amendment 39–13784 (69 FR 54206, September 8, 2004), and adding the following new AD:

2013–18–08 The Boeing Company: Amendment 39–17581; Docket No. FAA–2011–0155; Directorate Identifier 2009–NM–141–AD.

(a) Effective Date

This AD is effective November 6, 2013.

(b) Affected ADs

This AD supersedes AD 2004–18–06, Amendment 39–13784 (69 FR 54206, September 8, 2004).

(c) Applicability

This AD applies to The Boeing Company Model 737–200, –200C, –300, –400, and –500 series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by new findings of vertical cracks along chem-milled steps adjacent to the butt joints. We are issuing this AD to detect and correct fatigue cracking of the skin panels, which could result in sudden fracture and failure of the skin panels of the fuselage, and consequent rapid decompression of the airplane.

(f) Compliance

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

(g) Retained External Detailed and Eddy Current Inspections

This paragraph restates the requirements of paragraph (a) of AD 2004–18–06, Amendment 39–13784 (69 FR 54206, September 8, 2004), with revised service information. For Groups 1 through 5 airplanes identified in Boeing Alert Service Bulletin 737–53A1210, Revision 1, dated October 25, 2001: Before the accumulation of 35,000 total flight cycles, or within 4,500 flight cycles after October 13, 2004 (the effective date of AD 2004–18–06), whichever is later, do external detailed and eddy current inspections of the crown area and other known areas of fuselage skin cracking, in accordance with Part 1 and Figure 1 of the Work Instructions of Boeing Alert Service Bulletin 737–53A1210, Revision 1, dated October 25, 2001; or in accordance with Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009; except as provided by paragraph (o) of this AD. Repeat the external detailed and eddy current inspections at intervals not to exceed 4,500 flight cycles until paragraph (i), (j)(1)(i), (j)(1)(ii), (k), (l), or (m) of this AD has been done, as applicable. Although paragraph 1.D. of Boeing Alert Service Bulletin 737–53A1210, Revision 1, dated October 25, 2001, references a reporting requirement, such reporting is not required by this AD. Accomplishing the actions required by paragraph (p) or (q) of this AD ends the repetitive requirements in this paragraph.

(h) Retained External Detailed Inspection With Reduced Compliance Time

This paragraph restates the requirements of paragraph (b) of AD 2004–18–06, Amendment 39–13784 (69 FR 54206, September 8, 2004), with reduced compliance time and revised service information. For all airplanes identified in Boeing Alert Service Bulletin 737–53A1210, Revision 1, dated October 25, 2001: Before the accumulation of 40,000 total flight cycles, or within 4,500 flight cycles after October 13, 2004 (the effective date of AD 2004–18–06), whichever is later, do an external detailed inspection of the lower lobe area and section 41 of the fuselage for cracking, in accordance with Part 2 and Figure 2 of the Work Instructions of Boeing Alert Service Bulletin 737–53A1210, Revision 1, dated October 25, 2001; or in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009; except as provided by paragraph (o) of this AD. Repeat the inspection thereafter at intervals not to exceed 9,000 flight cycles until the actions specified in paragraph (j)(2) or paragraph (k), as applicable, of this AD have been done. Accomplishing the actions required by paragraph (s) of this AD ends the requirements in this paragraph.

(i) Retained Preventive Modification at Stringer 12

This paragraph restates the requirements of paragraph (c) of AD 2004–18–06, Amendment 39–13784 (69 FR 54206, September 8, 2004), with revised service information. For Groups 3 and 5 airplanes identified in Boeing Alert Service Bulletin 737–53A1210, Revision 1, dated October 25, 2001: If no cracking is found during any inspection required by paragraph (g) of this AD, doing the preventive modification of the chem-milled pockets in the upper skin, as

specified in Part 5 of the Work Instructions of Boeing Alert Service Bulletin 737–53A1210, Revision 1, dated October 25, 2001; or as specified in Part 7 of the Work Instructions of Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009, except as required by paragraph (x) of this AD; ends the repetitive external detailed and eddy current inspections required by paragraph (g) of this AD for the modified area only. As of the effective date of this AD, use only Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009, to do the actions required by this paragraph.

(j) Retained Corrective Actions

This paragraph restates the requirements of paragraph (d) of AD 2004–18–06, Amendment 39–13784 (69 FR 54206, September 8, 2004), with revised service information. If any cracking is found during any inspection required by paragraph (g), (h), (p), (q), or (s) of this AD, before further flight, do the actions specified in paragraphs (j)(1) and (j)(2) of this AD, as applicable, in accordance with the Work Instructions of Boeing Alert Service Bulletin 737–53A1210, Revision 1, dated October 25, 2001; or in accordance with the Work Instructions of Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009. As of the effective date of this AD, use only Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009, to do the actions required by this paragraph. Where Boeing Alert Service Bulletin 737–53A1210, Revision 1, dated October 25, 2001; or Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009; specify to contact Boeing for repair instructions, before further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or in accordance with data meeting the type certification basis of the airplane if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) or any other person authorized by the Manager, Seattle 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.

(1) Except as provided by paragraph (k) of this AD, for cracking of the crown area, do the repair specified in either paragraph (j)(1)(i) or (j)(1)(ii) of this AD.

(i) Do a time-limited repair in accordance with Part 4 of the Work Instructions of Boeing Alert Service Bulletin 737–53A1210, Revision 1, dated October 25, 2001; or in accordance with Part 6 of the Work Instructions of Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009, except as required by paragraph (x) of this AD; then do the actions required by paragraph (l) of this AD at the times specified in that paragraph. Installation of a time-limited repair ends the repetitive inspections required by paragraph (g) of this AD for the repaired area only.

(ii) Do a permanent repair in accordance with Part 3 of the Work Instructions of Boeing Alert Service Bulletin 737–53A1210, Revision 1, dated October 25, 2001; or in accordance with Part 5 of the Work Instructions of Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009. Installation of a permanent repair ends the repetitive inspections required by paragraph (g) of this AD for the repaired area only. Installation of the lap joint repair specified in paragraph (g) of AD 2002–07–08, Amendment 39–12702 (67 FR 17917, April 12, 2002), is considered acceptable for compliance with the corresponding permanent repair specified in this paragraph for the repaired areas only.

(2) Except as provided by paragraph (k) of this AD, for cracking of the lower lobe area and section 41, repair in accordance with Part 2 of the Work Instructions of Boeing Alert Service Bulletin 737–53A1210, Revision 1, dated October 25, 2001; or in accordance with paragraph (j)(2)(i) or (j)(2)(ii) of this AD. Accomplishment of this repair ends the repetitive inspections required by paragraph (h) of this AD for the repaired area only. As of the effective date of this, do the repair specified in paragraph (j)(2)(i) or (j)(2)(ii) of this AD.

(i) Do a time-limited repair in accordance with Part 6 of the Work Instructions of Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009, except as required by paragraph (x) of this AD, then do the actions required by paragraph (l) of this AD at the times specified in that paragraph.

(ii) Do a permanent repair in accordance with Part 5 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009.

(k) Retained Optional Repair Method

This paragraph restates the requirements of paragraph (e) of AD 2004–18–06, Amendment 39–13784 (69 FR 54206, September 8, 2004), with revised service information. For cracking in any area specified in paragraphs (j)(1) and (j)(2) of this AD within the limitations of the applicable structural repair manual (SRM) specified in paragraphs (k)(1) through (k)(4) of this AD, repair any cracks, in accordance with a method approved by the Manager, Seattle ACO; or in accordance with data meeting the type certification basis of the airplane if it is approved by the Boeing Commercial Airplanes ODA or any other person authorized by the Manager, Seattle 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. Accomplishment of the applicable repair terminates the repetitive inspections required by paragraphs (g) and (h) of this AD for the repaired area only. Guidance on repairing the cracking can be found in the applicable SRM specified in paragraphs (k)(1) through (k)(4) of this AD.

(1) For Model 737–100, –200 series airplanes: Figure 48, General Fuselage Skin Repair, of Subject 53–30–3, Skin Repair, of Chapter 53, Fuselage, of the Boeing 737–100/–200 SRM D6–15565, Revision 102, dated September 10, 2010.

(2) For Model 737–300 series airplanes: Repair 31, General Fuselage Skin Repairs, of Subject 53–00–01, Fuselage Skin—General, of Chapter 53, Fuselage, of the Boeing 737–300 SRM D6–37635, Revision 92, dated November 10, 2010.

(3) For Model 737–400 series airplanes: Repair 31, General Fuselage Skin Repairs, of Subject 53–00–01, Fuselage Skin—General, of Chapter 53, Fuselage, of the Boeing 737–400 SRM D6–38246, Revision 75, dated November 10, 2010.

(4) For Model 737–500 series airplanes: Repair 31, General Fuselage Skin Repairs, of Subject 53–00–01, Fuselage Skin—General, of Chapter 53, Fuselage, of the Boeing 737–500 SRM D6–38441, Revision 70, dated November 10, 2010.

(l) Retained Follow-On and Corrective Actions

This paragraph restates the requirements of paragraph (f) of AD 2004–18–06, Amendment 39–13784 (69 FR 54206, September 8, 2004), with revised service information. If a time-limited repair is done, as specified in paragraph (j)(1)(i) or (j)(2)(i) of this AD: Do the actions specified in paragraphs (l)(1), (l)(2), and (l)(3) of this AD, at the times specified in paragraphs (l)(1), (l)(2), and (l)(3) of this AD, in accordance with the Work Instructions of Boeing Alert Service Bulletin 737–53A1210, Revision 1, dated October 25, 2001; or in accordance with the Work Instructions of Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009.

(1) Within 3,000 flight cycles after doing the repair: Do the actions specified in paragraph (l)(1)(i) or (l)(1)(ii) of this AD. Then repeat the applicable inspection specified in paragraph (l)(1)(i) or (l)(1)(ii) of this AD at intervals not to exceed 3,000 flight cycles until permanent rivets are installed in the repaired area, which ends the repetitive inspections for this paragraph. As of the effective date of this AD, do only the inspections specified in paragraph (l)(1)(ii) of this AD.

(i) For repairs done before the effective date of this AD: Do a detailed inspection of the repaired area for loose fasteners in accordance with Part 4 of the Work Instructions of Boeing Alert Service Bulletin 737–53A1210, Revision 1, dated October 25, 2001, or do the actions specified in paragraph (l)(1)(ii) of this AD. If any loose fastener is found, before further flight, replace with a new fastener, in accordance with the Work Instructions of Boeing Alert Service Bulletin 737–53A1210, Revision 1, dated October 25, 2001.

(ii) For repairs done after the effective date of this AD: Do a detailed inspection of the repaired area for loose, damaged, and missing fasteners, in accordance with Part 6 of the Work Instructions of Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009. If any loose, missing, or damaged fastener is found, before further flight, replace with a new fastener, in accordance with the Work Instructions of Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009.

(2) At the applicable time specified in paragraph (l)(2)(i) and (l)(2)(ii) of this AD: Do inspections of the repaired area for cracking in accordance with Part 4 of the Work Instructions of Boeing Alert Service Bulletin 737–53A1210, Revision 1, dated October 25,

2001; or in accordance with Part 6 of the Work Instructions of Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009. If any cracking is found, before further flight, repair in accordance with a method approved by the Manager, Seattle ACO, or in accordance with data meeting the type certification basis of the airplane if it is approved by the Boeing Commercial Airplanes ODA or any other person authorized by the Manager, Seattle 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.

(i) For repairs done before the effective date of this AD: Within 4,000 flight cycles after doing the repair, do the inspections.

(ii) For repairs done on or after the effective date of this AD: Within 3,000 flight cycles after doing the repair, do the inspections.

(3) At the earlier of the times specified in paragraphs (l)(3)(i) and (l)(3)(ii) of this AD: Make the repair permanent in accordance with Part 4 and Figure 20 of the Work Instructions of Boeing Alert Service Bulletin 737–53A1210, Revision 1, dated October 25, 2001, or do the permanent repair, in accordance with Part 5 of the Work Instructions of Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009, which ends the repetitive inspections for the repaired area only. As of the effective date of this AD, only Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009, may be used to make the repair permanent.

(i) Within 10,000 flight cycles after doing the repair in accordance with Boeing Alert Service Bulletin 737–53A1210, Revision 1, dated October 25, 2001.

(ii) At the later of the times specified in paragraphs (l)(3)(ii)(A) and (l)(3)(ii)(B) of this AD.

(A) Within 6,000 flight cycles after doing the repair.

(B) Within 1,000 flight cycles after the effective date of this AD.

(m) Retained Optional Terminating Action for Repetitive Eddy Current Inspections

This paragraph restates the requirements of paragraph (g) of AD 2004–18–06, Amendment 39–13784 (69 FR 54206, September 8, 2004), with revised service information. Accomplishment of paragraph (b) or (c), as applicable, of AD 2003–14–06, Amendment 39–13225 (68 FR 42956, July 21, 2003), before the effective date of this AD ends the repetitive eddy current inspections required by paragraph (g) of this AD for that skin panel only; however, the repetitive external detailed inspections required by paragraph (g) of this AD are still required for all areas. Accomplishing paragraph (b) or (c), as applicable, of AD 2003–14–06, on or after the effective date of this AD, does not end either the repetitive detailed or eddy current inspections required by paragraph (g) of this AD.

(n) Retained Credit for Previous Actions

This paragraph restates the provisions of paragraph (h) of AD 2004–18–06, Amendment 39–13784 (69 FR 54206, September 8, 2004). This paragraph provides credit for actions specified by paragraphs (g), (h), (i), (j), (k), and (l) of this AD, if those actions were done before October 13, 2004 (the effective date of AD 2004–18–06), using Boeing Alert Service Bulletin 737–53A1210, dated December 14, 2000 (which is not incorporated by reference in this AD).

(o) Retained Exception to Service Bulletin Procedures

This paragraph restates the provision of paragraph (i) of AD 2004–18–06, Amendment 39–13784 (69 FR 54206, September 8, 2004), with revised service information. For airplanes subject to the requirements of paragraphs (g) and (h) of this AD: Inspections are not required in areas that are spanned by an FAA-approved repair that has a minimum of 3 rows of fasteners above and below, or forward and aft of the chem-milled step, or repairs that have a minimum of 2 rows of fasteners above and below, or forward and aft of the chem-milled step, and have been installed in accordance with the requirements of paragraph (k) of this AD. If an external doubler covers the chem-milled step, but does not span it by a minimum of 3 rows of fasteners above and below, or forward and aft, or does not have a minimum of 2 rows of fasteners above and below, and have been installed in accordance with the requirements of paragraph (k) of this AD: In lieu of requesting approval for an alternative method of compliance (AMOC), one option to comply with the inspection requirement of paragraphs (g) and (h) of this AD is to inspect all chem-milled steps covered by the repair using the method specified in the notes in Tables 1 through 6 of paragraph 1.E., ''Compliance,'' and in accordance with the Work Instructions, of Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009.

(p) For Certain Airplanes: New Repetitive External Detailed and Eddy Current Inspections of the Crown Area and Other Known Areas of Fuselage Skin Cracking, and Corrective Actions

For Groups 1 through 5 and Groups 9 through 21 airplanes identified in Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009, on which the inspections required by paragraph (g) of this AD have been done before the effective date of this AD: Within 4,500 flight cycles after doing the most recent inspection required by paragraph (g) of this AD, or within 1,800 flight cycles after the effective date of this AD, whichever is earlier; do external detailed and eddy current inspections of the crown area and other known areas of the fuselage skin cracking, in accordance with Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009; except as provided by paragraph (o) of this AD. Repeat the external detailed and eddy current inspections thereafter at intervals not to exceed 1,800 flight cycles. Accomplishing the inspections required by this paragraph ends the repetitive inspections required by paragraph (g) of this AD. Before further flight, do all applicable corrective actions as specified in paragraph (j) of this AD. For the locations specified in Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009, in lieu of doing detailed inspections, operators may do general visual inspections, provided that the general visual inspections are done at intervals not to exceed 1,000 flight cycles.

(q) For Certain Other Airplanes: New Repetitive External Detailed and Eddy Current Inspections of the Crown Area and Other Known Areas of Fuselage Skin Cracking, and Corrective Actions

For Groups 1 through 5 and 9 through 21 airplanes identified in Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009, on which the inspections required by paragraph (g) of this AD have not been done before the effective date of this AD: Before the accumulation of 28,000 total flight cycles, or within 1,800 flight cycles after the effective date of this AD, whichever is later, do external detailed and eddy current inspections of the crown area and other known areas of fuselage skin cracking, in accordance with Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009, except as provided by paragraph (o) of this AD. Repeat the external detailed and eddy current inspections thereafter at intervals not to exceed 1,800 flight cycles. Accomplishing the inspections required by this paragraph ends the repetitive inspections required by paragraph (g) of this AD. Before further flight, do all applicable corrective actions as specified in paragraph (j) of this AD. For the locations specified in Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009, in lieu of doing detailed inspections, operators may do general visual inspections, provided that the general visual inspections are done at intervals not to exceed 1,000 flight cycles.

(r) New Repetitive External Detailed and Eddy Current Inspections of the Fuselage Skin Along the Chem-Milled Steps of the Butt Joints, and Corrective Actions

For Groups 1 through 5, and 9 through 21 airplanes identified in Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009: At the later of the times specified in paragraphs (r)(1) and (r)(2) of this AD, do external detailed and eddy current inspections for vertical cracks in the fuselage skin along the chem-milled steps of the butt joints, in accordance with Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009, except as provided by paragraph (o) of this AD. Repeat the inspections thereafter at intervals not to exceed 1,800 flight cycles. If any cracking is found, before further flight, repair in accordance with Part 5 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009. Doing the repair terminates the repetitive inspections specified in this paragraph for the repaired area only.

(1) Before the accumulation of 55,000 total flight cycles or 55,000 total flight hours, whichever occurs first.

(2) Within 1,800 flight cycles after the effective date of this AD.

(s) New Repetitive Detailed and Eddy Current Inspections Along the Chem-Milled Lines of the Fuselage Skin of the Lower Lobe Area and Section 41, and Corrective Actions

For Groups 1 through 21 airplanes identified in Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009: At the applicable time specified in paragraph (s)(1) or (s)(2) of this AD, do external detailed and eddy current inspections, as applicable, for horizontal cracks along the chem-milled lines of the fuselage skin of the lower lobe area and section 41, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009, except as provided by paragraphs (o) and (x) of this AD. Repeat the inspections thereafter at intervals not to exceed 1,800 flight cycles. Accomplishing the inspections required by this paragraph ends the inspections required by paragraph (h) of this AD. Before further flight, do all applicable corrective actions as specified in paragraph (j) of this AD. For the locations specified in Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009, in lieu of doing detailed inspections, operators may do general visual inspections, provided that the general visual inspections are done at intervals not to exceed 1,000 flight cycles.

(1) Before the accumulation of 35,000 total flight cycles.

(2) Within 9,000 flight cycles after the most recent inspection required by paragraph (h) of this AD, or within 1,800 flight cycles after the effective date of this AD, whichever is earlier.

(t) For Certain Airplanes: New Repetitive External Detailed and Eddy Current Inspections Along the Chem-Milled Lines of the Fuselage Skin of the Window Belt Area, and Corrective Actions

For Groups 4, 11, and 16 airplanes identified in Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009: Before the accumulation of 25,000 total flight cycles or within 1,800 flight cycles after the effective date of this AD, whichever is later, do external detailed and eddy current inspections for horizontal cracks along the chem-milled lines of the fuselage skin of the fuselage window belt area, in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009, except as provided by paragraph (o) of this AD. Repeat the inspections thereafter at intervals not to exceed 1,800 flight cycles. If any cracking is found, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (y) of this AD. Doing the repair terminates the repetitive inspections specified in this paragraph for the repaired area only.

(u) For Certain Other Airplanes: New Repetitive External Detailed and Eddy Current Inspections Along the Chem-Milled Lines of the Fuselage Skin of the Window Belt Area, and Corrective Actions

For Groups 3, 5, 9, 10, 12, 14, 15, 17, 18, 19, 20, and 21 airplanes identified in Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009: Do the actions specified in paragraph (u)(1) or (u)(2) of this AD, as applicable. Part 7 (Figure 10) of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009, specifies applying corrosion inhibiting compound (CIC) Boeing Material Specification (BMS) 3–23 to the surfaces of the repaired area. As an option to using CIC BMS 3–23, operators may use CIC BMS 3–35, which is equivalent to CIC BMS 3–23.

(1) For airplanes on which the inspections required by paragraph (g) of this AD have been done before the effective date of this AD: Within 4,500 flight cycles after doing the most recent inspection required by paragraph (g) of this AD, or within 1,800 flight cycles after the effective date of this AD, whichever is earlier, do external detailed and eddy current inspections for horizontal cracks along the chem-milled lines of the fuselage skin of the fuselage window belt area, in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009, except as provided by paragraph (o) of this AD. Repeat the inspections thereafter at intervals not to exceed 1,800 flight cycles. If any cracking is found, before further flight, repair in accordance with Part 8 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009, except as required by paragraph (x) of this AD.

(2) For airplanes on which the inspections required by paragraph (g) of this AD have not been done before the effective date of this AD: Before the accumulation of 25,000 total flight cycles or within 1,800 flight cycles after the effective date of this AD, whichever is later, do external detailed and eddy current inspections for horizontal cracks along the chem-milled lines of the fuselage skin of the fuselage window belt area, in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009. Repeat the inspections thereafter at intervals not to exceed 1,800 flight cycles. If any cracking is found, before further flight, repair in accordance with Part 8 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009, except as required by paragraph (x) of this AD.

(v) New Optional Repair

For airplanes on which cracking is found during any inspection required by paragraph (p), (q), (r), or (s) of this AD, as applicable, doing the repair of the chem-milled area in the skin, as specified in Part 5 or Part 6 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009, ends the repetitive external detailed and eddy current inspections required by paragraph (p), (q), (r), or (s) of this AD, as applicable, for the repaired area only.

Note 1 to paragraph (v) of this AD: Part 8 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009, specifies a post-repair inspection of the skin chem-milled crack repair at stringer 12; that inspection is not required by this AD. The damage tolerance inspections specified in Table 7 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009, may be used in support of compliance with section 121.1109(c)(2) or 129.109(c)(2) of the Code of Federal Regulations (14 CFR 121.1109(c)(2) or 14 CFR 129.109(c)(2)).

(w) New Optional Preventive Modification at Stringer 12

For airplanes on which no cracking is found during any inspection required by paragraph (u) of this AD, doing the preventive modification of the chem-milled areas in the skin at stringer 12, as specified in Part 7 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009, except as required by paragraph (x) of this AD, ends the repetitive external detailed and eddy current inspections required by paragraph (u) of this AD, for the modified areas common to stringer 12 only. Part 7 (Figure 10) of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009, specifies applying CIC BMS 3–23 to the surfaces of the repaired area. As an option to using CIC BMS 3–23, operators may use CIC BMS 3–35, which is equivalent to CIC BMS 3–23.

(x) Exception to Service Information

Where Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009, specifies to contact Boeing for repair instructions, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (y) of this AD.

(y) Alternative Methods of Compliance (AMOCs)

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

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes ODA that has been authorized by the Manager, Seattle ACO, to make those findings. 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 previously in accordance with AD 2004–18–06, Amendment 39–13784 (69 FR 54206,

September 8, 2004), are approved as AMOCs for the corresponding provisions of this AD.

(5) Inspections and corrective actions required by paragraph (g) of AD 2009–21–01, Amendment 39–16038 (74 FR 52395, October 13, 2009), are approved as AMOCs for the corresponding provisions of paragraph(s) of this AD, but only for the areas of the lower lobe skin identified in AD 2009–21–01.

(z) Related Information

(1) For more information about this AD, contact Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6447; fax: 425–917–6590; email: *wayne.lockett@faa.gov*.

(2) Service information that is referenced in this AD that is not incorporated by reference in this AD may be obtained at the addresses identified in paragraphs (aa)(5) and (aa)(6) of this AD.

(aa) 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.

(3) The following service information was approved for IBR on November 6, 2013.

(i) Boeing Alert Service Bulletin 737–53A1210, Revision 3, dated July 16, 2009.

(ii) Figure 48, General Fuselage Skin Repair, of Subject 53–30–3, Skin Repair, of Chapter 53, Fuselage, of the Boeing 737–100/–200 SRM D6–15565, Revision 102, dated September 10, 2010. The revision level of this document is identified in only the transmittal letter; no other page of the document contains this information.

(iii) Repair 31, General Fuselage Skin Repairs, of Subject 53–00–01, Fuselage Skin—General, of Chapter 53, Fuselage, of the Boeing 737–300 SRM D6–37635, Revision 92, dated November 10, 2010. The revision level of this document is identified in only the transmittal letter; no other page of the document contains this information.

(iv) Repair 31, General Fuselage Skin Repairs, of Subject 53–00–01, Fuselage Skin—General, of Chapter 53, Fuselage, of the Boeing 737–400 SRM D6–38246, Revision 75, dated November 10, 2010. The revision level of this document is identified in only the transmittal letter; no other page of the document contains this information.

(v) Repair 31, General Fuselage Skin Repairs, of Subject 53–00–01, Fuselage Skin—General, of Chapter 53, Fuselage, of the Boeing 737–500 SRM D6–38441, Revision 70, dated November 10, 2010. The revision level of this document is identified in only the transmittal letter; no other page of the document contains this information.

(4) The following service information was approved for IBR on October 13, 2004 (69 FR 54206, September 8, 2004).

(i) Boeing Alert Service Bulletin 737–53A1210, Revision 1, excluding Appendix A, dated October 25, 2001.

(ii) Reserved.

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

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

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

Issued in Renton, Washington, on August 16, 2013.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–24034 Filed 10–1–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0360; Directorate Identifier 2013–NM–033–AD; Amendment 39–17591; AD 2013–19–09]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding airworthiness directive (AD) 2012–26–51 for all Airbus Model A318, A319, A320, and A321 series airplanes. AD 2012–26–51 required revising the airplane flight manual (AFM) to advise the flightcrew of emergency procedures for addressing angle of attack (AoA) sensor blockage, and also provided for optional terminating action for the AFM revision, which involves replacing AoA sensor conic plates with AoA sensor flat plates. This new AD requires replacing AoA sensor conic plates with AoA sensor flat plates, and subsequent removal of the AFM revision. This AD was prompted by a determination that replacement of AoA sensor conic plates is necessary to address the identified unsafe condition. We are issuing this AD to prevent reduced control of the airplane.

DATES: This AD becomes effective November 6, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 6, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of January 24, 2013 (78 FR 1723, January 9, 2013).

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1405; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to the specified products. The NPRM was published in the **Federal Register** on May 2, 2013 (78 FR 25666), and proposed to supersede AD 2012–26–51, Amendment 39–17312 (78 FR 1723, January 9, 2013). The NPRM proposed to correct an unsafe condition for the specified products. The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2013–0022, dated February 1, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Recently, an Airbus A330 aeroplane equipped with Angle of Attack (AoA) sensors with conic plates installed, experienced blockage of all sensors during climb, leading to autopilot disconnection and activation of the alpha protection (Alpha Prot) when Mach number was increased.
>
> Based on the results of the subsequent analysis, it is suspected that these conic plates may have contributed to the event. Investigations are on-going to determine what caused the blockage of these AoA sensors.
>
> Blockage of two or three AoA sensors at the same angle may cause the Alpha Prot of the normal law to activate. Under normal flight conditions (in normal law), if the Alpha Prot activates and Mach number increases, the flight control laws order a pitch down of the aeroplane that the flight crew may be unable

to counteract with a side stick deflection, even in the full backward position.

This condition, if not corrected, could result in reduced control of the aeroplane.

AoA conic plates of similar design are also installed on A320 family aeroplanes, and installation of these AoA sensor conic plates was required by EASA AD 2012–0236, making reference to Airbus Service Bulletin (SB) A320–34–1521 for in-service modification.

That requirement was deleted by EASA AD 2012–0236R1 [*http://ad.easa.europa.eu/blob/easa_ad_2012_0236_R1.pdf/AD_2012-0236R1_1*].

To address this potential unsafe condition on A320 family aeroplanes, Airbus developed an ''AOA Blocked'' emergency procedure, published as a temporary revision (TR) of the Airplane Flight Manual (AFM), to ensure that flight crews, in case of AoA sensors blockage, apply the applicable emergency procedure.

Consequently, EASA issued Emergency AD 2012–0264–E [*http://ad.easa.europa.eu/blob/easa_ad_2012_0264_E_superseded.pdf/EAD_2012-0264-E_2*] [which corresponds to FAA AD 2012–26–51, Amendment 39–17312 (78 FR 1723, January 9, 2013)] to require amendment of the AFM by incorporating the Airbus TR.

Since that [EASA] AD was issued, Airbus published approved instructions to re-install AoA sensor flat plates on A320 family aeroplanes.

For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2012–0264–E which is superseded, and requires installation of AoA sensor flat plates, after which the AFM operational procedure can be removed.

You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the comments received.

Support for the NPRM (78 FR 25666, May 2, 2013)

The Air Line Pilots Association International (ALPA) stated that it supports the installation of the AoA sensor flat plates.

United Airlines (UAL) stated that it concurs with the replacement of the AoA sensor conic plates with AoA sensor flat plats.

Request To Retain AFM Procedure

ALPA requested that we retain the AFM procedure. ALPA stated that if an AoA failure were to occur, the AFM procedure would be useful for flightcrew reference.

We disagree with the commenter's request. The AOA conical plates have been identified as the root cause of the unsafe condition. The AFM procedure was an interim corrective action to mitigate the immediate risks associated with installation of conical plates. Based on the service history and our risk assessment, we have concluded that the AFM procedure associated with installation of conical plates is not required after the installation of AOA sensor flat plates. We have not changed this final rule in this regard.

Request To Clarify Installation Method

UAL requested clarification on the intent and details of the installation method specified in paragraph (j)(2) of the NPRM (78 FR 25666, May 2, 2013). UAL suggested that we revise the NPRM installation method from doing the installation in accordance with a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA (or its delegated agent); to using a method stated in an applicable section of the airplane maintenance manual.

We agree that clarification is necessary. The intent of paragraph (j)(2) of this final rule is that operators or Airbus use the procedures specified in paragraph (o) of this final rule to either apply for a method of compliance for accomplishing the installation, or for Airbus to provide maintenance procedures to operators for installation of flat conical plates approved by EASA or approved under EASA design organization approval. We have not changed this final rule in this regard.

Conclusion

We reviewed the available data, including 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 (78 FR 25666, May 2, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 25666, May 2, 2013).

Costs of Compliance

We estimate that this AD affects 100 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
AFM revision [actions retained from AD 2012–26–51, Amendment 39–17312 (78 FR 1723, January 9, 2013)].	1 work-hour × $85 per hour = $85.	$0	$85	$8,500
Flat plate installation and removal of AFM revision [new action].	7 work-hours × $85 per hour = $595.	0	85	59,500

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

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States,

or on the distribution of power and responsibilities among the various levels of government.

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2012–26–51, Amendment 39–17312 (78 FR 1723, January 9, 2013), and adding the following new AD:

2013–19–09 Airbus: Amendment 39–17591. Docket No. FAA–2013–0360; Directorate Identifier 2013–NM–033–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective November 6, 2013.

(b) Affected ADs

This AD supersedes AD 2012–26–51, Amendment 39–17312 (78 FR 1723, January 9, 2013).

(c) Applicability

This AD applies to the Airbus airplanes listed in paragraphs (c)(1) through (c)(4) of this AD, certificated in any category, all manufacturer serial numbers.

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

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

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

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

(d) Subject

Air Transport Association (ATA) of America Code 34, Navigation.

(e) Reason

This AD was prompted by a determination that replacement of angle of attack (AoA) sensor conic plates is necessary to address the identified unsafe condition. We are issuing this AD to prevent reduced control of the airplane.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Retained Airplane Flight Manual (AFM) Revision With New Exception

This paragraph restates the requirements of paragraph (g) of AD 2012–26–51, Amendment 39–17312 (78 FR 1723, January 9, 2013), with a new exception. Except as specified in paragraph (k) of this AD, for airplanes on which an AoA sensor conic plate has been installed in production by Airbus modification 153213 or 153214, or in-service as specified in Airbus Mandatory Service Bulletin A320–34–1521, dated May 7, 2012; or Revision 01, dated September 12, 2012: Within 5 days after January 24, 2013 (the effective date of AD 2012–26–51), revise the Emergency Procedures of the Airbus A318/A319/A320/A321 AFM by inserting Airbus A318/A319/A320/A321 Temporary Revision (TR) TR286, Issue 1.0, dated December 17, 2012, to advise the flightcrew of emergency procedures for addressing AoA sensor blockage. When the information in Airbus A318/A319/A320/A321 TR TR286, Issue 1.0, dated December 17, 2012, is included in the general revisions of the AFM, the general revisions may be inserted in the AFM, and the TR may be removed. Accomplishment of the new flat plate installation required by paragraph (j) of this AD terminates the actions required by this paragraph; and after the installation of new flat plates has been done, Airbus A318/A319/A320/A321 TR TR286, Issue 1.0, dated December 17, 2012, must be removed from the AFM before further flight.

(h) Retained Optional Terminating Action With Revised TR Removal Requirement

This paragraph restates the actions specified in paragraph (h) of AD 2012–26–51, Amendment 39–17312 (78 FR 1723, January 9, 2013), with a revised TR removal requirement. Modification of an airplane by replacing AoA sensor conic plates with AoA sensor flat plates, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, constitutes terminating action for the AFM revision required by paragraph (g) of this AD; and after the modification has been done, Airbus A318/A319/A320/A321 TR TR286, Issue 1.0, dated December 17, 2012, must be removed from the AFM before further flight, except for airplanes on which the modification has been done before the effective date of this AD. For airplanes on which the modification has been done before the effective date of this AD, Airbus A318/A319/A320/A321 TR TR286, Issue 1.0, dated December 17, 2012, must be removed from the AFM within 5 days after the effective date of this AD. Accomplishment of the actions required by paragraphs (j) and (l) of this AD terminate the actions specified in this paragraph.

(i) Retained Parts Installation Prohibition

This paragraph restates the requirements of paragraph (i) of AD 2012–26–51, Amendment 39–17312 (78 FR 1723, January 9, 2013). As of January 24, 2013 (the effective date of AD 2012–26–51), no person may install an AoA sensor conic plate in service using Airbus Mandatory Service Bulletin A320–34–1521, dated May 7, 2012; or Revision 01, dated September 12, 2012; on any airplane.

(j) New Flat Plate Installation

Within 5 months after the effective date of this AD, remove all AoA sensor conic plates having part number (P/N) F3411060200000 or P/N F3411060900000 and install AoA sensor flat plates having part numbers specified in paragraph (j)(1) or (j)(2) of this AD, except as specified in paragraph (k) of this AD. Install the AoA sensor plates in accordance with the applicable method specified in paragraph (j)(1) or (j)(2) of this AD. Accomplishment of the AoA sensor flat plate installation terminates the AFM revision required by paragraph (g) of this AD; and after accomplishing the installation, the actions specified in paragraph (l) of this AD must be done.

(1) Install P/N D3411013520200 in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A320–34–1564, including Appendix 01, dated January 25, 2013.

(2) Install P/N D3411007620000 or P/N D3411013520000, in accordance with a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent).

(k) New Exception to Paragraphs (g) and (j) of This AD

An airplane on which Airbus modification 154863 (installation of AOA sensor flat plate) and modification 154864 (coating protection) have been embodied in production is not affected by the requirements of paragraph (g) or (j) of this AD, provided that, since first flight, no AoA sensor conic plate having P/N F3411060200000 or P/N F3411060900000 has been installed on that airplane.

(l) New Requirement for Removal of AFM Revision

After modification of an airplane as required by paragraph (j) of this AD, Airbus A318/A319/A320/A321 TR TR286, Issue 1.0, dated December 17, 2012, that was inserted into the Airbus A318/A319/A320/A321 AFM, as required by paragraph (g) of this AD, is no longer required and must be removed from the AFM of that airplane before further flight.

(m) New Parts Installation Prohibition

(1) For any airplane that has AoA sensor flat plates installed: As of the effective date of this AD, do not install any AoA sensor conic plate having P/N F3411060200000 or P/N F3411060900000, and do not use any AoA protection cover having P/N 98D34203003000.

(2) For any airplane that has AoA sensor conic plates installed: As of the effective date of this AD, after modification of the airplane as required by paragraph (j) of this AD, do not install any AoA sensor conic plate having P/N F3411060200000 or P/N F3411060900000, and do not use any AoA protection cover having P/N 98D34203003000.

(n) Special Flight Permits

Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the airplane can be modified (if the operator elects to do so), provided Airbus A318/A319/A320/A321 TR TR286, Issue 1.0, dated December 17, 2012, has been inserted into the Emergency Procedures of the Airbus A318/A319/A320/A321 AFM.

(o) Other FAA AD Provisions

The following provisions also apply to this AD:

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

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(p) Related Information

Refer to Mandatory Continuing Airworthiness Information EASA Airworthiness Directive 2013–0022, dated February 1, 2013, for related information, which can be found in the AD docket on the Internet at *http://www.regulations.gov.*

(q) 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.

(3) The following service information was approved for IBR on November 6, 2013.

(i) Airbus Mandatory Service Bulletin A320–34–1564, including Appendix 01, dated January 25, 2013.

(ii) Reserved.

(4) The following service information was approved for IBR on January 24, 2013 (78 FR 1723, January 9, 2013).

(i) Airbus A318/A319/A320/A321 Temporary Revision TR286, Issue 1.0, dated December 17, 2012, to the Airbus A318/A319/A320/A321 Airplane Flight Manual.

(ii) Reserved.

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

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

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

Issued in Renton, Washington, on September 13, 2013.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–23079 Filed 10–1–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0211; Directorate Identifier 2012–NM–230–AD; Amendment 39–17597; AD 2013–19–15]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, –400, –400D, –400F, and 747SR series airplanes. This AD was prompted by reports of cracking at the aft upper corner of the main entry door (MED) 5 cutout. This AD requires inspecting for the presence of repairs and measuring the edge margin at certain fastener locations around the upper aft corner of the door cutout, inspecting for any cracking of the fuselage skin assembly and bear strap in the aft upper corner area of the door cutout, and repairing or modifying the fuselage skin assembly and bear strap if necessary. We are issuing this AD to detect and correct cracking of the skin and bear straps at the aft upper corner of the MED 5 cutout, which could result in in-flight depressurization.

DATES: This final rule is effective November 6, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 6, 2013.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* 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: Bill Ashforth, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 917–6432; fax: (425) 917–6590; email: *bill.ashforth@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 published in the **Federal Register** on March 28, 2013 (78 FR 18917). The NPRM proposed to require inspecting for the presence of repairs and measuring the edge margin at certain fastener locations around the upper aft corner of the door cutout, inspecting for any cracking of the fuselage skin assembly and bear strap in the aft upper corner area of the door cutout, and repairing or modifying the fuselage skin assembly and bear strap if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (78 FR 18917, March 28, 2013) and the FAA's response to each comment.

Request To Provide Clarification or Revision of Corrective Actions Phrase in Paragraph (g)(2) of the NPRM (78 FR 18917, March 28, 2013)

UPS requested that the phrase ''applicable corrective or additional actions'' be used in place of ''applicable corrective actions'' in paragraph (g)(2) of the NPRM (78 FR 18917, March 28, 2013). UPS found the use of ''applicable corrective actions'' to be confusing in the case when no cracks are found during the inspection and stated the phrase could lead to problems with interpretation. UPS stated that for airplanes on which no cracks are found, Boeing Alert Service Bulletin 747–53A2839, dated November 6, 2012, specifies the installation of a preventative modification, with the option of doing the repetitive inspections until installation of the preventative modification. UPS added that it is not intuitively clear that corrective action is required for the case where no cracks are found.

We agree that clarification is necessary. We have revised the phrasing and paragraph structure of paragraph (g)(2) of this final rule to clarify what is required or acceptable in the case of no crack findings. However, we have not used the phrase ''applicable corrective or additional actions'' as suggested by UPS.

Request To Add Option To Do Certain Actions by Using Service Information

Boeing requested that paragraph (g)(1) of the NPRM (78 FR 18917, March 28, 2013) be revised to refer to Boeing Alert Service Bulletin 747–53A2839, dated November 6, 2012, for instructions instead of referencing the alternative method of compliance (AMOC) process. Boeing referred to similar language in the last sentence of paragraph (g)(2) of the NPRM and suggested adding that language to paragraph (g)(1) of the NPRM would clarify the required actions.

We disagree. For the condition addressed by paragraph (g)(1) of this final rule, Boeing Alert Service Bulletin 747–53A2839, dated November 6, 2012, states to ''Do inspections or change the repair, as described by Boeing.'' To require operators to contact Boeing for these actions would be delegating our rulemaking authority to the manufacturer. Paragraph (h)(2) of this final rule also requires using the AMOC process instead where Boeing Alert Service Bulletin 747–53A2839, dated November 6, 2012, specifies to contact Boeing. We have not changed this final rule in this regard.

Request To Approve an Alternate Generic Repair Scheme as an AMOC

British Airways requested that an alternate generic repair scheme be approved as an AMOC to this final rule. British Airways stated that it is in favor of doing the detailed inspections for the presence of repairs and measuring the edge margin, as it has had several findings during the accomplishment of Boeing Alert Service Bulletin 747–53A2839, dated November 6, 2012. However, due to insufficient availability of the modification kit (due to the service bulletin validation process), Boeing had provided an alternate generic repair scheme to British Airways which allowed British Airways to manufacture certain repair parts. British Airways stated it has requested that Boeing include the alternate generic repair scheme in the next revision of Boeing Alert Service Bulletin 747–53A2839, dated November 6, 2012.

We disagree. An AMOC is issued only after an AD has been issued and only after data are provided to show that the proposed solution is complete and addresses the unsafe condition. The alternate generic repair scheme that British Airways attached to its comment states that the ''repair is generic, and may need to be modified to account for the existing configuration and reported conditions.'' Therefore, each repair will need to be evaluated on a case-by-case basis. Once we issue this final rule, anyone may submit an AMOC request to use an alternate generic repair scheme under the provisions of paragraph (j) of this final rule. Sufficient data must be submitted to substantiate the generic repair and show that it would provide an acceptable level of safety. We have not changed this final rule in this regard.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously—and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (78 FR 18917, March 28, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 18917, March 28, 2013).

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

Costs of Compliance

We estimate that this AD affects 246 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
Inspect for repair and measure edge margin.	1 work-hour × $85 per hour = $85 per door (up to 2 doors per airplane).	None	Up to $170	Up to $41,820.

We estimate the following costs to do any necessary repetitive inspections, repairs or modifications that would be required based on the results of the inspection. We have no way of determining the number of aircraft that might need these inspections, repairs or modification:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repetitive inspections of un-repaired area.	6 work-hours × $85 per hour = $510 per door, per inspection cycle.	None	$510 per door, per inspection cycle.
Repair or modification	10 work-hours × $85 per hour = $850 per door.	Between $7,654 and $17,426 per door.	Between $8,504 and $18,276 per door.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013–19–15 The Boeing Company: Amendment 39–17597; Docket No. FAA–2013–0211; Directorate Identifier 2012–NM–230–AD.

(a) Effective Date

This AD is effective November 6, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, –400, –400D, –400F, and 747SR series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 747–53A2839, dated November 6, 2012.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of cracking at the aft upper corner of the main entry door (MED) 5 cutout. We are issuing this AD to detect and correct cracking of the skin and bear straps at the aft upper corner of the MED 5 cutout, which could result in in-flight depressurization.

(f) Compliance

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

(g) Inspections and Measurement

Except as specified in paragraph (h)(1) of this AD, at the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2839, dated November 6, 2012: Do a detailed inspection for the presence of repairs at the aft upper corner of the MED 5 cutout, and measure the edge margin at certain fastener locations around the corner of the door cutout, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2839, dated November 6, 2012.

(1) If a repair is found: Before further flight, inspect or change the repair, using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(2) If no repair is found, except as specified in paragraph (h)(1) of this AD, at the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2839, dated November 6, 2012: Do detailed and high frequency eddy current (HFEC) inspections for any cracking of the fuselage skin assembly and bear strap in the aft upper corner area of the door cutout, as applicable, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2839, dated November 6, 2012, except as required by paragraph (h)(2) of this AD. Do all applicable

corrective actions before further flight. If no cracking is found: Before further flight, install a preventative modification, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2839, dated November 6, 2012, except as required by paragraph (h)(2) of this AD.

(i) Options provided in Boeing Alert Service Bulletin 747–53A2839, dated November 6, 2012, for accomplishing the applicable corrective action are acceptable for the corresponding requirements of paragraph (g)(2) of this AD, provided that the inspections and preventative modification are done at the applicable times in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2839, dated November 6, 2012.

(ii) Options provided in Boeing Alert Service Bulletin 747–53A2839, dated November 6, 2012, for accomplishing the preventative modification when no cracking is found are acceptable for the corresponding requirements of paragraph (g)(2) of this AD, provided that the inspections and preventative modification are done at the applicable times in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2839, dated November 6, 2012.

(h) Exceptions to the Service Information

(1) Where Boeing Alert Service Bulletin 747–53A2839, dated November 6, 2012, specifies compliance times ''after the original issue date of this service bulletin,'' this AD requires compliance within the specified compliance times ''after the effective date of this AD.''

(2) Where Boeing Alert Service Bulletin 747–53A2839, dated November 6, 2012, specifies to contact Boeing for appropriate action: Before further flight, do the action using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(i) Post-Repair/Post-Modification Inspections

The post-repair or post-modification inspections specified in table 3 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2839, dated November 6, 2012, are not required by this AD.

Note 1 to paragraph (i) of this AD: The post-repair or post-modification inspection specified in table 3 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2839, dated November 6, 2012, may be used in support of compliance with section 121.1109(c)(2) or 129.109(b)(2) of the Federal Aviation Regulations (14 CFR 121.1109(c)(2) or 14 CFR 129.109(b)(2)). The corresponding actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2839, dated November 6, 2012, are not required by this AD.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle 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.

(k) Related Information

For more information about this AD, contact Bill Ashforth, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 917–6432; fax: (425) 917–6590; email: *bill.ashforth@faa.gov*.

(l) Material Incorporated by Reference

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

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

(i) Boeing Alert Service Bulletin 747–53A2839, dated November 6, 2012.

(ii) Reserved.

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

(4) You may view this 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 September 13, 2013.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–24029 Filed 10–1–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1041; Directorate Identifier 2011–NM–272–AD; Amendment 39–17590; AD 2013–19–08]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 727 airplanes; Model 737–100, –200, and –200C series airplanes; and Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, –400, –400D, –400F, 747SR, and 747SP series airplanes. This AD was prompted by a report of an activation of the control column shaker during takeoff. This AD requires performing a general visual inspection to determine if a certain angle of attack (AOA) sensor with a paddle type vane is installed, and, for affected sensors, performing an operational test of the stall warning system, and replacing the AOA sensor with a new sensor if necessary. We are issuing this AD to prevent erroneous activation of the control column shaker during takeoff, which could result in runway overrun, failure to clear terrain or obstacles after takeoff, or reduced controllability of the airplane.

DATES: This AD is effective November 6, 2013.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of November 6, 2013.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* 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: Ray Mei, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, Seattle Aircraft Certification Office, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6467; fax: 425–917–6590; email: *raymont.mei@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 published in the **Federal Register** on October 10, 2012 (77 FR 61548). The NPRM proposed to require performing a general visual inspection to determine if a certain angle of attack (AOA) sensor with a paddle type vane is installed, and, for affected sensors, performing an operational test of the stall warning system, and replacing the AOA sensor with a new sensor if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (77 FR 61548, October 10, 2012) and the FAA's response to each comment.

Supportive Comments

United Airlines and Air Line Pilots Association, International supported the NPRM (77 FR 61548, October 10, 2012).

Request To Allow Credit for Certain ''C'' Check Actions

Boeing requested that paragraph (f), ''Compliance,'' of the NPRM (77 FR 61548, October 10, 2012) be modified. Boeing stated it recommends the NPRM specifically state that if the maintenance planning document (MPD) ''C'' check task associated with the stall warning system has been accomplished within the last 15 months, or if one is scheduled within the compliance time, it can take the place of the required inspection. Boeing stated that the intent of the NPRM is then satisfied and no further inspection is required. Boeing also stated that the compliance statement in the Boeing service information is identical to the ''SRP 7X7–34–0114'' final compliance recommendation submitted to the FAA and it has been agreed upon.

We partially agree with Boeing's request. We agree with the intent of the request that the stall warning system test may be accomplished in lieu of the required inspection of the AOA sensor. However, because maintenance documents vary among operators, operators will have to submit data substantiating that the change would provide an acceptable level of safety. We have added a new paragraph (h) to this AD to allow accomplishment of this optional method of compliance in accordance with a method approved by the FAA. We have redesignated subsequent paragraphs accordingly.

Request To Review the Maintenance Records in Lieu of the Inspection

Lufthansa Technik AG requested that a review of the maintenance records be allowed in lieu of the inspection. Lufthansa Technik stated that in many cases it is possible to determine the part number installed from the airplane maintenance documents. Lufthansa Technik stated that the Boeing delivery documents contain a list with part numbers of the AOA sensors that are installed at airplane delivery. Lufthansa Technik stated that in the case of an AOA sensor being changed or replaced after delivery, it will be recorded in the airplane maintenance records. Lufthansa Technik also stated that some operators keep databases with the part numbers and serial numbers currently installed on their airplanes. Lufthansa Technik stated that in order to avoid incorrect results of the maintenance reviews due to incomplete or unclear maintenance records, the option should be limited to those cases where the part number of the sensors can be determined from that review without any doubt.

We disagree with Lufthansa Technik's request. It is the FAA's intent with this AD to require determination of the type of AOA vanes installed on the airplane by an actual physical inspection of the AOA vane installation. For purposes of correcting a potential unsafe condition in the AOA vanes, the FAA considers actual physical inspection of the type of AOA vanes installed to be the most reliable method of determining what type of vane is installed. Although airplane maintenance records may in some cases document the AOA vane installation, they may also contain incorrect or outdated information, or be incorrectly interpreted (for example, by misreading the installed part number, or misunderstanding part number effectivity in the service information). Although it is true that in some cases the FAA has allowed a review of the maintenance records in lieu of an inspection, the physical inspection of the AOA in this case is far more reliable than the record check and it can be performed easily. We have not changed this AD in this regard.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously—and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (77 FR 61548, October 10, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 61548, October 10, 2012).

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

Costs of Compliance

We estimate that this AD affects 1,013 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	3 work-hours × $85 per hour = $255	$0	$255	$258,315.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement	Up to 2 work-hours × $85 per hour = $170	Up to $36,552	Up to $36,722.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013–19–08 The Boeing Company: Amendment 39–17590; Docket No. FAA–2012–1041; Directorate Identifier 2011–NM–272–AD.

(a) Effective Date

This AD is effective November 6, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company series airplanes, certificated in any category, as specified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) Model 727, 727C, –100, –100C, –200, and –200F series airplanes, identified in Boeing Special Attention Service Bulletin 727–34–0245, dated June 4, 2008.

(2) Model 737–100, –200, and –200C series airplanes, identified in Boeing Special Attention Service Bulletin 737–34–2102, dated June 5, 2008.

(3) Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, –400, –400D, –400F, 747SR, and 747SP series airplanes, identified in Boeing Special Attention Service Bulletin 747–34–2925, dated June 4, 2008.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 3418, Stall Warning System.

(e) Unsafe Condition

This AD was prompted by a report of an erroneous activation of the control column shaker during takeoff. We are issuing this AD to prevent erroneous activation of the control column shaker during takeoff, which could result in runway overrun, failure to clear terrain or obstacles after takeoff, or reduced controllability of the airplane.

(f) Compliance

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

(g) Inspection

Within 36 months after the effective date of this AD: Do a general visual inspection of the left and right angle of attack (AOA) sensor as applicable, to determine if a certain AOA sensor with a paddle type vane is installed, in accordance with the Accomplishment Instructions of the applicable service information specified in paragraph (g)(1), (g)(2), or (g)(3) of this AD.

(1) Boeing Special Attention Service Bulletin 727–34–0245, dated June 4, 2008 (for Model 727 airplanes).

(2) Boeing Special Attention Service Bulletin 737–34–2102, dated June 5, 2008 (for Model 737–100, –200, and –200C series airplanes).

(3) Boeing Special Attention Service Bulletin 747–34–2925, dated June 4, 2008 (for Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, –400, –400D, -400F, 747SR, and 747SP series airplanes).

(h) Optional Method of Compliance

Operators may accomplish a stall warning system test in lieu of the inspection specified in paragraph (g) of this AD by using a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

(i) Operational Test and Replacement

If, during the inspection required by paragraph (g) of this AD, it is determined that an AOA sensor with a paddle type vane is installed: Before further flight, do an operational test of the stall warning system, in accordance with Part 2 of the Accomplishment Instructions of the applicable service information specified in paragraph (g)(1), (g)(2), or (g)(3) of this AD.

(1) For group 2 airplanes identified in Boeing Special Attention Service Bulletin 747–34–2925, dated June 4, 2008: If you cannot get the values given in the table specified in Part 2 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–34–2925, dated June 4, 2008, before further flight, replace the AOA sensor, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–34–2925, dated June 4, 2008.

(2) For all airplanes, except those identified in paragraph (i)(1) of this AD: If the AOA sensor fails to activate the control column shaker in the operational test, replace the AOA sensor with a new AOA sensor, in accordance with Part 3 of the Accomplishment Instructions of the applicable service information specified in paragraph (i)(2)(i), (i)(2)(ii), or (i)(2)(iii) of this AD.

(i) Boeing Special Attention Service Bulletin 727–34–0245, dated June 4, 2008 (for Model 727 airplanes).

(ii) Boeing Special Attention Service Bulletin 737–34–2102, dated June 5, 2008 (for Model 737–100, –200, and –200C series airplanes).

(iii) Boeing Special Attention Service Bulletin 747–34–2925, dated June 4, 2008 (for Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, –400, –400D, –400F, 747SR, and 747SP series airplanes).

(j) Alternative Methods of Compliance (AMOCs)

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

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

(k) Related Information

For more information about this AD, contact Ray Mei, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, Seattle Aircraft Certification Office, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 917–6467; fax: (425) 917–6590; email: *raymont.mei@faa.gov*.

(l) Material Incorporated by Reference

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

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

(i) Boeing Special Attention Service Bulletin 727–34–0245, dated June 4, 2008.

(ii) Boeing Special Attention Service Bulletin 737–34–2102, dated June 5, 2008.

(iii) Boeing Special Attention Service Bulletin 747–34–2925, dated June 4, 2008.

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

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

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

Issued in Renton, Washington, on September 13, 2013.

Jeffrey E. Duven,

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

[FR Doc. 2013–23084 Filed 10–1–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0090; Directorate Identifier 2012–NM–149–AD; Amendment 39–17595; AD 2013–19–13]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–300, 747–400, 747–400D, and 747SP series airplanes. This AD was prompted by reports of worn or incorrectly assembled latches on main deck escape slides installed on airplane doors. This AD requires determining if the latches are correctly assembled; and doing corrective actions if necessary. This AD also requires, for certain airplanes, modifications to the escape slide/rafts and escape slides. We are issuing this AD to prevent a latch hook moving from closed to open in an escape slide/raft or escape slide, which could result in the escape slide/raft or escape slide not deploying correctly in an emergency, or releasing/inflating into the passenger cabin and causing injury to passengers and crew.

DATES: This AD is effective November 6, 2013.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 6, 2013.

ADDRESSES: For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com*. For Goodrich service information identified in this AD, contact Goodrich Corporation, Aircraft Interior Products, ATTN: Technical Publications, 3414 South Fifth Street, Phoenix, AZ 85040–1169; telephone 602–243–2200; Internet *http://www.goodrich.com/TechPubs*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* 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: Sarah Piccola, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6483; fax: 425–917–6590; email: *sarah.piccola@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 published in the **Federal Register** on February 8, 2013 (78 FR 9346). The NPRM proposed to require determining if the latches on main deck escape slides installed on airplane doors are correctly assembled; and doing corrective actions if necessary. The NPRM also proposed to require, for certain airplanes, modifications to the escape slide/rafts and escape slides.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (78 FR 9346, February 8, 2013) and the FAA's response to each comment.

Request To Extend Compliance Time

Delta Air Lines (DAL) requested that the compliance time in the NPRM (78 FR 9346, February 8, 2013) be extended to 60 months. DAL stated that this will

allow for the modification to be accomplished at the next scheduled overhaul for DAL's affected slides.

We disagree with DAL's request to extend the compliance time. In developing an appropriate compliance time for this action, we considered the safety implications, parts availability, and normal maintenance schedules for the timely accomplishment of the inspections and modification. However, under the provisions of paragraph (j) of this final rule, we will consider requests for approval of an extension of the compliance time if sufficient data are submitted to substantiate that the new compliance time would provide an acceptable level of safety. We have not changed this final rule in this regard.

Requests To Refer to Revised Service Information

United Airlines and Boeing stated that Boeing has issued revised service information. The commenters requested that the service information in the NPRM (78 FR 9346, February 8, 2013) be updated to refer to Boeing Special Attention Service Bulletin 747–25–3428, Revision 4, dated February 25, 2013.

DAL requested that the NPRM (78 FR 9346, February 8, 2013) be revised to allow the replacement of affected slides with slides on which the inspection and modification have been done in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–25–3428, Revision 3, dated June 14, 2012.

We agree with United Airlines' and Boeing's requests and have revised paragraphs (c), (g), and (h) in this final rule to refer to Boeing Special Attention Service Bulletin 747–25–3428, Revision 4, dated February 25, 2013.

We also agree with DAL's request and have revised paragraph (i) of this final rule by redesignating paragraph (i) of the NPRM (78 FR 9346, February 8, 2013) as paragraph (i)(2), and adding new paragraph (i)(1), which provides credit for the applicable actions required by paragraph (g) of this final rule, if those actions were performed before the effective date of this final rule using Boeing Special Attention Service Bulletin 747–25–3428, Revision 3, dated June 14, 2012.

Request To Allow Replacement of Slides Using a Means Other Than the Service Information

DAL requested that, alternatively, the proposed AD (78 FR 9346, February 8, 2013) be revised to include a statement that accomplishment of the inspection and modification by means of an approved routine maintenance item would be acceptable.

As previously stated, we deem it acceptable to replace an affected part with a part that has been inspected and modified in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–25–3428, Revision 3, dated June 14, 2012.

Regarding the use of an approved maintenance item instead of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–25–3428, Revision 3, dated June 14, 2012, DAL included this as a conditional statement if the slide replacement discussed above was deemed unacceptable. As stated above, we agree that affected slides can be replaced with slides that have completed the inspection and modification in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–25–3428, Revision 3, dated June 14, 2012. However, once this final rule is issued, any person may request approval of an AMOC under the provisions of paragraph (j) of this final rule. We have not changed this final rule in this regard.

Additional Change to This Final Rule

We added Note 1 to paragraph (g) of this final rule to reference additional guidance material.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously—and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (78 FR 9346, February 8, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 9346, February 8, 2013).

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

Costs of Compliance

We estimate that this AD affects 121 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
Determine if latches are correctly assembled.	1 work-hour × $85 per hour = $85	$0	$85	$10,285.
Option to rework/replace latches instead of determining if latches are correctly assembled.	Between 3 and 24 work-hours × $85 per hour = Between $255 and $2,040.	$286 per latch	Between $541 and $2,326.	Between $65,461 and $281,446.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Corrective action	Between 3 and 24 work-hours × $85 per hour = Between $255 and $2,040.	$286 per latch	Between $541 and $2,326.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013–19–13 The Boeing Company: Amendment 39–17595; Docket No. FAA–2013–0090; Directorate Identifier 2012–NM–149–AD.

(a) Effective Date

This AD is effective November 6, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–300, 747–400, 747–400D, and 747SP series airplanes; certificated in any category; as identified in Boeing Special Attention Service Bulletin 747–25–3428, Revision 4, dated February 25, 2013; except for Groups 3–4, Configuration 2, and Group 9, Configuration 2, airplanes.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 25, Equipment/furnishings.

(e) Unsafe Condition

This AD was prompted by reports of worn or incorrectly assembled latches on main deck escape slides installed on airplane doors. We are issuing this AD to prevent a latch hook moving from closed to open in an escape slide/raft or escape slide, which could result in the escape slide/raft or escape slide not deploying correctly in an emergency, or releasing/inflating into the passenger cabin and causing injury to passengers and crew.

(f) Compliance

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

(g) Replacement or Rework of Escape Slide Latch Assembly

Within 48 months after the effective date of this AD: Determine if the latches in the main deck escape slide/rafts and the escape slides installed on the airplane doors are correctly assembled, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–25–3428, Revision 4, dated February 25, 2013. Do all applicable corrective actions before further flight. Options provided in Boeing Special Attention Service Bulletin 747–25–3428, Revision 4, dated February 25, 2013, for determining the correct assembly of the latches are acceptable for the corresponding requirement of this paragraph.

Note 1 to paragraph (g) of this AD: Boeing Special Attention Service Bulletin 747–25–3428, Revision 4, dated February 25, 2013, refers to Goodrich Service Bulletin 25–367, Revision 1, dated May 1, 2012, as an additional source of guidance for unpacking the escape slide/raft assemblies.

(h) Concurrent Requirements

For Groups 1, 5, 10, and 13 airplanes, as identified in Boeing Special Attention Service Bulletin 747–25–3428, Revision 4, dated February 25, 2013: Prior to or concurrently with accomplishing the actions required by paragraph (g) of this AD, replace the packboard cap nuts with flush-type inserts, reinforce the lower packboard support bracket attachments, install hooks, modify the lower liner of the main entry door and packboard, and remove the ''Press to Test'' circuit panel and associated circuitry, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–25–2425, Revision 1, dated September 7, 1979.

(i) Credit for Previous Actions

(1) This paragraph provides credit for the applicable actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Special Attention Service Bulletin 747–25–3428, Revision 3, dated June 14, 2012, which is not incorporated by reference in this AD.

(2) This paragraph provides credit for the applicable concurrent actions required by paragraph (h) of this AD, if those actions were performed before the effective date of this AD using Boeing Service Bulletin 747–25–2425, dated August 25, 1978, which is not incorporated by reference in this AD.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle 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.

(k) Related Information

(1) For more information about this AD, contact Sarah Piccola, Aerospace Engineer, Cabin Safety and Environmental Systems

Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6483; fax: 425–917–6590; email: *sarah.piccola@faa.gov.*

(2) For Goodrich service information identified in this AD, contact Goodrich Corporation, Aircraft Interior Products, ATTN: Technical Publications, 3414 South Fifth Street, Phoenix, AZ 85040–1169; telephone 602–243–2200; Internet *http://www.goodrich.com/TechPubs.*

(3) Boeing service information identified in this AD that is not incorporated by reference may be obtained at the addresses specified in paragraphs (l)(3) and (l)(4) of this AD.

(l) Material Incorporated by Reference

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

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

(i) Boeing Special Attention Service Bulletin 747–25–3428, Revision 4, dated February 25, 2013.

(ii) Boeing Service Bulletin 747–25–2425, Revision 1, dated September 7, 1979. (Pages 1 through 4 of this document are dated September 7, 1979. Pages 5 through 20 of this document are dated August 25, 1978.)

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

(4) You may view this 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 September 13, 2013.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–24031 Filed 10–1–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0425; Directorate Identifier 2011–NM–273–AD; Amendment 39–17604; AD 2013–19–22]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all The Boeing Company Model 717–200 airplanes. This AD was prompted by multiple reports of cracks of overwing frames. This AD requires repetitive inspections for cracking of the overwing frames, and corrective actions if necessary. We are issuing this AD to detect and correct such cracking that could sever a frame, which may increase the loading of adjacent frames, and result in damage to the adjacent structure and consequent loss of structural integrity of the airplane.

DATES: This AD is effective November 6, 2013.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of November 6, 2013.

ADDRESSES: For 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.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* 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: George Garrido, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5357; fax: 562–627–5210; email: *george.garrido@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued an SNPRM (supplemental notice of proposed rulemaking) to amend 14 CFR part 39 by adding an airworthiness directive (AD) that would apply to the specified products. The SNPRM published in the **Federal Register** on May 6, 2013 (78 FR 26286). We preceded the SNPRM with a notice of proposed rulemaking (NPRM) that published in the **Federal Register** on May 9, 2012 (77 FR 27142). The NPRM (77 FR 27142, May 9, 2012) proposed to require repetitive inspections for cracking of the overwing frames, and corrective actions if necessary. The SNPRM proposed to revise the initial compliance time and provide an optional modification that would extend the compliance time for the next repetitive inspection.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the SNPRM (78 FR 26286, May 6, 2013) and the FAA's response to each comment.

Request To Correct Service Bulletin Title

Boeing noted an error in the title of a service bulletin referenced in paragraphs (h) and (h)(2) of the SNPRM (78 FR 26286, May 6, 2013). Boeing requested the word ''Alert'' be removed with reference to ''Boeing 'Alert' Service Bulletin 717–53–0035, dated June 8, 2012.''

We agree with Boeing's request. We have revised paragraphs (h) and (h)(2) of this final rule to correct the service bulletin title accordingly, since the referenced service bulletin is not an ''Alert'' service bulletin.

Request To Provide Credit for Previous Actions

Boeing stated that cracked overwing frames had been found during scheduled inspections done in accordance with 717 Maintenance Task 53–129–01, and that the frames were replaced as a consequence. Boeing requested that we revise the SNPRM (78

FR 26286, May 6, 2013) to allow credit for work done prior to the effective date of the SNPRM using 717 Maintenance Task 53–129–01. Boeing stated those new frames should be given the same credit as the frames that were replaced using Boeing Alert Service Bulletin 717–53A0034, dated October 5, 2011.

We disagree with the request to allow credit for frames replaced using 717 Maintenance Task 53–129–01, which references the manufacturer's original production drawing. Paragraph (i) of the SNPRM (78 FR 26286, May 6, 2013) was added to allow credit for work done prior to the effective date of this final rule using Boeing Alert Service Bulletin 717–53A0034, dated October 5, 2011, which references Service Rework Drawing SR95530013. We disagree with changing this final rule because due to a large number of configurations, Boeing would be required to release numerous proprietary production drawings. However, operators may apply for approval of an alternative method of compliance (AMOC) (for credit for previously replaced frames) in accordance with the provisions of paragraph (j) of this AD. We have not changed this final rule in this regard.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously—and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the SNPRM (78 FR 26286, May 6, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the SNPRM (78 FR 26286, May 6, 2013).

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

Costs of Compliance

We estimate that this AD affects 129 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections	46 work-hours × $85 per hour = $3,910 per inspection cycle.	$0	$3,910	$504,390.
Installation of optional modification.	30 work-hours × $85 per hour = $2,550 per inspection cycle.	Up to $2,727	Up to $5,277	Up to $680,733.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Blendout repair	12 work-hours × $85 per hour = $1,020	$0	$1,020.
Replacement of a frame station	130 work-hours × $85 per hour = $11,050	Up to $86,977	Up to $98,027.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013–19–22 The Boeing Company: Amendment 39–17604; Docket No. FAA–2012–0425; Directorate Identifier 2011–NM–273–AD.

(a) Effective Date

This AD is effective November 6, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 717–200 airplanes, certificated in any category.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by multiple reports of cracks of overwing frames. We are issuing this AD to detect and correct such cracking that could sever a frame, which may increase the loading of adjacent frames, and result in damage to the adjacent structure and consequent loss of structural integrity of the airplane.

(f) Compliance

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

(g) Inspections and Corrective Actions

At the later of the times specified in paragraphs (g)(1) and (g)(2) of this AD: Do a general visual inspection and a high frequency eddy current (HFEC) inspection for cracking of the left-side and right-side overwing frames at stations 674, 696, and 715; and do all applicable corrective actions; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 717–53A0034, Revision 1, dated November 7, 2012. Repeat the inspections thereafter at the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 717–53A0034, Revision 1, dated November 7, 2012, except as provided by paragraph (h) of this AD.

(1) Before the accumulation of 12,000 total flight cycles.

(2) Within 24 months or 8,275 flight cycles after the effective date of this AD, whichever occurs first.

(h) Optional Terminating Action

Modification of left-side and right-side overwing frames at stations 674, 696, and 715, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 717–53–0035, dated June 8, 2012, terminates the inspections required by paragraph (g) of this AD, and extends the compliance time of the modified area for the next repetitive HFEC inspection to 45,000 flight cycles after the modification, provided that the actions specified in paragraphs (h)(1), (h)(2), and (h)(3) of this AD are accomplished, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 717–53–0035, dated June 8, 2012. Do the inspections specified in paragraph (g) of this AD prior to, or concurrently with, the modification specified in paragraph (h) of this AD.

(1) The overwing frame improvement modification of left-side and right-side overwing frames at stations 674, 696, and 715 is installed and HFEC inspection is done within 45,000 flight cycles from the time the modification is installed, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 717–53–0035, dated June 8, 2012.

(2) If no crack is found during any inspection specified by paragraph (h)(1) of this AD, the HFEC inspections at the modified area are repeated thereafter at the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 717–53–0035, dated June 8, 2012.

(3) If any crack is found during any inspection specified by paragraph (h)(1) of this AD, the frame is repaired or replaced using a method approved in accordance with the procedures specified in paragraph (j) of this AD, before further flight.

(i) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (g) of this AD, if the general visual inspection and HFEC inspection for cracking of the left-side and right-side overwing frames at stations 674, 696, and 715, and the applicable related investigative and corrective actions, were performed before the effective date of this AD using Boeing Alert Service Bulletin 717–53A0034, dated October 5, 2011, which is not incorporated by reference in this AD.

(j) Alternative Methods of Compliance (AMOCs)

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

(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 14 FR 25.571, Amendment 45, and the approval must specifically refer to this AD.

(k) Related Information

(1) For more information about this AD, contact George Garrido, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5357; fax: 562–627–5210; email: *george.garrido@faa.gov.*

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

(l) Material Incorporated by Reference

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

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

(i) Boeing Alert Service Bulletin 717–53A0034, Revision 1, dated November 7, 2012.

(ii) Boeing Service Bulletin 717–53–0035, dated June 8, 2012.

(3) For 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, Washington. For information on the availability of this material at the FAA, call Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

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

Issued in Renton, Washington, on September 17, 2013.

Ross Landes,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–23321 Filed 10–1–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0480; Directorate Identifier 2012–SW–090–AD; Amendment 39–17589; AD 2013–19–07]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France (Eurocopter) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Eurocopter Model SA–365N, SA–365N1, AS–365N2, AS 365 N3, EC 155B, EC155B1, AS332C, AS332L, AS332L1, AS332L2, and EC225LP helicopters with certain EADS Sogerma pilot and co-pilot seats installed. This AD requires inspecting the rear beam of

each seat to determine if all of the weld beads are present and replacing the seat if any weld bead is missing. This AD is prompted by a maintenance inspection that discovered a missing weld bead on the rear beam of a pilot seat. These actions are intended to prevent failure of the pilot and co-pilot seats and subsequent injury to the pilot or co-pilot.

DATES: This AD is effective November 6, 2013.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of November 6, 2013.

ADDRESSES: For service information identified in this AD, contact American Eurocopter Corporation, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.eurocopter.com/techpub.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this 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 (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: Robert Grant, Aviation Safety Engineer, Safety Management Group, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone 817–222–5110; email *robert.grant@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On June 5, 2013, at 78 FR 33766, 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 Eurocopter Model SA–365N, SA–365N1, AS–365N2, AS 365 N3, EC 155B, EC155B1, AS332C, AS332L, AS332L1, AS332L2, and EC225LP helicopters with an EADS Sogerma pilot or co-pilot seat, part number (P/N) 2510106–03–00 or P/N 2510106–06–00, with a serial number 720 through 1451, installed. The NPRM proposed to require, within 50 hours time-in-service (TIS), inspecting the rear beam of each pilot and co-pilot seat to determine if any weld beads are missing. If any weld beads are missing, before further flight, the NPRM proposed removing the seat from the helicopter and replacing it with an airworthy seat. The proposed requirements were intended to prevent failure of the pilot and co-pilot seats and subsequent injury to the pilot or co-pilot.

The NPRM was prompted by AD No. 2012–0206, dated October 2, 2012 (AD 2012–0206), issued by EASA, which is the Technical Agent for the Member States of the European Union. EASA advised that during a maintenance inspection, a weld bead was found missing on the rear beam of an EADS Sogerma pilot seat. According to EASA, this non-conformity impairs the seat anti-crash function and may be present on a limited number of seats installed on Eurocopter helicopters. EASA states that this condition, if not corrected, could lead to pilot injury following a hard landing following an emergency.

To address this unsafe condition, EASA issued AD No. 2012–0084, dated May 16, 2012 (AD 2012–0084), to require inspecting the flight crew seats, replacing any improperly welded seat, and marking all correctly welded seats. After issuing AD 2012–0084, a missing weld bead was discovered on another part of the seat rear beam that was not required to be inspected. As a result, EASA issued AD 2012–0206, which superseded AD 2012–0084, to revise the inspection procedure and add new areas of the rear beam of the seat to be inspected.

Comments

We gave the public the opportunity to participate in developing this AD, but we did not receive any comments on the NPRM (78 FR 33766, June 5, 2013).

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 and that air safety and the public interest require adopting the AD requirements as proposed.

Differences Between This AD and the EASA AD

The EASA AD allows compliance within 3 months or 50 flight hours, whichever occurs earlier; this AD requires compliance within 50 hours TIS. The EASA AD applies to Model AS332C1 helicopters. This AD does not because this model is not FAA type-certificated.

Related Service Information

Eurocopter has issued Alert Service Bulletin (ASB) No. AS365–25.01.18 for Model SA–365N, SA–365 N1, AS–365N2, and AS 365 N3 helicopters; ASB No. EC155–25A114 for Model EC155 B and EC155B1 helicopters; ASB No. AS332–25.02.49 for model AS332C, AS332L, AS332L1, and AS332L2 helicopters; and ASB No. EC225–25A110 for Model EC225LP helicopters; all Revision 1, dated August 9, 2012. The ASBs incorporate the procedures in EADS Sogerma Inspection Service Bulletin No. 2510106–25–888, Revision 1, dated July 16, 2012, for inspecting the rear beam of the pilot and co-pilot seats to verify all of the weld beads are present. The complete EADS Sogerma bulletin is contained in the Appendix of the ASBs. EASA classified these ASBs as mandatory and issued AD 2012–0206 to ensure the continued airworthiness of these helicopters.

Costs of Compliance

We estimate that this AD will affect 65 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. At an average labor rate of $85 per hour, inspecting the seats will require about .2 work-hour, for a cost per helicopter of $17 and a total cost to U.S. operators of $1,105. Replacing a seat with a missing weld bead will require about 1 work-hour, and required parts will cost about $30,251, for a cost per helicopter of $30,336.

According to Eurocopter's service information some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage by Eurocopter. Accordingly, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

detail the scope of the Agency's authority.

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

2013–19–07 Eurocopter France (Eurocopter): Amendment 39–17589; Docket No. FAA–2013–0480; Directorate Identifier 2012–SW–090–AD.

(a) Applicability

This AD applies to Eurocopter Model SA–365N, SA–365N1, AS–365N2, AS 365 N3, EC 155B, EC155B1, AS332C, AS332L, AS332L1, AS332L2, and EC225LP helicopters with an EADS Sogerma pilot or co-pilot seat, part number (P/N) 2510106–03–00 or P/N 2510106–06–00, with a serial number 720 through 1451, installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as a missing weld on a seat rear beam, which could result in failure of the seat and injury to the pilot during a hard landing.

(c) Effective Date

This AD becomes effective November 6, 2013.

(d) Compliance

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

(e) Required Actions

(1) Within 50 hours time-in-service, using a mirror, inspect the rear beam of each seat for weld beads in the areas depicted in the Appendix, Figure 1, of Eurocopter Alert Service Bulletin (ASB) No. AS365–25.01.18 for model SA–365N, SA–365N1, AS–365N2, and AS 365 N3 helicopters; ASB No. EC155–25A114 for model EC155 B and EC155B1 helicopters; ASB No. AS332–25.02.49 for model AS332C, AS332L, AS332L1, and AS332 L2 helicopters; and ASB No. EC225–25A110 for model EC225LP helicopters. All ASBs are Revision 1 and dated August 9, 2012.

(2) If any weld bead is missing from the rear beam, before further flight, remove the seat and replace it with an airworthy seat.

(3) Do not install a seat listed in paragraph (a) of this AD on any helicopter unless it has been inspected as required by this AD.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Robert Grant, Aviation Safety Engineer, Safety Management Group, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone 817–222–5110; email *robert.grant@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. 2012–0206, dated October 2, 2012. You may view the EASA AD on the internet in the AD Docket at *http://www.regulations.gov.*

(h) Subject

Joint Aircraft Service Component (JASC) Code: 2510: Flight Compartment Equipment.

(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) Eurocopter ASB No. AS365–25.01.18, Revision 1, dated August 9, 2012.

(ii) Eurocopter ASB No. AS332–25.02.49 Revision 1, dated August 9, 2012.

(iii) Eurocopter ASB No. EC155–25A114, Revision 1, dated August 9, 2012.

(iv) Eurocopter ASB No. EC225–25A110 Revision 1, dated August 9, 2012.

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

(4) You may view this service information that is incorporated by reference at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(5) You may also 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 September 13, 2013.

Lance T. Gant,

Acting Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–23092 Filed 10–1–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0275; Airspace Docket No. 13–AGL–15];

Amendment of Class E Airspace; Mandan, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Mandan, ND. Additional controlled airspace is necessary to accommodate new Area Navigation (RNAV) Standard Instrument Approach

Procedures at Mandan Municipal Airport. The airport's geographic coordinates are also adjusted. This action enhances the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: Effective date: 0901 UTC, December 12, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone 817–321–7716.

SUPPLEMENTARY INFORMATION:

History

On July 12, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class E airspace for the Mandan, ND, area, creating additional controlled airspace at Mandan Municipal Airport (78 FR 41890) Docket No. FAA–2013–0275. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9X dated August 7, 2013, and effective September 15, 2013, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace extending upward from 1,200 feet above the surface to accommodate new standard instrument approach procedures at Mandan Municipal Airport, Mandan, ND. Airspace added within a 30-mile radius of the final approach fix for the new RNAV (GPS) RWY 31 instrument approach procedure provides adequate controlled airspace for the safety and management of IFR operations at the airport. Geographic coordinates are also to be updated to coincide with the FAA's aeronautical database.

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. Therefore, this regulation: (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 only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, 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 amends controlled airspace at Mandan Municipal Airport, Mandan, ND.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 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(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 Part 71.1 of the Federal Aviation Administration Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013, and effective September 15, 2013, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.

* * * * *

AGL ND E5 Mandan, ND [Amended]

Mandan Municipal Airport, ND
(Lat. 46°46′05″ N., long. 100°53′40″ W.)

That airspace extending upward from 700 feet above the surface within a 9.6-mile radius of Mandan Municipal Airport, and that airspace extending upward from 1,200 feet above the surface within a 30-mile radius of lat. 46°35′58″ N., long. 100°43′26″ W.

Issued in Fort Worth, Texas, on September 23, 2013.

David P. Medina,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2013–23950 Filed 10–1–13; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 232

[Release Nos. 33–9457; 34–70497; 39–2492; IC–30722]

Adoption of Updated EDGAR Filer Manual

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (the Commission) is adopting revisions to the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) Filer Manual and related rules to reflect updates to the EDGAR system. The revisions are being made primarily to support updates to Form D and to submission form types 13F–HR and 13F–HR/A. The EDGAR system is scheduled to be upgraded to support this functionality on September 23, 2013.

DATES: *Effective Date:* October 2, 2013. The incorporation by reference of the EDGAR Filer Manual is approved by the Director of the **Federal Register** as of October 2, 2013.

FOR FURTHER INFORMATION CONTACT: In the Division of Corporation Finance, for questions concerning Form D contact Heather Mackintosh at (202) 551–3600; in the Division of Investment

Management, for questions concerning Form 13F contact Heather Fernandez at (202) 551–6715; and in the Office of Information Technology, contact Vanessa Anderson at (202) 551–8800.

SUPPLEMENTARY INFORMATION: We are adopting an updated EDGAR Filer Manual, Volume II. The Filer Manual describes the technical formatting requirements for the preparation and submission of electronic filings through the EDGAR system.[1] It also describes the requirements for filing using EDGARLink Online and the Online Forms/XML Web site.

The revisions to the Filer Manual reflect changes within Volume II entitled EDGAR Filer Manual, Volume II: ''EDGAR Filing,'' Version 25 (September 2013). The updated manual will be incorporated by reference into the Code of Federal Regulations.

The Filer Manual contains all the technical specifications for filers to submit filings using the EDGAR system. Filers must comply with the applicable provisions of the Filer Manual in order to assure the timely acceptance and processing of filings made in electronic format.[2] Filers may consult the Filer Manual in conjunction with our rules governing mandated electronic filing when preparing documents for electronic submission.[3]

The EDGAR system will be upgraded to Release 13.3 on September 23, 2013 and will introduce the following changes: Form D screens and instructions will be updated for Item 6 to replace the reference to ''Rule 506'' with ''Rule 506(b)'' and ''Rule 506(c)'', and to replace the reference to ''Securities Act Section 4(5)'' with ''Securities Act Section 4(a)(5)'', as per Release No. 33–9415.[4] Additionally, Form D ''Terms of Submission'' in the Signature and Submission screen will be updated as per Release No. 33–9414.[5]

Submission form types 13F–HR and 13F–HR/A will be updated to allow a maximum of 16 digits in the Sole, Shared, and None columns in COLUMN 8 of the Information Table.

Along with the adoption of the Filer Manual, we are amending Rule 301 of Regulation S–T to provide for the incorporation by reference into the Code of Federal Regulations of today's revisions. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

You may obtain paper copies of the updated Filer Manual at the following address: Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street, NE., Room 1543, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. We will post electronic format copies on the Commission's Web site; the address for the Filer Manual is *http://www.sec.gov/info/edgar.shtml.*

Since the Filer Manual and the corresponding rule changes relate solely to agency procedures or practice, publication for notice and comment is not required under the Administrative Procedure Act (APA).[6] It follows that the requirements of the Regulatory Flexibility Act[7] do not apply.

The effective date for the updated Filer Manual and the rule amendments is October 2, 2013. In accordance with the APA,[8] we find that there is good cause to establish an effective date less than 30 days after publication of these rules. The EDGAR system upgrade to Release 13.3 is scheduled to become available on September 23, 2013. The Commission believes that establishing an effective date less than 30 days after publication of these rules is necessary to coordinate the effectiveness of the updated Filer Manual with the system upgrade.

Statutory Basis

We are adopting the amendments to Regulation S–T under Sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933,[9] Sections 3, 12, 13, 14, 15, 23, and 35A of the Securities Exchange Act of 1934,[10] Section 319 of the Trust Indenture Act of 1939,[11] and Sections 8, 30, 31, and 38 of the Investment Company Act of 1940.[12]

List of Subjects in 17 CFR Part 232

Incorporation by reference, Reporting and recordkeeping requirements, Securities.

Text of the Amendment

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 1. The authority citation for Part 232 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l,* 78m, 78n, 78o(d), 78w(a), 78*ll,* 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, and 7201 *et seq.;* and 18 U.S.C. 1350.

* * * * *

■ 2. Section 232.301 is revised to read as follows:

§ 232.301 EDGAR Filer Manual.

Filers must prepare electronic filings in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets out the technical formatting requirements for electronic submissions. The requirements for becoming an EDGAR Filer and updating company data are set forth in the EDGAR Filer Manual, Volume I: ''General Information,'' Version 15 (May 2013). The requirements for filing on EDGAR are set forth in the updated EDGAR Filer Manual, Volume II: ''EDGAR Filing,'' Version 25 (September 2013). Additional provisions applicable to Form N–SAR filers are set forth in the EDGAR Filer Manual, Volume III: ''N–SAR Supplement,'' Version 2 (August 2011). All of these provisions have been incorporated by reference into the Code of Federal Regulations, which action was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. You must comply with these requirements in order for documents to be timely received and accepted. You can obtain paper copies of the EDGAR Filer Manual from the following address: Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street NE., Room 1543, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Electronic copies are available on the Commission's Web site. The address for the Filer Manual is *http://www.sec.gov/info/edgar.shtml.* You can also inspect the document 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/*

[1] We originally adopted the Filer Manual on April 1, 1993, with an effective date of April 26, 1993. Release No. 33–6986 (April 1, 1993) [58 FR 18638]. We implemented the most recent update to the Filer Manual on July 25, 2013. *See* Release No. 33–9433 (July 31, 2013) [78 FR 46256].

[2] *See* Rule 301 of Regulation S–T (17 CFR 232.301).

[3] *See* Release No. 33–9433 in which we implemented EDGAR Release 13.2. For additional history of Filer Manual rules, please see the cites therein.

[4] *See* Release No. 33–9415 (September 23, 2013) [78 FR 44771].

[5] *See* Release No. 33–9414 (September 23, 2013) [78 FR 44729].

[6] 5 U.S.C. 553(b).

[7] 5 U.S.C. 601–612.

[8] 5 U.S.C. 553(d)(3).

[9] 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a).

[10] 15 U.S.C. 78c, 78*l,* 78m, 78n, 78o, 78w, and 78*ll.*

[11] 15 U.S.C. 77sss.

[12] 15 U.S.C. 80a-8, 80a-29, 80a-30, and 80a-37.

code_of_federal_regulations/ibr_locations.html.

By the Commission.

Dated: September 25, 2013.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–23914 Filed 10–1–13; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

20 CFR Parts 718 and 725

RIN 1240–AA04

Regulations Implementing the Byrd Amendments to the Black Lung Benefits Act: Determining Coal Miners' and Survivors' Entitlement to Benefits; Correction

AGENCY: Office of Workers' Compensation Programs, Labor.

ACTION: Final rule; correction.

SUMMARY: The Office of Workers' Compensation Programs is correcting the preamble to a final rule implementing amendments to the Black Lung Benefits Act that appeared in the **Federal Register** of September 25, 2013 (78 FR 59102). The preamble incorrectly stated that the Office of Information and Regulatory Affairs of the Office of Management and Budget had reviewed the rule under Executive Order 12866. This document corrects that error and changes the contact information.

DATES: Effective October 25, 2013.

FOR FURTHER INFORMATION CONTACT: Carol A. Campbell, Acting Deputy Director, Division of Coal Mine Workers' Compensation, Office of Workers' Compensation Programs, U.S. Department of Labor, 200 Constitution Avenue NW., Suite C–3520, Washington, DC 20210. Telephone: (202) 343–5933 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1–800–877–8339 for further information.

SUPPLEMENTARY INFORMATION: In the preamble to the final rule titled ''Regulations Implementing the Byrd Amendments to the Black Lung Benefits Act: Determining Coal Miners' and Survivors' Entitlement to Benefits'' published in the **Federal Register** of September 25, 2013, the following corrections are made:

1. On page 59102, the information in the **FOR FURTHER INFORMATION CONTACT** section has changed as set forth above.

2. On page 59112, in the third column, remove the last paragraph of Section V of the **SUPPLEMENTARY INFORMATION** section and add, in its place, the following:

''The Office of Information and Regulatory Affairs of the Office of Management and Budget has waived review of this rule under Executive Order 12866.''

Dated: September 25, 2013.

Gary A. Steinberg,

Acting Director, Office of Workers' Compensation Programs.

[FR Doc. 2013–23928 Filed 10–1–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2013–0003; T.D. TTB–118; Ref: Notice No. 134]

RIN 1513–AB99

Establishment of the Big Valley District-Lake County and Kelsey Bench-Lake County Viticultural Areas and Modification of the Red Hills Lake County Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury Decision.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) establishes the approximately 11,000-acre ''Big Valley District-Lake County'' viticultural area and the approximately 9,100-acre ''Kelsey Bench-Lake County'' viticultural area, both in Lake County, California. Additionally, TTB modifies the boundary of the established 31,250-acre Red Hills Lake County viticultural area in order to align a portion of its border with that of the proposed Kelsey Bench-Lake County viticultural area. The proposed viticultural areas and the established viticultural area lie entirely within the larger Clear Lake viticultural area and the multicounty North Coast viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: This final rule is effective November 1, 2013.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01 (Revised), dated January 21, 2003, to the TTB Administrator to perform the functions and duties in the administration and enforcement of this law.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas and lists the approved American viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features as described in part 9 of the regulations and a name and a delineated boundary as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area

and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for the establishment of American viticultural areas. Petitions to establish a viticultural area must include the following:

- Evidence that the area within the proposed viticultural area boundary is nationally or locally known by the viticultural area name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed viticultural area;
- A narrative description of the features of the proposed viticultural area that affect viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed viticultural area distinctive and distinguish it from adjacent areas outside the proposed viticultural area boundary;
- A copy of the appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed viticultural area, with the boundary of the proposed viticultural area clearly drawn thereon; and
- A detailed narrative description of the proposed viticultural area boundary based on USGS map markings.

Big Valley District-Lake County and Kelsey Bench-Lake County Petitions

TTB received two petitions from Terry Dereniuck on behalf of the Big Valley District and Kelsey Bench Growers Committee proposing the establishment of the ''Big Valley District-Lake County'' and ''Kelsey Bench-Lake County'' American viticultural areas within Lake County, California. The proposed Big Valley District-Lake County viticultural area has 6 bonded wineries and 43 vineyards containing approximately 1,800 acres of wine grapes. The proposed Kelsey Bench-Lake County viticultural area has 1 bonded winery and 27 vineyards containing approximately 900 acres of wine grapes. Because the two petitions were submitted simultaneously and the two proposed viticultural areas share a common boundary, TTB is combining both proposals into a single rulemaking document.

The proposed Big Valley District-Lake County and Kelsey Bench-Lake County viticultural areas are located in central Lake County, California. The two proposed viticultural areas are bordered by Mount Konocti and the Red Hills to the east and by the Mayacmas Mountains to the west and south. The two proposed viticultural areas lie entirely within the existing Clear Lake viticultural area (27 CFR 9.99) which, in turn, lies within the multicounty North Coast viticultural area (27 CFR 9.30).

The proposed Big Valley District-Lake County viticultural area is located on the southern shore of Clear Lake. The proposed Kelsey Bench-Lake County viticultural area is adjacent to the southern boundary of the proposed Big Valley District-Lake County viticultural area. TTB notes that this shared proposed boundary line splits two vineyards between the two proposed viticultural areas. However, the petition included letters from both vineyard owners stating their understanding of the split and their support for the establishment of both of the proposed viticultural areas. The letters were included in the rulemaking docket.

The petitioner also requested a modification of a small portion of the western boundary of the established ''Red Hills Lake County'' viticultural area (27 CFR 9.169), to align it with the eastern boundary of the proposed Kelsey Bench-Lake County viticultural area using features identifiable on the newest version of the Kelseyville USGS quadrangle map. The proposed modification would increase the size of the Red Hills Lake County viticultural area by approximately 7 acres. Before the comment period opened, the petitioner provided, as an addendum to the petition, letters from a representative of the Red Hills Lake County growers committee and a vineyard owner whose property is within the Red Hills Lake County viticultural area and near the region of the proposed boundary modification. Both letters supported the proposed boundary modification and were included in the rulemaking docket.

Notice of Proposed Rulemaking and Comments Received

TTB published Notice No. 134 in the **Federal Register** on April 5, 2013 (78 FR 20544), proposing to establish the Big Valley District-Lake County and Kelsey Bench-Lake County viticultural areas and to modify the boundary of the established Red Hills Lake County viticultural area. In the notice, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features for the proposed viticultural areas. The distinguishing features of the proposed viticultural areas include geology, soils, climate, and topography. The notice also compared the distinguishing features of the proposed viticultural areas to the surrounding areas. For a description of the evidence relating to the name, boundary, and distinguishing features of the proposed viticultural areas and a comparison of the distinguishing features of the proposed viticultural areas to the surrounding areas, see Notice No. 134.

In Notice No. 134, TTB solicited comments on the accuracy of the name, boundary, climatic, and other required information submitted in support of the petitions. In addition, given the proposed viticultural areas' locations within the existing Clear Lake and North Coast viticultural areas, TTB solicited comments on whether the evidence submitted in the petitions regarding the distinguishing features of the proposed viticultural areas sufficiently differentiates the proposed viticultural areas from the two existing viticultural areas. TTB also asked for comments on whether the geographical features of the proposed viticultural areas are so distinguishable from the surrounding Clear Lake or North Coast viticultural areas that the proposed Big Valley District-Lake County and Kelsey Bench–Lake County viticultural areas should no longer be part of the two existing viticultural areas. Finally, TTB asked for comments on whether the boundary of the established Red Hills Lake County viticultural area should be modified to align with the proposed Kelsey Bench-Lake County viticultural area boundary using features identifiable on the latest version of the Kelseyville USGS map quadrangle. The comment period closed on June 4, 2013. TTB received no comments in response to Notice No. 134.

TTB Determination

After careful review of the petition and the letters submitted with the petition in support of the two proposed AVAs, TTB finds that the evidence provided by the petitioner supports the establishment of the approximately 11,000-acre Big Valley District-Lake County viticultural area and the 9,100-acre Kelsey Bench-Lake County viticultural area. Accordingly, under the authority of the FAA Act, section 1111(d) of the Homeland Security Act of 2002, and part 4 of the TTB regulations, TTB establishes the ''Big Valley District-Lake County'' viticultural area and the ''Kelsey Bench-Lake County'' viticultural area in Lake County, California, effective 30 days from the publication date of this document. TTB also determines that the land within the Big Valley District-Lake County viticultural area and the Kelsey Bench-Lake County viticultural area will remain part of both the Clear Lake and North Coast viticultural areas. Finally, TTB determines that the boundary of

the Red Hills Lake County viticultural area will be modified as proposed.

Boundary Description

See the narrative boundary description of the viticultural areas in the regulatory text published at the end of this final rule.

Maps

The petitioner provided the required maps, and they are listed below in the regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. With the establishment of these two viticultural areas, their names, ''Big Valley District-Lake County'' and ''Kelsey Bench-Lake County,'' will be recognized as names of viticultural significance under 27 CFR 4.39(i)(3). TTB has also determined that the terms ''Kelsey Bench'' and ''Kelseyville Bench'' both have viticultural significance in relation to the Kelsey Bench-Lake County viticultural area. The text of the regulation clarifies these points. Once this final rule becomes effective, wine bottlers using the names ''Big Valley District-Lake County,'' ''Kelsey Bench-Lake County,'' ''Kelsey Bench,'' or ''Kelseyville Bench'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the viticultural area name as an appellation of origin.

The establishment of the Big Valley District-Lake County viticultural area and the Kelsey Bench-Lake County viticultural area will not affect any existing viticultural area, and any bottlers using ''Clear Lake'' or ''North Coast'' as an appellation of origin or in a brand name for wines made from grapes grown within the Clear Lake or North Coast viticultural areas will not be affected by the establishment of these new viticultural areas. The establishment of the Big Valley District-Lake County viticultural area will allow vintners to use ''Big Valley District-Lake County,'' ''Clear Lake,'' and ''North Coast'' as appellations of origin for wines made from grapes grown within the Big Valley District-Lake County viticultural area if the wines meet the eligibility requirements for the appellation. Additionally, the establishment of the Kelsey Bench-Lake County viticultural area will allow vintners to use ''Kelsey Bench-Lake County,'' ''Clear Lake,'' and ''North Coast'' as appellations of origin for wines made from grapes grown within the Kelsey Bench-Lake County viticultural area.

For a wine to be labeled with a viticultural area name or other term identified as being viticulturally significant in part 9 of the TTB regulations or with a brand name that includes a viticultural area name or other viticulturally significant term, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name or term, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with a viticultural area name or other viticulturally significant term and that name or term appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name or other viticulturally significant term appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label.

Different rules apply if a wine has a brand name containing a viticultural area name or other term of viticultural significance that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

Regulatory Flexibility Act

TTB certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this final rule.

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Section 9.169 is amended by revising paragraphs (b)(4), (c)(15), (c)(16), and (c)(17) to read as follows:

§ 9.169 Red Hills Lake County.

* * * * *

(b) * * *

(4) Kelseyville Quadrangle—California. 1993.

(c) * * *

(15) Proceed east and then northeast approximately 0.4 mile along the unimproved road to the road's intersection with State Highway 29/175, then proceed east along State Highway 29/175 to the intersection of the highway with the 1,720-foot elevation line located just west of the 1,758-foot benchmark (BM) in section 25, T13N, R9W (Kelseyville Quadrangle); then

(16) Proceed northwest along the 1,720-foot elevation line to the common boundary line between sections 25 and 26, T13N, R9W; then

(17) Proceed north along the common boundary line between sections 25 and 26, T13N, R9W, and then the common boundary line between sections 23 and 24, T13N, R9W, (partially concurrent with Wilkinson Road) to the intersection of the common section 23–24 boundary line with the 1,600-foot elevation line (Kelseyville Quadrangle); then

* * * * *

■ 3. Subpart C is amended by adding § 9.232 to read as follows:

§ 9.232 Big Valley District-Lake County.

(a) *Name.* The name of the viticultural area described in this section is ''Big Valley District-Lake County''. For purposes of part 4 of this chapter, ''Big Valley District-Lake County'' is a term of viticultural significance.

(b) *Approved maps.* The four United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the Big Valley District-Lake County viticultural area are titled:

(1) Lucerne, CA, 1996;

(2) Kelseyville, CA, 1993;

(3) Highland Springs, CA, 1993; and

(4) Lakeport, CA, 1958; photorevised 1978; minor revision 1994.

(c) *Boundary.* The Big Valley District-Lake County viticultural area is located in Lake County, California. The

boundary of the Big Valley District-Lake County viticultural area is as described below:

(1) The beginning point is on the Lucerne map at the point where Cole Creek flows into Clear Lake, section 36, T14N/R9W. From the beginning point, proceed southerly (upstream) along Cole Creek approximately 0.9 mile to the creek's intersection with Soda Bay Road, section 1, T13N/R9W; then

(2) Proceed east on Soda Bay Road less than 0.1 mile to the road's intersection with the unnamed, light-duty road known locally as Clark Drive, section 1, T13N/R09W; then

(3) Proceed southeast in a straight line less than 0.1 mile to the 1,400-foot elevation line, section 1, T13N/R9W; then

(4) Proceed southerly along the 1,400-foot elevation line, crossing onto the Kelseyville map, to the line's intersection with a marked cemetery east of Kelseyville (in the northeast quadrant of section 14, T13N/R9W), and then continue along the 1,400-foot elevation line approximately 0.35 mile to the line's intersection with an unnamed, unimproved road which runs north from Konocti Road, section 13, T13N/R9W; then

(5) Proceed south-southeast along the unnamed, unimproved road to the road's intersection with the improved portion of Konocti Road, section 13, T13N/R9W; then

(6) Proceed west on Konocti Road approximately 0.9 mile to the road's intersection with an unnamed, light-duty road within Kelseyville known locally as Main Street, section 14, T13N/R9W; then

(7) Proceed south-southeast on Main Street approximately 0.35 mile to its intersection with State Highway 29/175, section 14, T13N/R9W; then

(8) Proceed west-northwest on State Highway 29/175 approximately 0.4 mile to the highway's intersection with Kelsey Creek, section 14, T13N/R9W; then

(9) Proceed northwesterly (downstream) along Kelsey Creek approximately 0.5 mile to the creek's intersection with an unnamed, light-duty road known locally as Big Valley Road (or North Main Street), section 15, T13N/R9W; then

(10) Proceed west and then northwest on Big Valley Road approximately 0.35 mile to the road's intersection with Merritt Road, southern boundary of section 10, T13N/R9W; then

(11) Proceed west on Merritt Road approximately 0.3 mile to the road's intersection with the 1,400-foot elevation line, southern boundary of section 10, T13N/R9W; then

(12) Proceed northwesterly along the 1,400-foot elevation line to the line's intersection with State Highway 29/175, section 9, T13N/R9W, and then continue southerly along the 1,400-foot elevation to the line's intersection with Merritt Road, southern boundary of section 9, T13N/R9W; then

(13) Proceed west on Merritt Road approximately 0.1 mile to the road's intersection with Hill Creek, southern boundary of section 9, T13N/R9W; then

(14) Proceed southerly (upstream) along Hill Creek approximately 0.9 mile to the creek's intersection with Bell Hill Road, section 16, T13N/R9W; then

(15) Proceed west then southwest on Bell Hill Road approximately 0.15 mile, passing the intersection of Bell Hill Road and Hummel Lane, to Bell Hill Road's intersection with the 1,400-foot elevation line, section 16, T13N/R9W; then

(16) Proceed westerly and then southwesterly along the meandering 1,400-foot elevation line, crossing onto the Highland Springs map, to the line's first intersection with Bell Hill Road in section 20, T13N/R9W; then

(17) Proceed west on the meandering Bell Hill Road, crossing Adobe Creek, to the road's intersection with Highland Springs Road, section 30, T13N/R9W; then

(18) Proceed north on Highland Springs Road approximately 2.8 miles to the road's intersection with Mathews Road at the northwest corner of section 8, T13N/R9W; then

(19) Proceed west on Mathews Road approximately 0.7 mile to the road's intersection with an unnamed paved road known locally as Ackley Road, southern boundary of section 6, T13N/R9W; then

(20) Proceed north on Ackley Road approximately 0.9 mile, crossing onto the Lakeport map, to the road's intersection with State Highway 29/175, section 6; T13N/R9W; then

(21) Proceed due north-northeast in a straight line approximately 0.15 mile to the unnamed secondary highway known locally as Soda Bay Road, northern boundary of section 6, T13N/R9W; then

(22) Proceed east on Soda Bay Road approximately 0.35 mile to the road's intersection with Manning Creek, northern boundary of section 6, T13N/R9W; then

(23) Proceed northwesterly (downstream) along Manning Creek to the shore of Clear Lake, section 30, T14N/R9W; then

(24) Proceed easterly along the meandering shore of Clear Lake, crossing onto the Lucerne map, to the beginning point.

■ 4. Subpart C is amended by adding § 9.233 to read as follows:

§ 9.233 Kelsey Bench-Lake County.

(a) *Name.* The name of the viticultural area described in this section is ''Kelsey Bench-Lake County''. For purposes of part 4 of this chapter, ''Kelsey Bench-Lake County,'' ''Kelsey Bench,'' and ''Kelseyville Bench'' are terms of viticultural significance.

(b) *Approved maps.* The two United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the Kelsey Bench-Lake County viticultural area are titled:

(1) Kelseyville, CA, 1993; and

(2) Highland Springs, CA, 1993.

(c) *Boundary.* The Kelsey Bench-Lake County viticultural area is located in Lake County, California. The boundary of the Kelsey Bench-Lake County viticultural area is as described below:

(1) The beginning point is on the Kelseyville map within the town of Kelseyville at the intersection of Konocti Road and Main Street (not named on the map), section 14, T13N/R9W. From the beginning point, proceed east on Konocti Road approximately 0.9 mile to the road's 3-way intersection with an unnamed, unimproved road to the south, section 13, T13N/R9W; then

(2) Proceed south on the unnamed, unimproved road approximately 0.35 mile to a fork in the road, and continue on the eastern branch of the fork approximately 0.4 mile to the point where the road intersects a straight line drawn westward from the marked 2,493-foot elevation point in section 19, T13N/R9W, to the intersection of the 1,600-foot elevation line and the eastern boundary of section 23, T13N/R9W (which is concurrent with Wilkerson Road); then

(3) Proceed westerly along the straight line described in paragraph (c)(2) approximately 0.3 mile to the line's western end at the intersection of the 1,600-foot elevation line and the eastern boundary of section 23, T13N/R9W; then

(4) Proceed south along the eastern boundaries of sections 23 and 26, T13N/R9W, approximately 0.8 mile to the first intersection of the eastern boundary of section 26 and the 1,720-foot elevation line; then

(5) Proceed southeasterly along the 1,720-foot elevation line to the line's intersection with State Highway 29/175, just west of BM 1758, section 25, T13N/R9W; then

(6) Proceed west on State Highway 29/175 approximately 0.15 mile to the highway's intersection with an

unnamed, unimproved road, section 25, T13N/R9W; then

(7) Proceed southwest then west on the unnamed, unimproved road approximately 0.4 mile to the road's intersection with Cole Creek Road at Bottle Rock Road, section 25, T13N/R9W; then

(8) Proceed west on Cole Creek Road approximately 0.65 mile to the road's intersection with an unnamed, light-duty road known locally as Live Oak Drive (at BM 1625), section 26, T13N/R9W; then

(9) Proceed northwest on Live Oak Drive to the road's intersection with Gross Road (at BM 1423), section 26, T13N/R9W; then

(10) Proceed south on Gross Road approximately 0.65 mile to the road's intersection with the 1,600-foot elevation line, section 26, T13N/R9W; then

(11) Proceed southerly along the meandering 1,600-foot elevation line to the line's intersection with Sweetwater Creek section 10, T12N/R9W; then

(12) Proceed due west in a straight line approximately 0.6 mile to the line's first intersection with the 1,600-foot elevation after crossing Kelsey Creek, section 10, T12N/R9W; then

(13) Proceed westerly and then northerly along the meandering 1,600-foot elevation line to the line's intersection with Kelsey Creek Drive, section 4, T12N/R9W; then

(14) Proceed west on Kelsey Creek Drive and then Adobe Creek Drive, crossing onto the Highland Springs map, and continue north-northwest on Adobe Creek Drive, a total distance of approximately 3.25 miles, to the marked 1,439-foot elevation point in section 29, T13N/R9W; then

(15) Proceed west-southwest in a straight line that passes through the marked 1,559-foot elevation point in section 29, T13N/R9W, and continue in the same direction to the line's intersection with an unnamed, light-duty road known locally as East Highland Springs Road, a total distance of approximately 0.6 mile, section 30, T13N, R9W; then

(16) Proceed north on East Highland Springs Road approximately 0.5 mile, to the road's intersection with an unnamed road in the northeast quadrant of section 30, T13N/R9W; then

(17) Proceed northwest on the unnamed road to the road's end point, then continue due north-northwest in a straight line, a total distance of approximately 0.3 mile, to the line's intersection with the southern boundary of section 19, T13N/R9W; then

(18) Proceed west along the southern boundary of section 19, T13N/R9W, approximately 0.5 mile to the section's southwest corner; then

(19) Proceed north along the western boundary of section 19, T13N/R9W, approximately 0.3 mile to the section line's seventh intersection with the 1,600-foot elevation line; then

(20) Proceed westerly, northwesterly, and then easterly along the meandering 1,600-foot elevation line to the line's second intersection with the northern boundary of section 19, T13N/R9W; then

(21) Proceed east along the northern boundary of section 19, T13N/R9W, approximately 0.35 mile to the section boundary's intersection with an unnamed road known locally as Fritch Road; then

(22) Proceed east on Fritch Road approximately 0.4 mile to the road's intersection with Highland Springs Road, section 18, T13N/R9W; then

(23) Proceed south on Highland Springs Road approximately 0.8 mile to the road's intersection with Bell Hill Road, section 19, T13N/R9W; then

(24) Proceed eastward on the meandering Bell Hill Road approximately 1.4 miles to the road's last intersection with the 1,400-foot elevation line in section 20, T13N/R9W; then

(25) Proceed northeasterly along the 1,400-foot elevation line, crossing onto the Kelseyville map, to the line's first intersection with Bell Hill Road in the southeast quadrant of section 16, T13N/R9W; then

(26) Proceed northeast and then east on Bell Hill Road approximately 0.15 mile to the road's intersection with Hill Creek, section 16, T13N/R9W; then

(27) Proceed northerly (downstream) along Hill Creek approximately 0.9 mile to the creek's intersection with Merritt Road, section 16, T13N/R9W; then

(28) Proceed east on Merritt Road approximately 0.1 mile to the road's intersection with the 1,400-foot elevation line, northern boundary of section 16, T13N/R9W; then

(29) Proceed northerly along the 1,400-foot elevation line approximately 0.2 mile to State Highway 29/175, section 9, T13N/R9W, and then continue northerly and then southeasterly along the 1,400-foot elevation line approximately 0.5 mile to the line's intersection with Merritt Road, northern boundary of section 15, T13N/R9W; then

(30) Proceed east on Merritt Road approximately 0.3 mile to the road's intersection with an unnamed road known locally as Big Valley Road (or North Main Street), northern boundary of section 15, T13N/R9W; then

(31) Proceed south then east on Big Valley Road (North Main Street) approximately 0.35 mile to the road's intersection with Kelsey Creek, section 15, T13N/R9W; then

(32) Proceed southerly (upstream) along Kelsey Creek approximately 0.5 mile to the creek's intersection with State Highway 29/175, section 14, T13N/R9W; then

(33) Proceed southeast on State Highway 29/175 approximately 0.4 mile, crossing Live Oak Drive, to the highway's intersection with an unnamed road known locally as Main Street, section 14, T13N/R9W; then

(34) Proceed north on Main Street approximately 0.3 mile, returning to the beginning point.

Signed: July 25, 2013.

John J. Manfreda,

Administrator.

Approved: September 25, 2013.

Timothy E. Skud,

Deputy Assistant Secretary, (Tax, Trade, and Tariff Policy).

[FR Doc. 2013–23939 Filed 10–1–13; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2013–0002; T.D. TTB–117; Ref: Notice No. 133]

RIN 1513–AC00

Establishment of the Moon Mountain District Sonoma County Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury Decision.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) establishes the approximately 17,633-acre ''Moon Mountain District Sonoma County'' viticultural area in Sonoma County, California. The viticultural area lies entirely within the larger Sonoma Valley viticultural area and the multicounty North Coast viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: This final rule is effective November 1, 2013.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco

Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01 (Revised), dated January 21, 2003, to the TTB Administrator to perform the functions and duties in the administration and enforcement of this law.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas and lists the approved American viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features as described in part 9 of the regulations and a name and a delineated boundary as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for the establishment of American viticultural areas. Petitions to establish a viticultural area must include the following:

- Evidence that the area within the proposed viticultural area boundary is nationally or locally known by the viticultural area name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed viticultural area;
- A narrative description of the features of the proposed viticultural area that affect viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed viticultural area distinctive and distinguish it from adjacent areas outside the proposed viticultural area boundary;
- A copy of the appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed viticultural area, with the boundary of the proposed viticultural area clearly drawn thereon; and
- A detailed narrative description of the proposed viticultural area boundary based on USGS map markings.

Moon Mountain District Sonoma County Petition

TTB received a petition from Patrick L. Shabram on behalf of Christian Borcher, a representative of the vintners and grape growers in the proposed viticultural area, proposing the establishment of the ''Moon Mountain District Sonoma County'' American viticultural area. The proposed viticultural area contains approximately 17,663 acres, of which approximately 1,500 acres are dedicated to commercially producing vineyards. The petition states that there are 40 commercial vineyards and 11 bonded wineries located within the proposed viticultural area. According to the petition, the distinguishing features of the proposed Moon Mountain District Sonoma County viticultural area include its topography, geology, climate, and soils.

TTB notes that the proposed Moon Mountain District Sonoma County viticultural area lies completely within the Sonoma Valley viticultural area (27 CFR 9.29), which, in turn, is entirely within the larger multicounty North Coast viticultural area (27 CFR 9.30). The proposed viticultural area does not overlap any other existing or proposed viticultural area.

Notice of Proposed Rulemaking and Comments Received

TTB published Notice No. 133 in the **Federal Register** on March 4, 2013 (78 FR 14046), proposing to establish the Moon Mountain District Sonoma County viticultural area. In the notice, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features for the proposed viticultural area. The distinguishing features of the proposed viticultural area include topography, geology, climate, and soil. The notice also compared the distinguishing features of the proposed viticultural area to the surrounding areas. For a description of the evidence relating to the name, boundary, and distinguishing features of the proposed viticultural area and a comparison of the distinguishing features of the proposed viticultural area to the surrounding areas, see Notice No. 133.

In Notice No. 133, TTB solicited comments on the accuracy of the name, boundary, climatic, and other required information submitted in support of the petition. In addition, given the proposed viticultural area's location within the existing Sonoma Valley and North Coast viticultural areas, TTB solicited comments on whether the evidence submitted in the petition regarding the distinguishing features of the proposed viticultural area sufficiently differentiates the proposed viticultural area from the two existing viticultural areas. TTB also asked for comments on whether the geographical features of the proposed viticultural area are so distinguishable from the surrounding Sonoma Valley or North Coast viticultural areas that the proposed Moon Mountain District Sonoma County viticultural area should no longer be part of the two existing viticultural areas. The comment period closed on May 3, 2013.

In response to Notice No. 133, TTB received a total of 11 comments, all of which supported the establishment of the Moon Mountain District Sonoma County viticultural area. The commenters included local vintners and vineyard owners, the past president of the Sonoma Valley Vintners Association, and the Sonoma Valley Visitors Bureau. None of the comments addressed the question of whether or not the proposed Moon Mountain District Sonoma County viticultural area is so distinguishable from the Sonoma

Valley and North Coast viticultural areas that it should no longer be part of either existing viticultural area. TTB received no comments in opposition of the Moon Mountain District Sonoma County viticultural area as proposed.

TTB Determination

After careful review of the petition and the comments received in response to Notice No. 133, TTB finds that the evidence provided by the petitioner supports the establishment of the approximately 17,663-acre Moon Mountain District Sonoma County viticultural area. Accordingly, under the authority of the FAA Act, section 1111(d) of the Homeland Security Act of 2002, and part 4 of the TTB regulations, TTB establishes the ''Moon Mountain District Sonoma County'' viticultural area in Sonoma County, California, effective 30 days from the publication date of this document. TTB also determines that the land within the Moon Mountain District Sonoma County viticultural area will remain part of both the Sonoma Valley and North Coast viticultural areas.

Boundary Description

See the narrative boundary description of the viticultural area in the regulatory text published at the end of this final rule.

Maps

The petitioner provided the required maps, and they are listed below in the regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. With the establishment of this viticultural area, its name, ''Moon Mountain District Sonoma County,'' will be recognized as a name of viticultural significance under 27 CFR 4.39(i)(3). The text of the regulation clarifies this point. Once this final rule becomes effective, wine bottlers using the name ''Moon Mountain District Sonoma County'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the viticultural name as an appellation of origin.

The establishment of the Moon Mountain District Sonoma County viticultural area will not affect any existing viticultural area, and any bottlers using ''Sonoma Valley'' or ''North Coast'' as an appellation of origin or in a brand name for wines made from grapes grown within the Sonoma Valley or North Coast viticultural areas will not be affected by the establishment of this new viticultural area. The establishment of the Moon Mountain District Sonoma County viticultural area will allow vintners to use ''Moon Mountain District Sonoma County,'' ''Sonoma Valley,'' and ''North Coast'' as appellations of origin for wines made from grapes grown within the Moon Mountain District Sonoma County viticultural area if the wines meet the eligibility requirements for the appellation.

For a wine to be labeled with a viticultural area name or with a brand name that includes a viticultural area name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with a viticultural area name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label.

Different rules apply if a wine has a brand name containing a viticultural area name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

Regulatory Flexibility Act

TTB certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this final rule.

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Subpart C is amended by adding § 9.231 to read as follows:

§ 9.231 Moon Mountain District Sonoma County.

(a) *Name.* The name of the viticultural area described in this section is ''Moon Mountain District Sonoma County''. For purposes of part 4 of this chapter, ''Moon Mountain District Sonoma County'' is a term of viticultural significance.

(b) *Approved maps.* The four United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the Moon Mountain District Sonoma County viticultural area are titled:

(1) Rutherford, CA, 1951; photorevised 1968;

(2) Sonoma, CA, 1951; photorevised 1980

(3) Glen Ellen, CA, 1954; photorevised 1980; and

(4) Kenwood, CA, 1954; photorevised 1980.

(c) *Boundary.* The Moon Mountain District Sonoma County viticultural area is located in Sonoma County, California. The boundary of the Moon Mountain District Sonoma County viticultural area is as described below:

(1) The beginning point is on the Rutherford map at the 2,188-foot elevation point located on the Sonoma-Napa County boundary line in section 26, T7N/R6W. From the beginning point, proceed southerly along the meandering Sonoma-Napa County boundary line, crossing onto the Sonoma map, to the intersection of the county line and Lovall Valley Road, Huichica Land Grant; then

(2) Continue along the Sonoma-Napa County boundary line approximately 0.2 mile to the intersection of the county line and the end of an unnamed light-duty road; then

(3) Proceed southwesterly in a straight line approximately 1.2 miles, passing through the marked 692-foot peak, to the intersection of the line with an unnamed light-duty road known locally as Thornsberry Road; then

(4) Proceed north-northwesterly in a straight line approximately 1 mile to the intersection of two unnamed light-duty roads known locally as Castle Road and Bartholomew Road (marked by the 218-foot elevation point); then

(5) Proceed west in a straight line approximately 1.4 miles, passing through the southern-most quarry marked on Schocken Hill, to the intersection of the line with the 400-foot elevation line, Pueblo Lands of Sonoma; then

(6) Proceed northwesterly along the meandering 400-foot elevation line for approximately 7.4 miles, crossing onto the Glen Ellen map and then the Kenwood map, to the intersection of the contour line with Nelligan Road, near the mouth of Nunns Canyon, T6N/R6W; then

(7) Proceed northerly on Nelligan Road approximately 0.6 mile to the intersection of the road with the 600-foot elevation line; then

(8) Proceed northwest along the 600-foot elevation line approximately 1.8 miles to its second intersection with a marked trail (near a marked quarry and approximately 0.2 mile southeasterly of a marked 973-foot peak), Los Guilicos Land Grant; then

(9) Proceed east-northeasterly in a straight line approximately 0.8 miles to the marked 1,483-foot peak; then

(10) Proceed east-southeasterly in a straight line approximately 1.5 miles, crossing onto the Rutherford map, returning to the beginning point.

Signed: August 1, 2013.

John J. Manfreda,

Administrator.

Approved: September 25, 2013.

Timothy E. Skud,

Deputy Assistant Secretary, (Tax, Trade, and Tariff Policy).

[FR Doc. 2013–23942 Filed 10–1–13; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2013–0001; T.D. TTB–116; Ref: Notice No. 132]

RIN 1513–AB98

Establishment of the Ballard Canyon Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) establishes the approximately 7,800-acre ''Ballard Canyon'' viticultural area in Santa Barbara County, California. The viticultural area lies entirely within the larger Santa Ynez Valley viticultural area and the multicounty Central Coast viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: This final rule is effective November 1, 2013.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01 (Revised), dated January 21, 2003, to the TTB Administrator to perform the functions and duties in the administration and enforcement of this law.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas and lists the approved American viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features as described in part 9 of the regulations and a name and a delineated boundary as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for the establishment of American viticultural areas. Petitions to establish a viticultural area must include the following:

- Evidence that the area within the proposed viticultural area boundary is nationally or locally known by the viticultural area name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed viticultural area;
- A narrative description of the features of the proposed viticultural area that affect viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed viticultural area distinctive and distinguish it from adjacent areas outside the proposed viticultural area boundary;
- A copy of the appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed viticultural area, with the boundary of the proposed viticultural area clearly drawn thereon; and
- A detailed narrative description of the proposed viticultural area boundary based on USGS map markings.

Ballard Canyon Petition

TTB received a petition from Wesley D. Hagen, a vineyard manager and winemaker, on behalf of 26 other vintners and grape growers in the Ballard Canyon area of California, proposing the establishment of the ''Ballard Canyon'' American viticultural area. The proposed viticultural area contains approximately 7,800 acres, of

which approximately 565 acres are dedicated to commercially producing vineyards. The petition states that there are 10 commercial vineyards located within the proposed viticultural area, with Syrah being the primary grape variety grown. According to the petition, the distinguishing features of the proposed Ballard Canyon viticultural area include wind, temperature, and soils.

The proposed Ballard Canyon viticultural area is located in Santa Barbara County, California, to the west of the town of Ballard. The proposed viticultural area lies at the center of the Santa Ynez Valley viticultural area (27 CFR 9.54), which, in turn, is within the larger multicounty Central Coast viticultural area (27 CFR 9.75). The Santa Ynez Valley viticultural area currently contains two smaller, established viticultural areas: Sta. Rita Hills (27 CFR 9.162), which lies to the west of the proposed viticultural area, and Happy Canyon of Santa Barbara (27 CFR 9.217), which lies to the east of the proposed Ballard Canyon viticultural area. The Sta. Rita Hills and the Happy Canyon of Santa Barbara viticultural areas do not share a boundary with or overlap the proposed Ballard Canyon viticultural area.

Notice of Proposed Rulemaking and Comments Received

TTB published Notice No. 132 in the **Federal Register** on January 16, 2013 (78 FR 3370), proposing to establish the Ballard Canyon viticultural area. In the notice, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features for the proposed viticultural area. The distinguishing features of the proposed viticultural area include wind, temperature, and soil. The notice also compared the distinguishing features of the proposed viticultural area to the surrounding areas. For a description of the evidence relating to the name, boundary, and distinguishing features of the proposed viticultural area, and for a comparison of the distinguishing features of the proposed viticultural area to the surrounding areas, see Notice No. 132.

In Notice No. 132, TTB solicited comments on the accuracy of the name, boundary, climatic, and other required information submitted in support of the petition. In addition, given the proposed viticultural area's location within the existing Santa Ynez Valley and Central Coast viticultural areas, TTB solicited comments on whether the evidence submitted in the petition regarding the distinguishing features of the proposed viticultural area sufficiently differentiates the proposed viticultural area from the two existing viticultural areas. TTB also asked for comments on whether the geographical features of the proposed viticultural area are so distinguishable from the surrounding Santa Ynez Valley or Central Coast viticultural areas that the proposed Ballard Canyon viticultural area should no longer be part of the two existing viticultural areas. The comment period closed on March 18, 2013.

In response to Notice No. 132, TTB received a total of 3 comments, all of which supported the establishment of the Ballard Canyon viticultural area. Two commenters identified themselves as winery owners within the region of the proposed viticultural area, and the third commenter described himself as a ''wine industry professional'' who is familiar with wines produced in the Ballard Canyon area. None of the comments addressed the question of whether or not the Ballard Canyon viticultural area is so distinguishable from the Santa Ynez Valley and Central Coast viticultural areas that it should no longer be part of either existing viticultural area. TTB received no comments in opposition of the Ballard Canyon viticultural area as proposed.

TTB Determination

After careful review of the petition and the comments received in response to Notice No. 132, TTB finds that the evidence provided by the petitioner supports the establishment of the approximately 7,800-acre Ballard Canyon viticultural area. Accordingly, under the authority of the FAA Act, section 1111(d) of the Homeland Security Act of 2002, and part 4 of the TTB regulations, TTB establishes the ''Ballard Canyon'' viticultural area in Santa Barbara County, California, effective 30 days from the publication date of this document. TTB also determines that the land within the Ballard Canyon viticultural area will remain part of both the Santa Ynez Valley and Central Coast viticultural areas.

Boundary Description

See the narrative boundary description of the viticultural area in the regulatory text published at the end of this final rule.

Maps

The petitioner provided the required maps, and they are listed below in the regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. With the establishment of this viticultural area, its name, ''Ballard Canyon,'' will be recognized as a name of viticultural significance under 27 CFR 4.39(i)(3). The text of the regulation clarifies this point. Once this final rule becomes effective, wine bottlers using the name ''Ballard Canyon'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the viticultural name as an appellation of origin.

The establishment of the Ballard Canyon viticultural area will not affect any existing viticultural area, and any bottlers using ''Santa Ynez Valley'' or ''Central Coast'' as an appellation of origin or in a brand name for wines made from grapes grown within the Santa Ynez Valley or Central Coast viticultural areas will not be affected by the establishment of this new viticultural area. The establishment of the Ballard Canyon viticultural area will allow vintners to use ''Ballard Canyon,'' ''Santa Ynez Valley,'' and ''Central Coast'' as appellations of origin for wines made from grapes grown within the Ballard Canyon viticultural area if the wines meet the eligibility requirements for the appellation.

For a wine to be labeled with a viticultural area name or with a brand name that includes a viticultural area name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with a viticultural area name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label.

Different rules apply if a wine has a brand name containing a viticultural area name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

Regulatory Flexibility Act

TTB certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer

acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this final rule.

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Subpart C is amended by adding § 9.230 to read as follows:

§ 9.230 Ballard Canyon.

(a) *Name.* The name of the viticultural area described in this section is ''Ballard Canyon''. For purposes of part 4 of this chapter, ''Ballard Canyon'' is a term of viticultural significance.

(b) *Approved maps.* The three United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the Ballard Canyon viticultural area are titled:

(1) Los Olivos, CA, 1995;

(2) Zaca Creek, Calif., 1959; and

(3) Solvang, CA, 1995.

(c) *Boundary.* The Ballard Canyon viticultural area is located in Santa Barbara County, California. The boundary of the Ballard Canyon viticultural area is as described below:

(1) The beginning point is on the Los Olivos map at the intersection of State Route 154 and Foxen Canyon Road, section 23, T7N/R31W.

(2) From the beginning point, proceed southwesterly in a straight line approximately 0.3 mile, crossing onto the Zaca Creek map, to the intersection of Ballard Canyon Road and an unnamed, unimproved road known locally as Los Olivos Meadows Drive, T7N/R31W; then

(3) Proceed south-southeasterly in a straight line approximately 1 mile, crossing onto the Los Olivos map, to a marked, unnamed large structure located within a circular-shaped 920-foot contour line in the southwest corner of section 26, T7N/R31W; then

(4) Proceed south-southwesterly in a straight line approximately 1.25 miles, crossing onto the Zaca Creek map, to the marked ''Ball'' 801-foot elevation control point, T6N/R31W; then

(5) Proceed south-southwesterly in a straight line approximately 1.45 miles, crossing onto the Solvang map, to a marked, unnamed 775-foot peak, T6N/R31W; then

(6) Proceed south-southwesterly in a straight line approximately 0.55 mile to a marked communication tower located within the 760-foot contour line, T6N/R31W; then

(7) Proceed west-southwesterly in a straight line approximately 0.25 mile to the intersection of Chalk Hill Road and an unnamed, light-duty road known locally as Mesa Vista Lane, T6N/R31W; then

(8) Proceed west-southwesterly in a straight line approximately 0.6 mile to the southern-most terminus of a marked, unnamed stream known locally as Ballard Creek, T6N/R31W; then

(9) Proceed northerly (upstream) along Ballard Creek approximately 0.35 mile to the creek's intersection with the 400-foot contour line, T6N/R31W; then

(10) Proceed southerly and then northwesterly along the 400-foot contour line approximately 1.5 miles, to the contour line's first intersection with Ballard Canyon Road, T6N/R31W; then

(11) Proceed north-northeasterly in a straight line approximately 1.7 miles, crossing onto the Zaca Creek map, to the western-most intersection of the 800-foot contour line and the T6N/T7N boundary line (approximately 0.9 mile east of U.S Highway 101); then

(12) Proceed west along the T6N/T7N boundary line approximately 0.4 mile to the boundary line's third intersection with the 600-foot contour line (approximately 0.5 mile east of U.S. Highway 101); then

(13) Proceed northerly along the meandering 600-foot elevation contour line to the contour line's intersection with Zaca Creek, T7N/R31W; then

(14) Proceed northeasterly in a straight line for approximately 1.2 miles to the western-most intersection of the southern boundary of the Corral de Quati Land Grant and the 1,000-foot contour line (approximately 0.4 mile east of U.S. Highway 101), T7N/R31W; then

(15) Proceed easterly along the meandering 1,000-foot contour line approximately 1.5 miles to the contour line's third intersection with the southern boundary of the Corral de Quati Land Grant (approximately 0.1 mile west of State Route 154), section 22, T7N/R31W; then

(16) Proceed southeasterly in a straight line approximately 0.8 mile, crossing onto the Los Olivos map, returning to the beginning point.

Signed: August 6, 2013.

Mary G. Ryan,

Acting Administrator.

Approved: September 25, 2013.

Timothy E. Skud,

Deputy Assistant Secretary, (Tax, Trade, and Tariff Policy).

[FR Doc. 2013–23944 Filed 10–1–13; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Bureau of the Fiscal Service

31 CFR Chapter II, Parts 202–391

RIN 1510–AB31

Regulatory Reorganization; Administrative Changes to Regulations Due to the Consolidation of the Financial Management Service and the Bureau of the Public Debt Into the Bureau of the Fiscal Service

AGENCY: Bureau of the Fiscal Service, Fiscal Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: On October 7, 2012, the Secretary of the Treasury issued Treasury Order 136–01, establishing within the Department of the Treasury (''Department'') the Bureau of the Fiscal Service (''Fiscal Service''). The new bureau consolidated the bureaus formerly known as the Financial Management Service (''FMS'') and the Bureau of the Public Debt (''BPD''). Treasury Order 136–01 was published in the **Federal Register** on May 24, 2013. This consolidation requires reorganization of, and administrative changes to, title 31 of the Code of Federal Regulations. This final rule renames subchapter A, transfers parts 306 through 391 of subchapter B to subchapter A, and removes and reserves subchapter B in 31 CFR chapter II.

DATES: This rule is effective on October 2, 2013.

FOR FURTHER INFORMATION CONTACT: Elisha Garvey, Attorney-Advisor, 202–504–3715 or *elisha.garvey@bpd.treas.gov*; or Frank Supik, Senior Counsel, 202–874–6638 or *frank.supik@fms.treas.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On October 7, 2012, the Secretary of the Treasury issued Treasury Order 136–01. The Department published the Order in the **Federal Register** at 78 FR 31629 on May 24, 2013. The Order consolidated and redesignated the bureaus formerly known as BPD and FMS into a new entity, the Bureau of the Fiscal Service. The Order delegates to the Commissioner, Bureau of the Fiscal Service, the authority that was previously delegated to the Commissioner of the Public Debt and the Commissioner, Financial Management Service. The Order also provides for the continuation of all administrative actions of BPD and FMS in effect on October 7, 2012. Treasury Order 136–01 provides that the Commissioner, Bureau of the Fiscal Service, has all authorities, functions, and duties delegated to the Commissioner of the Public Debt and the Commissioner, FMS, in effect on October 7, 2012 and any other authorities, functions, and duties assigned by the Secretary or his designee.

II. Reorganization of, and Administrative Changes to, Title 31 CFR

Title 31, Code of Federal Regulations (31 CFR), Subtitle B (Regulations Relating to Money and Finance (Continued), Chapter II (Fiscal Service, Department of the Treasury) currently contains two subchapters: 1) ''Subchapter A—Financial Management Service''; and 2) ''Subchapter B—Bureau of the Public Debt.''

Treasury Order 136–01 consolidated the two bureaus into one newly-established bureau. Accordingly, this final rule reorganizes 31 CFR, Subtitle B, Chapter II, into one subchapter. The current subchapter A will be retitled ''Subchapter A—Bureau of the Fiscal Service.'' The new subchapter A will contain current subchapter A's existing parts 200–285 and current subchapter B's existing parts 306–391. Since current subchapter B's regulations will be moved to new subchapter A, subchapter B will be removed and reserved.

This final rule does not make any changes to the current requirements of the regulations in 31 CFR Subtitle B, Chapter II, Subchapters A and B. It merely consolidates the regulations of the bureaus formerly known as FMS and BPD into one subchapter to apply to the Fiscal Service. The rule does not renumber or rename any existing parts of 31 CFR Parts 200–391. This rule makes some changes to agency names and Web sites to conform to the name of the new bureau.

III. Administrative Procedure Act

Pursuant to the Administrative Procedure Act (APA) at 5 U.S.C. 553(b)(3)(B), notice and comment are not required prior to the issuance of a final rule if an agency, for good cause, finds that ''notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.''

This final rule merely makes technical or conforming nonsubstantive amendments to the regulations to reflect the Order, which: (1) established the Fiscal Service; and (2) consolidated FMS and BPD into the Fiscal Service. In addition, this final rule improves the organization of the Fiscal Service's regulations. It makes no substantive changes and does not change or impose additional requirements that necessitate adjustments by entities subject to the Fiscal Service's regulations. Instead, it merely repromulgates existing regulations. Moreover, to the extent that the final rule updates regulations to reflect the bureau's name and contact information, it will help reduce confusion regarding the correct entity to contact.

Therefore, the Fiscal Service has concluded that advance notice and comment under the APA is unnecessary and not in the public interest.

IV. 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 final rule because there are no new or revised recordkeeping or reporting requirements.

V. Regulatory Flexibility Act

Because this final rule is not required to be preceded by a notice of proposed rulemaking under the Administrative Procedure Act (5 U.S.C. 553), the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

VI. Executive Order 12866

This final rule is not a significant regulatory action as defined in Executive Order 12866. Accordingly, this final rule is not subject to the analysis required by the Executive Order.

VII. Effective Date

This final rule is effective on October 2, 2013. A final rule may be published with an immediate effective date if an agency finds good cause and publishes such with the final rule.[1] The purpose of a delayed effective date is to allow regulated entities to comply with new requirements. As described above, the final rule makes nonsubstantive, technical changes and does not require entities to make substantive changes to their behavior in a substantive manner. Therefore, the Fiscal Service finds good cause under 5 U.S.C. 553(d) to dispense with a delayed effective date.

List of Subjects

31 CFR Part 202

Banks, Banking.

31 CFR Part 203

Banks, Banking, Electronic funds transfers, taxes.

31 CFR Part 205

Administrative practice and procedure, Electronic funds transfers, Grant programs, Intergovernmental relations.

31 CFR Part 206

Accounting, Banks, Banking, Electronic funds transfers.

31 CFR Part 208

Accounting, Banks, Banking, Electronic funds transfers.

31 CFR Part 210

Electronic funds transfers, Fraud.

31 CFR Part 211

Foreign banking, Foreign claims.

31 CFR Part 212

Benefit payments, Exempt payments, Financial institutions, Garnishment, Preemption, Recordkeeping.

31 CFR Part 215

Employment taxes, Government employees, Income taxes, Intergovernmental relations.

31 CFR Part 223

Administrative practice and procedure, Surety bonds.

31 CFR Part 224

Surety bonds.

31 CFR Part 225

Government securities, Surety bonds.

31 CFR Part 226

Banks, Banking, Insurance, Taxes.

31 CFR Part 235

Banks, Banking, Claims, Forgery.

31 CFR Part 240

Banks, Banking, Forgery.

[1] 5 U.S.C. 553(d)(3).

31 CFR Part 245

Banks, Banking, Claims, Reporting and recordkeeping requirements.

31 CFR Part 248

Banks, Banking, Claims, Foreign banking.

31 CFR Part 250

Foreign claims.

31 CFR Part 256

Claims.

31 CFR Part 270

Freedom of information.

31 CFR Part 281

Foreign currencies.

31 CFR Part 285

Administrative practice and procedure, Claims, Credit, Income taxes.

31 CFR Part 306

Government securities.

31 CFR Part 308

Government securities.

31 CFR Part 309

Government securities.

31 CFR Part 312

Credit unions, Savings associations.

31 CFR Part 315

Bonds.

31 CFR Part 316

Bonds.

31 CFR Part 317

Banks, Banking, Bonds.

31 CFR Part 321

Banks, Banking, Bonds.

31 CFR Part 323

Freedom of information.

31 CFR Part 328

Banks, Banking, Government securities.

31 CFR Part 330

Banks, Banking, Bonds.

31 CFR Part 332

Bonds.

31 CFR Part 337

Government securities.

31 CFR Part 339

Bonds.

31 CFR Part 340

Bonds.

31 CFR Part 341

Bonds, Retirement.

31 CFR Part 342

Bonds.

31 CFR Part 343

Bonds, Mortgage insurance.

31 CFR Part 344

Bonds, Government securities, Reporting and recordkeeping requirements.

31 CFR Part 345

Government securities.

31 CFR Part 346

Bonds, Retirement.

31 CFR Part 348

Banks, Banking, Electronic funds transfers, Government securities.

31 CFR Part 351

Bonds.

31 CFR Part 352

Bonds.

31 CFR Part 353

Bonds.

31 CFR Part 354

Loan programs-education, Securities, Student aid, Student Loan Marketing Association (Sallie Mae).

31 CFR Part 355

Banks, Banking, Claims, Government securities.

31 CFR Part 356

Banks, Banking, Bonds, Government securities, Reporting and recordkeeping requirements.

31 CFR Part 357

Banks, Banking, Bonds, Electronic funds transfers, Government securities, Reporting and recordkeeping requirements.

31 CFR Part 358

Banks, Banking, Government securities.

31 CFR Part 359

Bonds.

31 CFR Part 360

Bonds.

31 CFR Part 361

Claims, Common carriers, Freight, Government property.

31 CFR Part 362

Claims, Common carriers, Freight, Government property.

31 CFR Part 363

Bonds, Securities.

31 CFR Part 370

Electronic funds transfers, Government securities, Reporting and recordkeeping requirements.

31 CFR Part 375

Bonds, Government securities.

31 CFR Part 380

Government securities, Surety bonds.

31 CFR Part 391

Banks, Banking, Bonds, Government securities, Claims.

Authority and Issuance

The Fiscal Service amends chapter II of title 31, subtitle B, of the Code of Federal Regulations as follows:

Title 31—Money and Finance: Treasury

CHAPTER II—FISCAL SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—BUREAU OF THE FISCAL SERVICE

■ 1. Revise the heading of 31 CFR chapter II, subchapter A, to read as set forth above.

■ 2. Amend parts 202–285 as follows:

■ a. Remove all references to ''Financial Management Service'' and add, in their place, ''Bureau of the Fiscal Service''.

■ b. Remove all references to ''FMS'' and add, in their place, ''Fiscal Service''.

■ c. Remove all references to ''*www.fms.treas.gov*'' and add, in each place, ''*www.fiscal.treasury.gov*''.

■ 3. Transfer parts 306, 308–309, 312, 315–317, 321, 323, 328, 330, 332, 337, 339–346, 348, 351–363, 370, 375, 380 and 391 from subchapter B to subchapter A.

■ 4. Amend parts 306–391 as follows:

■ a. Remove all references to ''Bureau of the Public Debt'' and add, in their place, ''Bureau of the Fiscal Service''.

■ b. Remove all references to ''BPD'' and ''Public Debt'' and add, in their place, ''Fiscal Service''.

■ c. Remove all references to ''*www.publicdebt.treas.gov*'' and add, in each place, ''*www.fiscal.treasury.gov*''.

SUBCHAPTER B—[REMOVED AND RESERVED]

■ 5. Remove and reserve 31 CFR chapter II, subchapter B.

By the Department of the Treasury.

Dated: September 27, 2013.

Richard L. Gregg,

Fiscal Assistant Secretary.

[FR Doc. 2013–24133 Filed 10–1–13; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0746]

RIN 1625–AA00

Safety Zone, Lucas Oil Drag Boat Racing Series; Thompson Bay, Lake Havasu City, AZ.

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone within the navigable waters of Thompson Bay in Lake Havasu, AZ for the Lucas Oil Drag Boat Racing Series. This temporary safety zone is necessary to provide safety for the racers, crew, spectators, vessels and other users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port or his designated representative.

DATES: This rule is effective from 7 a.m. to 7 p.m. on October 11, 2013 thru October 13, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2013–0746]. To view documents mentioned in this preamble as being available in the docket, go to *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 rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Bryan Gollogly, Waterways Management, U.S. Coast Guard Sector San Diego; telephone (619) 278–7656, email *d11marineeventssandiego@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the logistical details of the Lucas Oil Drag Boat Racing Series were not finalized nor presented to the Coast Guard in enough time to draft and publish an NPRM. As such, the event would occur before the rulemaking process was complete.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because it is impractical and contrary to the public interest. The Coast Guard did not have the necessary event information in time to provide both a comment period and allow for a 30 day delayed effective date. Immediate action is required to ensure the safety zone is in place to protect participants, crew, spectators, participating vessels, and other vessels and users of the waterway during the event.

B. Basis and Purpose

The legal basis for this temporary rule is the Ports and Waterways Safety Act which authorizes the Coast Guard to establish safety zones (33 U.S.C 1221 et seq.). The Coast Guard is establishing a temporary safety zone on the navigable waters of the Thompson Bay, Lake Havasu, AZ for The Lucas Oil Drag Boat Racing Series. This safety zone is necessary to provide for the safety of the participants, crew, spectators, sponsor vessels, and other users of the waterway. At this event, over 100 race teams from across the United States and Canada are expected to participate. The safety zone will cover the majority of Thompson Bay. The course requires enforcement of a safety zone while the drag boats are on the course, thus restricting vessel traffic within the Thompson Bay for 36 hours spanning three days. There will be 20 safety vessels provided by the sponsor to help monitor the area encompassed by the temporary safety zone.

C. Discussion of the Final Rule

The Coast Guard is establishing a temporary safety zone that will be enforced from 7 a.m. to 7 p.m. on October 11, 2013 thru October 13, 2013. The safety zone includes the waters of Thompson Bay encompassed by drawing a line from point to point along the following coordinates:

Northern Zone line:
34°27′57.96″ N, 114°20′48.49″ W
34°27′57.71″ N, 114°20′49.75″ W

North West Zone Line:
34°27′07.99″ N, 114°21′09.93″ W
34°26′51.99″ N, 114°21′03.83″ W

South Zone Line:
34°27′07.99″ N, 114°21′09.93″ W
34°26′51.99″ N, 114°21′03.83″ W

This safety zone is necessary to ensure personnel and vessels remain safe by keeping clear during the high speed transit of drag boats. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

Before the effective period, the Coast Guard will publish a Coast Guard District Eleven Local Notice to Mariners information on the event and associated safety zone.

Vessels will be able to transit the surrounding area and may be authorized to transit through the safety zone with the permission of the Captain of the Port of the designated representative. Before activating the zones, the Coast Guard will notify mariners by appropriate means including but not limited to Local Notice to Mariners.

D. 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.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This determination is based on the size, duration and location of the safety zone. Commercial vessels will not be hindered by the safety zone. Recreational vessels may be allowed to

transit through the designated safety zone during the specified times if they request and obtain authorization from the Captain of the Port, or his designated representative. Additionally, before the effective period, the Coast Guard will publish a Local Notice to Mariners.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 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 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.

(1) This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in the aforementioned portion of Lake Havasu from 7 a.m. to 7 p.m. on October 11, 2013 thru October 13, 2013.

(2) This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone will only be in effect for 36 hours. When authorized by the Coast Guard Captain of the Port, San Diego, or his designated representative, vessel traffic can transit through the zone utilizing the ''Follow Me'' sponsor supplied vessels that will be on-scene to guide non participant vessels along designated routes.

3. Assistance for Small Entities

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**, above.

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.

4. 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).

5. Federalism

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 determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. 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.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. 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.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. 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.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. 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 (NEPA) (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 a safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T11–596 to read as follows:

§ 165.T11–596 Safety Zone, Lucas Oil Drag Boat Racing Series; Thompson Bay, Lake Havasu City, AZ.

(a) *Location.* The safety zone includes the waters of Thompson Bay encompassed by drawing a line from point to point along the following coordinates:

Northern Zone Line:
34°27′57.96″ N, 114°20′48.49″ W
34°27′57.71″ N, 114°20′49.75″ W

North West Zone Line:
34°27′07.99″ N, 114°21′09.93″ W
34°26′51.99″ N, 114°21′03.83″ W

South Zone Line:
34°27′07.99″ N, 114°21′09.93″ W
34°26′51.99″ N, 114°21′03.83″ W

(b) *Enforcement period.* This safety zone will be enforced from 7 a.m. to 7 p.m. on October 11, 2013 thru October 13, 2013.

(c) *Definitions.* The following definition applies to this section: *designated representative,* means any commissioned, warrant, or petty officer of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Coast Guard Captain of the Port, San Diego, or his designated representative.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative.

(4) Upon being hailed by the Captain of the Port of San Diego or his designated representative by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: September 10, 2013.

S.M. Mahoney,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. 2013–23995 Filed 10–1–13; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[EPA–R09–OAR–2013–0489; FRL–9901–58–Region 9]

Source Specific Federal Implementation Plan for Implementing Best Available Retrofit Technology for Four Corners Power Plant; Navajo Nation; Extension of Notification Deadline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On August 24, 2012, EPA promulgated a Federal Implementation Plan (FIP) to implement the Best Available Retrofit Technology (BART) requirement of the Regional Haze Rule for the Four Corners Power Plant (FCPP), which is located on the Navajo Nation Indian Reservation. Included in the FIP was a requirement that by July 1, 2013, Arizona Public Service (APS), co-owner and operator of FCPP must notify EPA of its selected BART compliance strategy. On June 19, 2013, APS requested that EPA extend the notification date from July 1 to December 31, 2013, due to new uncertainties related to the potential deregulation of the retail electricity market in Arizona that complicate its decision for selecting a BART compliance option. In response to this request, on July 11, 2013, EPA proposed to extend the notification date, from July 1, 2013 to December 31, 2013. EPA did not receive any comments during the 30-day public comment period for the proposed action. EPA received one comment that was emailed to EPA on August 13, 2013, one day after the close of the comment period. We are providing a response to the late comment, however the information in the late comment did not change the basis or justification for our proposal to extend the notification date. Therefore, EPA is taking final action to extend the notification date in the FIP from July 1, 2013 to December 31, 2013.

DATES: This rule is effective on November 1, 2013.

ADDRESSES: EPA established a docket for this action at EPA–R09–OAR–2013–0489. Generally, documents in the docket are available electronically at *www.regulations.gov* or in hard copy at EPA Region 9, 75 Hawthorne Street, San Francisco, California. While documents in the docket are listed in the index, some information may be publicly available only at EPA Region 9 (e.g., maps, voluminous reports, copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact person listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Anita Lee, EPA Region 9, (415) 972–3958, *r9_airplanning@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we'', ''us'', and ''our'' refer to EPA.

Table of Contents

I. Background
II. Summary of EPA Action and Response to Late Comment
III. Statutory and Executive Order Reviews

I. Background

FCPP is a privately owned and operated coal-fired power plant located on the Navajo Nation Indian Reservation near Farmington, New Mexico. Based on lease agreements signed in 1960, FCPP was constructed and has been operating on real property held in trust by the Federal government for the Navajo Nation. The facility consists of five coal-fired electric utility steam generating units with a total capacity of 2,060 megawatts (MW). Units 1, 2, and 3 at FCPP are owned entirely by APS, which serves as the facility operator, and are rated to 170 MW (Units 1 and 2) and 220 MW (Unit 3). Units 4 and 5 are each rated to a capacity of 750 MW, and are co-owned by six entities: Southern California Edison (48 percent), APS (15 percent), Public Service Company of New Mexico (13 percent), Salt River Project (10 percent), El Paso Electric Company (7 percent), and Tucson Electric Power (7 percent).

On August 24, 2012, EPA promulgated a FIP that established limits for emissions of oxides of nitrogen (NO_X) from FCPP under the BART provision of the Regional Haze Rule (77 FR 51620). The final FIP required the owners of FCPP to implement one of two strategies for BART compliance: (1) Compliance with a facility-wide BART emission limit for NO_X of 0.11 pounds per million British Thermal Units of heat input (lb/MMBtu) by October 23, 2017, or (2) retirement of Units 1, 2, and 3 by January 1, 2014, and compliance with a BART emission limit

for NO_X of 0.098 lb/MMBtu on Units 4 and 5 by July 1, 2018. The second BART compliance strategy, involving retirement of Units 1, 2, and 3, was based on a broader plan put forth by APS that also called for APS to purchase Southern California Edison's 48 percent ownership interest in Units 4 and 5 at FCPP. This compliance strategy was proposed and finalized in the FIP as an alternative emission control strategy that achieved greater reasonable progress than BART. For additional information regarding EPA's analyses regarding BART and the alternative emission control strategy, see EPA's BART proposal (75 FR 64221, October 29, 2010), supplemental proposal (76 FR 10530, February 25, 2011) and final rule (77 FR 51620, August 24, 2012).

As discussed in our supplemental proposal published on February 25, 2011, APS' choice to retire Units 1, 2, and 3, and comply with BART emission limits on Units 4 and 5 was contingent on the resolution of several issues. These issues included a renewed site lease with the Navajo Nation, a renewed coal contract, and regulatory approvals from the Arizona Corporation Commission (ACC), California Public Utilities Commission (CPUC), and Federal Energy Regulatory Commission (FERC) for APS to purchase the 48 percent interest of Units 4 and 5 currently owned by Southern California Edison (SCE). Because the regulatory approvals, renewed site lease, and renewed coal contract were expected to require significant time and effort by APS, other owners, and the Navajo Nation, EPA's final FIP included requirements for APS to (1) update EPA by January 1, 2013, on the status of lease negotiations and regulatory approvals, and (2) notify EPA, by July 1, 2013, of the BART strategy APS would elect to implement, including a plan and schedule for compliance with its chosen strategy.[1]

On December 31, 2012, APS provided an update to EPA regarding the status of the approvals required for implementing the alternative emission control strategy.[2] APS stated that on March 7, 2011, APS and the Navajo Nation executed an agreement to extend the lease for FCPP to July 6, 2041. The lease renewal must be reviewed and approved by the U.S. Bureau of Indian Affairs, which triggers review under the National Environmental Policy Act (NEPA), and other related reviews, including under Section 7 of the Endangered Species Act. NEPA review is underway and is expected to conclude in time to allow for a Record of Decision by January 2015. EPA is a cooperating agency in the NEPA process. In its December 31, 2012 update letter, APS also stated that it is in ongoing negotiation for a new coal supply agreement with its coal supplier. Finally, APS confirmed that it had obtained regulatory approvals to purchase SCE's 48 percent interest of Units 4 and 5.[3]

However, in a letter dated June 19, 2013, APS requested that EPA extend the date by which APS must provide notification of its BART implementation strategy for FCPP.[4] APS explained that it had previously expected to meet the July 1, 2013 notification date because it had completed the processes to obtain regulatory approvals to purchase SCE's shares of Units 4 and 5, and renewal of the lease and coal contract were underway. Then, unexpectedly, in May 2013, the ACC voted to re-examine deregulation of the retail electric market in Arizona.[5] In its June 19, 2013 letter, APS explains that, depending on its structure and reach, a deregulated retail electric market could significantly change the BART compliance strategy for FCPP. Thus, APS stated that it would no longer be able to make an informed decision regarding the BART option by July 1, 2013. APS stated that its decision concerning a selected compliance strategy requires more certainty regarding the likelihood of deregulation in Arizona. APS also filed a Form 8–K with the United States Securities and Exchange Commission disclosing the uncertainty caused by the ACC decision to examine deregulation.[6]

APS has requested that EPA extend the notification date for its selection of the BART compliance strategy to December 31, 2013. APS noted that the potential for deregulation of the retail electric market in Arizona was not foreseen at the time of our final rulemaking in 2012. APS also noted that extending the notification date by six months will not affect public health or the environment because the BART compliance dates, in 2017 or 2018, depending on the compliance strategy selected, are not linked to the notification date and remain unchanged.

On July 11, 2013, EPA proposed to revise the notification date provision in the existing source-specific federal implementation plan for FCPP, codified at 40 CFR 49.5512(i)(4), to extend the date by which the owner or operator of FCPP must notify EPA of its selected BART compliance strategy from July 1, 2013 to December 31, 2013 (78 FR 41731). EPA's proposal included a proposed determination that an extended notification date was necessary to provide APS with the needed flexibility in determining whether to implement BART or the alternative emission control strategy to reduce FCPP's NO_X emissions by 80–87 percent. Additionally the proposed extension would not interfere with attainment, reasonable further progress, or any other requirement of the CAA because the proposed notification date extension does not change the compliance dates associated with BART or the alternative emission control strategy. The public comment period for the proposed action closed on August 12, 2013. EPA did not receive any comments on the proposed action during the public comment period. On August 13, 2013, a comment letter dated August 12, 2013, was sent to EPA via electronic mail. Although our proposal stated that comments ''must be postmarked no later than August 12, 2013,'' EPA is responding to the late comment in this final rulemaking. Because the comment does not change our basis or justification for our proposal to extend the notification date, EPA is finalizing our proposed action.

II. Summary of EPA Action and Response to Late Comment

EPA is taking final action to extend the date by which the owner or operator of FCPP must notify EPA of its selected BART compliance strategy, from July 1, 2013 to December 31, 2013. This final action revises one provision in the existing source-specific FIP for FCPP, codified at 40 CFR 49.5512(i)(4). The notification date was not a substantive requirement of our BART determination, nor was it a requirement related to the emission limit constituting BART or the timeframe for BART compliance, as defined in the CAA or the Regional Haze Rule. EPA notes that the FIP continues to require FCPP to meet the emission limits required under BART or the alternative

[1] See 40 CFR 49.5512(i)(4).

[2] See Letter from Susan Kidd, Director Environmental Policies and Programs, Arizona Public Service, to Jared Blumenfeld, Regional Administrator, EPA Region 9, dated December 31, 2012.

[3] APS received approval from the ACC on April 24, 2012; from FERC on November 27, 2012; and from the Department of Justice/Federal Trade Commission on July 2, 2012. As discussed in our final rulemaking dated August 24, 2012, EPA already understood that the CPUC approved the sale of SCE's shares of Units 4 and 5 at FCPP to APS on March 22, 2012.

[4] See letter from Ann Becker, Vice President, Environmental and Chief Sustainability Officer, Arizona Public Service, to Jared Blumenfeld, Regional Administrator, EPA Region 9, dated June 19, 2013.

[5] *http://www.azcc.gov/Divisions/Administration/About/Letters/5-23-13%20Retail%20Competition%2013-0135.pdf.*

[6] Form 8–K was appended to the June 19, 2013 letter from Ann Becker to Jared Blumenfeld.

emission control strategy by the compliance dates specified in our final rulemaking, codified at 40 CFR 49.5512(i)(2) and (3), regardless of the extension of the notification date in (i)(4).

On August 13, 2013, EPA received one late comment via electronic mail on our proposed notification date extension. The comment was submitted by the Law Office of John M. Barth on behalf of the San Juan Citizens Alliance (SJCA). SJCA provided four reasons for contending that the request for an extension of the notification date was ''not reasonable.''

First, SJCA contends that APS's request for an extension is not reasonable because APS ''knew or should have known'' the ACC might consider deregulation in the future, but failed to identify it as a factor that could influence its choice between BART and the alternative to BART. It appears that SJCA is arguing that APS cannot base its request for a notification date extension on the potential for deregulation because APS should have foreseen, but did not identify, deregulation as an important factor in its decision. EPA disagrees. In our final action in August 2012 that, among other things, established the notification date, EPA had determined that APS had adequately justified its requested notification date of July 1, 2013 based on when it anticipated receiving approvals, from the ACC, the California Public Utilities Commission, and the Federal Energy Regulatory Commissions, to purchase SCE's share of Units 4 and 5 at FCPP, a key prerequisite for implementing the Alternative to BART. SJCA submitted comments on the proposed action and did not raise the ACC's potential consideration of deregulation as a basis for not finalizing the July 1, 2013 notification date. SJCA has not provided any reason that APS may not raise the ACC's consideration of deregulation now as a justification for the notification date extension. The mere fact that deregulation may have arisen in the future, but was not identified as a potential issue, does not stop APS from relying on this event as a reasonable basis to request an extension of the notification date now. In any event, SJCA has not provided any explanation for how it or the public will be harmed if EPA extends the notification date. APS is still required to comply with BART or the alternative emission control strategy by the dates in our August 2012 final rule.

Second, SJCA asserts that APS's request for the extension, by letter dated June 19, 2013, was untimely because the ACC discussed potential deregulation on May 9, 2013 and advised APS of this action on May 23, 2013. SJCA does not provide any explanation about how this brief delay in requesting an extension of the compliance date makes APS's request unreasonable. As noted above, APS has not requested, and EPA has not proposed, to extend the actual compliance dates for BART or the Alternative to BART. SJCA has not claimed that extension of the notification date to December 31, 2013, results in any harm to its members or the public. In any event, the brief time that elapsed before APS submitted a request to EPA for an extension of the notification date was not unreasonable.

Third, SJCA argues that the ACC is only conducting an information gathering proceeding concerning deregulation and such a proceeding is not adequate to justify extending the notification date. Again, EPA disagrees with the commenter. APS requested a modest extension of the notification date based on the current uncertainty regarding the ACC's consideration of deregulation and the potential for a deregulated electric market to influence APS's decisions related to FCPP. None of the information SJCA submitted is sufficient to allow EPA to determine that the ACC's proceeding to receive and consider comments on deregulation is not a reasonable justification for extending the notification date. SJCA has not provided any facts showing that the potential for deregulation would not affect APS's decisions related to FCPP or that it or any other member of the public is harmed by the notification date extension. As noted above, EPA is not extending the dates on which APS must demonstrate FCPP is in compliance with the BART emissions limit or the alternative emission control strategy.

Finally, SJCA states that it is unreasonable to extend the notification date to December 31, 2013 and that October 31, 2013 should be sufficient. EPA disagrees. SJCA has not demonstrated that a six-month extension for APS to provide notification is not reasonable. In fact, Exhibit 2 to the SJCA comment letter highlights the uncertainty of the timing of the ACC's examination of deregulation. Exhibit 2 shows that, as of July 1, 2013, the ACC's timeline for examining deregulation was ''tentative,'' and the understanding of Commissioner Robert L. Burns was ''that the goal is to address the issue at a September or October Open Meeting.'' [7] Thus, Exhibit 2 does not provide enough certainty in the timing of ACC's review and consideration of comments on deregulation to indicate that a notification date of October 31, 2013 would be sufficient or more reasonable than December 31, 2013. SJCA has also failed to provide any reason that it or any other member of the public will be harmed from the extension of the notification date. APS is required to continue to comply with the dates it will come into compliance with BART or the alternative.

In summary, the four points raised by SJCA in its late comment do not provide sufficient information for EPA to change its proposal to extend APS's BART notification date from July 1, 2013 to December 31, 2013. EPA is finalizing its proposal, and APS is required to notify EPA on December 31, 2013, whether FCPP will install and operate emissions controls to meet the BART limitation for Units 1–5 in 2017, or implement the alternative emissions control strategy by closing Units 1, 2 and 3 in January 2014 and installing controls to meet a NO_X emission limit of 0.098 lb/MMBtu on Units 4 and 5 in July 2018.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review 13563

This action extends the date for a single source to notify EPA regarding its decision to implement BART or an alternative emission control strategy. This type of action for a single source is exempt from review under Executive Orders (EO) 12866 (58 FR 51735, October 4, 1993) and EO 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Burden is defined at 5 CFR 1320.3(b). Because the action merely extends a notification date, it does not impose an information collection burden and the Paperwork Reduction Act does not apply.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment

[7] Exhibit 2 to the SJCA Comment Letter was a letter dated July 1, 2013 from Robert L. Burns, Arizona Corporation Commission, to President Ben Shelly and Speaker Johnny Naize, Navajo Nation, in response to a letter from President Shelly and Speaker Naize, dated June 24, 2013, expressing concern related to the decision of the ACC to reexamine deregulation in Arizona.

rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final action on small entities, I certify that this final action will not have a significant economic impact on a substantial number of small entities. The owners of FCPP are not small entities, and the extended notification date was requested by the operator and co-owner of FCPP. See *Mid-Tex Electric Cooperative, Inc.* v. *FERC*, 773 F.2d 327 (DC Cir. 1985).

D. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, requires Federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Federal agencies must also develop a plan to provide notice to small governments that might be significantly or uniquely affected by any regulatory requirements. The plan must enable officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and must inform, educate, and advise small governments on compliance with the regulatory requirements.

This final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. This rule merely extends a notification date in an existing federal implementation plan for FCPP by six months. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This final rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This final rule does not impose regulatory requirements on any government entity.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or in the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action extends a notification date by six months. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13175 (65 FR 67249, November 9, 2000), 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 EPA consults with tribal officials early in the process of developing the proposed regulation and develops a tribal summary impact statement.

EPA has concluded that this final rule may have tribal implications because FCPP is located on the Navajo Nation Indian Reservation. However, the rule will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law.

EPA consulted with tribal officials early in the process of developing the BART regulations that were finalized on August 24, 2012, for FCPP to permit them to have meaningful and timely input into its development. During the comment period for prior EPA actions related to the EPA's BART FIP for FCPP, the Navajo Nation raised concerns to EPA about the potential economic impacts of our BART determination on the Navajo Nation. EPA consulted the Navajo Nation regarding those concerns. Additional details of our consultation with the Navajo Nation are provided in sections III.H and IV.F of our final rulemaking published on August 24, 2012 (77 FR 51620). EPA notified the Navajo Nation Environmental Protection Agency regarding the request from APS to extend the notification date on June 25, 2013. EPA did not receive a request from the Navajo Nation to consult on this six-month extension of the notification date for FCPP.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. This action addresses a notification date required for regional haze and visibility protection.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is exempt under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12 (10) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (e.g., materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by the VCS bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when the Agency decides not to use available and applicable VCS.

This final rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any VCS.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994), establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs,

policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This final rule does not change any applicable emission limit for FCPP nor does it extend the compliance deadline under BART or the Alternative to BART. This final rule merely extends the date, by six months, by which the operator of FCPP must notify EPA of its elected compliance strategy.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's final action under section 801 because this is a rule of particular applicability and only applies to one facility, the Four Corner Power Plant.

L. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 2, 2013. 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 CAA section 307(b)(2)).

List of Subjects in 40 CFR Part 49

Environmental protection, Air pollution control, Indians, Intergovernmental relations, Nitrogen Dioxide.

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

Dated: September 24, 2013.

Gina McCarthy,

Administrator.

For the reasons stated in the preamble, Title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 49—[AMENDED]

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

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

■ 2. Section 49.5512 is amended by revising paragraph (i)(4) to read as follows:

§ 49.5512 Federal Implementation Plan Provisions for Four Corners Power Plant, Navajo Nation.

* * * * *

(i) * * *

(4) By January 1, 2013, the owner or operator shall submit a letter to the Regional Administrator updating EPA of the status of lease negotiations and regulatory approvals required to comply with paragraph (i)(3) of this section. By December 31, 2013, the owner or operator shall notify the Regional Administrator by letter whether it will comply with paragraph (i)(2) of this section or whether it will comply with paragraph (i)(3) of this section and shall submit a plan and time table for compliance with either paragraph (i)(2) or (3) of this section. The owner or operator shall amend and submit this amended plan to the Regional Administrator as changes occur.

* * * * *

[FR Doc. 2013–24112 Filed 10–1–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2010–0899; FRL–9901–44–Region 5]

Approval and Promulgation of Air Quality Implementation Plan; Illinois; Redesignation of the Chicago Area to Attainment of the 1997 Annual Fine Particulate Matter Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking several related actions under the Clean Air Act (CAA) affecting the Chicago area and the state of Illinois for the 1997 annual fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS or standard). EPA is determining that the Chicago-Gary-Lake County, Illinois-Indiana (IL-IN) area is attaining the 1997 annual $PM_{2.5}$ standard based on quality assured, state-certified monitoring data for all $PM_{2.5}$ monitoring sites in this area from 2007–2012. EPA is granting a request from the state of Illinois to redesignate the Chicago area to attainment of the 1997 annual $PM_{2.5}$ standard. EPA is approving, as a revision of the Illinois State Implementation Plan (SIP), the state's plan for maintaining the 1997 annual $PM_{2.5}$ standard in the Chicago-Gary-Lake County, IL-IN area through 2025. EPA is approving Illinois' comprehensive 2002 Nitrogen Oxides (NO_X), Sulfur Dioxide (SO_2), Volatile Organic Compound (VOC), ammonia, and primary $PM_{2.5}$ emission inventories for the Chicago area. Finally, EPA is approving Illinois' 2008 and 2025 NO_X and primary $PM_{2.5}$ Motor Vehicle Emission Budgets (MVEBs) for the Chicago area and finding these MVEBs as adequate for use in transportation conformity determinations. The Chicago area includes: Cook, DuPage, Kane, Lake, McHenry, and Will Counties, Aux Sable and Goose Lake Townships in Grundy County, and Oswego Township in Kendall County. The Chicago-Gary-Lake County, IL-IN area also includes Lake and Porter Counties in Indiana, which have been previously redesignated to attainment of the 1997 annual $PM_{2.5}$ standard.

DATES: This final rule is effective October 2, 2013.

ADDRESSES: EPA has established a docket for this action: Docket ID No. EPA–R05–OAR–2010–0899. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hardcopy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hardcopy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Edward Doty, Environmental Scientist, at (312) 886–6057, before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Edward Doty, Environmental Scientist,

Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6057, *Doty.Edward@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is the background for the actions?
II. What is EPA's response to comments on EPA's proposed actions?
III. Why is EPA taking these actions?
IV. What actions is EPA taking?
V. Statutory and Executive Order Reviews

I. What is the background for the actions?

On November 27, 2009 (76 FR 62243), EPA made a final determination that the Chicago-Gary-Lake County, IL–IN area had attained the 1997 annual $PM_{2.5}$ standard based on PM2.5 monitoring data for the period of 2006–2008.

On October 15, 2010, the Illinois Environmental Protection Agency (IEPA) submitted a request to EPA for the redesignation of the Chicago area to attainment of the 1997 annual $PM_{2.5}$ standard and for EPA approval of a SIP revision containing $PM_{2.5}$-related emission inventories and a $PM_{2.5}$ maintenance plan for the Chicago area. The maintenance plan includes 2008 and 2025 MVEBs for the Chicago area. In a supplemental submission to the EPA on September 16, 2011, the IEPA revised the on-road mobile source emissions and MVEBs for the Chicago area to reflect the use of EPA's MOVES model to calculate mobile source emissions. In a supplemental submission to the EPA on May 6, 2013, the IEPA submitted VOC and ammonia emission inventories to supplement the emission inventories that had previously been submitted to support the redesignation request for the 1997 annual $PM_{2.5}$ standard in the Chicago-Gary-Lake County, IL–IN area and to demonstrate future maintenance of the $PM_{2.5}$ standard in this area.

On August 7, 2013 (78 FR 48103), EPA issued a notice of rulemaking proposing to grant Illinois' request to redesignate the Chicago area to attainment of the 1997 annual $PM_{2.5}$ standard. This notice of rulemaking also proposed to: Determine that the Chicago-Gary-Lake County, IL–IN area has attainined the 1997 annual $PM_{2.5}$ standard based on $PM_{2.5}$ monitoring data for the period of 2007 through 2012; approve Illinois' $PM_{2.5}$ maintenance plan for the Chicago area; approve 2002 primary $PM_{2.5}$, NO_X, SO_2, VOC, and ammonia emission inventories for the Chicago area; and approve 2008 and 2025 primary $PM_{2.5}$ and NO_X MVEBs for the Chicago area.

II. What is EPA's response to comments on EPA's proposed acions?

EPA received three sets of comments on the proposed rule, all of which supported EPA's proposed actions. One of these commenters requested a clarification of information provided in the proposed rule at 78 FR 48115.

A commenter representing the ExxonMobil Oil Corporation supports EPA's proposed actions, but notes that at 78 FR 48115, EPA provides estimates of the NO_X and SO_2 emission reductions expected to result from the implementation of a consent decree at the ExxonMobil Joliet Refinery in units of tons per year, whereas the consent decree specifies emission limits for the Joliet refinery as concentration-based limits. The commenter summarizes the NO_X and SO_2 emission limits in the consent decree for this facility in units of parts per million units volume of dry air (ppmvd), and requests that EPA clarify that the August 7, 2013, proposed rule is not proposing new emission limits for this facility. The commenter does not refute EPA's estimates of the NO_X and SO_2 emission reductions resulting from the consent decree.

In response to the commenter from ExxonMobil Oil Corporation, we want to clarify that it was not the intent of the proposed rule to specify existing emission limits or to propose new emission limits for this facility, and this final rule does not set new emission limits for this facility. The proposed rule simply estimated initial and final emission levels in tons per year for the purposes of estimating the changes in annual emissions that may be expected to result for this facility through the implementation of the consent decree. It was EPA's intent to document the emission reductions in the Chicago area that contributed to the attainment of the 1997 annual $PM_{2.5}$ standard in the Chicago-Gary-Lake County, IL–IN area. EPA makes no findings in this rulemaking regarding the applicable emission limits for the ExxonMobile Joliet Refineray.

None of the comments received with regard to the August 7, 2013, proposed rule object to any of the proposed actions in that proposed rule. Therefore, we conclude that there are no adverse comments for this proposed rule.

III. Why is EPA taking these actions?

EPA has determined that the Chicago-Gary-Lake County, IL–IN area continues to attain the 1997 annual $PM_{2.5}$ standard. EPA has also determined that all other criteria have been met for the redesignation of the Chicago area from nonattainment to attainment of the 1997 annual $PM_{2.5}$ standard and for approval of Illinois' maintenance plan for this area. *See* CAA sections 107(d)(3)(E) and 175A. The detailed rationale for EPA's findings and actions is set forth in the proposed rule of August 7, 2013 (78 FR 48103).

IV. What actions is EPA taking?

EPA is making a determination that the Chicago-Gary-Lake County, IL–IN area continues to attain the 1997 annual $PM_{2.5}$ standard based on 2007–2012 $PM_{2.5}$ monitoring data. EPA is determining that the Chicago area has met the requirements for redesignation to attainment for the 1997 annual $PM_{2.5}$ standard under sections 107(d)(3)(E) and 175A of the CAA. EPA is, thus, granting the request from Illinois to change the legal designation of the Chicago area from nonattainment to attainment for the 1997 annual $PM_{2.5}$ NAAQS. EPA is also approving Illinois' $PM_{2.5}$ maintenance plan for the Chicago area as a revision to the Illinois SIP because the plan meets the requirements of section 175A of the CAA. EPA is approving 2002 emission inventories for primary $PM_{2.5}$, NO_X, SO_2, ammonia, and VOC for the Chicago area as satisfying the requirement in section 172(c)(3) of the CAA for a comprehensive, current emission inventory. Finally, EPA finds adequate and is approving 2008 and 2025 primary $PM_{2.5}$ and NO_X MVEBs for the Chicago area. These MVEBs will be used in future transportation conformity analyses for the Chicago.

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for these actions to become effective immediately upon publication. This is because a delayed effective date is unnecessary due to the nature of a redesignation to attainment, which relieves the area from certain CAA requirements that would otherwise apply to it. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the ''grants or recognizes an exemption or relieves a restriction,'' and section 553(d)(3) which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however,

does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule relieves the state of planning requirements for this $PM_{2.5}$ nonattainment area. For these reasons, EPA finds good cause under 5 U.S.C. 553(d)(3) for these actions to become effective on the date of publication of these actions.

V. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by State law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, these actions merely approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by State law and the CAA. For that reason, these actions:

- Are not ''significant regulatory actions'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- are 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.*);
- do 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);
- do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- are not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- are not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and,
- do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 2, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Particulate matter, Sulfur dioxide, Ammonia, Volatile organic compounds.

40 CFR Part 81

Air pollution control, Environmental protection, National parks, Wilderness areas.

Dated: September 18, 2013.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR parts 52 and 81 are amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. Section 52.725 is amended by adding paragraphs (l) and (m) to read as follows:

§ 52.725 Control strategy: Particulates.

* * * * *

(l) Approval—The 1997 annual $PM_{2.5}$ maintenance plan for the Illinois portion of the Chicago-Gary-Lake County, IL–IN nonattainment area (including Cook, DuPage, Kane, Lake, McHenry and Will Counties, Aux Sable and Goose Lake Townships in Grundy County, and Oswego Township in Kendall County) has been approved as submitted on October 15, 2010, and supplemented on September 16, 2011, and May 6, 2013. The maintenance plan establishes 2008 and 2025 motor vehicle emissions budgets for this area of 127,951 tons per year for NO_X and 5,100 tons per year for primary $PM_{2.5}$ in 2008 and 44,224 tons per year for NO_X and 2,377 tons per year for primary $PM_{2.5}$ in 2025.

(m) Illinois' 2002 NO_X, primary $PM_{2.5}$, SO_2, ammonia, and VOC emission inventories, as submitted on October 15, 2010, and supplemented on May 6, 2013, satisfy the emission inventory requirements of section 172(c)(3) of the Clean Air Act for the Chicago area.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

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

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

■ 4. Section 81.314 is amended by revising the entry for Chicago-Gary-Lake County, IL–IN in the table entitled ''Illinois-$PM_{2.5}$ (Annual NAAQS)'' to read as follows:

§ 81.314 Illinois.

* * * * *

ILLINOIS—$PM_{2.5}$
[Annual NAAQS]

Designated area	Designation [a]	
	Date [1]	Type
Chicago-Gary-Lake County, IL–IN	10–2–13	Attainment.
Cook County		
DuPage County		
Grundy County (part)		
Goose Lake and Aux Sable Townships		
Kane County		
Kendall County (part)		
Oswego Township		
Lake County		
McHenry County		
Will County		
* * * * * * *		

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.

* * * * *

[FR Doc. 2013–23952 Filed 10–1–13; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0307; FRL–9396–6]

Glyphosate; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation amends the established tolerance for residues of the herbicide glyphosate in or on canola, seed at 20 parts per million (ppm) by changing the tolerance expression from the combined residues of glyphosate only, to the combined residues of glyphosate and N-acetyl-glyphosate (expressed as glyphosate equivalents). E.I. du Pont de Nemours and Company requested this change under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective October 2, 2013. Objections and requests for hearings must be received on or before December 2, 2013, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2011–0307, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Lois Rossi, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.* To access the OCSPP test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.''

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2011–0307 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before December 2, 2013. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified

by docket ID number EPA–HQ–OPP–2011–0307, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of April 20, 2011 (76 FR 22067) (FRL–8869–7), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 1F7840) by E.I. du Pont de Nemours and Company, 1007 Market Street, Wilmington, DE 19898. The petition requested that 40 CFR 180.364 be amended by changing the tolerance expression for residues of the herbicide glyphosate in or on canola, seed at 20 ppm from the combined residues of glyphosate only to the combined residues of glyphosate and N-acetyl-glyphosate (expressed as glyphosate equivalents) to account for application of glyphosate to the genetically modified ''Optimum GLY'' canola. That document referenced a summary of the petition prepared by E.I. du Pont de Nemours and Company, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for glyphosate including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with glyphosate follows.

In the **Federal Register** of May 1, 2013 (78 FR 25396) (FRL–9384–3), EPA issued a final rule establishing a tolerance for residues of glyphosate in or on several commodities. No new toxicological data was submitted since EPA established this regulation. The current regulation does not alter exposure levels to glyphosate and thus does not require a change in tolerance levels for canola seed. The transfer of the tolerance for canola seed from 40 CFR 180.364(a)(1) to 180.364(a)(2) does not change the estimated aggregate risks resulting from the use of glyphosate, as discussed in the preamble to the May 1, 2013 final rule. Refer to the **Federal Register** document, available at *http://www.regulations.gov,* for a detailed discussion of the aggregate risk assessment and determination of safety.

Therefore, based on the risk assessment discussed in the preamble to the final rule published in the **Federal Register** of May 1, 2013 (78 FR 25396), EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to glyphosate residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (DuPont liquid chromatography/mass spectrometry/mass spectrometry Method 15444) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has established a MRL for glyphosate in or on canola at 20 ppm for residues of glyphosate only. The U.S. tolerance is established on canola at 20 ppm for the combined residues of glyphosate and N-acetyl-glyphosate to account for application of glyphosate to genetically modified ''Optimum GLY'' canola, which metabolizes glyphosate differently than any previous canola varieties. Therefore, the Codex MRL and the U.S. tolerance cannot be harmonized.

V. Conclusion

Therefore, this regulation amends the established tolerance for residues of the herbicide glyphosate in or on canola, seed at 20 ppm by redesignating it from 40 CFR 180.364(a)(1), where compliance with the tolerance expression is determined by measuring the combined residues of glyphosate only, to 40 CFR 180.364(a)(2), where compliance with the tolerance is determined by measuring the combined residues of glyphosate and N-acetyl-glyphosate (expressed as glyphosate equivalents).

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is

not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 26, 2013.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.364, remove the entry for ''Canola, seed'' from the table in paragraph (a)(1) and add alphabetically ''Canola, seed'' to the table in paragraph (a)(2) to read as follows:

§ 180.364 Glyphosate; tolerances for residues.

(a) * * *

(2) * * *

Commodity	Parts per million
Canola, seed	20
* * * * *	

* * * * *

[FR Doc. 2013–24128 Filed 10–1–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2012–0912; FRL–9399–6]

Methoxyfenozide; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of methoxyfenozide in or on multiple commodities which are identified and discussed later in this document. Additionally, this regulation removes several established time-limited and permanent tolerances, as they will be superseded by tolerances established by this document. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective October 2, 2013. Objections and requests for hearings must be received on or before December 2, 2013, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2012–0912, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Lois Rossi, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance

regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.* To access the OCSPP test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.''

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2012–0912 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before December 2, 2013. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2012–0912, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of January 16, 2013 (78 FR 3377) (FRL–9375–4), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 2E8118) by IR–4, 500 College Road East, Suite 201W, Princeton, NJ 08540. The petition requested that 40 CFR 180.544 be amended by establishing tolerances for residues of the insecticide methoxyfenozide (3-methoxy-2-methylbenzoic acid 2-(3,5-dimethylbenzoyl)-2-(1,1-dimethylethyl) hydrazide) in or on atemoya at 0.6 parts per million (ppm); berry, low growing, except cranberry, subgroup 13–07G at 1.5 ppm; biriba at 0.6 ppm; caneberry subgroup 13–07A at 6 ppm; cherimoya at 0.6 ppm; custard apple at 0.6 ppm; date at 7 ppm; fruit, pome, group 11–10 at 1.5 ppm; fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 1 ppm; grain, aspirated grain fractions at 80 ppm; herb subgroup 19A, except chive at 400 ppm; ilama at 0.6 ppm; pea and bean, dried shelled, except soybean, subgroup 6C, except pea, blackeyed, seed and pea, southern, seed at 0.5 ppm; sorghum, grain, forage at 9 ppm; sorghum, grain, grain at 4 ppm; sorghum, grain, stover at 15 ppm; sorghum, sweet, forage at 9 ppm; sorghum, sweet, grain at 4 ppm; sorghum, sweet, stalk at 9 ppm; sorghum, sweet, stover at 15 ppm; soursop at 0.6 ppm; sugar apple at 0.6 ppm; and vegetable, fruiting, group 8–10 at 2 ppm.

Additionally, the petition requested that EPA establish tolerances under paragraph (d)(2) for indirect or inadvertent residues of methoxyfenozide in or on rapeseed subgroup 20A at 1.0 ppm and sunflower subgroup 20B at 1.0 ppm, and to amend the tolerance for herb and spice, group 19, except coriander, leaves at 4.5 ppm to spice subgroup 19B at 4.5 ppm. Upon approval of the proposed tolerances listed under ''New Tolerances,'' the petition finally requested that EPA remove the following commodities from paragraph (a)(1): Bean, dry seed at 0.24 ppm; coriander, leaves at 30 ppm; grape at 1.0 ppm; fruit, pome, group 11 at 1.5 ppm; okra at 2.0 ppm; pea, dry seed at 2.5 ppm; strawberry at 1.5 ppm; and vegetable, fruiting, group 8 at 2.0 ppm. That document referenced a summary of the petition prepared on behalf of IR–4 by Dow AgroSciences, LLC, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has revised the proposed tolerance levels for several commodities. The Agency has also removed the time-limited tolerances for several commodities and the established tolerance in or on grain, aspirated grain fractions. The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for methoxyfenozide including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with methoxyfenozide follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The main target organs identified from the toxicity studies on methoxyfenozide were the liver, thyroid, and red blood cells, though many of the available short-term or subchronic toxicity studies showed

little or no toxicity. Effects of methoxyfenozide on the blood in mammals (methemoglobinemia, decreased red blood cell parameters, Heinz body formation) are consistent with those of other hydrazine compounds. Hematologic parameters in the rat and dog were affected by exposure to methoxyfenozide. Mild anemia (decreases in red blood cell count, hematocrit and hemoglobin) was observed in both species following chronic dietary exposure, along with methemoglobinemia and red blood cell structural abnormalities. Increased platelets were also observed. An increase in the cellularity of rib and sternum bone marrow, along with macrophage pigmentation in the liver and spleen, were reported in the dog. No significant hematological changes were seen in the dog or rat subchronic studies, or the rat 2 week range-finding studies; however, hematological effects were observed in the dog 2 week range-finding study, along with increased spleen weight. No hematological effects were reported in the mouse.

Increased liver weight and periportal hypertrophy were observed in the rat and dog. These findings were observed in the rat following 2-week, subchronic or chronic dietary exposure and in the dietary reproductive toxicity study, and in the dog following chronic exposure. In the rat 2-week toxicity study, increased adrenal gland weight and minimal hypertrophy of the zone fasciculata, and increased thyroid follicular cell hypertrophy/hyperplasia were also observed. Thyroid hypertrophy and altered colloid and increased adrenal weights were observed in the rat chronic oral study, and the incidence and severity of chronic progressive glomerulonephropathy was increased. Thyroid weights were increased in the dog following chronic exposure.

Acute and subchronic oral neurotoxicity studies in the rat did not show evidence of potential neurotoxicity. In the acute study, decreased hindlimb grip strength on day 0 was reported in males. This finding was only observed at the limit dose in males and was not observed in the subchronic neurotoxicity study and was therefore not considered evidence of neurotoxicity. No clinical signs of toxicity or neurohistopathology were observed in other guideline studies.

No maternal or developmental effects were observed in either the rat or rabbit developmental toxicity studies. In the rat 2-generation reproductive toxicity study, no offspring or reproductive toxicity was observed, and parental effects were limited to increased liver weight and microscopic periportal hypertrophy. In an immunotoxicity study in the rat, no immunotoxicity was observed.

There was no evidence of carcinogenicity in the rat combined chronic toxicity and carcinogenicity study or the mouse carcinogenicity study. No mutagenic or clastogenic potential was observed in the battery of genotoxicity studies on methoxyfenozide. Based on these findings, methoxyfenozide has been classified as ''not likely to be carcinogenic to humans.''

Specific information on the studies received and the nature of the adverse effects caused by methoxyfenozide as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document: ''Methoxyfenozide. Human Health Risk Assessment to Support Proposed New Uses on Herbs, Caneberries, Dates and Sorghum; to Establish Rotational Crop Tolerances in the Rapeseed and Sunflower Oilseed Subgroups; as well as to Extend and Update Crop Group Tolerances on Multiple Commodities'' at pp. 35–41 in docket ID number EPA–HQ–OPP–2012–0192.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for methoxyfenozide used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of July 11, 2012 (77 FR 40806) (FRL–9354–1).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to methoxyfenozide, EPA considered exposure under the petitioned-for tolerances as well as all existing methoxyfenozide tolerances in 40 CFR 180.544. EPA assessed dietary exposures from methoxyfenozide in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No such effects were identified in the toxicological studies for methoxyfenozide; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM–FCID) Version 3.16, which uses food consumption data from the U.S. Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, ''What We Eat in America'' (NHANES/WWEIA) from 2003 through 2008. As to residue levels in food, EPA utilized tolerance-level residues, DEEM (Version 7.81) default processing factors as necessary, an empirical processing factor for orange juice, and 100 percent crop treated (PCT) for all commodities.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that methoxyfenozide does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and PCT information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for methoxyfenozide. Tolerance level residues and/or 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for methoxyfenozide in drinking water. These simulation models take into account data on the physical, chemical,

and fate/transport characteristics of methoxyfenozide. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Pesticide Root Zone Model Ground Water (PRZM GW), the estimated drinking water concentrations (EDWCs) of methoxyfenozide for chronic exposures for non-cancer assessments are estimated to be 51.6 parts per billion (ppb) for surface water and 251 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 251 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Methoxyfenozide is currently registered for the following uses that could result in residential exposures: Ornamental uses, including on residential property. EPA assessed residential exposure using the following assumptions: Adult handlers were assessed for short-term inhalation exposures from mixing, loading, and applying methoxyfenozide using a manually pressurized hand wand, backpack sprayer, or hose-end sprayer. Since the short- and intermediate-term toxicological endpoints are the same, only short-term exposures have been assessed and are assumed to be protective of intermediate-term exposures. A postapplication exposure assessment was not conducted for adults because the handler assessment is expected to be protective of postapplication exposure via the inhalation route. Although there is also potential for dermal exposure, there is no expectation of dermal risk to any population, including infants and children, based on the lack of dermal toxicity for methoxyfenozide. Furthermore, the potential for postapplication oral exposures to children is not expected since the extent to which young children engage in activities associated with areas where residential ornamentals are grown or use these areas for prolonged periods of play is low. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found methoxyfenozide to share a common mechanism of toxicity with any other substances, and methoxyfenozide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that methoxyfenozide does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act Safety Factor (FQPA SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* Based on the results in the developmental toxicity studies in rats and rabbits and in the 2-generation reproduction study in rats, no increased sensitivity of fetuses or pups, as compared to adults, was demonstrated for methoxyfenozide. There are no concerns or residual uncertainties for pre- or postnatal toxicity following exposure to methoxyfenozide.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for methoxyfenozide is complete.

ii. There is no indication that methoxyfenozide is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional uncertainty factors (UFs) to account for neurotoxicity.

iii. There is no evidence that methoxyfenozide results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The chronic dietary food exposure assessment was performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to methoxyfenozide in drinking water. Based on the discussion in Unit III.C.3., residential exposures to children or toddlers are not expected. These assessments will not underestimate the exposure and risks posed by methoxyfenozide.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, methoxyfenozide is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to methoxyfenozide from food and water will utilize 84% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of methoxyfenozide is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Methoxyfenozide is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to methoxyfenozide.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in an aggregate MOE of 530 for adult handlers. Because EPA's level of concern for methoxyfenozide is a MOE of 100 or below, this MOE is not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Methoxyfenozide is currently registered for uses that could result in intermediate-term residential exposure. However, based on the information in Unit III.C.3., an intermediate-term aggregate exposure assessment was not performed and is not necessary.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, methoxyfenozide is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to methoxyfenozide residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology, using high performance liquid chromatography (HPLC), with either mass spectrometric detection (LC/MS) or ultraviolet detection (HPLC/UV), is available to enforce the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has established MRLs for methoxyfenozide in or on commodities associated with this action. Codex has established MRLs in or on grapes at 1 milligram/kilogram (mg/kg); pepper and tomato at 2 mg/kg; pome fruits at 2 mg/kg; and strawberries at 2 mg/kg. The U.S. tolerances for small vine climbing fruit, except fuzzy kiwifruit subgroup 13–07F at 1.0 ppm (represented by grape); and vegetable, fruiting, group 8–10 (represented by commodities including pepper and tomato) at 2.0 ppm are harmonized with the Codex MRLs for grape and for pepper and tomato, respectively.

Additionally, the EPA is establishing a tolerance in or on fruit, pome, group 11–10 at 2.0 ppm, which is increased from the current tolerance of 1.5 ppm for fruit, pome, group 11, in order to harmonize with the Codex MRL in or on fruit, pome at 2 mg/kg. The Agency is also establishing a tolerance in or on berry, low growing, subgroup 13–07G, except cranberry (represented by strawberry) at 2.0 ppm, in order to harmonize with the Codex MRL in or on strawberry at 2 mg/kg. The 13–07G tolerance is being increased from the current tolerance of 1.5 ppm in or on strawberry.

The recommended tolerance of 0.50 ppm in or on pea and bean, dried shelled, except soybeans subgroup 6C, was proposed at the Agency's request to better harmonize with the existing Codex MRL of 0.5 mg/kg in or on dried beans. This tolerance will supersede the current tolerances in or on dried beans at 0.24 ppm, and in or on dried peas at 2.5 ppm. The Codex has not established MRLs for other commodities associated with this action.

C. Revisions to Petitioned-For Tolerances

Based on the data supporting the petition, EPA has revised the proposed tolerances for several commodities, as follows: Date from 7.0 ppm to 8.0 ppm; grain, aspirated grain fractions from 80 ppm to 120 ppm; sorghum, grain, forage from 9.0 ppm to 15 ppm; sorghum, grain, grain from 4.0 ppm to 6.0 ppm; sorghum, grain, stover from 15 ppm to 20 ppm; sorghum, sweet, forage from 9.0 ppm to 15 ppm; sorghum, sweet, grain from 4.0 ppm to 6.0 ppm; sorghum sweet, stalk from 9.0 ppm to 15 ppm; and sorghum, sweet, stover from 15 ppm to 20 ppm. The Agency revised these tolerance levels based on analysis of the residue field trial data using the Organization for Economic Cooperation and Development (OECD) tolerance calculation procedures. As previously discussed, EPA has also revised the following proposed tolerances in order to harmonize with established Codex MRLs: Berry, low growing, subgroup 13–07G, except cranberry from 1.5 ppm to 2.0 ppm, and fruit, pome, group 11–10 from 1.5 ppm to 2.0 ppm.

EPA is establishing a tolerance in or on herb subgroup 19A, except chive at 400 ppm. The petition to the Agency requested concurrently to amend the established tolerance for indirect or inadvertent residues in or on herb and spice, group 19, except coriander, leaves at 4.5 ppm to spice subgroup 19B at 4.5 ppm, because a permanent tolerance in or on subgroup 19A was proposed to be established and an inadvertent tolerance is no longer needed when a commodity has a tolerance allowing for direct treatment. However, because the permanent tolerance being established in or on herb subgroup 19A does not include a tolerance for chive and chive is not included in subgroup 19B, the Agency determined that it is also necessary to maintain a tolerance for the indirect or inadvertent residues of methoxyfenozide in or on chive, as the commodity was previously covered by the group 19 indirect or inadvertent residue tolerance. Therefore, EPA is also establishing an individual tolerance for the indirect or inadvertent residues of methoxyfenozide in or on chive at 4.5 ppm.

Additionally, EPA determined that the time-limited tolerances in or on sorghum, forage at 30.0 ppm; sorghum, grain at 0.05 ppm; and sorghum, stover at 60.0 ppm should be removed because the tolerances expired on December 31, 2012, and because they will be superseded by permanent tolerances for these commodities. Finally, the Agency has determined that the established

tolerance in or on grain, aspirated fractions at 2.0 ppm should be removed, as it will be superseded by the grain, aspirated grain fractions tolerance at 120 ppm.

V. Conclusion

Therefore, tolerances are established for residues of methoxyfenozide (3-methoxy-2-methylbenzoic acid 2-(3,5-dimethylbenzoyl)-2-(1,1-dimethylethyl) hydrazide) in or on atemoya at 0.60 ppm; berry, low growing, subgroup 13–07G, except cranberry at 2.0 ppm; biriba at 0.60 ppm; caneberry subgroup 13–07A at 6.0 ppm; cherimoya at 0.60 ppm; custard apple at 0.60 ppm; date at 8.0 ppm; fruit, pome, group 11–10 at 2.0 ppm; fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 1.0 ppm; grain, aspirated grain fractions at 120 ppm; herb subgroup 19A, except chive at 400 ppm; ilama at 0.60 ppm; pea and bean, dried shelled, except soybean, subgroup 6C, except pea, blackeyed, seed and pea, southern, seed at 0.50 ppm; sorghum, grain, forage at 15 ppm; sorghum, grain, grain at 6.0 ppm; sorghum, grain, stover at 20 ppm; sorghum, sweet, forage at 15 ppm; sorghum, sweet, grain at 6.0 ppm; sorghum, sweet, stalk at 15 ppm; sorghum, sweet, stover at 20 ppm; soursop at 0.60 ppm; sugar apple at 0.60 ppm; and vegetable, fruiting, group 8–10 at 2.0 ppm. This regulation additionally establishes tolerances for indirect or inadvertent residues in or on rapeseed subgroup 20A at 1.0 ppm and sunflower subgroup 20B at 1.0 ppm. The regulation also amends the tolerance for indirect or inadvertent residues in or on herb and spice, group 19, except coriander, leaves at 4.5 ppm to spice subgroup 19B at 4.5 ppm and chive at 4.5 ppm.

This regulation additionally removes the established tolerances in or on bean, dry, seed at 0.24 ppm; coriander, leaves at 30 ppm; fruit, pome, group 11 at 1.5 ppm; grain, aspirated fractions at 2.0 ppm; grape at 1.0 ppm; okra at 2.0 ppm; pea, dry, seed at 2.5 ppm; strawberry at 1.5 ppm; and vegetable, fruiting, group 8 at 2.0 ppm. Finally, this regulation removes the time-limited tolerances in or on sorghum, forage at 30.0 ppm; sorghum, grain at 0.05 ppm; and sorghum, stover at 60.0 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 26, 2013.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.544:

■ a. Remove bean, dry, seed; coriander, leaves; fruit, pome, group 11; grain, aspirated fractions; grape; okra; pea, dry seed; strawberry; and vegetable, fruiting, group 8 from the table in paragraph (a)(1).

■ b. Remove and reserve paragraph (b).

■ c. Remove herb and spice, group 19, except coriander, leaves from the table in paragraph (d)(2).

■ d. Add the following commodities in alphabetical order to the tables in paragraphs (a)(1) and (d)(2) as shown.

§ 180.544 Methoxyfenozide; tolerances for residues.

(a) * * *

(1) * * *

Commodity	Parts per million
* * * * *	
Atemoya	0.60
* * * * *	
Berry, low growing, subgroup 13–07G, except cranberry	2.0
Biriba	0.60
* * * * *	
Caneberry subgroup 13–07A	6.0
* * * * *	
Cherimoya	0.60

Commodity	Parts per million
* * * * *	
Custard apple	0.60
Date	8.0
* * * * *	
Fruit, pome, group 11–10	2.0
Fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F	1.0
* * * * *	
Grain, aspirated grain fractions	120
* * * * *	
Herb subgroup 19A, except chive	400
* * * * *	
Ilama	0.60
* * * * *	
Pea and bean, dried shelled, except soybean, subgroup 6C, except pea, blackeyed, seed and pea, southern, seed	0.50
* * * * *	
Sorghum, grain, forage	15
Sorghum, grain, grain	6.0
Sorghum, grain, stover	20
Sorghum, sweet, forage	15
Sorghum, sweet, grain	6.0
Sorghum, sweet, stalk	15
Sorghum, sweet, stover	20
Soursop	0.60
* * * * *	
Sugar apple	0.60
* * * * *	
Vegetable, fruiting, group 8–10	2.0
* * * * *	

* * * * *

(b) *Section 18 emergency exemptions.* [Reserved]

* * * * *

(d) * * *

(2) * * *

Commodity	Parts per million
* * * * *	
Chive	4.5
* * * * *	
Rapeseed subgroup 20A	1.0
Spice subgroup 19B	4.5
Sunflower subgroup 20B	1.0

[FR Doc. 2013–24127 Filed 10–1–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2012–0885; FRL–9397–8]

Sedaxane; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of sedaxane in or on potato and potato, wet peel. Syngenta Crop Protection, LLC requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective October 2, 2013. Objections and requests for hearings must be received on or before December 2, 2013, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2012–0885, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Lois Rossi, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2012–0885 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before December 2, 2013. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2012–0885, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, EPA/DC, (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://*

www.epa.gov/dockets/contacts.htm. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of December 19, 2012 (77 FR 75082) (FRL–9372–6), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 2F8113) by Syngenta Crop Protection, Inc., Regulatory Affairs, P.O. Box 18300, Greensboro, NC 27419–8300. The petition requested that 40 CFR 180.665 be amended by establishing tolerances for residues of the fungicide sedaxane, in or on potato at 0.02 parts per million (ppm) and potato, wet peel at 0.06 ppm. That document referenced a summary of the petition prepared by Syngenta Crop Protection, Inc., the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has recommended that a different tolerance be set for potato, wet peel. The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for sedaxane including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with sedaxane follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The toxicological effects reported in the submitted animal studies such as mitochondrial disintegration and glycogen depletion in the liver are consistent with the pesticidal mode of action also being the mode of toxic action in mammals. The rat is the most sensitive species tested, and the main target tissue for sedaxane is the liver. Sedaxane also caused thyroid hypertrophy/hyperplasia. In the acute neurotoxicity (ACN) and sub-chronic neurotoxicity (SCN) studies, sedaxane caused decreased activity, decreased muscle tone, decreased rearing and decreased grip strength.

There are indications of reproductive toxicity in rats at the high dose, but these effects did not result in reduced fertility. In the rat, no adverse effects in fetuses were seen in developmental toxicity studies at maternally toxic doses. However, in the rabbit, fetal toxicity was observed at the same doses as the dams. Offspring effects in the reproduction study occurred at the same doses causing parental effects, thus there was no quantitative increase in sensitivity in rat pups. Sedaxane is tumorigenic in the liver in the rat and mouse, and led to tumors in the thyroid and uterus in the rat and was classified as ''likely to be carcinogenic to humans.'' Sedaxane was negative in the mutagenicity studies. The 28-day dermal study did not show systemic toxicity at the limit dose of 1,000 milligrams/kilogram/day (mg/kg/day). Sedaxane has low acute toxicity by the oral, dermal, and inhalation routes. It is not a dermal sensitizer, causes no skin irritation and only slight eye irritation.

Specific information on the studies received and the nature of the adverse effects caused by sedaxane as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in the final rule published in the **Federal Register** of June 20, 2012 (77; FR 36920) (FRL–9345–8).

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which the NOAEL and LOEAL are identified. Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for sedaxane used for human risk assessment is discussed in Unit B of the final rule published in the **Federal Register** of June 20, 2012 (77 FR 36920) (FRL–9345–8).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to sedaxane, EPA considered exposure under the petitioned-for tolerances as well as all existing sedaxane tolerances in 40 CFR 180.665. EPA assessed dietary exposures from sedaxane in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Such effects were identified for sedaxane. In estimating acute dietary exposure, EPA used 2003–2008 food consumption information from the U.S. Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). As to residue levels in food, EPA conducted a highly conservative acute dietary risk

assessment which used tolerance level residues and assumed that 100% of all commodities were treated.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment, EPA used the food consumption data from the USDA's 2003–2008 NHANES/WWEIA. As to residue levels in food, EPA conducted a partially refined chronic dietary risk assessment which used anticipated residues and assumed 100 percent crop treated (PCT) for all commodities except for soybean, wheat, and potato, where average PCT estimates of 51, 32, and 67, respectively, were used, and modeled drinking water estimates were included.

iii. *Cancer.* EPA assessed exposure for the purpose of estimating cancer risk assuming anticipated residues and 100 PCT for all commodities except for soybean, wheat, and potato, where average percent crop treated estimates of 51, 32, and 67, respectively, were used, and modeled drinking water estimates were included.

iv. *Anticipated residue PCT information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances. Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- Condition A: The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- Condition B: The exposure estimate does not underestimate exposure for any significant subpopulation group.
- Condition C: Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency estimated the PCT for existing uses as follows:

For chronic and cancer dietary exposure assessment, 100% was assumed for all commodities except for soybeans (51%) and wheat (32%), which incorporated average PCT estimates. Average PCT estimates were also used for the proposed use on potato (67%).

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and the National Pesticide Use Database for the chemical/crop combination for the most recent 6–7 years. EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than one. In those cases, 1% is used as the average PCT and 2.5% is used as the maximum PCT. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the highest observed maximum value reported within the recent 6 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition A, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions B and C, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which sedaxane may be applied in a particular area.

EPA did not use anticipated residue or PCT information in the acute dietary assessment for sedaxane. However, for the chronic and cancer dietary assessments, anticipated residues were used along with 100 PCT for all food commodities except for soybean, wheat, and potato, where average PCT estimates of 51, 32, and 67, respectively, were used, and modeled drinking water estimates were included.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for sedaxane in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of sedaxane. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the Tier I Food Quality Protection Act (FQPA) Index Reservoir Screening Tool (FIRST) and Tier II pesticide root zone model PRZM-Groundwater (PRZM–GW Version 1.0, 12/11/2012), the estimated drinking water concentrations (EDWCs) of sedaxane for acute exposures are estimated to be 4.1 parts per billion (ppb) for surface water and 15.1 ppb for ground water. The water exposures for the chronic dietary and cancer assessments are estimated to be 1.2 ppb for surface water and 13 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 15.1 ppb was used to assess the contribution to drinking water. For chronic and cancer dietary risk assessment, the water concentration value of 13 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Sedaxane is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the

cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' EPA has not found sedaxane to share a common mechanism of toxicity with any other substances. For the purposes of this tolerance action, therefore, EPA has assumed that sedaxane does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There is no evidence for increased susceptibility following prenatal and/or postnatal exposures to sedaxane based on effects seen in developmental toxicity studies in rabbits or rats. There was no evidence of increased susceptibility in a 2-generation reproduction study in rats following prenatal or postnatal exposure to sedaxane. Clear NOAELs/LOAELs were established for the developmental effects seen in rats and rabbits as well as for the offspring effects seen in the 2-generation reproduction study. The dose-response relationship for the effects of concern is well characterized. The NOAEL used for the acute dietary risk assessment (30 mg/kg/day), based on effects observed in the ACN study, is protective of the developmental and offspring effects seen in rabbits and rats (NOAELs of 100–200 mg/kg/day).

In addition, there is no evidence of neuropathology or abnormalities in the development of the fetal nervous system from the available toxicity studies conducted with sedaxane.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1x. That decision is based on the following findings:

i. The toxicity database for sedaxane is complete.

ii. The sedaxane toxicology database did not demonstrate evidence of neurotoxicity. Although sedaxane caused changes in endpoints such as decreased activity, decreased muscle tone, decreased rearing and decreased grip strength in the ACN study and reduced locomotor activity in the SCN study, EPA believes these effects do not support a finding that sedaxane is a neurotoxicant. The observed effects in the ACN and SCN studies were likely secondary to inhibition of mitochondrial energy production, which is the pesticidal mode of action for sedaxane. Furthermore, there was no corroborative neuro-histopathology demonstrated in any study, even at the highest doses tested (i.e., 2,000 mg/kg/day). Therefore, based on its chemical structure, its pesticidal mode of action, and lack of evidence of neuro-histopathology in any acute and repeated-dose toxicity study, sedaxane does not demonstrate potential for neurotoxicity. Since sedaxane did not demonstrate increased susceptibility to the young or specific neurotoxicity, a developmental neurotoxicity (DNT) study is not required.

iii. There is no evidence that sedaxane results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed as screening-level (acute) or partially-refined (chronic) assessments. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to sedaxane in drinking water. These assessments will not underestimate the exposure and risks posed by sedaxane.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

Sedaxane is a member of the pyrazole carboxamide fungicides. Metabolic processes involving cleavage of the linkage between the pyrazole and phenyl rings of these compounds have the potential to produce common pyrazole-metabolites. Indeed, confined rotational crops studies for sedaxane and isopyrazam demonstrate that low levels of three common metabolites form. However, due to the low levels of these compounds in rotational crops (<=0.01 ppm), and low concerns about their potential toxicity relative to parent molecules, any risks from aggregation of exposures to common metabolites across chemicals will be insignificant.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to sedaxane will occupy <1% of the aPAD for all populations.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to sedaxane from food and water will utilize <1% of the cPAD for all populations. There are no residential uses for sedaxane.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account short- and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Short- and intermediate-term adverse effects were identified; however, sedaxane is not registered for any use patterns that would result in short- or intermediate-term residential exposures. Because there is no short- or intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short-term risk), no further assessment of short- or intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short- and intermediate-term risk for sedaxane.

4. *Aggregate cancer risk for U.S. population.* The Agency has classified sedaxane as ''Likely to be Carcinogenic to Humans'' based on significant tumor increases in two adequate rodent carcinogenicity studies. Accordingly, a cancer dietary risk assessment was conducted, indicating a risk estimate of 1×10^{-6} for the U.S. population. EPA considers risks in the range of 1×10^{-6} to be negligible.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that

no harm will result to the general population, or to infants and children from aggregate exposure to sedaxane residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology is available to enforce the tolerance expression. A modification of the Quick, Easy, Cheap, Effective, Rugged, and Safe (QuEChERS) method was developed for the determination of residues of sedaxane (as its isomers SYN508210 and SYN508211) in/on various crops. A successful independent laboratory validation (ILV) study was also conducted on the modified QuEChERS method using samples of wheat green forage and wheat straw fortified with SYN508210 and SYN508211 at 0.005 and 0.05 ppm. The analytical standard for sedaxane, with an expiration date of June 30, 2014, is currently available in the EPA National Pesticide Standards Repository. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level. The Codex has not established MRLs for sedaxane.

C. Revisions to Petitioned-For Tolerances

The Agency determined that the tolerance level for potato, wet peel should be changed from the petitioned-for 0.06 ppm to 0.075 ppm based upon EPA's examination of the level of residues that may remain on potatoes following application of sedaxane at the maximum label rate and the average degree of sedaxane residue concentration in wet potato peel.

V. Conclusion

Therefore, tolerances are established for residues of sedaxane, including its metabolites and degradates in or on potato; and potato, wet peel at 0.02 and 0.075 ppm respectively.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 17, 2013.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.665, add alphabetically the following commodities to the table in paragraph (a) to read as follows:

§ 180.665 Sedaxane; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Potato	0.02
Potato, wet peel	0.075
* * * * *	

* * * * *

[FR Doc. 2013–23941 Filed 10–1–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0332; FRL–9401–3]

Methyl Parathion; Removal of Expired Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is removing listings in the Code of Federal Regulations (CFR) for already expired tolerances for methyl parathion, for the purpose of clarity and in accordance with current EPA practice.

DATES: This regulation is effective October 2, 2013.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2009–0332, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets*.

FOR FURTHER INFORMATION CONTACT: Joseph Nevola, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8037; email address: *nevola.joseph@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl*.

II. Background

A. What action is the agency taking?

In this final rule, EPA is removing listings in the CFR for already expired tolerances for methyl parathion in § 180.121(e). In the **Federal Register** of January 5, 2001 (66 FR 1242) (FRL–6752–6), EPA promulgated a final rule revoking methyl parathion uses in commodities for which methyl parathion use was unlawful after December 31, 1999. The final rule listed these expired tolerances in § 180.121(e). However, some people have inaccurately read § 180.121(e) to mean that there are active methyl parathion tolerances for these commodities. In order to eliminate confusion, EPA is removing paragraph (e) in its entirety. EPA is not making any change in the status of these expired tolerances, just removing an informational listing that the Agency believes is no longer needed and that may be misleading if not read correctly.

EPA is issuing a final rule for this purpose without notice and opportunity to comment. Section 553(b)(3)(B) of the Administrative Procedure Act provides that notice and comment is not necessary ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' EPA finds good cause here because removing the listings does not affect the legal status of the already expired tolerances.

B. What is the agency's authority for taking this action?

EPA is not taking any action that substantively changes a tolerance. EPA is only taking administrative action to remove the informational listing in § 180.121(e).

C. When do these actions become effective?

As stated in the **DATES** section, this final rule is effective October 2, 2013. The methyl parathion tolerances expired more than 13 years ago and the Agency believes that the informational listing in § 180.121(e) is no longer needed.

III. Statutory and Executive Order Reviews

In this final rule, EPA is removing a listing of already expired tolerances. The Office of Management and Budget (OMB) has exempted this type of action from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866 due to its lack of significance, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*). Nor does it require any special considerations as required by Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Furthermore, for the pesticide named in this final rule, the Agency knows of no extraordinary circumstances that exist as to the present removal of listings for already expired tolerances that would change EPA's analysis. In addition, the Agency has determined that this action will not have a substantial direct effect

on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the Federal Food, Drug, and Cosmetic Act (FFDCA). For these same reasons, the Agency has determined that this final rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). Executive Order 13175, requires 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.'' This final rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this final rule.

IV. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 18, 2013.

Steven Bradbury,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

§ 180.121 [Amended]

■ 2. In § 180.121, remove paragraph (e).

[FR Doc. 2013–23801 Filed 10–1–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1983–0002; FRL–9901–60–Region 2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Ludlow Sand & Gravel Superfund Site

AGENCY: United States Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 2 is publishing a direct final Notice of Deletion of the Ludlow Sand & Gravel Superfund Site (Site), located in the Town of Paris, Oneida County, New York, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP).This direct final Notice of Deletion is being published by EPA with the concurrence of the State of New York (State), through the New York State Department of Environmental Conservation (NYSDEC). EPA and NYSDEC have determined that all appropriate response actions under CERCLA, other than monitoring and maintenance (M&M) and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: This direct final deletion will be effective December 2, 2013 unless EPA receives adverse comments by November 1, 2013. If adverse comments are received, EPA will publish a timely withdrawal of this direct final deletion in the **Federal Register**, informing the public that the deletion will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1983–0002, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: rodrigues.isabel@epa.gov.*
- *Fax:* To the attention of Isabel Rodrigues at 212–637–4284.
- *Mail:* To the attention of Isabel Rodrigues, Remedial Project Manager, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 20th Floor, New York, NY 10007–1866.
- *Hand Delivery:* Superfund Records Center, 290 Broadway, 18th Floor, New York, NY 10007–1866 (telephone: 212–637–4308). Such deliveries are only accepted during the Record Center's normal hours of operation (Monday to Friday from 9 a.m. to 5 p.m.). Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–1983–0002: EPA's policy is that all comments received will be included in the Docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or via email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comments. If you send comments to EPA via email, your email address will be included as part of the comment that is placed in the Docket and made available on the Web site. If you submit electronic comments, EPA recommends that you include your name and other contact information in the body of your

comments and with any disks or CD–ROMs that you submit. If EPA cannot read your comments due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comments. Electronic files should avoid the use of special characters and any form of encryption and should be free of any defects or viruses.

Docket: All documents in the Docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available Docket materials can be viewed electronically at *http://www.regulations.gov* or obtained in hard copy at:

U.S. Environmental Protection Agency, Region 2, Superfund Records Center, 290 Broadway, 18th Floor, New York, NY 10007–1866, *Phone:* 212–637–4308, *Hours:* Monday to Friday from 9:00 a.m. to 5:00 p.m. and

Town of Paris, Town Hall, 2580 Sulphur Springs Road, Sauquoit, NY 13456–0451, *Phone:* 315–839–5400, *Hours:* Monday–Thursday from 9:00 a.m. to 4:00 p.m., Friday from 9:00 a.m. to 12:00 p.m. and

NYSDEC Central Office, 625 Broadway, Albany, NY 12233–7016, *Phone:* 518–402–9775, *Hours:* Monday–Friday from 9:00 a.m. to 5:00 p.m., Please call for an appointment. and

NYSDEC Region 6 Sub-Office, State Office Building, 207 Genesee Street, Utica, NY 13501, Phone: 315–793–2555, *Hours:* Monday–Friday from 8:30 a.m. to 4:45 p.m.,Please call for an appointment.

FOR FURTHER INFORMATION CONTACT: Isabel Rodrigues, Remedial Project Manager, by mail at Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 20th floor, New York, NY 10007–1866; telephone at 212–637–4248; fax at 212–637–4284; or email at *rodrigues.isabel@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion
V. Deletion Action

I. Introduction

EPA Region 2 is publishing this direct final deletion of the Ludlow Sand & Gravel Superfund Site from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR Part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of Comprehensive Environmental response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in Section 300.425(e)(3) of the NCP, a site deleted from the NPL remains eligible for remedial actions if conditions at the site warrant such action.

Because EPA considers this action to be noncontroversial and routine, this action will be effective December 2, 2013 unless EPA receives significant adverse comments by November 1, 2013. Along with this direct final Notice of Deletion, EPA is co-publishing a Notice of Intent to delete the Site in the ''Proposed Rules'' section of today's **Federal Register**. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final Notice of Deletion before the effective date of the deletion and the deletion will not take effect. EPA will, if appropriate, prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments received. In such a case, there will be no additional opportunity to comment.

Section II below explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless significant adverse comments are received during the public comment period.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where there is no risk posed or no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the state, whether any of the following criteria have been met:

i. Responsible parties or other parties have implemented all appropriate response actions required;

ii. All appropriate Fund-financed responses under CERCLA have been implemented, and no further action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release of hazardous substances poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121 (c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site.

(1) EPA consulted with the state of New York prior to developing this direct final Notice of Deletion and the Notice of Intent to Delete also published today in the ''Proposed Rules'' section of the **Federal Register**.

(2) EPA has provided the State 30 working days for review of this notice and the parallel Notice of Intent to Delete prior to their publication today, and the State, through the NYSDEC, has concurred on the deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final Notice of Deletion, a notice of the availability of the parallel Notice of Intent to Delete is being published in a major local newspaper, *The Observer-Dispatch* (Utica). The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

(4) EPA placed copies of documents supporting the proposed deletion in the Docket and made these items available for public inspection and copying at the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely notice of withdrawal of

this direct final Notice of Deletion before its effective date and will prepare a response to comments. If appropriate, EPA may then continue with the deletion process based on the Notice of Intent to Delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA's management of sites. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following summary provides the Agency's rationale for deleting the Site from the NPL.

Site Background and History

The Site is located in the Town of Paris, Oneida County, New York, approximately six miles south of Utica. The Ludlow Sand & Gravel property encompasses approximately 60 acres with landfill activities confined to approximately 18 acres. The fill area is fenced on the western boundary along Holman City Road. The south and east sides of the landfill are bounded by a designated wetland and an unnamed stream, while to the north, the landfill is bounded by a gravel pit which is also part of the Site.

The landfill began receiving municipal refuse from surrounding communities in the 1960's. The landfill also received bulk liquid, including septage, waste oils, coolants, and sludges containing metals. The bulk liquids were disposed of at the landfill by surface application. The on-site gravel pit, known as the North Gravel Pit (NGP), located to the north of the landfill, was also periodically used for the disposal of bulk waste oils. Drummed liquid wastes were reportedly not disposed of in the landfill. Drummed liquids were bulked using a vacuum truck and were applied to the landfill in a manner similar to the bulk liquids previously described. The landfill continued to accept waste until it was shut down by court order in 1988.

As early as 1966, New York State cited the owner/operator, Mr. Ludlow, for improper or illegal waste disposal practices. A variety of legal actions were taken against Mr. Ludlow in response to legal complaints made by the New York State Department of Law.

Preliminary site investigations conducted by NYSDEC in 1982 identified the presence of polychlorinated biphenyls (PCBs) in leachate seeps emanating from the landfill. Reports from the community and site inspections conducted by the NYSDEC indicated that the Site warranted proposal for the NPL. In December 1982, the Site was proposed to the NPL (47 FR 58476). In September 1983, the Site was placed on the NPL (48 FR 40658). EPA, in consultation with the State, divided the site into two operable units (OUs). OU1 addressed the landfill proper and OU2 was to address contamination in off-site groundwater, the on-site wetlands, and the NGP.

Remedial Investigation and Feasibility Study

Special Metals Corporation of Utica, New York, a potentially responsible party (PRP), agreed to perform a Remedial Investigation/Feasibility Study (RI/FS) for the site in an Administrative Consent Order with the State that was signed on September 10, 1984. The completed RI/FS was submitted to the State in 1986 and included a recommendation for landfill closure as the remedy for the site. The FS recommended alternatives for remediating the landfill that were less stringent than the federal and state requirements. Subsequently, Mr. Ludlow, another PRP, engaged a contractor to perform additional investigations to supplement the initial investigation and prepare a closure plan. A second investigation report with a final closure plan was submitted to the State for review. In July 1987, a Federal District Court Judge in the District Court of Binghamton ordered the landfill to close by February 15, 1988 pursuant to federal and state regulation and ordered the partial payment of response costs to the State. Concurrent with the PRP's additional investigations, the EPA tasked a contractor to perform a supplemental RI/FS in response to the State's request for assistance in evaluating the cost of the alternatives. The supplemental RI/FS was released to the public for comments in August 1988.

A supplemental RI to investigate the drinking water supply was also conducted. The Village of Clayville's water system is located approximately three quarters of a mile northwest of the landfill. This system consists of a supply well 81 feet deep that has a capacity of 70 gallons per minute. The only individual water supply wells within 1,000 feet of the landfill are three homeowner wells along Mohawk Street located upgradient to groundwater flow around the landfill and eight additional homeowner wells located between 1,000 and 3,000 feet from the landfill. The three closest residential wells and the Clayville public water supply were sampled for organics and metals. The results indicated that all off-site residential and public water supplies met federal and state drinking water standards.

In 1994, the PRPs proposed a work plan for a supplemental RI/FS to address OU2. As some removal of contaminated material had occurred as part of the implementation of the OU1 remedy, the PRPs believed that sufficient work was done to address the contamination at the NGP and that any further remedial action was unnecessary. The EPA and NYSDEC disagreed and the dispute was taken to court. Subsequently, the work plan was approved for implementation under a Consent Judgment, by order of the court, dated August 3, 1996. The purpose of the supplemental RI was to characterize the extent of groundwater contamination further and to define the nature and extent of residual contamination at the NGP. The supplemental RI was conducted between November 1996 and January 1998.

Selected Remedy

Based upon the results of the RI/FS, EPA signed a Record of Decision (ROD) on September 30, 1988. The remedial measures identified in the 1988 OU1 ROD were as follows:

- Consolidate approximately 10,000 cubic yards of contaminated soil and sediment located adjacent to the landfill and dispose of it in the landfill and then place either a clay or synthetic cover over it to prevent rain water from coming into contact with the buried materials;
- Collect leachate from seepage areas;
- Dewater the landfill, if necessary, by using either a passive drain system or groundwater extraction wells;
- Implement upgradient groundwater controls to lower the water table to prevent groundwater from coming into contact with the waste material;
- Treat the contaminated leachate and groundwater at an on-site facility, or if the volume of water were small, transport the water and leachate to an approved disposal facility;
- Install a perimeter fence around the site, including the wetlands;
- Recommend that institutional controls be established in the form of deed restrictions on future uses of the site; and

• Monitor the groundwater, private wells, and surface water to ensure that remediation of the landfill is effective.

In addition, the ROD called for implementation of a soil/sediment sampling program to fully define the volume and extent of contaminated soils to be consolidated under the cap. New York State and the PRPs entered into a Consent Judgement in the Northern District of New York for the implementation of an Approved Remedial Plan (ARP). The ARP addressed the elements of the 1988 ROD. The ARP also included elements that were to be addressed as part of OU2, including the excavation and consolidation of contaminated sediments from the wetlands and PCB-contaminated soil from the NGP into the landfill. It also included a supplemental groundwater study that was completed by the PRPs in January 1990.

Many soil and groundwater samples were collected at the site to characterize the nature and extent of contamination as part of the supplemental RI. These and other data indicated that PCBs were the principal contaminants which exceeded soil cleanup values. These PCB concentrations remained at depth in the NGP because of the limitations of the excavation equipment which was used when the NGP was excavated as part of the OU1 remedial activities. In addition, low levels of volatile organic compounds (VOCs) and inorganic compounds (metals) were also detected in soil and groundwater samples on a sporadic and limited basis. During the supplemental RI quarterly groundwater sampling was performed at five wells around the perimeter of the NGP from September 1997 until March 1999 for a total of seven sampling events. Monitoring well MW11–R had detectable concentrations of PCBs (0.13 parts per billion (ppb) and 0.24 ppb) in the unfiltered samples during two of the seven sampling events (September 1997 and June 1998). All other wells sampled and all filtered samples did not demonstrate detectable concentrations. This indicated that PCB contamination is not migrating in groundwater and is confined to the pit area. Based upon these data, it was determined that no further remedial action was necessary for the groundwater, with the assumption that the residual PCB contamination remaining below the water table in the NGP would be addressed as part of the OU2 remedy.

The remedy for OU2, specified in a ROD issued by NYSDEC on March 31, 2003, primarily addressed residual PCB contamination at depth in the NGP and specifically called for:

• Solidifying soil at depth with PCB concentrations above 10 parts per million (ppm);

• Implementing a pre-design delineation sampling program to determine the area to be treated;

• Implementing soil bench-scale testing to determine the grout characteristics;

• Backfilling the NGP to its original elevation, covering the area with clean soil to raise the surface elevation to its original grade, and applying a vegetative cover;

• Limiting site access and issuing a deed restriction to prohibit groundwater usage and limiting the land use to nonresidential purposes;

• Installing at least two downgradient deep groundwater monitoring wells to ensure that PCB migration in the groundwater is not occurring; and

• Implementing a groundwater monitoring program.

Response Actions

The remedial action (RA) for OU1 was conducted by the PRPs pursuant to the Consent Judgement with the State. During the remedial design, the soil contamination in the wetlands areas and NGP were delineated. The Remedial Design Report was approved by the NYSDEC in June 1990.

RA activities for OU1 started in 1990 and were performed under the oversight of the NYSDEC. Sediment from the wetlands was excavated to the NYSDEC Technical and Administrative Guidance Memorandum (TAGM) No. 94–HWR–4046 surface soil guidance value of 1 ppm for PCBs and consolidated into the landfill prior to the cap completion. Approximately 40 cubic yards of sediment with PCB concentrations greater than 500 ppm were disposed of off-site at an approved disposal facility. Approximately 60,000 cubic yards of soil were excavated from the NGP, of which approximately 40,000 cubic yards were found to be contaminated with PCBs and were consolidated into the landfill prior to completion of the cap. The other 20,000 cubic yards of material had nondetectable levels of PCBs and were placed on the bank of the NGP. The total amount of soil that was excavated from the NGP was greater than anticipated and the excavation using conventional excavation equipment became difficult when groundwater was encountered. Topsoil and seeding were placed over the entire capped area which was enclosed within a chain link fence. A leachate collection system, a leachate treatment system, gas collection/lateral drainage layer and gas venting systems were also installed. Monitoring wells were installed downgradient from the landfill. Construction was completed in 1992.

A report documenting the cleanup efforts, *Construction Document Report,* was submitted by the PRPs and approved by the NYSDEC in May 1995.

The United States Army Corps of Engineers (USACE) prepared the RD plans and specifications for OU2 through an interagency agreement with the EPA. The 2003 ROD identified pressure grouting as the method to be used to solidify the PCB-impacted soils in the NGP. The EPA performed a Value Engineering Assessment between the proposed pressure grouting technology and soil mixing technology. In-situ soil mixing (ISSM), sometimes referred to as in-situ solidification/stabilization (ISS), was identified as having the potential to complete the project at a lower cost and in a shorter time frame. As a result the EPA decided to use this technology to address the PCB contamination above 10 ppm in the NGP. The EPA Region 2 removal program staff directed and oversaw construction activities.

From May 21 to June 8, 2007, the contractor mobilized at the site to prepare the site for construction activities. Also during this period of time, ponded water within the proposed work area was pumped into four 22,000-gallon frac tanks where it was stored until laboratory results indicated that it was acceptable to discharge.

Following on-site mobilization in June 2007, construction activities were conducted in two phases. Phase I of the RA included ISSM of PCB-contaminated soils and installation of groundwater monitoring wells. Phase II included backfilling the pit with clean fill to its original elevation, seeding the area to provide a vegetative cover, and installing culverts, swales, and a retention basin for storm water runoff.

On July 17, 2007 the ISSM contractor mobilized equipment to begin the field demonstration activities. Three sets of two 8.5-foot diameter overlapping grouted columns were advanced in a noncontaminated area of the NGP. The center of the columns were placed 7.36 feet apart to ensure column overlap. The columns were advanced to 15 feet below ground surface (bgs). Each set was made with a different mixture of Portland cement. A few days later these columns were exposed and samples were collected for physical testing to ensure the desired specs were met. Based on the results of the testing, a 7% Portland cement mixture was selected and full production was initiated. By August 22, 2007, a total of 582 columns were completed resulting in approximately 17,000 cubic yards of solidified soil.

On September 25, 2007, a final inspection was conducted by EPA and NYSDEC for OU2. Subsequently, on April 30, 2009, a site-wide inspection was conducted by EPA and NYSDEC in conjunction with the most recent five-year review of the site. Based on the result of these inspections, it was determined that construction for the entire site had been completed, that the remedy had been implemented consistent with the RODs, and is functioning as intended by the decision documents.

Cleanup Goals

OU1

Following the completion of the OU1 RA a long-term monitoring program was implemented to monitor the effectiveness of the cap and leachate collection system. Results indicated that the system was effective. An evaluation and comparison of historical leachate and groundwater data were conducted in 2006 and concluded that there was minimal potential for impacts to downgradient water supply wells and groundwater. Based on this evaluation, a decision was made to discontinue the operation of the leachate collection and treatment system operation while continuing the monitoring program for groundwater, water supplies and leachate. The leachate treatment system was shutdown on June 10, 2008.

During the most recent leachate monitoring event in December 2011, results were similar to pre-shutdown concentrations. Water level measurements were also consistent with the levels measured pre-shutdown. Water quality analytical data indicated that PCBs continued to be below method reporting limits, and data for other contaminants were similar to previous results with the exception of two contaminants, total phenols and antimony, which exceeded state ambient water quality criteria for the first time. Concentrations of total phenolics are, however, less than the required discharge limit of 0.008 ppm. Elevated antimony, along with continued elevated iron and manganese concentrations in leachate water, are attributed to the release of these metals from soils due to the reducing conditions within the leachate and groundwater beneath the landfill and are not landfill-related contaminants of concern.

During the most recent site inspection, the landfill cover and other site features, including manholes, fencing, roads, site building and monitoring wells were generally noted to be in good condition and the presence of seeps was not observed. Therefore, the landfill cover system appears to be operating effectively to limit or prevent concentrations of site contaminants from exceeding groundwater criteria off-site.

OU2

CDM, under contract with EPA, conducted pre-design field investigation soil sampling in January 2006 to horizontally and vertically delineate the PCB contamination in the NGP area. Activities were completed in accordance with USACE-approved Final Sampling and Analysis Plan (SAP) which consists of the Field Sampling Plan (FSP) and Quality Assurance Project Plan (QAPP).

During this investigation, CDM collected 305 soil samples from both surface and subsurface locations. Surface samples were collected less than 0.5 feet bgs, and deeper subsurface samples were collected 0.5 feet to 36 feet bgs in the NGP area. Only PCB analyses were performed on these samples in accordance with the approved SAP. Only two Aroclors (1254 and 1248) were detected in varying concentrations in the soil samples. The Data Quality Control Summary Report (DQCSR) discusses both the data quality and analytical results of the soil samples collected by CDM during the investigation.

The ROD states that performing end-point verification sampling outside the perimeter of the grouted area is required to ensure that all PCB-contaminated soils have been solidified in accordance with the Remedial Action Objectives. The EPA and NYSDEC agreed to completely delineate the contamination before the soil mixing took place in lieu of end-point verification sampling after the soils had been stabilized. Additional soil sampling was performed between January and August, 2007 to satisfy this requirement. Results from the 2006 and 2007 delineation sampling events showed PCB concentrations ranging from below the detection limit, in numerous samples, to 500 ppm at soil boring SB–14, located in the northwest portion of the NGP, at a depth of 8–10 feet. As noted above, all soils with PCB concentrations above the cleanup criterion were addressed during the RA.

Monitoring and Maintenance

The Long-Term Monitoring Program for the Ludlow site commenced in 2000. This program consists of the following activities:

- Monthly inspections are performed to visually assess and document the condition of the landfill perimeter fence and access road, leachate management system building, gas collection system, monitoring wells and manholes, and overall integrity of the cover;
- Water level measurements are obtained from designated monitoring wells at the landfill to assess seasonal water levels fluctuations and evaluate groundwater flow direction;
- Groundwater samples are collected from 17 monitoring wells, three residential wells and one public supply well during the monitoring events in accordance with the Long-Term Monitoring Program and analyzed for PCBs and VOCs;
- Surface water is sampled annually from the culvert where the ponded wetland discharges beneath Holman City Road to monitor PCBs;
- Annual methane monitoring at the landfill gas vents, manholes, and monitoring wells is conducted; and
- Leachate collected from the landfill is pumped through the on-site leachate treatment facility prior to discharge in accordance with the Operation, Maintenance and Monitoring Manual (O&M Manual). As noted above, operation of the leachate collection and treatment system was discontinued in 2008 after it was determined that there was minimal potential for the capped landfill to impact to downgradient water supply wells and groundwater.

No operation or maintenance for the stabilized soils is necessary for OU2. The area covering the solidified columns was backfilled to the former existing grade. This covered the columns with up to 30 feet of clean soil. In accordance with the OU2 ROD, a groundwater monitoring program was implemented. Five new wells installed during the OU2 remediation were sampled to establish a baseline. The monitoring of these wells is subject to the OU1 Long-Term Monitoring Program for the site. Monitoring and maintenance will continue to be performed by MACTEC Engineering and Consulting, P.C., under contract with NYSDEC. Institutional controls were established in the Declaration of Covenants, Restrictions and Environmental Easement which was executed on August 9, 2013.

Five-Year Review

Hazardous substances remain at this Site above levels that would allow for unlimited use and unrestricted exposure. Therefore, pursuant to CERCLA Section 121(c), EPA is required to conduct a review of the remedy at least once every five years. Three five-year reviews have been completed at the Site. The first five-year review was completed on July 1, 1999, the second was completed on July 1, 2004, and the

third was completed on July 1, 2009. The 2009 five-year review included a recommendation to implement institutional controls. This was completed on August 9, 2013 with the execution of the Declaration of Covenants, Restrictions and Environmental Easement. The fourth five-year review is scheduled to be completed on or before July 1, 2014.

Community Involvement

Public participation activities for this Site have been satisfied as required in CERCLA Sections 113(k) and 117, 42 U.S.C. 9613(k) and 9617. As part of the remedy selection process, the public was invited to comment on the proposed remedy. Prior to each five-year review, the public was notified through an ad in a local newspaper, *The Observer-Dispatch* (Utica), that a review of the remedy would be conducted and that the results would be available in the local site repository upon completion. Contact information for questions related to the five-year review was also provided. All other documents and information that EPA relied on or considered in recommending this deletion are available for the public to review at the information repositories identified above.

Determination That the Site Meets the Criteria for Deletion From the NCP

The implemented remedy achieves the degree of cleanup specified in the ROD for all pathways of exposure. All selected remedial action objectives and clean-up levels are consistent with agency policy and guidance. No further Superfund responses are needed to protect human health and the environment at the Site.

The NCP specifies that EPA may delete a site from the NPL if ''all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate.'' 40 CFR 300.425(e)(1)(ii). EPA, with the concurrence of the State of New York, through NYSDEC, believes that this criterion for deletion has been met. Consequently, EPA is deleting this Site from the NPL. Documents supporting this action are available in the Site files.

V. Deletion Action

EPA, with the concurrence of the State of New York, has determined that all appropriate responses under CERCLA have been completed and that no further response actions under CERCLA, other than M&M and five-year reviews, are necessary. Therefore, EPA is deleting the Site from the NPL. Because EPA considers this action to be noncontroversial and routine, EPA is taking this action without prior publication. This action will be effective December 2, 2013 unless EPA receives adverse comments by November 1, 2013. If adverse comments are received within the 30-day public comment period of this action, EPA will publish a timely withdrawal of this direct final Notice of Deletion before the effective date of the deletion and the deletion will not take effect. EPA will, if appropriate, prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments received. In such a case, there will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 20, 2013.

Judith A. Enck,

Regional Administrator, EPA, Region 2.

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR 1987 Comp., p. 193.

Appendix B to Part 300 [Amended]

■ 2. Table 1 of Appendix B to part 300 is amended by removing ''NY,'' ''Ludlow Sand & Gravel,'' ''Clayville''.

[FR Doc. 2013–24116 Filed 10–1–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 107

[Docket No. PHMSA–2013–0045 (HM–258C)]

RIN 2137–AF02

Hazardous Materials Regulations: Penalty Guidelines

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

ACTION: Final rule; revised statement of policy.

SUMMARY: The Pipeline and Hazardous Materials Safety Administration (PHMSA) is publishing this revised statement of policy to update baseline assessments for frequently-cited violations of the Hazardous Materials Regulations (HMR) and to clarify additional factors that affect penalty amounts. This revised statement of policy is intended to provide the regulated community and the general public with information on the hazardous materials penalty assessment process.

DATES: This rule is effective October 1, 2013.

FOR FURTHER INFORMATION CONTACT: Meridith L. Kelsch or Shawn Wolsey, Office of the Chief Counsel, at (202) 366–4400, or Deborah L. Boothe, Standards and Rulemaking Branch, at (202) 366–8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Contents

I. Background
II. Discussion of Revisions
  A. Revisions to Part II, List of Frequently Cited Violations
  B. Revisions to Parts III and IV
III. Regulatory Analyses and Notices
  A. Statutory/Legal Authority for the Rulemaking
  B. Executive Order 13610, Executive Order 13563, Executive Order 12866, and DOT Regulatory Policies and Procedures
  C. Executive Order 13132
  D. Executive Order 13175
  E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies
  F. Paperwork Reduction Act
  G. Regulatory Identifier Number (RIN)
  H. Unfunded Mandates Reform Act of 1995
  I. Environmental Assessment
  J. Privacy Act
  K. Executive Order 13609 and International Trade Analysis
  L. National Technology Transfer and Advancement Act

I. Background

The Pipeline and Hazardous Materials Safety Administration (PHMSA) publishes hazardous materials transportation enforcement civil penalty guidelines in Appendix A to 49 CFR part 107, subpart D. The Research and Special Programs Administration (RSPA; PHMSA's predecessor agency) first published these guidelines in the **Federal Register** on March 6, 1995, in response to a request contained in Senate Report 103–150 that

accompanied the Department of Transportation and Related Agencies Appropriations Act of 1994 (*See* 60 FR 12139). RSPA and PHMSA published additional revisions of these guidelines on January 21, 1997 (62 FR 2970), September 8, 2003 (68 FR 52844), February 17, 2006 (71 FR 8485), December 29, 2009 (74 FR 68701), and September 1, 2010 (75 FR 53593). These guidelines provide the regulated community and the general public with information about PHMSA's hazmat penalty assessment process and the types of information or documentation that respondents in enforcement cases can provide to justify possible reductions of proposed penalties.

PHMSA's field operations personnel and attorneys use these guidelines, which are updated periodically, as a standard for determining civil penalties for violations of the Federal hazardous materials transportation law (49 U.S.C. 5101–5128) and the regulations issued under that law. The baseline penalties and aggravating or mitigating factors outlined in these guidelines are a tool to aid PHMSA in applying similar civil penalties and adjustments in comparable situations. These baselines and adjustment criteria are based on factors PHMSA is required, under 49 U.S.C. 5123(c) and 49 CFR 107.331, to consider in each case. PHMSA selected the baseline penalties set out in Part II by considering the relative nature, circumstances, extent, and gravity of the particular violation. The aggravating and mitigating factors discussed in Parts III and IV represent all information PHMSA is required to consider under these provisions.

Since the guidelines are intended to reflect the statutory considerations, they are subject to adjustments, as appropriate, for the specific facts of individual cases. The guidelines are neither binding nor mandatory, but serve as a standard to promote consistency. Using the baselines as a starting point allows PHMSA to handle analogous violations similarly; and combining baselines with the mitigating and aggravating adjustments, helps us treat respondents in enforcement actions fairly. These baselines, however, only provide a starting point and may be adjusted as appropriate to reflect additional relevant factors. As such, they do not impose any requirement and are not binding.

As a general statement of agency policy and practice, these guidelines are not finally determinative of any issues or rights and do not have the force of law. They are informational, impose no requirements, and serve only as instruction or a guide. As such, they constitute a statement of agency policy and serve to provide greater transparency for effected entities. For these reasons, they do not establish a rule or requirement and no notice of proposed rulemaking or comment period is necessary. For further discussion of the nature and PHMSA's use of these penalty guidelines, see the preambles to the final rules published on March 6, 1995 (60 FR 12139) and January 21, 1997 (62 FR 2970).

II. Discussion of Revisions

In this final rule, PHMSA is publishing an updated statement of policy, revising Appendix A to Part 107, Subpart D, including the List of Frequently Cited Violations in Part II of the guidelines, and Parts III and IV, which provide additional factors that affect penalty amounts. The revisions to Part II include modifications to individual baseline assessments, the addition of frequently-cited violations that were not previously included in the guidelines, and assigned penalties instead of penalty ranges, where appropriate, to reflect safety risks, such as packing group. The revisions to Parts III and IV of the guidelines clarify the criteria PHMSA considers when determining a civil penalty amount that appropriately reflects the risk posed by a violation, the culpability of the respondent, and aggravating or mitigating factors.

A. Revisions to Part II, List of Frequently Cited Violations

The revisions to Part II of the guidelines are the result of inflation and statutory adjustments, as well as an overall review of the current penalty guidelines and regulatory requirements. PHMSA evaluated the baseline penalties to ensure they are comprehensive, clear, consistent, and appropriately reflect the safety implications of the violations.

As part of these adjustments, in this revised statement of policy, PHMSA is modifying the baselines in the List of Frequently Cited Violations in Part II of the guidelines to reflect inflation and the statutory increase in the maximum civil penalty, which took effect October 1, 2012. Both of these factors necessitate an overall increase in the baseline penalties.

Section 33010 of the Hazardous Materials Transportation Safety Improvement Act of 2012 (Title III of the Moving Ahead for Progress in the 21st Century Act (''MAP–21,''), Pub. L. 112–141, 126 Stat. 405, 837 (codified as amended at 49 U.S.C. 5123(a)) increased the maximum civil penalty for a knowing violation of the Federal hazardous materials transportation law, or a regulation, order, special permit, or approval issued under that law, from $55,000 to $75,000 and increased the maximum civil penalty from $110,000 to $175,000 if the violation results in death, serious illness or severe injury to any person or substantial destruction of property. This statutory change took effect October 1, 2012, and PHMSA incorporated these changes into the regulations effective April 17, 2013 (78 FR 22798). Since the maximum civil penalties have increased, it is appropriate to also increase the individual baselines for consistency.

Additionally, PHMSA is increasing individual baselines for inflation because many of the current baselines have not been adjusted since they were first published. Specifically, RSPA initially published the guidelines in 1995 (60 FR 12139). In 1997, RSPA adjusted the maximum civil penalty for inflation, added, deleted and combined several baselines, and altered several baselines to reflect the comparative risks of the violation for different hazardous materials. Again in 2003, RSPA adjusted the maximum and minimum civil penalties for inflation and added, modified, and increased several specific baselines (68 FR 52844). In 2006, PHMSA adjusted the maximum and minimum civil penalties, adopting the limits established by Congress in 2005 in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU; Pub. L. 109–59, 119 Stat. 1144 (codified as amended at 49 U.S.C. 5123(a))). At the same time, PHMSA adjusted a small number of individual baselines (71 FR 8485). Again in 2009, PHMSA adjusted the maximum and minimum civil penalties for inflation (74 FR 68701). The 2010 adjustments merely corrected errors in the 2009 calculations (75 FR 53593). Notably, since the guidelines were first published in 1995, certain individual baselines were adjusted but never comprehensively adjusted for inflation.

In order to remain consistent with the MAP–21 increase to the maximum civil penalties, as well as make appropriate adjustments for inflation, PHMSA reviewed the entire list of baseline penalties and generally increased them. We are not increasing all of the baselines, however, as we considered each individually to ensure the baselines appropriately reflect the safety implications associated with the particular violation.

For those baselines that PHMSA is increasing for inflation and consistency with MAP–21, we used a uniform calculation to determine the amount of increase. PHMSA determined the

inflation adjustment by using the calculation found in the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Act), as amended by the Debt Collection Improvement Act of 1996 (the Act is set forth in the note to 28 U.S.C. 2461). The Act requires each Federal agency to adjust maximum and minimum civil penalties it administers at least every four years, to correspond with the effects of inflation, but applies a maximum increase of 10 percent for first-time adjustments. Congress, effective October 1, 2012 (see MAP–21 discussion above) adjusted the maximum and minimum penalties for inflation; so PHMSA is increasing only individual baselines.

Because this revised statement of policy does not address inflation adjustments for maximum and minimum penalties, the adjustments are not mandated, and the formula provided in the Act is not binding on these revisions. Nevertheless, PHMSA applied the formula in the Act to calculate the baseline increases, for consistency and continuity, as the Act is a standard recognized method of calculating inflation adjustments for regulatory penalties.

The formula for inflation adjustments set out in the Act provides that the increase is based on a ''cost-of-living adjustment'' determined by the increase in the Consumer Price Index (CPI–U) for the month of June of the calendar year preceding the adjustment as compared to the CPI–U for the month of June of the calendar year in which the last adjustment was made. In applying this calculation, PHMSA used 2003 as the year in which the last adjustment was made. This is because 2003 is the last time there were numerous adjustments and those revisions were the most similar to the current changes, in that there were extensive adjustments to individual baselines and not just maximum and minimum civil penalties. Since this revised statement of policy is adjusting individual baselines, 2003 represents the most-recent instance of comparable adjustments.

Applying the adjustment formula in the Act, PHMSA calculated the percentage by which the CPI–U in June 2012 (229.478) (the year preceding the adjustment) exceeds the CPI–U in June 2003 (183.7) (the year in which the baseline penalties were last adjusted). This comparison shows that the CPI–U increased by 25 percent during that period. Accordingly, PHMSA is increasing the baseline civil penalties by 25 percent. To avoid increasing any penalties by more than 25 percent, PHMSA rounded down the calculated adjustments to the nearest one-hundred dollars.

Although the Act provides a 10 percent limit on first-time adjustments, PHMSA is not conforming to this limitation for several reasons. First, many individual baselines have been adjusted before, so this is not a first-time adjustment. We are applying the same calculated inflation adjustment to all of the individual baselines that we are increasing for uniformity. To apply the 25 percent increase to those baselines that have been changed before, and 10 percent to those that have not, would create inconsistencies by creating larger differences between baselines that have been deemed comparatively appropriate in all prior revisions. Second, PHMSA is not required to comply with the 10 percent limit in these adjustments because the adjustments in this updated statement of policy are not mandated under the Act, as the Act does not apply to adjustments to individual baselines. Rather, we are merely using the Act as a uniform and recognized standard for consistency. Finally, the changes in MAP–21 increased the maximum civil penalty by approximately 36 percent (from $55,000 to $75,000) for a knowing violation and 59 percent (from $110,000 to $175,000) for violations resulting in serious harms. By comparison, a 25 percent increase to individual baseline penalties is significantly lower than the changes to the maximum civil penalties imposed by MAP–21.

Another change in this revised statement of policy is to add baseline penalties with violation descriptions to provide consistency and clarity for imposing similar penalties in similar cases. To identify violations that have been cited frequently but were not listed in the table of baseline penalties, PHMSA reviewed past Notices of Probable Violations and the regulations. We are now listing baseline penalties with violation descriptions in the List of Frequently Cited Violations for these violations. We are establishing these baseline penalties based on civil penalties that have been applied in past enforcement cases and by analogy to baselines for comparable violations that are already listed and relative safety implications.

In general, we are expanding the following categories in the List of Frequently Cited Violations: Security plans; Special permits and approvals; Undeclared shipments; Shipping papers; Emergency response requirements; Package marking requirements; Package labeling requirements; Placarding requirements; Packaging requirements; Offeror Requirements for specific hazardous materials: Cigarette lighters, Explosives, Radioactive Materials, Compressed Gases in cylinders; Packaging Manufacturers, Drum Manufacturers and Reconditioners, IBC and Portable Tank Requalification; Cylinder Manufacturers and Rebuilders; Cylinder Requalification; Incident Notification and Stowage/Attendance/Transportation Requirements. We are adding these new categories: Offeror Requirements for specific hazardous materials: Oxygen Generators and Batteries; Manufacturing, Reconditioning, Retesting Requirements: Activities subject to Approvals and Cargo Tank Motor Vehicles.

Another modification PHMSA is making in this revised statement of policy is to eliminate many baseline ranges (e.g., $3,000 to $6,000) in the List of Frequently Cited Violations, and replace them with specific baselines (e.g., $6,000 for PG I; $4,500 for PG II; $3,000 for PG III). Baseline ranges provided flexibility to adjust penalties depending on the safety risks or severity of a particular case. We will now divide many ranges into distinct baseline amounts that reflect the relative risks of specific packing groups, explosive classifications, or hazardous materials. Applying specific baselines instead of ranges will continue to reflect the relative safety risks of various hazardous materials within a particular violation, while assuring consistency and clarity.

Finally, PHMSA comprehensively reviewed the baseline penalties and descriptions, and we are adopting several modifications to ensure they are current, consistent, and appropriate. In this revised statement of policy, we are removing outdated or duplicative descriptions and updating language to reflect the regulatory text, where necessary. We are also decreasing and increasing baselines, as appropriate, to ensure comparable, similar, or related violations have commensurate baseline penalties and that each baseline reflects the risks associated with the violation.

B. Revisions to Part III—Consideration of Statutory Criteria and Part IV—Miscellaneous Factors Affecting Penalty Amounts

This statement of policy also modifies Parts III and IV of the guidelines, which provide factors that affect penalty amounts. As specified in 49 U.S.C. 5123(c) and 49 CFR 107.331, PHMSA must consider several factors when assessing a civil penalty, including the nature, circumstances, extent and gravity of a violation, the degree of culpability and compliance history of the respondent, the financial impact of

the penalty on the respondent, and other matters as justice requires. As described below, PHMSA will also consider a respondent's corrective actions and that point in time at which those actions are taken. Parts III and IV elaborate on several of these factors and explain how PHMSA considers this information to adjust penalties, where appropriate.

In this revision, PHMSA is clarifying Parts III and IV to provide transparency and ensure consistency in how mitigating and aggravating factors affect penalty assessments. In general, we are modifying some of the language in these Parts to articulate clearly how PHMSA considers relevant information and performs adjustments. We are also adding new points that will enhance transparency and consistency.

1. Revisions to Part III—Consideration of Statutory Criteria

Previously, Part III—Consideration of Statutory Criteria has outlined the process PHMSA uses for setting initial penalties and listed the statutory criteria PHMSA must consider under 49 U.S.C. 5123(c) and 49 CFR 107.331. In this revision, we are providing this same information as well as additional details.

In the revised guidelines, we are still identifying the statutory considerations, but have revised the language to add greater clarity. Specifically, we have added details to elaborate on the information that may be relevant in considering the statutory criteria. For example, in evaluating the gravity of a violation, we explain that actual and potential consequences of a violation are factors we consider in setting a civil penalty in a case. We are including this and similar factors to help demonstrate the types of information that are pertinent to the statutory criteria.

We are also explaining where we obtain the information that is relevant to the statutory criteria and at what stages we collect it. Specifically, we may obtain information concerning the statutory criteria at any stage of the enforcement proceedings, and we may receive this information from any appropriate source, including the regulated entity. This additional information serves to clarify that determining a civil penalty is an ongoing process that develops throughout an enforcement proceeding. As such, this clarification notifies respondents in enforcement cases that they may provide relevant information to PHMSA at any stage and we will consider it.

Finally, we are providing a specific order in which PHMSA will apply increases and decreases to baseline penalty amounts. While the previous guidelines alluded to this, we are establishing a clear sequence of adjustments in this revision. Specifically, after selecting an appropriate baseline penalty, we will generally apply decreases for reshippers, increases for multiple counts, increases for prior violations, decreases for corrective actions, and then decreases for financial considerations, in order to consider all of the statutory criteria. Clearly establishing this sequence will provide for consistency in how respondents are treated in enforcement actions.

2. Revisions to Part IV—Miscellaneous Factors Affecting Penalty Amounts

In the revised guidelines, we are also modifying the language in Part IV—Miscellaneous Factors Affecting Penalty Amounts. These modifications provide greater clarity and transparency by revising language, including more detail, and setting out more-clearly defined procedures for applying aggravating and mitigating factors. We are also restructuring this section so that the factors are listed in the order in which PHMSA applies the penalty increases or decreases, as set out in Part III.

With respect to respondents that act as reshippers, we have revised the language in this section so that our procedures and relevant criteria are understandable. Additionally, we have extended the reshipper mitigating factor to carriers who reasonably rely on a shipment as they receive it and do not open or alter the package before continuing in transportation. We expanded this to carriers to reflect their similarity to reshippers in so far as both may receive fully-prepared shipments and rely on another party's preparation and compliance. Apart from extending this provision to carriers, we have not made any substantive changes to this section.

We are also modifying the provisions regarding multiple counts of a violation. The revised language provides more detail in describing how PHMSA handles multiple counts, which promotes greater consistency and transparency. Although this is a highly fact-specific determination, the additional language will provide more comprehensive guidance. For example, we are including fuller explanations of the factors that are relevant, such as whether multiple counts demonstrate a company's regular business practice. Additionally, we are including specific examples of when multiple counts may be treated as one violation, when a penalty may be increased by 25 percent for each additional count, and when separate counts may be warranted.

The provisions pertaining to prior violations are also being updated to establish a clear timeframe and consistent application. We are specifying that the six-year period used to evaluate increases for prior violations will be determined using the dates of the last exit briefings issued. Previously, this period was calculated using the date a case or ticket was ''initiated,'' without specifying what constituted initiation of a case. We are now specifying that the initiation date of a case is the date of the exit briefing. The date of the exit briefing best represents the date a case is initiated because it is the date a respondent first receives notice of a non-compliance issue and commences the enforcement process. Additionally, the date of the exit briefing is the most consistent measure that can be replicated for all cases.

Generally, an exit briefing is issued on or near the date a violation is found, whereas a ticket or Notice of Probable Violation may be issued substantially later and are not issued within the same time frame for all cases. Using a calendar year instead of a specific date can lead to some respondents being penalized for prior cases that happened more than six years previously (e.g., a prior violation in January 2007 would be within six years of a case issued in September 2013), while others are penalized for only less than a six-year period (e.g., a prior violation in December 2006 would be outside the six years for a case issued in January 2013). To avoid these disparities, PHMSA is applying the date of the exit briefing as the date a case is ''initiated.'' Although PHMSA is using the exit briefing to represent the initiation of a case, only cases that have been finally-adjudicated will be considered as prior violations. As such, the issuance of an exit briefing alone, with no further action does not constitute a prior violation.

In addition, we are including a specific provision for the use of expired special permits that was previously included in a separate section. Under this provision, if a respondent is cited for operating under an expired special permit and has previously committed the same violation, the penalty will be doubled (i.e., increased by 100 percent). This is the same as the previous language, we are simply relocating it so that all of the factors relating to prior violations are discussed together.

We are also adding one factor that PHMSA will consider in determining penalty increases for prior violations. If PHMSA finds that a respondent has

been cited for an identical violation within the six-year period specified above, we will generally increase the penalty for that violation by 100 percent. The rationale for this is that the respondent was previously notified of the violation and had the opportunity to correct it; failing to correct an issue and committing the exact same violation demonstrates a disregard for compliance and justifies an additional increase to the penalty.

With respect to corrective action, the revised guidelines provide additional details regarding how PHMSA determines reductions for corrective action. These revisions supplement, but do not change, the existing standard. Notably, we are including further explanations of the primary factors—extent and timing. We are also adding guidance for how respondents may document their corrective actions. Additionally, we are setting out standards that describe the factors we consider in determining whether to reduce a civil penalty for corrective action, up to 25 percent. Finally, we are incorporating a new provision that respondents who have committed the same violation previously (as determined in a finally-adjudicated case) may not receive a reduction for corrective action because corrective action is warranted when a respondent in an enforcement case makes sincere, comprehensive, and effective efforts to remedy a violation. Therefore, if the company was previously notified of the non-compliance issue and failed to fix it, a corrective action reduction is not appropriate.

We are also revising the provisions for penalty reductions for financial considerations in the guidelines; however, we are not making any substantive changes to this section. We have merely modified and restructured the language, without changing the meaning.

Finally, we are removing the section regarding penalty increases for using an expired special permit. Previously, this section included two provisions: (1) That a prior violation warrants an increase of 25 percent, and (2) that when a respondent uses an expired special permit and has previously committed the same violation, an increase of 100 percent is appropriate. The first provision is adequately expressed in the section on prior violations (i.e., 25 percent increase for a prior violation). And the second provision is now moved to the section on prior violations as well, in order to keep all increases for prior violations in the same section for organizational purposes.

Although these revisions to the guidelines are intended to provide consistency and clarity, the baseline assessments are only the starting point for assessing a penalty for a violation. Because no two cases are identical, rigid use of the guidelines would produce arbitrary results and, most significantly, would ignore the statutory mandate to consider specific assessment criteria set forth in 49 U.S.C. 5123 and 49 CFR 107.331, including consideration of small businesses. Therefore, PHMSA will continue to review all relevant information in the record concerning any alleged violation or the respondent, and we will adjust the baseline assessments as warranted by the statutory criteria.

These penalty guidelines remain subject to revision and PHMSA will use the version of the guidelines in effect at the time the violation in any particular case is committed. Questions concerning PHMSA's penalty guidelines and any comments or suggested revisions may be addressed to the persons identified above, in **FOR FURTHER INFORMATION CONTACT**.

III. Rulemaking Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under the authority of the Federal hazardous materials transportation law (49 U.S.C. 5101–5128). Section 5123(a) of that law provides civil penalties for knowing violations of Federal hazardous material transportation law or a regulation, order, special permit, or approval issued under that law. This rule revises PHMSA's guidelines for determining civil penalties, which are published in Appendix A to subpart D of part 107, including the List of Frequently Cited Violations in Part II, as well as Part III Consideration of Statutory Criteria and Part IV Miscellaneous Factors Affecting Penalty Amounts, which provide additional factors and criteria that affect penalty amounts.

Revisions to Part II include modifications to individual baseline assessments, the addition of frequently-cited violations not previously included in the guidelines, and the replacement of penalty ranges with assigned penalties based on safety risks, such as packing group, where appropriate. The revisions to Parts III and IV of the guidelines clarify the criteria PHMSA considers when determining a civil penalty amount that appropriately reflects the risk posed by a violation, the culpability of the respondent, and any aggravating or mitigating factors. More specifically, we are establishing a sequence in which aggravating and mitigating factors are applied, identifying the period within which prior violations are considered, specifying that the repeating of identical violations in multiple cases serves as an aggravating factor, and clarifying the process by which PHMSA considers mitigation for corrective actions, reshippers, and financial considerations as well as penalty increases for multiple counts and prior violations.

Under 49 U.S.C. 5123(c), when determining a civil penalty amount, PHMSA must consider the nature, circumstances, extent, and gravity of the violation, the degree of culpability, history of compliance, ability to pay, and effect on ability to continue to do business for the specific respondent, as well as other matters that justice requires. As such, the baseline penalties in the List of Frequently Cited Violations and the additional factors in Parts III and IV are merely guidelines that are subject to adjustments for the unique facts and circumstances of each case. They do not establish or impose any requirements, are not finally-determinative of any issues or rights, are not binding, and do not have the force of law. Rather, they are guidelines PHMSA uses as a starting point in determining a civil penalty and a guide outlining relevant factors we consider. Since they are merely informational guidelines stating general agency policy and practice, no notice of proposed rulemaking is necessary.

B. Executive Order 13610, Executive Order 13563, Executive Order 12866, and DOT Regulatory Policies and Procedures

This rulemaking is not considered a significant regulatory action under Executive Order 12866 and the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). Accordingly, this final rule was not reviewed by the Office of Management and Budget (OMB). Further, this rule is not a significant regulatory action under the Regulatory Policies and Procedures of the DOT because it has minimal impact on a significant number of small businesses.

Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review that were established in Executive Order 12866 Regulatory Planning and Review of September 30, 1993. In addition, Executive Order 13563 specifically requires agencies to identify and consider regulatory approaches that reduce burdens and maintain flexibility and consider how to best promote

retrospective analysis to modify, streamline, expand, or repeal existing rules that are outmoded, ineffective, insufficient, or excessively burdensome. The revisions to Appendix A to Subpart D of Part 107 are consistent with the intent of Executive Order 13563 as this final rule clarifies the civil penalties process, fosters a greater understanding of the regulations and associated penalties for non-compliance and updates the regulations to more-accurately reflect current economic conditions.

Executive Order 13610 (Identifying and Reducing Regulatory Burdens) reaffirming the goals of Executive Order 13563 (Improving Regulation and Regulatory Review) issued January 18, 2011, and Executive Order 12866 (Regulatory Planning and Review) issued September 30, 1993 directs agencies to prioritize ''those initiatives that will produce significant quantifiable monetary savings or significant quantifiable reductions in paperwork burdens while protecting public health, welfare, safety, and our environment.'' Executive Order 13610 further instructs agencies to give consideration to the cumulative effects of their regulations, including cumulative burdens, and prioritize reforms that will significantly reduce burdens.

This final rule does not conflict with Executive Order 12866, Executive Order 13563, or DOT Regulatory Policies and Procedures. This rule imposes no new costs upon persons conducting hazardous materials operations in compliance with the requirements of the HMR. Those entities not in compliance with the requirements of the HMR may experience an increased cost based on the penalties levied against them for non-compliance; however, this is an avoidable, variable cost and thus is not considered in any evaluation of the significance of this regulatory action. The amendments in this rule could provide safety benefits (i.e., larger penalties deterring knowing violators). Overall, it is anticipated this rulemaking would be cost neutral.

A summary of the regulatory evaluation used to support the proposals presented in this final rule are discussed below. A copy of the full regulatory evaluation explaining the rationale behind PHMSA's conclusions is available in the docket for this rulemaking.

Regulatory Evaluation

For the regulatory evaluation of this final rule, PHMSA assumes:

- The cost associated with this rulemaking will be imposed on those individuals who are in violation of the requirements of the HMR.
- Updating the guidelines and expanding the list of frequently cited violations will raise awareness of the regulatory requirements and provide a safety benefit.
- PHMSA is raising the baseline penalties for consistency with MAP–21 and to reflect inflation based on the calculation found in the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Act), as amended by the Debt Collection Improvement Act of 1996 (the Act is set forth in the note to 28 U.S.C. 2461).

PHMSA's current civil penalties program has proven effective in achieving a high level of transportation safety. However, the lack of fee increases to keep pace with inflation may have limited the capability to deter potential violators from knowingly violating the HMR. While this final rule maintains the current level of safety, we expect the implementation of the changes published in this final rule will result in a benefit by providing a more substantial deterrent for potential violators of the HMR.

PHMSA anticipates the primary costs will be to those who violate the HMR while the primary benefits will be attributed to an increased awareness of regulatory requirements, an improved understanding of the civil penalties process, and a more substantial deterrent for those who violate the HMR.

C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (Federalism). This rule does not impose any regulation having substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; it is merely an updated informational statement of policy and guidance and does not impose any requirements. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments). Because this final rule does not have tribal implications and does not impose substantial direct compliance costs on Indian tribal governments, and does not preempt tribal law, the funding and consultation requirements of Executive Order 13175 do not apply, and a tribal summary impact statement is not required.

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

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires an agency to review regulations to assess the impact on small entities unless the agency determines a rule is not expected to have a significant impact on a substantial number of small entities. If an agency finds that there is a significant impact, the agency must consider whether alternative approaches could mitigate the impact on small entities. The size criteria for small entities are defined by the Small Business Administration (SBA) in 13 CFR 121.201.

The hazardous materials regulated community consists of approximately 200,000 offerors. Approximately 90 percent meet the SBA small business criteria. However, we have determined that, based on the following analysis, the changes adopted in the final rule will not result in a significant impact. Based on our review of PHMSA hazardous materials penalties levied in the last calendar year (January 1, 2012–December 31, 2012), PHMSA issued 616 cases and tickets. If we used the assumption that 90 percent of the hazardous materials regulated community meet the SBA small business criteria than this final rule would only affect approximately 550 small entities. Therefore, PHMSA certifies this rule would not have a significant economic impact on a substantial number of small entities.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number. Section 1320.8(d) of Title 5 of the Code of Federal Regulations requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information and recordkeeping requests. There are no new information requirements in this final rule.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in spring and fall of each year. The RIN contained in the heading of

this document can be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $141.3 million or more, in the aggregate, to any of the following: state, local, or Native American tribal governments, or to the private sector.

I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. §§ 4321–4375), requires Federal agencies to consider the consequences of major federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. When developing potential regulatory requirements, PHMSA evaluates those requirements to consider the environmental impact of each amendment. Specifically, the Council on Environmental Quality (CEQ) regulations require federal agencies to conduct an environmental review considering: (1) The need for the proposed action; (2) alternatives to the proposed action; (3) probable environmental impacts of the proposed action and alternatives; and (4) the agencies and persons consulted during the consideration process.

Description of Action

In this final rule we are revising 49 CFR Appendix A to Subpart D of Part 107 (Enforcement) Part II by:

- Modifying individual baseline assessments contained in the penalty guidelines table;
- Adding violations not previously included in the list of frequently-cited violations; and
- Replacing penalty ranges with assigned penalties based on safety risks, such as packing group, where appropriate.

In addition in this final rule we are revising 49 CFR Appendix A to Subpart D of Part 107, Part III—Consideration of Statutory Criteria and Part IV—Miscellaneous Factors Affecting Penalty Amounts by:

- Establishing a penalty amount that appropriately addresses the risk posed by a violation; and
- Establishing the criteria and PHMSA's process for considering the statutorily-mandated aggravating or mitigating factors involved in determining a civil penalty.

Alternatives Considered

Alternative (1)—No action alternative: Leave the HMR as is; do not adopt above-described guidelines.

PHMSA periodically reviews and updates various regulations and guidelines to improve the clarity of the HMR and provide relief for safe alternatives when necessary. If PHMSA chose the no-action alternative, the public would not receive the benefits of increased awareness of the civil penalties and the processes that accompany them. Furthermore, PHMSA civil penalties would continue to be out of date and not reflective of current economic conditions. Therefore, PHMSA rejected the do-nothing alternative.

Alternative (2)—Preferred Alternative: Go forward with the modified guidelines as described in this notice.

Environmental Consequences

Under the HMR, hazardous materials are transported by aircraft, vessel, rail, and highway. The potential for environmental damage or contamination exists when packages of hazardous materials are involved in accidents or en route incidents resulting from cargo shifts, valve failures, package failures, loading, unloading, collisions, handling problems, or deliberate sabotage. The release of hazardous materials can cause human death or injury, the loss of ecological resources (e.g. wildlife habitats), and the contamination of air, aquatic environments, and soil. Contamination of soil can lead to the contamination of ground water. Compliance with the HMR substantially reduces the possibility of accidental release of hazardous materials.

When developing potential regulatory requirements, PHMSA evaluates those requirements to consider the environmental impact of each amendment. Specifically, PHMSA evaluates: The risk of release and resulting environmental impact; risk to human safety, including any risk to first responders; longevity of the packaging; and if the proposed regulation would be carried out in a defined geographic area, the resources, especially any sensitive areas, and how they could be impacted by any proposed regulations. As the civil penalty program is specifically designed to ensure compliance with the HMR it concurrently reduces the possibility of accidental release of hazardous materials and thus environmental damage.

Conclusion

Based on the above discussion, the amendments in this final rule would have no significant negative environmental impacts. Civil penalties may act as a deterrent to those violating the HMR, which may have a negligible positive environmental impact as a result of increased compliance with the HMR. PHMSA concludes there are no significant environmental impacts associated with this final rule.

J. 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 comments (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 (Volume 65, Number 70; Pages 19477–78) which may be viewed at *http://www.dot.gov/privacy*.

K. Executive Order 13609 and International Trade Analysis

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

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

PHMSA participates in the establishment of international standards in order to protect the safety of the American public, and we have assessed

the effects of the final rule to ensure that it does not cause unnecessary obstacles to foreign trade. Accordingly, this rulemaking is consistent with Executive Order 13609 and PHMSA's obligations.

L. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) directs federal agencies to use voluntary consensus standards in their regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specification of materials, test methods, or performance requirements) that are developed or adopted by voluntary consensus standard bodies. There are no voluntary consensus standards relevant to the penalty guidelines, and as such, the revised guidelines do not include any.

IV. Revised Appendix A to Subpart D of Part 107—Guidelines for Civil Penalties

List of Subjects in 49 CFR Part 107

Administrative practices and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR chapter I is amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

■ 1. The authority citation for part 107 is revised to read as follows:

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

■ 2. Revise Appendix A to Subpart D of Part 107 to read as follows:

Appendix A to Subpart D of Part 107—Guidelines for Civil Penalties

I. This appendix sets forth the guidelines PHMSA uses (as of October 2, 2013) in making initial baseline determinations for civil penalties. The first part of these guidelines is a list of baseline amounts or ranges for frequently-cited probable violations. Following the list of violations are general guidelines PHMSA uses in making penalty determinations in enforcement cases.

II. List of Frequently Cited Violations

Violation description	Section or cite	Baseline assessment
General Requirements		
A. Registration Requirements: Failure to register as an offeror or carrier of hazardous material and pay registration fee:	107.608, 107.612.	
1. Small business or not-for-profit		$1,200 + $600 each additional year.
2. All others		$3,500 + $1,000 each additional year.
B. Training Requirements:		
1. Failure to provide initial training to hazmat employees (general awareness, function-specific, safety, and security awareness training):	172.702.	
a. More than 10 hazmat employees		$1,500 for each area.
b. 10 hazmat employees or fewer		$1,000 for each area.
2. Failure to provide recurrent training to hazmat employees (general awareness, function-specific, safety, and security awareness training).	172.702	$1,000 for each area.
3. Failure to provide in-depth security training when a security plan is required but has not been developed.	172.702	Included in penalty for no security plan.
4. Failure to provide in-depth security training when a security plan is required and has been developed.	172.702	$3,100.
5. Failure to create and maintain training records:	172.704.	
a. More than 10 hazmat employees		$1,000.
b. 10 hazmat employees or fewer		$600.
C. Security Plans:		
1. Failure to develop a security plan; failure to adhere to security plan:	172.800.	
a. Section 172.504 Table 1 materials		$9,300.
b. Packing Group I		$7,500.
c. Packing Group II		$5,600.
d. Packing Group III		$3,700.
2. Incomplete security plan or incomplete adherence (one or more of four required elements missing).		One-quarter (25 percent) of above for each element.
3. Failure to update a security plan to reflect changing circumstances.	172.802(b)	One-third (33 percent) of baseline for no plan.
4. Failure to put security plan in writing; failure to make all copies identical.	172.800(b)	One-third (33 percent) of baseline for no plan.
D. Notification to a Foreign Shipper: Failure to provide a foreign offeror or forwarding agent written information of HMR requirements applicable to a shipment of hazardous materials within the United States, at the place of entry into the United States:	171.22(f).	
1. Packing Group I and § 172.504 Table 1 materials		$9,300.*
2. Packing Group II		$5,500.*
3. Packing Group III		$1,800.*

* The baseline applied to the importer shall be equal to or less than the baseline applied to the foreign offeror or forwarding agent.

Violation description	Section or cite	Baseline assessment
E. Special Permits and Approvals:		
1. Offering or transporting a hazardous material, or otherwise performing a function covered by a special permit or approval, without authorization:	171.2.	
a. After the special permit or approval has expired		$1,200 + $600 for each additional year.
b. After the special permit or approval has been terminated		$5,000 to $25,000.
2. Failure to comply with a provision of a special permit or approval (when no other baseline is applicable):	171.2.	
a. That relates to safety		$4,000 and up.
b. That does not relate to safety		$500 and up.
3. Failure to maintain a copy of the special permit in the transport vehicle or facility, when required by the terms of the special permit.	Special Permit	$1,000.
4. Use an approval or approval symbol issued to another person	Approval, Various	$9,000.
Offeror Requirements—All hazardous materials		
A. Undeclared Shipment:	172.200, 172.300, 172.400, 172.500.	
1. Offering for transportation a hazardous material without shipping papers, package markings, labels, and placards (where required):		
a. Packing Group I and § 172.504 Table 1 materials		$30,000 and up.
b. Packing Group II		$20,000.
c. Packing Group III		$17,500.
d. Consumer Commodity, ORM–D		$5,000.
2. Offering for transportation a hazardous material that is misclassified on the shipping paper, markings, labels, and placards (including improper treatment as consumer commodity, ORM–D):		
a. Packing Group I and § 172.504 Table I materials		$20,000.
b. Packing Group II		$12,000.
c. Packing Group III		$8,000.
3. Offering for transportation a forbidden hazardous material:		
a. Packing Group I and § 172.504 Table I materials		$35,000.
b. Packing Group II		$25,000.
c. Packing Group III		$20,000.
4. Offering for transportation a lithium battery, without shipping papers, package markings, labels, or placards (when required):		
a. For air transport		$40,000.
b. For ground transport		$20,000.
B. Shipping Papers:		
1. Failure to provide a shipping paper for a shipment of hazardous materials or accepting hazardous materials for transportation without a shipping paper:	172.201, 177.817(a).	
a. Packing Group I and § 172.504 Table 1 materials		$7,500.
b. Packing Group II		$5,600.
c. Packing Group III		$3,700.
2. Failure to follow one or more of the three approved formats for listing hazardous materials and non-hazardous materials on a shipping paper.	172.201(a)(1)	$1,500.
3. Failure to retain shipping papers as required	172.201(e)	$1,200.
4. Failure to include a proper shipping name in the shipping description or using an incorrect proper shipping name:	172.202.	
a. Packing Group I and § 172.504 Table 1 materials		$2,000.
b. Packing Group II		$1,500.
c. Packing Group III		$1,000.
5. Failure to include a hazard class/division number in the shipping description:	172.202.	
a. Packing Group I and § 172.504 Table 1 materials		$2,000.
b. Packing Group II		$1,500.
c. Packing Group III		$1,000.
6. Failure to include an identification number in the shipping description:	172.202.	
a. Packing Group I and § 172.504 Table 1 materials		$2,500.
b. Packing Group II		$1,800.
c. Packing Group III		$1,200.
7. Using an incorrect hazard class:	172.202.	
a. That does not affect compatibility requirements		$1,000.
b. That affects compatibility requirements:		
i. Packing Group I and § 172.504 Table 1 materials		$7,500.
ii. Packing Group II		$5,600.
iii. Packing Group III		$3,700.

Violation description	Section or cite	Baseline assessment
8. Using an incorrect identification number:	172.202.	
a. That does not change the response information		$1,000.
b. That changes response information:		
i. Packing Group I and § 172.504 Table 1 materials		$7,500.
ii. Packing Group II		$5,600.
iii. Packing Group III		$3,700.
9. Failure to include the Packing Group or using an incorrect Packing Group:	172.202.	
a. Packing Group I and § 172.504 Table 1 materials		$1,700.
b. Packing Group II and III		$1,300.
10. Using a shipping description that includes additional unauthorized information (extra or incorrect words).	172.202	$1,000.
11. Using a shipping description not in required sequence	172.202	$600.
12. Failure to include the total quantity of hazardous material covered by a shipping description (including net explosive mass).	172.202	$600.
13. Failure to include any of the following on a shipping paper, as required: Special permit number; ''Limited Quantity or ''Ltd Qty;'' ''RQ'' for a hazardous substance; technical name in parentheses for a listed generic or ''n.o.s.'' material; or marine pollutant.	172.203(a), (b), (c)(2), (k), (l)	$600.
14. Failure to indicate poison inhalation hazard on a shipping paper.	172.203(m)	$2,500.
15. Failure to include or sign the required shipper's certification on a shipping paper.	172.204	$1,000.
C. Emergency Response Information Requirements:		
1. Providing incorrect emergency response information with or on a shipping paper:	172.602.	
a. No significant difference in response		$1,000.
b. Significant difference in response:		
i. Packing Group I and § 172.504 Table 1 materials		$7,500.
ii. Packing Group II		$5,600.
iii. Packing Group III		$3,700.
2. Failure to include an emergency response telephone number on a shipping paper.	172.604	$3,200.
3. Failure to have the emergency response telephone number monitored while a hazardous material is in transportation; or listing the number in a manner that it is not readily identifiable or cannot be found easily and quickly (e.g., multiple telephone numbers); or failing to include the name, contract number, or other unique identifier of the person registered with the emergency response provider.	172.604	$1,600.
4. Listing an emergency response telephone number on a shipping paper that causes emergency responders delay in obtaining emergency response information (e.g., listing a telephone number that not working, incorrect, or otherwise not capable of providing required information).	172.604	$3,200 to $5,200
D. Package Marking Requirements:		
1. Failure to mark the proper shipping name and identification number on a package:	172.301(a).	
a. Packing Group I and § 172.504 Table 1 materials		$6,000.
b. Packing Group II		$4,500.
c. Packing Group III		$3,000.
2. Marking a package with an incorrect shipping name and identification number:	172.301(a).	
a. That does not change the response information:		
i. Packing Group I and § 172.504 Table 1 materials		$3,700.
ii. Packing Group II		$2,700.
iii. Packing Group III		$2,200.
b. That changes the response information:		
i. Packing Group I and § 172.504 Table 1 materials		$9,500.
ii. Packing Group II		$7,100.
iii. Packing Group III		$4,700.
3. Failure to mark the proper shipping name on a package or marking an incorrect shipping name on a package:	172.301(a).	
a. Packing Group I and § 172.504 Table 1 materials		$2,000.
b. Packing Group II		$1,500.
c. Packing Group III		$1,000.
4. Failure to mark the identification number on a package:	172.301(a).	
a. Packing Group I and § 172.504 Table 1 materials		$2,500.
b. Packing Group II		$1,800.
c. Packing Group III		$1,200.
5. Marking a package with an incorrect identification number:	172.301(a).	
a. That does not change the response information		$1,000.

Violation description	Section or cite	Baseline assessment
b. That changes the response information:		
i. Packing Group I and § 172.504 Table 1 materials		$7,500.
ii. Packing Group II		$5,600.
iii. Packing Group III		$3,700.
6. Failure to include the required technical name(s) in parentheses for a listed generic or "n.o.s." entry.	172.301(c)	$600.
7. Failure to mark "non-odorized" on a cylinder containing liquefied petroleum gas.	172.301(f)	$2,000.
8. Marking a package as containing hazardous material when it contains no hazardous material.	172.303(a)	$1,000.
9. Failure to locate required markings away from other markings that could reduce their effectiveness.	172.304(a)(4)	$1,000.
10. Failure to mark a package containing liquid hazardous materials with required orientation markings:	172.312.	
a. Packing Group I and § 172.504 Table 1 materials		$4,000.
b. Packing Group II		$3,500.
c. Packing Group III		$3,000.
11. Failure to mark "Biohazard on an infectious substance or "Inhalation Hazard" on a package containing a poison by inhalation hazard.	172.313(a), 172.323	$4,000.
12. Failure to apply limited quantity marking or "RQ" marking on a non-bulk package containing a hazardous substance.	172.315, 172.324(b)	$600.
13. Listing the technical name of a select agent hazardous material when it should not be listed.	172.301(b)	$1,600.
14. Failure to apply a "Keep away from heat," marine pollutant, or elevated temperature ("HOT") marking.	172.317, 172.322, 172.325	$1,200.
15. Failure to properly mark a bulk container	172.331, 172.334, 172.336, 172.338.	$1,000.
E. Package Labeling Requirements:		
1. Failure to label a package or applying a label that represents a hazard other than the hazard presented by the hazardous material in the package.	172.400	$7,000.
2. Placing a label on a package that does not contain a hazardous material.	172.401(a)	$1,000.
3. Failure to place a required subsidiary label on a package:	172.402.	
a. Packing Group I and § 172.504 Table 1 materials		$3,100.
b. Packing Group II		$1,800.
c. Packing Group III		$600.
4. Placing a label on a different surface of the package than, or away from, the proper shipping name.	172.406(a)	$1,000.
5. Placing an improper size label on a package	172.407(c)	$1,000.
6. Placing a label on a package that does not meet color specification requirements (depending on the variance).	172.407(d)	$1,000.
7. Failure to place a Cargo Aircraft Only label on a package intended for air transportation, when required.	172.402(c)	$5,000.
8. Failure to place a Cargo Aircraft Only label on a package containing a primary lithium battery or failure to mark a package containing a primary lithium battery as forbidden for transport on passenger aircraft:	172.402(c), 172.102(c)(1) Special Provision 188, 189, 190.	
a. For air transport		$10,000.
b. For ground transport		$1,000.
9. Failure to provide an appropriate class or division number on an explosive label.	172.411	$3,100.
F. Placarding Requirements:		
1. Improperly placarding a freight container or vehicle containing hazardous materials:	172.504.	
a. Packing Group I and § 172.504 Table 1 materials		$1,200 to $11,200.
b. Packing Group II and III		$1,000 to $9,000.
2. Failure to placard a freight container or vehicle containing hazardous materials (no placard at all):	172.504.	
a. Packing Group I and § 172.504 Table 1 materials		$12,000.
b. Packing Group II and III		$8,500.
G. Packaging Requirements:		
1. Failure to comply with package testing requirements for small quantities, excepted quantities, de minimis, materials of trade, limited quantities, and ORM–D.	173.4, 173.4a, 173.4b, 173.6, 173.156, 173.306.	$1,000 to $5,000.
2. Offering a hazardous material for transportation in an unauthorized non-UN standard or non-specification packaging (includes failure to comply with the terms of a special permit authorizing use of a non-standard or non-specification packaging):	Various.	
a. Packing Group I, § 172.504 Table 1 materials, and Division 2.3 gases.		$11,200.
b. Packing Group II and Divisions 2.1 and 2.2 gases		$8,700.
c. Packing Group III		$6,200.

Violation description	Section or cite	Baseline assessment
3. Offering a hazardous material for transportation in a package that was not retested as required:	Various.	
a. Packing Group I and § 172.504 Table 1 materials		$8,000.
b. Packing Group II		$5,000.
c. Packing Group III		$3,000.
4. Offering a hazardous material for transportation in an improper package:	Various.	
a. When Packing Group I material is packaged in a Packing Group III package.		$8,000.
b. When Packing Group I material is packaged in a Packing Group II package.		$5,000.
c. When Packing Group II material is packaged in a Packing Group III package.		$3,000.
5. Offering a hazardous material for transportation in a packaging (including a packaging manufactured outside the United States) that is torn, damaged, has hazardous material present on the outside of the package, or is otherwise not suitable for shipment.	Various	$7,500.
6. Offering a hazardous material for transportation in a self-certified packaging that has not been subjected to design qualification testing:	178.601, Various.	
a. Packing Group I and § 172.504 Table 1 materials		$13,500.
b. Packing Group II		$10,500.
c. Packing Group III		$7,500.
7. Offering a hazardous material for transportation in a packaging that has been successfully tested to an applicable UN standard but is not marked with the required UN marking (including missing specification plates).	173.32(d), 173.24(c)	$4,500.
8. Failure to close a UN standard packaging in accordance with the closure instructions:	173.22(a)(4).	
a. Packing Group I and § 172.504 Table 1 materials		$2,000 to $5,000.
b. Packing Group II		$1,000 to $4,000.
c. Packing Group III		$500 to $3,000.
9. Offering a hazardous material for transportation in a packaging that leaks during conditions normally incident to transportation:	173.24(b).	
a. Packing Group I and § 172.504 Table 1 materials		$16,500.
b. Packing Group II		$11,200.
c. Packing Group III		$7,500.
10. Overfilling or underfilling a package so that the effectiveness is substantially reduced:	173.24(b).	
a. Packing Group I and § 172.504 Table 1 materials		$11,200.
b. Packing Group II		$7,500.
c. Packing Group III		$3,700.
11. Failure to ensure packaging is compatible with hazardous material lading.	173.24(e)	$9,000 to $12,000.
12. Failure to mark an overpack as required	173.25(a)(4)	$3,700.
13. Packaging incompatible materials in an overpack	173.25(a)(5)	$9,300.
14. Marking a package "overpack" when the inner packages do not meet the requirements of the HMR:	173.25(a).	
a. Packing Group I and § 172.504 Table 1 materials		$15,000.
b. Packing Group II		$10,000.
c. Packing Group III		$7,000.
15. Failure to comply with additional requirements for transportation by aircraft.	173.27	$1,000 to $10,000.
16. Filling an IBC, portable tank, or cargo tank (DOT, UN, or IM) that is out of test and offering hazardous materials for transportation in that IBC or portable tank. (Penalty amount depends on number of units and time out of test.).	173.32(a), 173.33(a)(3), 180.352, 180.407, 180.605.	
a. Packing Group I and § 172.504 Table 1 materials:		
i. All testing overdue		$8,700.
ii. Only periodic (5 year) tests overdue or only intermediate periodic (2.5 year) tests overdue.		$4,600.
b. Packing Group II:		
i. All testing overdue		$6,600.
ii. Only periodic (5 year) tests overdue or only intermediate periodic (2.5 year) tests overdue.		$3,300.
c. Packing Group III:		
i. All testing overdue		$4,600.
ii. Only periodic (5 year) tests overdue or only intermediate periodic (2.5 year) tests overdue.		$2,300.
17. Manifolding cylinders without conforming to manifolding requirements.	173.301(g)	$3,700 and up.

Violation description	Section or cite	Baseline assessment
18. Failure to ensure a cargo tank motor vehicle in metered delivery service has an operational off-truck remote shut-off activation device.	173.315(n)(3)	$2,500.
19. Offering a hazardous material in a cargo tank motor vehicle when the material does not meet compatibility requirements with the tank or other lading or residue.	173.33	$15,000.
20. Failure to provide the required outage in a portable tank that results in a release of hazardous materials:.	173.32(f)(6).	
a. Packing Group I and § 172.504 Table 1 materials		$15,000.
b. Packing Group II		$11,200.
c. Packing Group III		$7,500.
Offeror Requirements—Specific hazardous materials		
A. Cigarette Lighters:		
1. Offering for transportation an unapproved cigarette lighter, lighter refill, or similar device, equipped with an ignition element and containing fuel.	173.21(i)	$7,500.
2. Failure to include the cigarette lighter test report identifier on the shipping paper.	173.308(d)(1)	$1,000.
3. Failure to mark the approval number on the package.	173.308(d)(2)	$1,000.
B. Class 1—Explosives:		
1. Failure to mark the package with the EX number for each substance contained in the package or, alternatively, indicate the EX number for each substance in association with the description on the shipping description.	172.320	$1,000.
2. Offering an unapproved explosive for transportation:	173.54, 173.56(b).	
a. Division 1.4 fireworks meeting the chemistry requirements of APA Standard 87–1.		$5,000.
b. Division 1.3 fireworks meeting the chemistry requirements of APA Standard 87–1.		$7,500.
c. All other explosives (including forbidden)		$12,500 and up.
3. Offering an unapproved explosive for transportation that minimally deviates from an approved design in a manner that does not impact safety:	173.54, 173.56(b).	
a. Division 1.4		$3,000.
b. Division 1.3		$4,000.
c. All other explosives		$6,000.
4. Offering a leaking or damaged package of explosives for transportation:	173.54(c).	
a. Division 1.3 and 1.4		$12,500.
b. All other explosives		$16,500.
5. Offering a Class 1 material that is fitted with its own means of ignition or initiation, without providing protection from accidental actuation.	173.60(b)(5)	$15,000.
6. Packaging explosives in the same outer packaging with other materials.	173.61	$9,300.
7. Transporting a detonator on the same vehicle as incompatible materials using the approved method listed in 177.835(g)(3) without meeting the requirements of IME Standard 22.	177.835(g)(3)	$10,000.
C. Class 7—Radioactive Materials:		
1. Failure to include required additional entries for radioactive material on a shipping paper, or providing incorrect information for these additional entries.	172.203(d)	$2,000 to $5,000.
2. Failure to mark the gross mass on the outside of a package of Class 7 material that exceeds 110 pounds.	172.310(a)	$1,000.
3. Failure to mark each package with the words ''Type A'' or ''Type B,'' as appropriate.	172.310(b)	$3,700.
4. Placing a label on Class 7 material that understates the proper label category.	172.403	$6,200.
5. Placing a label on Class 7 material that fails to contain (or has erroneous) entries for the name of the radionuclide(s), activity, and transport index.	172.403(g)	$2,000 to $5,000.
6. Failure to meet one or more of the general design requirements for a package used to ship a Class 7 material.	173.410	$6,200.
7. Failure to comply with the industrial packaging (IP) requirements when offering a Class 7 material for transportation.	173.411	$6,200.
8. Failure to provide a tamper-indicating device on a Type A package used to ship a Class 7 material.	173.412(a)	$5,000.
9. Failure to meet the additional design requirements of a Type A package used to ship a Class 7 material.	173.412(b)–(i)	$6,200.
10. Failure to meet the performance requirements for a Type A package used to ship a Class 7 material.	173.412(j)–(l)	$11,200.

Violation description	Section or cite	Baseline assessment
11. Offering a DOT specification 7A packaging without maintaining complete documentation of tests and an engineering evaluation or comparative data:	173.415(a), 173.461.	
a. Tests and evaluation not performed		$13,500.
b. Test performed but complete records not maintained		$2,500 to $6,200.
12. Offering any Type B, Type B(U), or Type B(M) packaging that failed to meet the approved DOT, NRC or DOE design, as applicable.	173.416	$16,500.
13. Offering a Type B packaging without registering as a party to the NRC approval certificate:	173.471(a).	
a. Never obtained approval		$3,700.
b. Holding an expired certificate		$1,200.
14. Failure to meet one or more of the special requirements for a package used to ship more than 0.1 kg of uranium hexafluoride.	173.420	$13,500.
15. Offering Class 7 materials for transportation as a limited quantity without meeting the requirements for a limited quantity.	173.421(a)	$8,000.
16. Offering a multiple-hazard limited quantity Class 7 material without addressing the additional hazard.	173.423(a)	$600 to $3,100.
17. Offering Class 7 materials for transportation under exceptions for radioactive instruments and articles while failing to meet the applicable requirements.	173.424	$6,200 to $12,500.
18. Offering Class 7 low specific activity (LSA) materials or surface contaminated objects (SCO) while failing to comply with applicable transport requirements (including, an external dose rate that exceeds an external radiation level of 10 mSv/h at 3 meters from the unshielded material).	173.427	$7,500 to $12,500.
19. Offering Class 7 LSA materials or SCO as exclusive use without providing specific instructions to the carrier for maintenance of exclusive use shipment controls.	173.427(a)(6)	$1,200.
20. Offering in excess of a Type A quantity of a Class 7 material in a Type A packaging.	173.431	$15,000.
21. Offering a package that exceeds the permitted radiation level or transport index.	173.441	$12,500.
22. Offering a package without determining the level of removable external contamination, or that exceeds the limit for removable external contamination.	173.443	$6,200 and up.
23. Storing packages of radioactive material in a group with a total criticality safety index of more than 50.	173.447(a)	$6,200 and up.
24. Offering for transportation or transporting aboard a passenger aircraft any single package or overpack of Class 7 material with a transport index greater than 3.0.	173.448(e)	$6,200 and up.
25. Exporting a Type B, Type B(U), Type B(M), or fissile package without obtaining a U.S. Competent Authority Certificate or, after obtaining a U.S. Competent Authority Certificate, failing to submit a copy to the national competent authority of each country into or through which the package is transported.	173.471(d)	$3,700.
26. Offering or exporting special form radioactive materials without maintaining a complete safety analysis or Certificate of Competent Authority, as required.	173.476(a), (b)	$3,700.
27. Shipping a fissile material as fissile-exempt without meeting one of the exemption requirements or otherwise not complying with fissile material requirements.	173.417, 173.453, 173.457	$12,500.
28. Offering Class 7 fissile materials while failing to have a DOT Competent Authority Certificate or NRC Certificate of Compliance, as required, or failing to meet the requirements of the applicable Certificate.	173.417	$1,000 to $12,500.
D. Class 2—Compressed Gases in Cylinders:		
1. Filling and offering a cylinder with compressed gas when the cylinder is out of test or after its authorized service life:	173.301(a)(6), (a)(7).	
a. Table 1 and compressed gas in solution		$10,000 to $15,000.
b. Division 2.1 gases		$7,500 to $10,000.
c. Division 2.2 gases		$5,000 to $7,500.
2. Overfilling cylinders:	Various.	
a. Division 2.3 gases		$15,000.
b. Division 2.1 gases		$10,000.
c. Division 2.2 gases		$7,500.
d. Aerosols, limited quantities, consumer commodities		$5,000.
3. Failure to check each day the pressure of a cylinder charged with acetylene that is representative of that day's compression, after the cylinder has cooled to a settled temperature, or failure to keep a record of this test for 30 days.	173.303(d)	$6,200.

Violation description	Section or cite	Baseline assessment
4. Offering a limited quantity of a compressed gas in a metal container for the purpose of propelling a nonpoisonous material and failure to heat the cylinder until the pressure is equivalent to the equilibrium pressure at 131 °F, without evidence of leakage, distortion, or other defect.	173.306(a)(3)	$1,800 to $5,000.
5. Offering a limited quantity of a compressed gas in a metal container intended to expel a non-poisonous material, while failing to subject the filled container to a hot water bath, as required.	173.306(a)(3)(v)	$5,000.
6. Offering liquefied petroleum gas for permanent installation on consumer premises when the requirements are not met.	173.315(j)	$7,500 to $10,000.
E. Oxygen Generators Offered by Air:		
1. Offering an unapproved oxygen generator for transportation	173.168	$25,000.
2. Offering an oxygen generator for transportation without installing a means of preventing actuation, as required.	173.168	$12,500 to $25,000.
3. Offering an oxygen generator as spent when the ignition and chemical contents were still present.	172.102(c)(1) Special Provision 61	$35,000.
F. Batteries:	173.159, 173.185, 173.21(c).	
1. Offering lithium batteries in transportation that have not been tested:		
a. Ground transport		$15,000.
b. Air transport		$30,000.
2. Offering lithium batteries in transportation that have been assembled from tested cells, but have not been tested.		$5,000 + 25 percent increase for each additional design.
3. Failure to create records of design testing		$2,500 to $9,300.
4. Offering lithium batteries in transportation that have not been protected against short circuit.		$15,000.
5. Offering lithium batteries in transportation in unauthorized packages.		$12,500.
6. Offering lead acid batteries in transportation in unauthorized packages.		$10,000.
7. Offering lithium batteries in transportation on passenger aircraft or misclassifying them for air transport.		$30,000.
8. Failure to prepare batteries so as to prevent damage in transit		$6,000.
Manufacturing, Reconditioning, Retesting Requirements		
A. Activities Subject to Approval:		
1. Failure to report in writing a change in name, address, ownership, test equipment, management, or test personnel.	171.2(c), Approval Letter	$700 to $1,500.
2. Failure by an independent inspection agency of specification cylinders to satisfy all inspector duties, including inspecting materials, and verifying materials of construction and cylinders comply with applicable specifications.	178.35(c)(1), (2), (3)	$5,000 to $16,500.
3. Failure to properly complete or retain inspector's report for specification packages.	178.25(c)(4), Various	$4,000.
4. Failure to have a cylinder manufacturing registration number/symbol, when required.	Various	$2,500.
B. Packaging Manufacturers (General):		
1. Failure of a manufacturer or distributor to notify each person to whom the packaging is transferred of all the requirements not met at the time of transfer, including closure instructions.	178.2(c)	$3,100.
2. Failure to comply with specified construction requirements for non-bulk packagings:	178.504 to 178.523.	
a. Packing Group I and § 172.504 Table 1 materials		$12,000.
b. Packing Group II		$8,000.
c. Packing Group III		$4,000.
3. Fail testing: Failure to ensure a packaging certified as meeting the UN standard is capable of passing the required performance testing (depending on size of package):	178.601(b), 178.609, Part 178 subparts O, Q.	
a. Infectious substances		$16,500.
b. Packing Group I and § 172.504 Table 1 materials		$13,500 to $16,500.
c. Packing Group II		$10,500 to $13,500.
d. Packing Group III		$7,500 to $10,500.
4. No testing: Certifying a packaging as meeting a UN standard when design qualification testing was not performed (depending on size of package):	178.601(d), 178.609, Part 178 subparts O, Q.	
a. Infectious substances		$16,500.
a. Packing Group I and § 172.504 table 1 materials		$13,500 to $16,500.
b. Packing Group II		$10,500 to $13,500.
c. Packing Group III		$7,500 to $10,500.
5. Failure to conduct periodic testing on UN standard packaging (depending on length of time, Packing Group, and size of package).	178.601(e), Part 178 subparts O, Q.	$2,500 to $16,500.

Violation description	Section or cite	Baseline assessment
6. Improper testing: Failure to properly conduct testing for UN standard packaging (e.g., testing with less weight than marked on packaging; drop testing from lesser height than required; failing to condition fiberboard boxes before design test) (depending on size of package):		
a. Design qualification testing:	178.601(d), 178.609, Part 178 subparts O, Q.	
i. Infectious substances		$13,500.
ii. Packing Group I		$10,500 to $13,500.
iii. Packing Group II		$7,500 to $10,500.
iv. Packing Group III		$2,500 to $7,500.
b. Periodic testing:	178.601(e), 178.609.	
i. Infectious substances		$10,500.
ii. Packing Group I		$7,000 to $10,500.
iii. Packing Group II		$4,000 to $7,000.
iv. Packing Group III		$600 to $4,000.
7. Failure to keep complete and accurate testing records:	178.601(l).	
a. No records kept		$5,000.
b. Incomplete or inaccurate records		$1,200 to $3,700.
8. Improper marking of UN certification	178.503	$600 per item.
C. Drum Manufacturers & Reconditioners:		
1. Failure to properly conduct a production leakproofness test on a new or reconditioned drum:	178.604(b), (d), 173.28(b)(2)(i).	
a. Improper testing:		
i. Packing Group I		$3,000.
ii. Packing Group II		$2,500.
iii. Packing Group III		$2,000.
b. No testing performed:		
i. Packing Group I		$6,200.
ii. Packing Group II		$5,000.
iii. Packing Group III		$3,700.
2. Marking incorrect tester information on a reused drum:	173.28(b)(2)(ii).	
a. Incorrect information		$1,000.
b. Unauthorized use of another's information		$9,000.
3. Representing, marking, or certifying a drum as a reconditioned UN standard packaging when the drum does not meet a UN standard..	173.28(c)	$7,500 to $13,500.
4. Representing, marking, or certifying a drum as altered from one UN standard to another, when the drum has not been altered.	173.28(d)	$600
D. IBC and Portable Tank Requalification:		
1. Failure to properly test and inspect IBCs or portable tanks	180.352, 180.603.	
a. Packing Group I		$10,000.
b. Packing Group II		$7,500.
c. Packing Group III		$5,000.
2. Failure to properly mark an IBC or portable tank with the most current retest and/or inspection information.	180.352(e), 178.703(b), 180.605(k)	$600 per item.
3. Failure to keep complete and accurate records of IBC or portable tank retest and reinspection:	180.352(f), 180.605(l).	
a. No records kept		$5,000.
b. Incomplete or inaccurate records		$1,200 to $3,700.
4. Failure to make inspection and test records available to a DOT representative upon request.	180.352(g), 49 U.S.C. 5121(b)(2)	$1,200.
5. Failure to perform tests (internal visual, leakproofness) on an IBC as part of a repair.	180.352(d)	$3,700 to $6,200.
6. Failure to perform routine maintenance on an IBC	180.350(c)	$2,500.
E. Cylinder Manufacturers & Rebuilders:		
1. Manufacturing, representing, marking, certifying, or selling a DOT high-pressure cylinder that was not inspected and verified by an approved independent inspection agency.	178.35	$10,000 to $25,000.
2. Failure to mark a registration number/symbol on a cylinder, when required.	178.35, Various	$1,000.
3. Failure to mark the date of manufacture or lot number on a DOT–39 cylinder.	178.65(i)	$3,700.
4. Failure to have a chemical analysis performed in the U.S. for a material manufactured outside the U.S., without an approval.	107.807, 178.35	$6,200.
5. Failure to comply with defect and attachment requirements, safety device requirements, or marking requirements.	178.35(d), (e), (f)	$5,000.
6. Failure to meet wall thickness requirements	Various	$9,300 to $18,700.
7. Failure to heat treat cylinders prior to testing	Various	$6,200 to $18,700.
8. Failure to conduct a complete visual internal examination	Various	$3,100 to $7,700.
9. Failure to conduct a hydrostatic test, or conducting a hydrostatic test with inaccurate test equipment.	Various	$3,100 to $7,700.
10. Failure to conduct a flattening test	Various	$9,300 to $18,700.

Violation description	Section or cite	Baseline assessment
11. Failure to conduct a burst test on a DOT–2P, 2Q, 2S, or 39 cylinder.	178.33–8, 178.33a–8, 178.33b–8, 178.65(f)(2).	$6,200 to $18,700.
12. Failure to maintain required inspector's reports:	178.35, Various.	
a. No reports at all		$5,000.
b. Incomplete or inaccurate reports		$1,200 to $3,700.
13. Failure to complete or retain manufacturer's reports	178.35(g)	$6,200.
14. Representing a DOT–4 series cylinder as repaired or rebuilt to the requirements of the HMR without being authorized by the Associate Administrator.	180.211(a)	$10,000 to $25,000.
F. Cargo Tank Motor Vehicles:		
1. Failure to maintain complete cargo tank test reports, as required:	180.417(b), (c).	
a. No records		$5,000.
b. Incomplete records		$1,200 to $3,700.
2. Failure to have a cargo tank tested or inspected (e.g., visual, thickness, pressure, leakproofness).	180.407(c)	$8,000 and up; increase by 25 percent for each additional.
3. Failure to mark a cargo tank with test and inspection markings	180.415	$600 each item.
4. Failure to retain a cargo tank's data report and Certificates or design certification.	178.320(b), 178.337–18, 178.338–19, 178.345–15.	$6,200.
5. Failure to mark a special permit number on a cargo tank.	172.301(c)	$1,800.
6. Constructing a cargo tank or cargo tank motor vehicle not in accordance with a special permit or design certification.	178.320(b), Special Permit	$13,500.
7. Failure to mark manhole assemblies on a cargo tank motor vehicle manufactured after October 1, 2004.	178.345–5(e)	$4,500.
8. Failure to apply specification plate and name plate:	178.337–17, 178.338–18, 178.345–14.	
a. No marking		$4,500.
b. Incomplete marking		$600 per item.
9. Failure to conduct monthly inspections and tests of discharge system in cargo tanks.	180.416(d)	$2,500.
G. Cylinder Requalification:		
1. Certifying or marking as retested a non-specification cylinder	180.205(a)	$1,000.
2. Failure to have retester's identification number (RIN)	180.205(b)	$5,000.
3. Failure to have current authority due to failure to renew a RIN	180.205(b)	$2,500 + $600 each additional year.
4. Marking a RIN before successfully completing a hydrostatic retest.	180.205(b)	$1,000.
5. Representing, marking, or certifying a cylinder as meeting the requirements of a special permit when the cylinder was not maintained or retested in accordance with the special permit.	171.2(c), (e), 180.205(c), Special Permit.	$2,500 to $7,500.
6. Failure to conduct a complete visual external and internal examination.	180.205(f)	$2,600 to $6,500.
7. Performing hydrostatic retesting without confirming the accuracy of the test equipment or failing to conduct hydrostatic testing.	180.205(g)(1), 180.205(g)(3)	$2,600 to $6,500.
8. Failure to hold hydrostatic test pressure for 30 seconds or sufficiently longer to allow for complete expansion.	180.205(g)(5)	$3,800.
9. Failure to perform a second retest, after equipment failure, at a pressure increased by the lesser of 10 percent or 100 psi (includes exceeding 90percent of test pressure prior to conducting a retest).	180.205(g)(5)	$3,800.
10. Failure to condemn a cylinder when required (e.g., permanent expansion exceeds 10 percent of total expansion [5percent for certain special permit cylinders], internal or external corrosion, denting, bulging, evidence of rough usage).	180.205(i)	$7,500 to $13,500.
11. Failure to properly mark a condemned cylinder or render it incapable of holding pressure.	180.205(i)(2)	$1,000 to $5,000.
12. Failure to notify the cylinder owner in writing when a cylinder has been condemned.	180.205(i)(2)	$1,200.
13. Failure to perform hydrostatic retesting at the minimum specified test pressure.	180.209(a)	$2,600 to $6,500.
14. Marking a star on a cylinder that does not qualify for that mark.	180.209(b)	$2,500 to $5,000.
15. Marking a "+" sign on a cylinder without determining the average or minimum wall stress by calculation or reference to CGA Pamphlet C–5.	173.302a(b)	$2,500 to $5,000.
16. Marking a cylinder in or on the sidewall when not permitted by the applicable specification.	180.213(b)	$7,500 to $13,500.
17. Failure to maintain legible markings on a cylinder	180.213(b)(1)	$1,000.
18. Marking a DOT 3HT cylinder with a steel stamp other than a low-stress steel stamp.	180.213(c)(2)	$7,500 to $13,500.
19. Improper marking of the RIN or retest date on a cylinder	180.213(d)	$1,000.

Violation description	Section or cite	Baseline assessment
20. Marking an FRP cylinder with steel stamps in the FRP area of the cylinder such that the integrity of the cylinder is compromised.	Special Permit	$7,500 to $13,500.
21. Failure to comply with eddy current examination requirements for DOT 3AL cylinders manufactured of aluminum alloy 6351–T6, when applicable.	Appendix C to Part 180	$2,600 to $6,500.
22. Failure to maintain current copies of the HMR, DOT special permits, and CGA Pamphlets applicable to inspection, retesting, and marking activities.	180.215(a)	$700 to $1,500.
23. Failure to keep complete and accurate records of cylinder re-inspection and retest:	180.215(b).	
a. No records kept		$5,000.
b. Incomplete or inaccurate records		$1,200 to $3,700.
Carrier Requirements		
A. Incident Notification:		
1. Failure to provide immediate telephone/online notification of a reportable hazardous materials incident reportable under 171.15(b).	171.15	$6,000.
2. Failure to file a written hazardous material incident report within 30 days of discovering a hazardous materials incident reportable under 171.15(b) or 171.16(a).	171.16	$4,000.
3. Failure to include all required information in hazardous materials incident notice or report or failure to update report.	171.15, 171.16	$1,000.
B. Shipping Papers:		
1. Failure to retain shipping papers for 1 year after a hazardous material (or 3 years for a hazardous waste) is accepted by the initial carrier.	174.24(b), 175.33(c), 176.24(b), 177.817(f).	$1,200.
C. Stowage/Attendance/Transportation Requirements:		
1. Transporting packages of hazardous material that have not been secured against movement.	Various	$3,700 and up.
2. Failure to properly segregate hazardous materials	Various	$9,300 and up.
3. Failure to remove a package containing hazardous materials from a motor vehicle before discharge of its contents:	177.834(h).	
a. Packing Group I and § 172.504 Table 1 materials		$5,000.
b. Packing Group II		$3,000.
c. Packing Group III		$1,000.
4. Transporting explosives in a motor vehicle containing metal or other articles or materials likely to damage the explosives or any package in which they are contained, without segregating in different parts of the load or securing them in place in or on the motor vehicle and separated by bulkheads or other suitable means to prevent damage.	177.835(i)	$6,500 and up.
5. Failure to attend Class 1 explosive materials during transportation.	177.835(k)	$3,000.
6. Transporting railway track torpedoes outside of flagging kits, in violation of DOT–E 7991.	171.2(b), (e)	$8,700.
7. Failure to carry a hazmat registration letter or number in the transport vehicle.	107.620(b)	$1,000.
8. Transporting Class 7 (radioactive) material having a total transport index greater than 50.	177.842(a)	$6,200 and up.
9. Transporting Class 7 (radioactive) material without maintaining the required separation distance.	177.842(b)	$6,200 and up.
10. Failure to comply with radiation survey requirements of a special permit that authorizes the transportation of Class 7 (radioactive) material having a total transportation index exceeding 50.	171.2(b), (e), Special Permit	$6,200 and up.

The baseline penalty amounts in Part II are used as a starting amount or range appropriate for the normal or typical nature, extent, circumstances, and gravity of the probable violations frequently cited in enforcement reports. PHMSA must also consider any additional factors, as provided in 49 U.S.C. 5123(c) and 49 CFR 107.331, including the nature, circumstances, extent and gravity of a violation, the degree of culpability and compliance history of the respondent, the financial impact of the penalty on the respondent, and other matters as justice requires. Consequently, at each stage of the administrative enforcement process, up to and including issuance of a final order or decision on appeal, PHMSA can adjust the baseline amount in light of the specific facts and circumstances of each case.

As part of this analysis, PHMSA reviews the factors outlined in the next section, *Miscellaneous Factors Affecting Penalty Amounts,* the safety implications of the violation, the pervasiveness of the violation, and all other relevant information. PHMSA considers not only what happened as a result of the violation, but also what could have happened as a result of continued violation of the regulations. As a general matter, one or more specific instances of a violation are presumed to reflect a respondent's general manner of operations, rather than isolated occurrences.

PHMSA may draw factors relevant to the statutory considerations from the initial information gathered by PHMSA's Office of Hazardous Materials Safety Field Operations, the respondent in response to an exit briefing, ticket, or Notice of Probable Violation (NOPV), or information otherwise available to us. We will generally apply the specific statutory factors that are outlined in

the next section, *Miscellaneous Factors Affecting Penalty Amounts,* in the following order:

1. Select the appropriate penalty amount within a specific baseline or range, with appropriate increases or decreases depending on the packing group or material involved and other information regarding the frequency or duration of the violation, the culpability of the respondent, and the actual or potential consequences of the violation.

2. Apply decreases for a reshipper or carrier that reasonably relied on an offeror's non-compliant preparation of a hazardous materials shipment.

3. Apply increases for multiple counts of the same violation.

4. Apply increases for prior violations of the HMR within the past six years.

5. Apply decreases for corrective actions.

6. Apply decreases for respondent's inability to pay or adverse effect on its ability to continue in business.

After each adjustment listed above, PHMSA will use the new modified baseline to calculate each subsequent adjustment. PHMSA will apply adjustments separately to each individual violation. All penalty assessments will be subject to additional adjustments as appropriate to reflect other matters as justice requires.

A. Respondents That Reship

A person who either receives hazardous materials from another company and reships them (reshipper), or accepts a hazardous material for transportation, and transports that material (carrier), is responsible for ensuring that the shipment complies in all respects with Federal hazardous materials transportation law. In both cases, the reshipper or carrier independently may be subject to enforcement action if the shipment does not comply.

Depending on all the circumstances, however, the person who originally prepared the shipment and placed it into transportation may have greater culpability for the noncompliance than the reshipper or carrier who reasonably relies on the shipment as received and does not open or alter the package before the shipment continues in transportation. PHMSA will consider the specific knowledge and expertise of all parties, as well as which party is responsible for compliance under the regulations, when evaluating the culpability of a reshipper or carrier. PHMSA recognizes that a reshipper or carrier may have reasonably relied upon information from the original shipper and may reduce the applicable baseline penalty amount up to 25 percent.

B. Penalty Increases for Multiple Counts

A main objective of PHMSA's enforcement program is to obtain compliance with the HMR and the correction of violations which, in many cases, have been part of a company's regular course of business. As such, there may be multiple instances of the same violation. Examples include a company shipping various hazardous materials in the same unauthorized packaging, shipping the same hazardous material in more than one type of unauthorized packaging, shipping hazardous materials in one or more packagings with the same marking errors, or using shipping papers with multiple errors.

Under 49 U.S.C. 5123(a), each violation of the HMR and each day of a continuing violation (except for violations pertaining to packaging manufacture or qualification) is subject to a civil penalty up to $75,000 or $175,000 for a violation occurring on or after October 1, 2012. As such, PHMSA generally will treat multiple occurrences that violate a single regulatory provision as separate violations and assess the applicable baseline penalty for each distinct occurrence of the violation. PHMSA will generally consider multiple shipments or, in the case of package testers, multiple package designs, to be multiple occurrences; and each shipment or package design may constitute a separate violation.

PHMSA, however, will exercise its discretion in each case to determine the appropriateness of combining into a single violation what could otherwise be alleged as separate violations and applying a single penalty for multiple counts or days of a violation, increased by 25 percent for each additional instance, as directed by 49 U.S.C. 5123(c). For example, PHMSA may treat a single shipment containing three items or packages that violate the same regulatory provision as a single violation and apply a single baseline penalty with a 50 percent increase for the two additional items or packages; and PHMSA may treat minor variations in a package design for a package tester as a single violation and apply a single baseline penalty with a 25 percent increase for each additional variation in design.

When aggravating circumstances exist for a particular violation, PHMSA may handle multiple instances of a single regulatory violation separately, each meriting a separate baseline or increase the civil penalty by 25 percent for each additional instance. Aggravating factors may include increased safety risks, continued violation after receiving notice, or separate and distinct acts. For example, if the multiple occurrences each require their own distinct action, then PHMSA may count each violation separately (e.g., failure to obtain approvals for separate fireworks devices).

C. Penalty Increases for Prior Violations

The baseline penalty in the List of Frequently Cited Violations assumes an absence of prior violations. If a respondent has prior violations of the HMR, generally, PHMSA will increase a proposed penalty.

When setting a civil penalty, PHMSA will review the respondent's compliance history and determine if there are any finally-adjudicated violations of the HMR initiated within the previous six years. Only cases or tickets that have been finally-adjudicated will be considered (i.e., the ticket has been paid, a final order has been issued, or all appeal remedies have been exhausted or expired). PHMSA will include prior violations that were initiated within six years of the present case; a case or ticket will be considered to have been initiated on the date of the exit briefing for both the prior case and the present case. If multiple cases are combined into a single Notice of Probable Violation or ticket, the oldest exit briefing will be used to determine the six-year period. If a situation arises where no exit briefing is issued, the date of the Notice of Probable Violation or Ticket will be used to determine the six-year period. PHMSA may consider prior violations of the Hazardous Materials Regulations from other DOT Operating Administrations.

The general standards for increasing a baseline proposed penalty on the basis of prior violations are as follows:

1. For each prior civil or criminal enforcement case—25 percent increase over the pre-mitigation recommended baseline penalty.

2. For each prior ticket—10 percent increase over the pre-mitigation recommended baseline penalty.

3. If a respondent is cited for operating under an expired special permit and previously operated under an expired special permit (as determined in a finally-adjudicated civil, criminal, or administrative enforcement case or a ticket), PHMSA will increase the civil penalty 100 percent.

4. If a respondent is cited for the exact same violation that it has been previously cited for within the six-year period (in a finally-adjudicated civil, criminal, or administrative enforcement case or a ticket), PHMSA will increase the baseline for that violation by 100 percent. This increase will apply only when the present violation is identical to the previous violation and applies only to the specific violation that has recurred.

5. A baseline proposed penalty (both for each individual violation and the combined total) will not be increased more than 100 percent on the basis of prior violations.

D. Corrective Action

PHMSA may lower a proposed penalty when a respondent's documented corrective action has fixed an alleged violation. Corrective action should demonstrate not only that the specific deficiency is corrected but also that any systemic corrections have been addressed to prevent recurrence of the violation.

The two primary factors that determine the reduction amount are the extent and timing of the corrective action. In other words, PHMSA will determine the amount of mitigation based on how much corrective action a respondent completes and how soon after the exit briefing it performs corrective action. Comprehensive systemic action to prevent future violations may warrant greater mitigation than actions that simply target violations identified during the inspection. Actions taken immediately (within the 30 calendar day period that respondents have to respond to an exit briefing, or upon approval of Field Operations) may warrant greater mitigation than actions that are not taken promptly.

PHMSA may consider a respondent's corrective action to assess mitigation at various stages in the enforcement process, including: (1) AFTEr an inspection and before an NOPV is issued; (2) on receipt of an NOPV; or (3) after receipt of an NOPV. In order to reduce a civil penalty for corrective action, PHMSA must receive satisfactory

documentation that demonstrates the corrective action was completed. If a corrective action is of a type that cannot be documented (e.g., no longer using a particular packaging), then a respondent may provide a signed affidavit describing the action it took. The affidavit must begin with the affirmative oath ''I hereby affirm under the penalties of perjury that the below statements are true and correct to the best of my knowledge, information and belief,'' in accordance with 28 U.S.C. 1746.

Generally, corrective action credit may not exceed 25 percent. Mitigation is applied to individual violations and fact patterns but should not be considered to be automatic reduction. Thus, in a case with two violations, if corrective action for the first violation is more extensive than for the second, the penalty for the first will be mitigated more than that for the second. If a respondent has previously committed the same violation, however, as determined in a finally-adjudicated civil, criminal, or administrative enforcement case or a ticket, PHMSA will not apply any reduction for corrective action.

In determining the appropriate civil penalty reduction, PHMSA will consider the extent to which the respondent corrected the violation and any risks or harms it created, the respondent's actions to prevent the violation from recurring, improvements to overall company practices to address a widespread compliance issue, and how quickly the corrective action was performed. In general, PHMSA will apply the following reductions for corrective action, subject to the facts and circumstances of individual cases and respondents. If a respondent has given full documentation of timely corrective action and PHMSA does not believe that anything else can be done to correct the violation or improve overall company practices, we will generally reduce the civil penalty by no more than 25 percent. As noted above, a 25 percent reduction is not automatic. We will reduce the penalty up to 20 percent when a respondent promptly and completely corrected the cited violation and has taken substantial steps toward comprehensive improvements. PHMSA will generally apply a reduction up to 15 percent when a respondent has made substantial and timely progress toward correcting the specific violation as well as overall company practices, but additional actions are needed. A reduction up to 10 percent is appropriate when a respondent has taken significant steps toward addressing the violation, but minimal or no steps toward correcting broader company policies to prevent future violations. PHMSA may reduce a penalty up to 5 percent when a respondent made untimely or minimal efforts toward correcting the violation.

E. Financial Considerations

PHMSA may mitigate a proposed penalty when a respondent documents that the penalty would either (1) exceed an amount that the respondent is able to pay, or (2) have an adverse effect on the respondent's ability to continue in business. These criteria relate to a respondent's entire business, and not just the product line or part of its operations involved in a violation. PHMSA may apply this mitigation by reducing the civil penalty or instituting a payment plan.

PHMSA will only mitigate a civil penalty based on financial considerations when a respondent supplies financial documentation demonstrating one of the factors above. A respondent may submit documentation of financial hardship at any stage to receive mitigation or an installment payment plan. Documentation includes tax records, a current balance sheet, profit and loss statements, and any other relevant records. Evidence of a respondent's financial condition is used only to decrease a penalty, and not to increase it.

In evaluating the financial impact of a penalty on a respondent, PHMSA will consider all relevant information on a case-by-case basis. Although PHMSA will determine financial hardship and appropriate penalty adjustments on an individual basis, in general, we will consider the following factors.

1. The overall financial size of the respondent's business and information on the respondent's balance sheet, including the current ratio (current assets to current liabilities), the nature of current assets, and net worth (total assets minus total liabilities).

2. A current ratio close to or below 1.0 may suggest that the company would have difficulty in paying a large penalty or in paying it in a single lump sum.

3. A small amount of cash on hand (representing limited liquidity), even with substantial other current assets (such as accounts receivable or inventory), may suggest a company would have difficulty in paying a penalty in a single lump sum.

4. A small or negative net worth may suggest a company would have difficulty in paying a penalty in a single lump sum. Notwithstanding, many respondents have paid substantial civil penalties in installments even though net worth was negative. For this reason, negative net worth alone does not always warrant reduction of a proposed penalty or even, in the absence of factors discussed above, a payment plan.

When PHMSA determines that a proposed penalty poses a significant financial hardship, we may reduce the proposed penalty and/or implement an installment payment plan. The appropriateness of these options will depend on the circumstances of the case.

When an installment payment plan is appropriate, the length of the payment plan should be as short as possible, but may be adjusted as necessary. PHMSA will not usually exceed six months for a payment plan. In unusual circumstances, PHMSA may extend the period of a payment plan. For example, the duration of a payment plan may reflect fluctuations in a company's income if its business is seasonal or if the company has documented specific reasons for current non-liquidity.

Issued in Washington, DC, on September 25, 2013 under authority delegated in 49 CFR § 1.97.

Cynthia L. Quarterman,

Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2013–23887 Filed 10–1–13; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 107, 130, 171, 172, 173, 174, 177, 178, 179, and 180

RIN 2137–AF03

[Docket No. PHMSA–2013–0158 (HM–244F)]

Hazardous Materials: Minor Editorial Corrections and Clarifications (RRR)

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

ACTION: Final rule.

SUMMARY: This final rule corrects editorial errors, makes minor regulatory changes and, in response to requests for clarification, improves the clarity of certain provisions in the Hazardous Materials Regulations (HMR). The intended effect of this rule is to enhance the accuracy and reduce misunderstandings of the regulations. The amendments contained in this rule are non-substantive changes and do not impose new requirements.

DATES: *Effective date:* October 1, 2013. The incorporation by reference of certain publications listed in the rule was approved by the Director of the Federal Register as of January 7, 2013.

FOR FURTHER INFORMATION CONTACT: Neal Suchak, Standards and Rulemaking Division, 202–366–8553, PHMSA, East Building, PHH–10, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background
II. Section-by-Section Review
III. Regulatory Analyses and Notices
A. Statutory/Legal Authority for the Rulemaking
B. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures
C. Executive Order 13132
D. Executive Order 13175
E. Regulatory Flexibility Act, Executive Order 13272 and DOT Policies and Procedures
F. Executive Order 13563 Improving Regulation and Regulatory Review
G. Unfunded Mandates Reform Act of 1995
H. Paperwork Reduction Act
I. Environmental Impact Analysis
J. Regulation Identifier Number (RIN)
K. Privacy Act

I. Background

The Pipeline and Hazardous Materials Safety Administration (PHMSA) annually reviews the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) to identify typographical errors, outdated addresses or other contact information, and similar errors. In this final rule, we are correcting typographical errors, incorrect references to the Code of Federal Regulations (CFR) and international standards citations, inconsistent use of terminology, misstatements of certain regulatory requirements, and inadvertent omissions of information. Because these amendments do not impose new requirements, notice and public comment are unnecessary. By making these amendments effective without the customary 30-day delay following publication, the changes will appear in the next published revision of title 49 of the CFR.

II. Section-by-Section Review

The following is a section-by-section summary of the minor editorial corrections and clarifications made in this final rule.

Part 107

Section 107.402

This section prescribes the requirements for application for designation as a certification agency. Paragraph (d) of this section specifically describes the requirements to become a Fireworks Certification Agency (FCA). These requirements were adopted in a final rule entitled ''Hazardous Materials: Revision to Fireworks Regulations (RRR)'' published on July 16, 2013 (Docket No. PHMSA–2010–0320 (HM–257); 78 *FR* 42473, effective August 16, 2013). Paragraph (d)(1)(ii) adopted in this rulemaking details the work experience an employee of a FCA would need to possess, specifically ''experience in manufacturing or testing of Division 1.4G consumer fireworks.'' It was not PHMSA's intent to unnecessarily limit FCA employees to only those dealing with low hazard fireworks as those employees with experience in manufacturing or testing of higher hazard explosives and fireworks would be qualified to conduct the work of an FCA. Therefore, in this rulemaking PHMSA is amending 107.402(d)(1)(ii) by replacing the specific language ''Division 1.4G consumer fireworks'' with the more generic term ''fireworks or explosives.''

Section 107.801

This section describes the purpose and scope of subpart I of Part 107 regarding the approval of Independent Inspection Agencies, Cylinder Requalifiers, and Non-domestic Chemical Analyses and Tests of DOT Specification Cylinders. Paragraph (b) of this section contains the typographical error ''Administratior.'' PHMSA is correcting this spelling error to read ''Administrator.''

Section 107.803

This section provides instructions for the approval of an Independent Inspection Agency (IIA). Paragraph (c) describes the application information that each applicant must submit to become an IIA. The reference in § 107.803(c)(6) to subparagraph (c)(3) is incorrect. Currently, § 107.803(c)(6) references subparagraph (c)(3) when referring to a certifying inspection agency. This reference is incorrect as subparagraph (c)(3) refers to the applicant. PHMSA is revising § 107.803(c)(6) to correctly reference subparagraph (c)(5), which clarifies that an identification number or qualification number should be assigned to each inspector employed by the applicant.

Part 171

Section 171.23

This section describes requirements for specific materials and packagings transported under the International Civil Aviation Organization (ICAO) Technical Instructions, International Maritime Dangerous Goods (IMDG) Code, Transport Canada Transportation of Dangerous Goods (TDG) Regulations, or the International Atomic Energy Agency (IAEA) Regulations. Subparagraph (a)(4) describes the filling of cylinders for export or use on board a vessel. PHMSA amended this subparagraph in a final rule published on September 13, 2011 (Docket No. PHMSA–2011–0134 (HM–244D); 76 *FR* 177, effective October 13, 2011), at which time § 171.23(a)(4)(iii) was inadvertently omitted. The change made to § 171.23 in the publication of the final rule (HM–244D) was solely to correct paragraph (a)(4)(ii), where the word ''density'' was misspelled as ''ensity.'' No other changes to this section were intended. PHMSA is revising this section to reinsert the requirement for the bill of lading or other shipping paper to include the certification statement: ''This cylinder has (These cylinders have) been qualified, as required, and filled in accordance with DOT requirements for export.''

Part 172

Section 172.101

This section contains the Hazardous Materials Table (HMT) and explanatory text for each of the columns in the table. Paragraph (c) of this section describes column 2: hazardous materials descriptions and proper shipping names. Subparagraph (c)(6) describes what may be used when a proper shipping name includes a concentration or concentration range. While the HMR permits the use of the percent sign (%) in other sections of the regulations (for example, the organic peroxide table; § 173.225), it does not specifically state that it may be substituted for the word ''percent'' in a proper shipping name listed in the HMT. International standards permit the use of the percent sign (%) in place of the word ''percent.'' Therefore, PHMSA is clarifying § 172.101(c)(6) to note that the percent sign (%) is permitted and may be used in place of the word ''percent.''

The proper shipping name for the entry ''*Helium, compressed,* UN 1046'' is italicized in the § 172.101 HMT. This is incorrect, as italicized text indicates that the words are not part of a proper shipping name but may be used in addition to the proper shipping name. It was not PHMSA's intent to make words in this proper shipping name optional. In this final rule, PHMSA is revising the entry ''*Helium, compressed,* UN1046'' to read ''Helium, compressed, UN1046.''

The entry for ''*Hydrogen iodide solution,* see Hydriodic acid'' is incorrect in the § 172.101 HMT. The row showing information for this material as a packing group III should not be shown in the § 172.101 HMT. The intention of this entry is to make reference to the entry ''Hydriodic acid, UN1787,'' and the inclusion of a row showing information for packing group III could cause confusion that the reference to Hydriodic Acid applies only for materials of that packing group. Therefore, PHMSA is revising this entry to remove information from additional rows under ''*Hydrogen iodide solution,* see Hydriodic acid.''

The entry for ''Neon, compressed, UN1065'' is being revised to realign the columns of the § 172.101 HMT in the correct order. Information currently in column 5 of the § 172.101 HMT should be moved one column to the right. Subsequently, information currently in columns 6–10 should be moved two columns to the right.

The entry for ''Nitrocellulose, *with not more than 12.6 percent, by dry mass* mixture with *or* without plasticizer, with *or* without pigment, UN2557*''* is incorrect in the § 172.101 HMT. The

entry should include the word ''nitrogen,'' and read ''Nitrocellulose, *with not more than 12.6 percent nitrogen, by dry mass* mixture with *or* without plasticizer, with *or* without pigment.'' The word ''nitrogen'' was omitted inadvertently when PHMSA published a final rule on October 1, 2007 (Docket No. PHMSA–2007–29245 (HM–244); 72 FR 55678, effective October 1, 2007), when the entry was intended to be changed for consistency with the United Nations (UN) Model Regulations. The entry in the UN Model Regulations for UN2557 includes the word ''nitrogen.'' PHMSA is revising this entry for consistency with the UN Model Regulations.

Section 172.102

This section prescribes the special provisions assigned to § 172.101 HMT entries. On January 19, 2011 PHMSA published, and made effective a final rule, (Docket No. PHMSA–2009–0126 (HM–215K); 76 FR 12), which amended special provision 149. This special provision authorizes an increased amount of certain Class 3 (flammable liquid) materials in PG II that are transported as limited quantities or consumer commodities. It was revised to indicate that the exception provided may not be used for transportation by aircraft. However, the previous regulatory text for special provision 149 was not removed from the HMR resulting in two entries under special provision 149. Therefore, PHMSA is amending § 172.102(c)(1) to remove the second entry for special provision 149.

In the same rulemaking (HM–215K), § 172.102(c)(1) special provision T9 was amended. Special provisions found in § 172.102(c)(7) with a ''T'' code apply to Portable Tanks. This final rule changed column 5 of special provision T9 to indicate use of the portable tank as prohibited for liquids. The previous bottom opening requirements remain in the table inadvertently. Therefore, PHMSA is revising special provision T9 to remove the incorrect duplicative entry, and consequently, the reference to § 178.275 in column 5. Additionally, PHMSA is revising the Table of Portable Tank T Codes to reformat special provision T21 because as it appears currently, all information in the table was inadvertently shifted one column to the right.

Section 172.203

This section provides shippers with additional requirements for hazardous materials descriptions on shipping papers. Paragraph (k) of this section prescribes the requirements applicable to technical names. On December 29, 2006, PHMSA published a final rule (Docket No. PHMSA–06–25476 (HM–215I); 7 *FR* 78596, effective January 1, 2007), which harmonized many regulations within the HMR in accordance with international standards. Among these changes, was the order in which a hazardous materials shipping description should be entered on a shipping paper. Originally, the proper order was proper shipping name followed by hazard class, UN identification number, and packing group. Based on the changes made under Docket HM–215I, the new order of hazardous materials shipping descriptions is: UN identification number, followed by the proper shipping name, hazard class, and packing group. This new sequence had a mandatory compliance date of January 1, 2013. PHMSA is revising § 172.203(k) introductory text and subparagraph (k)(1) to reflect the proper sequence for a hazardous materials description on a shipping paper in the examples given in this paragraph.

Section 172.400

This section provides the general labeling requirements. Paragraph (b) of this section contains a table for the appropriate label in accordance with column 6 of the HMT. The entry for Class 3 is incorrect in the first column and reads ''3 (flammable liquid) Combustible Liquid'' and PHMSA is revising it to ''3 Flammable Liquid (Combustible liquid)'' to accurately describe the general labeling requirements.

Section 172.512

The placarding requirements for freight containers and aircraft unit load devices are described in § 172.512. The reference in § 172.512(b)(1)(iii) to part 7; chapter 2, section 2.7 of the ICAO Technical Instructions in this sub-subparagraph is inaccurate. This reference became inaccurate when the 2013–2014 publication of the ICAO Technical Instructions re-designated part 7; chapter 2; section 2.6 as a new requirement for visibility of labels, moving all subsequent sections up. Part 7; chapter 2, section 2.7 of the ICAO Technical Instructions now refers to replacement of labels, whereas section 2.8 refers to identification of unit load devices containing dangerous goods. PHMSA is revising this sub-subparagraph for the correct reference to cite part 7; chapter 2, section 2.8.

Section 172.604

This section describes the requirements for providing an emergency response telephone number. Paragraph (d) of this section gives exceptions to this requirement and lists what materials are not required to be accompanied by an emergency response telephone number. The exception in subparagraph § 172.604(d)(1) includes the word ''and'' at the end, suggesting that a material must be offered for transportation as a limited quantity as well as have a proper shipping name that is listed in subparagraph § 172.604(d)(2). This is not the intent of this regulation and PHMSA is revising subparagraph § 172.604(d)(1) in an effort to eliminate any confusion by removing the word ''and'' at the end, to indicate that these are two separate exceptions to the requirement to provide an emergency response telephone number. This correction would create consistency with similarly structured sections of the HMR.

Part 173

Section 173.22

This section prescribes the shipper's responsibilities required for the offering for transportation of a hazardous material in commerce. In sub-subparagraph § 173.22(a)(4)(ii), the requirements to retain closure notifications for a bulk package or cylinder are described. In the last sentence of this sub-subparagraph, the HMR reads that subsequent offerors of a ''filed'' and otherwise properly prepared unaltered package are not required to maintain manufacturer notification (including closure instruction). PHMSA is revising this sub-subparagraph to replace the word ''filed'' with ''filled.''

Section 173.62

This section provides packaging instructions for Class 1 explosive materials. Paragraph (b) of this section contains the explosives table which specifies the packaging instructions assigned to each explosive UN number. PHMSA inadvertently omitted an entry for UN0501 in this table. ''Propellant, solid, UN0501'' was added to the HMT when PHMSA's predecessor agency, the Research and Special Programs Administration (RSPA),published a final rule on June 21, 2001, (Docket No. RSPA–2000–7702 (HM–215D); 66 FR 33316, effective October 1, 2001), in an effort to harmonize the HMR with international standards. When ''Propellant, solid, UN0501'' was added to the HMT, the corresponding entry in the explosives table in § 173.62(b) was not made. PHMSA is revising the explosives table in § 172.62(b) by adding the entry for UN0501 and the reference to its corresponding packing instruction, 114(b). This change captures our

original intent to align the requirements with those provided in the UN Model Regulations.

Section 173.124

This section defines classification criteria for Class 4 hazardous materials. Paragraph (a) defines a Division 4.1 (flammable solid) material. The reference in § 173.124(a)(2)(iv) identifies tests to classify self-reactive materials. It currently references Figure 14.2 in the UN Manual of Tests and Criteria, however there is no such figure. The appropriate table reference should be Figure 20.1 (a–b) in the UN Manual of Tests and Criteria, which is a flow chart scheme for self-reactive substances and organic peroxides. PHMSA is revising this section to reflect the correct reference to the UN Manual of Tests and Criteria.

Section 173.199

This section provides packaging requirements for Category B infectious substances. Paragraph (d) provides requirements for refrigerated or frozen specimens (ice, dry ice, and liquid nitrogen). Subparagraph (d)(2) says ''The package is marked ''Carbon dioxide, solid'' or ''Dry ice'' and an indication that the material being refrigerated is used for diagnostic treatment purposes (e.g., frozen medical specimens).'' The language in this paragraph was adopted when PHMSA published a final rule on June 2, 2006 (Docket No. PHMSA–2004–16895 (HM–226A); 71 FR 32243, effective October 1, 2006), revising the requirements applicable to infectious substances. However to alleviate confusion and provide consistency within the HMR, this requirement should read ''diagnostic or treatment purposes'' as it does in § 173.217(d), which provides the packaging requirements for carbon dioxide, solid (dry ice). PHMSA is revising § 173.199(d)(2) to correct the inconsistency.

Section 173.220

This section prescribes requirements for the transportation of internal combustion engines, self-propelled vehicles, mechanical equipment containing internal combustion engines, battery-powered equipment or machinery, and fuel cell-powered equipment or machinery. Subparagraph § 173.220(a)(1) provides details on determining whether the engine contains a liquid or gaseous fuel. Under the second sentence of this subparagraph, an engine may be considered as not containing fuel when the engine components and fuel lines have been ''completed drained, sufficiently cleaned of residue . . .'' The word ''completed'' is intended to read ''completely.'' This same typographical error appears in § 173.220(a)(2). PHMSA is revising these subparagraphs to replace the word ''completed'' with ''completely.''

Section 173.301

This section prescribes the general requirements for shipment of compressed gases and other hazardous materials in cylinders, UN pressure receptacles, and spherical pressure vessels. Paragraph (f) of this section gives the requirements applicable to pressure relief device systems. The reference in § 173.301(f)(1) to subparagraph (l)(2) is outdated. Formerly, § 173.301(l)(2) described the filling requirements of cylinders for export when not equipped with a pressure relief device. On May 3, 2007, PHMSA published a final rule (Docket No. PHMSA–2005–23141 (HM–215F); 72 FR 25162, effective October 1, 2007), which moved these requirements to § 171.23(a)(5). A correction of the reference to § 173.301(l)(2) was inadvertently omitted. Therefore, PHMSA is revising § 173.301(f)(1) to correctly reference § 171.23(a)(5) to provide the filling requirements of cylinders for export when not equipped with a pressure relief device.

Paragraph (j) of this section provides requirements for non-specification cylinders in domestic use. The first sentence of this paragraph references § 173.23(g). This reference is incorrect as 173.23(g) refers to previously authorized non-bulk packagings manufactured and tested in accordance with subparts L and M of part 178. The reference should be to § 171.23(a), which identifies the requirements for the transportation of foreign cylinders within the United States. Requirements applicable to the import and export of foreign cylinders into the United States were consolidated into § 171.23(a) when PHMSA published a final rule on May 3, 2007 (Docket No. PHMSA–2005–23141 (HM–215F). PHMSA is revising § 173.301(j) for the proper reference.

Section 173.304

This section describes the requirements for filling of cylinders with liquefied compressed gases. Paragraph (d) provides criteria for the filling of refrigerant and dispersant gases. PHMSA is correcting the title of paragraph (d) by italicizing ''Refrigerant and dispersant gases'' to better identify the heading.

Section 173.476

This section specifies the requirements for approval of special form Class 7 (radioactive) materials. Paragraph (d) of this section notes that paragraphs (a) and (b) do not apply in those cases where A_1 equals A_2 (i.e., when the maximum activity of special form Class 7 (radioactive) material permitted in a Type A package equals the maximum activity of a non-special form Class 7 (radioactive) material permitted in a Type A package) and the material is not required to be described on the shipping papers as ''Radioactive Material, Special Form, n.o.s.'' On January 26, 2004, RSPA published a final rule (Docket No. RSPA–99–6283 (HM–230); 69 FR 3632, effective October 13, 2011), in an effort to make the HMR compatible with the International Atomic Energy Agency's (IAEA) Safety Standards Series. In doing so, many entries in the HMT were revised or removed. The entry for ''Radioactive Material, Special Form, n.o.s., UN2974'' was removed. In this same final rule, the entries for ''Radioactive Material, Type A Package, Special Form, UN3332'' and ''Radioactive Material, Type A Package, Special Form, Fissile, UN3333'' were revised to remove the ''I'' from column 1 of the HMT to indicate they were no longer designated for international transportation. At the time of this change, the proper shipping name ''Radioactive Material, Special Form, n.o.s.'' was not removed from § 173.476(d). PHMSA is revising this section to replace the proper shipping name ''Radioactive Material, Special Form, n.o.s.'' with ''Radioactive Material, Type A Package, Special Form'' or as ''Radioactive Material, Type A Package, Special Form, Fissile.''

Part 178

Section 178.61

This section provides criteria for specification 4BW welded steel cylinders with electric-arc welded longitudinal seam. Subparagraph (b)(2) states that material for heads must meet the requirements of paragraph (a) of this section or be open hearth, electric or basic oxygen carbon steel of uniform quality. The reference to paragraph (a) is incorrect, as paragraph (a) describes the type, size and service pressure of specification 4BW cylinders and not the type of material for the heads. The correct reference is to § 178.61(b)(1), which references the specifications for steel found in Table 1 to Appendix A of part 178. PHMSA is revising § 178.61(b)(2) to correctly reference that the material for heads must meet the requirements of (b)(1) of this section.

Section 178.345–3

This section prescribes requirements for the structural integrity of specification cargo tanks. Paragraph (c)(1) addresses stress in the cargo tank shell resulting from normal operating loadings. PHMSA is correcting the formula in paragraph (c)(1) for the figure ''S_S2'' to read ''SS^2.''

Section 178.503

This section describes the requirements for the marking requirements for non-bulk performance-oriented packagings. Paragraph (a) of this section provides criteria for the marking of packagings to represent that they are manufactured to a UN standard. There is an inadvertent error in § 178.503(a)(1) that states, ''Except as provided in paragraph (e)(1)(ii) of this section, the United Nations symbol as illustrated in paragraph (e)(1)(i) of this section (for embossed metal receptacles, the letters ''UN'') may be applied in place of the symbol;'' The parentheses should be extended in this subparagraph. PHMSA is revising § 178.503(a)(1) to read: ''(1) Except as provided in paragraph (e)(1)(ii) of this section, the United Nations symbol as illustrated in paragraph (e)(1)(i) of this section (for embossed metal receptacles, the letters ''UN'' may be applied in place of the symbol).''

Section 178.605

This section prescribes the requirements for hydrostatic pressure test of non-bulk UN specification packagings. Paragraph (d) provides the test method and pressure to be applied. Non-bulk packagings intended to contain hazardous materials in Packing Group I must be tested to a minimum test pressure of 250 kPa (36 psig) during the hydrostatic pressure test. This statement appears in paragraph (d), before the numbered subparagraphs listing the test methods, as well as after. PHMSA is amending § 178.605(d) to remove the duplicative statement following the numbered subparagraphs of test methods.

III. Regulatory Analyses and Notices

A. Statutory Authority

This final rule is published under authority of 49 U.S.C. 5103(b), which authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. The purpose of this final rule is to remove inadvertent errors in the hazardous materials table, grammatical and typographical errors, and, in response to requests for clarification, improve the clarity of certain provisions in the Hazardous Materials Regulations. The changes made in this final rule are considered non-substantive and this is published as a direct final rule.

B. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). Additionally, E.O. 13563 supplements and reaffirms E.O. 12866, stressing that, to the extent permitted by law, an agency rulemaking action must be based on benefits that justify its costs, impose the least burden, consider cumulative burdens, maximize benefits, use performance objectives, and assess available alternatives. This final rule does not impose new or revised requirements for hazardous materials shippers or carriers; therefore, it is not necessary to prepare a regulatory impact analysis.

C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria in Executive Order 13132 (''Federalism''). This final rule does not adopt any regulation that: (1) Has substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government; or (2) imposes substantial direct compliance costs on state and local governments. PHMSA is not aware of any state, local, or Indian tribe requirements that would be preempted by correcting editorial errors and making minor regulatory changes. This final rule does not have sufficient federalism impacts to warrant the preparation of a federalism assessment.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not have tribal implications, does not impose substantial direct compliance costs on Indian tribal governments, and does not preempt tribal law, the funding and consultation requirements of Executive Order 13175 do not apply, and a tribal summary impact statement is not required.

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

This final rule will not have a significant economic impact on a substantial number of small entities. This rule makes minor editorial changes that will not impose any new requirements on persons subject to the HMR; thus, there are no direct or indirect adverse economic impacts for small units of government, businesses, or other organizations.

F. Executive Order 13563 Improving Regulation and Regulatory Review

Executive Order 13563 supplements and reaffirms the principles, structures, and definitions governing regulatory review that were established in Executive Order 12866 Regulatory Planning and Review of September 30, 1993. In addition, Executive Order 13563 specifically requires agencies to: (1) Involve the public in the regulatory process; (2) promote simplification and harmonization through interagency coordination; (3) identify and consider regulatory approaches that reduce burden and maintain flexibility; and (4) ensure the objectivity of any scientific or technological information used to support regulatory action; consider how to best promote retrospective analysis to modify, streamline, expand, or repeal existing rules that are outmoded, ineffective, insufficient, or excessively burdensome.

A complete review of the existing HMR led to the identification of various minor errors in the HMR.

The correction of these errors will clarify current text while maintaining the intent of the regulations affected. This final rule is designed to address those errors by making non-substantive changes to the HMR such as editorial changes, spelling corrections, removal of transitional requirements that are no longer applicable and formatting modifications. This final rule corrects these errors but does not require the application of Executive Order 13563. The final rule does however clarify the regulatory text thus improving the regulations.

G. Unfunded Mandates Reform Act of 1995

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

H. Paperwork Reduction Act

There are no new information collection requirements in this final rule.

I. Environmental Impact Analysis

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347), and implementing regulations by the Council on Environmental Quality (40 CFR part 1500) require Federal agencies to consider the consequences of Federal actions and prepare a detailed statement on actions that significantly affect the quality of the human environment.

The purpose of this rulemaking is to correct editorial errors, make minor regulatory changes and, in response to requests for clarification, improve the clarity of certain provisions in the HMR. The intended effect of this rule is to enhance the accuracy and reduce misunderstandings of the regulations. The amendments contained in this rule are non-substantive changes and do not impose new requirements. Therefore, PHMSA has determined that the implementation of this final rule will not have any significant impact on the quality of the human environment.

J. Regulation Identifier Number (RIN)

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

K. 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), which may be viewed at *http://www.dot.gov/privacy.*

List of Subjects

49 CFR Part 107

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

49 CFR Part 171

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

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Incorporation by reference, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Incorporation by reference, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

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

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

■ 2. In § 107.402, paragraph (d)(1)(ii) is revised to read as follows:

§ 107.402 Application for designation as a certification agency.

* * * * *

(d) * * *

(1) * * *

(ii) Employ personnel with work experience in manufacturing or testing of fireworks or explosives; or a combination of work experience in manufacturing or testing of fireworks or explosives and a degree in the physical sciences or engineering from an accredited university;

* * * * *

§ 107.801 [Amended]

■ 3. In § 107.801, in the first sentence of paragraph (b), remove the word ''Administratior'' and add the word ''Administrator'' in its place.

■ 4. In § 107.803, paragraph (c)(6) is revised to read as follows:

§ 107.803 Approval of an independent inspection agency (IIA).

* * * * *

(c) * * *

(6) An identification or qualification number assigned to each inspector who is supervised by a certifying inspector identified in paragraph (c)(5) of this section.

* * * * *

PART 130—OIL TRANSPORTATION

■ 5. The authority citation for part 130 is revised to read as follows:

Authority: 33 U.S.C 1321; 49 CFR 1.81 and 1.97.

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 6. The authority citation for part 171 continues to read as follows:

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

■ 7. In § 171.23, paragraph (a)(4)(iii) is added to read as follows:

§ 171.23 Requirements for specific materials and packagings transported under the ICAO Technical Instructions, IMDG Code, Transport Canada TDG Regulations, or the IAEA Regulations.

* * * * *

(a) * * *

(4) * * *

(iii) The bill of lading or other shipping paper identifies the cylinder and includes the following certification: ''This cylinder has (These cylinders have) been qualified, as required, and filled in accordance with the DOT requirements for export.''

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, TRAINING REQUIREMENTS, AND SECURITY PLANS

■ 8. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 44701; 49 CFR 1.81 and 1.97.

■ 9. In § 172.101, revise paragraph (c)(6) to read as follows:

§ 172.101 Purpose and use of the hazardous materials table.

* * * * *

(c) * * *

(6) When a proper shipping name includes a concentration range as part of the shipping description, the actual concentration, if it is within the range stated, may be used in place of the concentration range. For example, an aqueous solution of hydrogen peroxide containing 30 percent peroxide may be described as ''Hydrogen peroxide, aqueous solution *with not less than 20 percent but not more than 40 percent hydrogen peroxide''* or ''Hydrogen peroxide, aqueous solution *with 30 percent hydrogen peroxide.*'' Also, the percent sign (%) may be used in place of the word ''percent'' when words in italics containing the word ''percent'' are used in addition to the proper shipping name.

* * * * *

■ 10. In § 172.101, in the Hazardous Materials Table, the following entries are revised to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

§ 172.101—HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations (see §§ 173.27 and175.75)		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*		*		*	*	*		*		*		
	Helium, compressed	2.2	UN1046		2.2		306	302	302, 314	75 kg	150 kg	A	85
	*		*		*	*	*		*		*		
	Hydrogen iodide solution, see Hydriodic acid.												
	*		*		*	*	*		*		*		
	Neon, compressed	2.2	UN1065		2.2		306, 307	302	None	75 kg	150 kg	A.	
	*		*		*	*	*		*		*		
	Nitrocellulose, *with not more than 12.6 percent nitrogen, by dry mass* mixture with *or* without plasticizer, with *or* without pigment.	4.1	UN2557	II	4.1	44	151	212	240	1 kg	15 kg	D	28, 36
	*		*		*	*	*		*		*		

* * * * *

■ 11. Amend § 172.102 as follows:

■ a. In paragraph (c)(1), remove the first entry for special provision 149.

■ b. In paragraph (c)(7)(ii), in the Table of Portable Tank T Codes T1–T22, revise the entries for T9 and T22.

The revisions read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(7) * * *

(ii) * * *

TABLE OF PORTABLE TANK T CODES T1–T22

[Portable tank codes T1–T22 apply to liquid and solid hazardous materials of classes 3 through 9 which are transported in portable tanks]

Portable tank instruction	Minimum test pressure (bar)	Minimum shell thickness (in mm-reference steel) (*see* § 178.274(d))	Pressure-relief requirements (*see* § 178.275(g))	Bottom opening requirements (*see* § 178.275(d))
(1)	(2)	(3)	(4)	(5)
*	*	*	*	*
T9	4	6 mm	Normal	Prohibited for liquids.
*	*	*	*	*
T21	10	10 mm	Normal	Prohibited for liquids. § 178.275(d)(2).
*	*	*	*	*

* * * * *

■ 12. In § 172.203, paragraphs (k) introductory text and (k)(1) are revised to read as follows:

§ 172.203 Additional description requirements.

* * * * *

(k) *Technical names for ''n.o.s.'' and other generic descriptions.* Unless otherwise excepted, if a material is described on a shipping paper by one of the proper shipping names identified by the letter ''G'' in column (1) of the § 172.101 Table, the technical name of the hazardous material must be entered in parentheses in association with the basic description. For example ''UN 1760, Corrosive liquid, n.o.s., (Octanoyl chloride), 8, II'', or ''UN 1760, Corrosive liquid, n.o.s., 8, II (contains Octanoyl chloride)''. The word ''contains'' may be used in association with the technical name, if appropriate. For organic peroxides which may qualify for more than one generic listing depending on concentration, the technical name must include the actual concentration being shipped or the concentration range for the appropriate generic listing. For example, ''UN 3102, Organic peroxide type B, solid, 5.2, (dibenzoyl peroxide, 52–100%)'' or ''UN 3108, Organic peroxide type E, solid, 5.2, (dibenzoyl peroxide, paste, <52%)''. Shipping descriptions for toxic materials that meet the criteria of Division 6.1, PG I or II (as specified in § 173.132(a) of this subchapter) or Division 2.3 (as specified in § 173.115(c) of this subchapter) and are identified by the letter ''G'' in column (1) of the § 172.101 Table, must have the technical name of the toxic constituent entered in parentheses in association with the basic description. A material classed as Division 6.2 and assigned identification number UN 2814 or UN 2900 that is suspected to contain an unknown Category A infectious substance must have the words ''suspected Category A infectious substance'' entered in parentheses in place of the technical name as part of the proper shipping description. For additional technical name options, see the definition for ''Technical name'' in § 171.8. A technical name should not be marked on the outer package of a Division 6.2 material (see § 172.301(b)).

(1) If a hazardous material is a mixture or solution of two or more hazardous materials, the technical names of at least two components most predominately contributing to the hazards of the mixture or solution must be entered on the shipping paper as required by paragraph (k) of this section. For example, ''UN 2924, Flammable liquid, corrosive, n.o.s., 3, II (contains Methanol, Potassium hydroxide)''.

* * * * *

■ 13. In § 172.400, in the table in paragraph (b), the entry for Hazard class or division ''3'' is revised to read as follows:

§ 172.400 General labeling requirements.

* * * * *

(b) * * *

Hazard class or division	Label name	Label design or section reference
*	*	*
3 Flammable Liquid (Combustible liquid)	FLAMMABLE LIQUID (none)	172.419
*	*	*

* * * * *

■ 14. In § 172.512, paragraph (b)(1)(iii) is revised to read as follows:

§ 172.512 Freight containers and aircraft unit load devices.

* * * * *

(b) * * *

(iii) Is identified as containing a hazardous material in the manner provided in part 7; chapter 2, section 2.8, of the ICAO Technical Instructions (IBR, see § 171.7 of this subchapter).

* * * * *

■ 15. In § 172.604, paragraph (d)(1) is revised to read as follows:

§ 172.604 Emergency response telephone number.

* * * * *

(d) * * *

(1) Hazardous materials that are offered for transportation under the provisions applicable to limited quantities; or

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 16. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81 and 1.97.

■ 17. In § 173.22, in paragraph (a)(4)(ii) the last sentence is revised to read as follows:

§ 173.22 Shipper's responsibility.

* * * * *

(a) * * *

(4) * * *

(ii) * * * Subsequent offerors of a filled and otherwise properly prepared unaltered package are not required to maintain manufacturer notification (including closure instructions).

* * * * *

■ 18. In § 173.62, the table in paragraph (b), the entry for UN0501 is added to read as follows:

§ 173.62 Specific packaging requirements for explosives.

* * * * *

(b) * * *

EXPLOSIVES TABLE

ID No.	PI
* * * * *	
UN0501	114(b)
* * * * *	

* * * * *

■ 19. In § 173.124, paragraph (a)(2)(iv) is revised to read as follows:

§ 173.124 Class 4, Divisions 4.1, 4.2 and 4.3—Definitions.

(a) * * *

(2) * * *

(iv) *Tests.* The generic type for a self-reactive material must be determined using the testing protocol from Figure 20.1 (a)-(b) (Flow Chart Scheme for Self-Reactive Substances and Organic Peroxides) from the UN Manual of Tests and Criteria (IBR, see § 171.7 of this subchapter).

* * * * *

■ 20. In § 173.199, paragraph (d)(2) is revised to read as follows:

§ 173.199 Category B infectious substances.

* * * * *

(d) * * *

(2) The package is marked ''Carbon dioxide, solid'' or ''Dry ice'' and an indication that the material being refrigerated is used for diagnostic or treatment purposes (e.g., frozen medical specimens).

* * * * *

■ 21. In § 173.220, paragraphs (a)(1) and (2) are revised to read as follows:

§ 173.220 Internal combustion engines, self-propelled vehicles, mechanical equipment containing internal combustion engines, battery-powered equipment or machinery, fuel cell-powered equipment or machinery.

(a) * * *

(1) The engine contains a liquid or gaseous fuel. An engine may be considered as not containing fuel when the engine components and any fuel lines have been completely drained, sufficiently cleaned of residue, and purged of vapors to remove any potential hazard and the engine when held in any orientation will not release any liquid fuel;

(2) The fuel tank contains a liquid or gaseous fuel. A fuel tank may be considered as not containing fuel when the fuel tank and the fuel lines have been completely drained, sufficiently cleaned of residue, and purged of vapors to remove any potential hazard;

* * * * *

■ 22. In § 173.301, paragraphs (f)(1) and (j) are revised to read as follows:

§ 173.301 General requirements for shipment of compressed gases and other hazardous materials in cylinders, UN pressure receptacles and spherical pressure vessels.

* * * * *

(f) *Pressure relief device systems.* (1) Except as provided in paragraphs (f)(5) and (6) of this section, and § 171.23(a)(5) of this subchapter, a cylinder filled with a gas and offered for transportation must be equipped with one or more pressure relief devices sized and selected as to type, location, and quantity, and tested in accordance with CGA S–1.1 (compliance with paragraph 9.1.1.1 is not required) and CGA S–7. The pressure relief device must be capable of preventing rupture of the normally filled cylinder when subjected to a fire test conducted in accordance with CGA C–14 (IBR, see § 171.7 of this subchapter), or, in the case of an acetylene cylinder, CGA C–12 (IBR, see § 171.7 of this subchapter).

* * * * *

(j) *Non-specification cylinders in domestic use.* Except as provided in §§ 171.12(a) and 171.23(a) of this subchapter, a filled cylinder manufactured to other than a DOT specification or a UN standard in accordance with part 178 of this subchapter, or a DOT exemption or special permit cylinder or a cylinder used as a fire extinguisher in conformance with § 173.309(a), may not be transported to, from, or within the United States.

* * * * *

§ 173.304 [Amended]

■ 23. In § 173.304, the paragraph (d) subject heading is italicized.

■ 24. In § 173.476, paragraph (d) is revised to read as follows:

§ 173.476 Approval of special form Class 7 (radioactive) materials.

* * * * *

(d) Paragraphs (a) and (b) of this section do not apply in those cases where A_1 equals A_2 and the material is not required to be described on the shipping papers as ''Radioactive Material, Type A Package, Special Form'' or as ''Radioactive Material, Type A Package, Special Form, Fissile.''

PART 174—CARRIAGE BY RAIL

■ 25. The authority citation for part 174 is revised to read as follows:

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

PART 177—CARRIAGE BY HIGHWAY

■ 26. The authority citation for part 177 is revised to read as follows:

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

PART 178—SPECIFICATIONS FOR PACKAGINGS

■ 27. The authority citation for part 178 is revised to read as follows:

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

■ 28. In § 178.61, paragraph (b)(2) is revised to read as follows:

§ 178.61 Specification 4BW welded steel cylinders with electric-arc welded longitudinal seam.

* * * * *

(b) * * *

(2) Material for heads must meet the requirements of paragraph (b)(1) of this section or be open hearth, electric or basic oxygen carbon steel of uniform quality. Content percent may not exceed the following: Carbon 0.25, Manganese 0.60, Phosphorus 0.045, Sulfur 0.050. Heads must be hemispherical or ellipsoidal in shape with a maximum ratio of 2.1. If low carbon steel is used, the thickness of such heads must be

determined by using a maximum wall stress of 24,000 p.s.i. in the formula described in paragraph (f)(4) of this section.

* * * * *

■ 29. In § 178.345–3, paragraph (c)(1) introductory text is revised to read as follows:

§ 178.345–3 Structural integrity.

* * * * *

(c) * * *

(1*) Normal operating loadings.* The following procedure addresses stress in the cargo tank shell resulting from normal operating loadings. The effective stress (the maximum principal stress at any point) must be determined by the following formula:

$$S = 0.5(S_y + S_x) \pm [0.25(S_y - S_x)^2 + SS^2]^{0.5}$$

Where:

* * * * *

■ 30. In § 178.503, paragraph (a)(1) is revised to read as follows:

§ 178.503 Marking of packagings.

(a) * * *

(1) Except as provided in paragraph (e)(1)(ii) of this section, the United Nations symbol as illustrated in paragraph (e)(1)(i) of this section (for embossed metal receptacles, the letters ''UN'' may be applied in place of the symbol);

* * * * *

■ 31. In § 178.605, paragraph (d) is revised to read as follows:

§ 178.605 Hydrostatic pressure test.

* * * * *

(d) *Test method and pressure to be applied.* Metal packagings and composite packagings other than plastic (e.g., glass, porcelain or stoneware), including their closures, must be subjected to the test pressure for 5 minutes. Plastic packagings and composite packagings (plastic material), including their closures, must be subjected to the test pressure for 30 minutes. This pressure is the one to be marked as required in § 178.503(a)(5). The receptacles must be supported in a manner that does not invalidate the test. The test pressure must be applied continuously and evenly, and it must be kept constant throughout the test period. In addition, packagings intended to contain hazardous materials of Packing Group I must be tested to a minimum test pressure of 250 kPa (36 psig). The hydraulic pressure (gauge) applied, taken at the top of the receptacle, and determined by any one of the following methods must be:

(1) Not less than the total gauge pressure measured in the packaging (i.e., the vapor pressure of the filling material and the partial pressure of the air or other inert gas minus 100 kPa (15 psi)) at 55 °C (131 °F), multiplied by a safety factor of 1.5. This total gauge pressure must be determined on the basis of a maximum degree of filling in accordance with § 173.24a(d) of this subchapter and a filling temperature of 15 °C (59 °F);

(2) Not less than 1.75 times the vapor pressure at 50 °C (122 °F) of the material to be transported minus 100 kPa (15 psi), but with a minimum test pressure of 100 kPa (15 psig); or

(3) Not less than 1.5 times the vapor pressure at 55 °C (131 °F) of the material to be transported minus 100 kPa (15 psi), but with a minimum test pressure of 100 kPa (15 psig).

* * * * *

PART 179—SPECIFICATIONS FOR TANK CARS

■ 32. The authority citation for part 179 is revised to read as follows:

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

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

■ 33. The authority citation for part 180 is revised to read as follows:

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

Issued in Washington, DC, on September 25, 2013 under authority delegated in 49 CFR part 1.97.

Cynthia L. Quarterman,

Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2013–23873 Filed 10–1–13; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 109

[Docket No. PHMSA–2012–0259 (HM–258B)]

RIN 2137–AE98

Hazardous Materials: Enhanced Enforcement Procedures—Resumption of Transportation

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

ACTION: Final rule.

SUMMARY: PHMSA is addressing certain matters identified in the Hazardous Materials Transportation Safety Improvement Act of 2012 related to the Department's enhanced inspection, investigation, and enforcement authority. Specifically, PHMSA is amending the package opening provision to include procedures for an agent of the Secretary of Transportation to open packages of perishable hazardous materials and to provide notification to the responsible party that an agent has exercised a safety inspection or investigation authority. In addition, we are establishing equipment requirements for agents. The Department's enhanced inspection, investigation, and enforcement procedures were previously established through notice and comment rulemaking and thoroughly address the hazardous material transportation matters identified by Congress. This final rule is required to codify changes to Federal hazardous materials transportation law and to ensure transparency and consistency for hazardous materials inspectors across all modes of transportation. As it affects only agency enforcement procedures, there are no additional compliance costs to industry associated with this final rule.

DATES: This Final rule is effective November 1, 2013.

FOR FURTHER INFORMATION CONTACT: Vincent Lopez or Shawn Wolsey, Office of Chief Counsel, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, at (202) 366–4400.

SUPPLEMENTARY INFORMATION:

Table of Contents of Supplementary Information

I. Executive Summary
II. Background
III. Discussion of the Comments on the NPRM
IV. Summary of MAP–21 and Final Rule
V. Summary Review of Amendments
VI. Regulatory Analyses and Notices
A. Statutory/Legal Authority for This Rulemaking
B. Executive Orders 12866, 13563, 13610, and DOT Regulatory Policies and Procedures
C. Executive Order 13132
D. Executive Order 13175
E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies
F. Paperwork Reduction Act
G. Regulatory Identifier Number (RIN)
H. Unfunded Mandates Reform Act
I. Environmental Assessment
J. Privacy Act

I. Executive Summary

On July 6, 2012, the President signed the Moving Ahead for Progress in the 21st Century Act, or the MAP–21, which included the Hazardous Materials Transportation Safety Improvement Act of 2012 (HMTSIA) as Title III of Division C of the statute. Public Law 112–141, 126 Stat. 405, July 6, 2012. Section 33009 of HMTSIA revised 49 U.S.C. 5121 to include a notification requirement. Congress also directed the Department to address certain hazardous material (hazmat) transportation matters through rulemaking:

- The safe and expeditious resumption of transportation of perishable hazardous material, including radiopharmaceuticals and other medical products that may require timely delivery due to life-threatening situations;
- The means by which non-compliant packages that present an imminent hazard are placed out-of-service until the condition is corrected;
- The means by which non-compliant packages that do not present a hazard are moved to their final destination;
- Appropriate training and equipment for inspectors; and
- The proper closure of packaging in accordance with the hazardous material regulations.

We are clarifying in this rulemaking, as described further below, the Department's position with respect to perishable hazardous material, by amending the opening of packages provision of the Department's hazardous materials procedural regulations for the opening of packages, for emergency orders, and for emergency recalls. 49 CFR 109.5. The amendment recognizes the special characteristics and handling requirements of perishable hazardous material by clarifying that an agent will stop or open a package containing a perishable hazardous material only after the agent has utilized appropriate alternatives. We are also codifying the statutory notification requirement in HMTSIA by incorporating into the regulations the Department's current notification procedures from the operations manual. Finally, we are adding a new provision to address appropriate equipment for inspectors.

For the remaining mandates to address certain matters related to the Department's enhanced inspection, investigation, and enforcement authority, no additional regulatory changes will be made. We believe that the Department's current rules that were previously established through notice and comment rulemaking and existing policies and operating procedures thoroughly address the hazmat transportation matters identified by Congress as requiring additional regulations. For instance, in a prior rulemaking, the Department established procedural regulations for opening packages, removing packages from transportation, and closing packages in part 109 of title 49, Code of Federal Regulations (CFR). These regulations include the definition of key terms, including ''perishable hazardous material.'' The regulations address how the Department's agents will handle non-compliant packages that present an imminent hazard and those that do not. Moreover, the rules address when and how the Department's agents will open a package. And, if an agent opens a package, there are procedural rules for closing the package and ensuring its safe resumption of transportation, if applicable. Specifically, under 49 CFR 109.13, if an imminent hazard is found to exist after an agent opens a package, the operating administration's authorized official may issue an out-of-service order prohibiting the movement of the package. The package must be removed from transportation until it is brought into compliance. An out-of-service order is a type of emergency order. The procedural regulations also include procedures for administrative review, reconsideration, and appellate review of an out-of-service order. In addition, the Department developed an internal operations manual for training and use by its hazmat inspectors and investigators across all modes of transportation. The operations manual's guidance is intended to target and manage the use of the enhanced inspection and enforcement authority in a uniform and consistent manner within the Department. At this time, we do not have any data or other information that indicate the rules, policies, and operating procedures currently in place are inadequate or that additional regulations are necessary.

II. Background

On March 2, 2011, we issued a final rule under Docket No. PHMSA–2005–22356 (PHM–7), ''Hazardous Materials: Enhanced Enforcement Procedures.'' 76 FR 11570. The final rule became effective on May 2, 2011. The rule implemented enhanced inspection, investigation, and enforcement authority conferred on the Secretary of Transportation (Secretary) by the Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005 (HMTSSRA). The final rule established procedures for issuance of emergency orders (restrictions, prohibitions, recalls, and out-of-service orders) to address unsafe conditions or practices posing an imminent hazard; opening of packages to identify undeclared or non-compliant shipments, when the person in possession of the package refuses a request to open it; and the temporary detention and inspection of potentially non-compliant packages. 76 FR 11570 (codified at 49 CFR part 109). In conjunction with the final rule, the Department of Transportation (Department or DOT) developed an internal operations manual for training and use by its inspectors and investigators (collectively agents). The operations manual is a joint document created by the operating administrations that enforce the Hazardous Materials Regulations, 49 CFR parts 171–180 (HMR),[1] to provide guidance to agents who, in the course of conducting inspections, determine that they need to open a package, remove a package from transportation, or perform any other function authorized in part 109. The manual seeks to establish baseline conditions that will ensure consistent application of the authorities exercised under 49 CFR part 109 at a minimum threshold. The guidance is intended to target and manage the use of enhanced inspection and enforcement authority in a manner that minimizes burdens on the transportation system while, at the same time, meets the overriding mission of transportation safety. The operations manual was made available to the public on the PHMSA Web site, *http://www.phmsa.dot.gov*.

On July 6, 2012, the President signed the MAP–21, which included the HMTSIA as Title III of Division C of the statute. Section 33008 of HMTSIA created a mandate for the Department to develop uniform performance standards for hazmat inspectors and investigators. The standards shall be established as

[1] Under authority delegated by the Secretary, the Administrators of four agencies within DOT enforce the Hazardous Materials Regulations, 49 CFR parts 171–180 and other regulations, approvals, special permits, and orders issued under Federal hazardous materials transportation law, 49 U.S.C. 5101 *et seq.:* (1) Federal Aviation Administration, 49 CFR 1.83(d)(1); (2) Federal Railroad Administration, 49 CFR 1.89(j); (3) Federal Motor Carrier Safety Administration, 49 CFR 1.87(d)(1); and (4) Pipeline and Hazardous Materials Safety Administration, 49 CFR 1.97(b). The Secretary has delegated authority to the Administrator of each respective operating administration to exercise the enhanced inspection and enforcement authority conferred by HMTSSRA. 71 FR 52751, 52753 (Sept. 7, 2006). The United States Coast Guard is authorized to enforce the Hazardous Materials Regulations in connection with certain transportation or shipment of hazardous materials by water but does not have Congressional/delegated authority to carry out the enhanced inspection, investigation, and enforcement authority.

mandatory training guidelines in the following areas:

- The collection, analysis, and publication of findings from hazmat accidents or incidents; and
- The identification of noncompliance with the HMR, and the initiation of appropriate enforcement action.

See 126 Stat. at 836

Section 33009 of HMTSIA revised 49 U.S.C. 5121, to include a notification requirement. Congress also directed the Department to address certain hazmat transportation matters through rulemaking:

- The safe and expeditious resumption of transportation of perishable hazardous material, including radiopharmaceuticals and other medical products that may require timely delivery due to life-threatening situations;
- The means by which non-compliant packages that present an imminent hazard are placed out-of-service until the condition is corrected;
- The means by which non-compliant packages that do not present a hazard are moved to their final destination;
- Appropriate training and equipment for inspectors; and
- The proper closure of packaging in accordance with the hazardous material regulations.

See 126 Stat. at 836–7.

As described further below, we believe that the Department's current rules that were previously established through notice and comment rulemaking and existing policies and operating procedures thoroughly address the congressional mandates to address certain hazmat transportation matters.

III. Discussion of Comments on the NPRM

On May 22, 2013, we published a notice of proposed rulemaking (NPRM) dealing with these statutory mandates. 78 FR 30258. We received comments from the National Association of Chemical Distributors (NACD) and the American Trucking Associations (ATA). In this section we summarize and discuss the NACD and ATA comments. You may access the docket and the comments and other documents in this rulemaking by visiting the Federal eRulemaking Portal at *http://www.regulations.gov*, under Docket No. PHMSA–2012–0259.

National Association of Chemical Distributors (NACD)

NACD expressed its overall support for the proposed rule's focus on clarifying the procedures related to the Department's hazardous materials procedural regulations for the opening of packages, for emergency orders, and for emergency recalls. NACD believes we should use this authority sparingly, and as such, it supports our proposal to establish a policy that Departmental agents will not intentionally open packages containing perishable hazardous material unless a compelling safety need exists. Furthermore, NACD recommends that we extend the rule's proposed procedures to include temperature-sensitive materials. NACD asserts that its members frequently transport materials that, although they may not be completely perishable, are temperature-sensitive. According to NACD, the materials' properties may change and make the product less effective if delayed and exposed to extreme temperatures for a period of time. This could result in substantial negative impacts for its members and their customers.

When we developed the definition for ''perishable hazardous material,'' we envisioned etiological agents, such as biological products, infectious substances, medical waste, and toxins as perishable commodities that will require special handling. In response to comments received during the PHM–7 rulemaking, we modified the definition to include ''hazardous materials consigned for medical use.'' We adopted the modified definition because we believed it was broad enough to capture the types of hazardous material requiring expedited handling as prescribed by the statute. In MAP–21, Congress reinforced that we had correctly defined the term when it identified ''radiopharmaceuticals and other medical products'' as the types of perishable hazardous materials requiring special handling.

We note that the current definition of ''perishable hazardous material'' includes a ''hazardous material that is subject to significant risk of speedy decay, deterioration, or spoilage.'' NACD, in its comments, provided only general information regarding temperature-sensitive materials, indicating they may not be completely perishable. Moreover, it did not identify specific materials of concern nor did it provide any information on the rate of decay, deterioration, or spoilage of any temperature-sensitive materials. Based on this limited information, it appears the materials contemplated in NACD's comments are beyond the scope of this rulemaking.

Nevertheless, we are mindful of the concerns of NACD, and other industry stakeholders, about unnecessary delays that may occur when an agent exercises one of the enhanced inspection, investigation, and enforcement authorities. It is important to note that properly prepared packages will not be opened by DOT agents because in the final rule we have limited the scope of the authority to open packages, to guard against unwarranted opening and delay and the unnecessary disruption of commerce. Moreover, we believe the definition of ''perishable hazardous material'' and the rules, current procedures, and guidance already developed are adequate safeguards. However, for additional clarity, we are amending the opening of packages provision of the Department's hazardous materials procedural regulations for the opening of packages, for emergency orders, and for emergency recalls as proposed. The amendment recognizes the special characteristics and handling requirements of perishable hazardous material by clarifying that an agent will stop or open a package containing a perishable hazardous material only after the agent has utilized appropriate alternatives.

American Trucking Associations (ATA)

ATA expressed its overall support of our mission to safeguard the transportation of hazardous materials and indicated that it has a favorable view our proposals for the handling of perishable hazardous materials and notice of enforcement measures. However, ATA also made it clear that it did not support our prior rulemaking, PHM–7, in which we implemented the enhanced inspection and investigation, and enforcement authority. Moreover, ATA believes the current rulemaking suffers from many of the same perceived deficiencies that it identified in the comments it filed in the PHM–7 rulemaking. As such, ATA encourages us to reconsider its previous comments in the context of this rulemaking. Further, ATA expresses a number of concerns and recommendations. As a preliminary matter, it is important to note that we previously addressed the significant concerns reiterated here by ATA in the final rule in PHM–7. In that rulemaking, we provided our analysis of the comments received on the topics presented by the commenters. We therefore recommend that ATA, other interested parties, and the public, reexamine the PHM–7 final rule and our comprehensive discussion of the comments and our responses.

ATA presented numerous areas for our consideration in its most recent comments. However, as discussed earlier, we have, in a previous rulemaking, already addressed the

significant concerns raised again by ATA in its comments to this rulemaking. Nevertheless, we feel it is important to summarize the agency's positions on the significant concerns raised, which include the scope of the rule, liability for delays and injuries, and the opening of packages.

The Scope of the Rule. ATA contends that the enhanced inspection, investigation, and enforcement authority applies only to undeclared hazmat shipments. However, as we explained in our response to this concern in the PHM–7 final rule, the Department interprets the statute broadly because the plain language of the statute does not limit the Department's authority to undeclared shipments. Moreover, the legislative history indicates that Congress intended to promote the Department's authority to ensure that hazardous materials shipments are made in accordance with the HMR. Still, in consideration of commenters' concerns regarding the package opening authority, we narrowed the scope of this authority by limiting its use to only packages that may contain hazardous material and are not in compliance with the HMR or Federal hazmat law. We said that limiting this authority to packages that may be non-compliant will guard against unwarranted opening or delay of declared packages that are in compliance with the HMR. At this time, we are unaware of any instances of unwarranted package opening or delays.

Liability for Delays and Injuries. ATA believes that the agency should be responsible for curing any losses incurred by the carrier related to late deliveries of inspected packages or other non-related packages that are part of the same load. Further, ATA advocates motor carrier liability protection from damages that could result from injuries sustained in opening packages. As we noted it the PHM–7 final rule, liability for delays is a contractual matter between the motor carrier and the shipper. As a Federal agency charged with a safety mission, PHMSA does not endeavor to regulate private contractual matters between carriers and shippers. Moreover, we do not expect the Department to bear financial responsibility for private costs related to our exercise of these authorities. Under the discretionary function exception, the Federal Tort Claims Act (FTCA) would bar any common law tort action against the Department or operating administration based on such activities. See 28 U.S.C. 2680(a). For a more information on this issue and the FTCA, see our detailed discussion in the PHM–7 NPRM. 73 FR 57287.

The Opening of Packages. ATA believes that opening packages during transport is too risky. Although ATA's primary concern is presented in the context of the packaging opening authority, its comments implicate all of the part 109 authorities, including the removal from transportation, the transportation for examination and analysis, the assistance of properly qualified personnel, the closing of packages, and the safe resumption of transportation. Fundamentally, ATA believes that opening hazardous materials packages should only occur in a controlled environment, preferably at the consignor's or consignee's facility, and performed only by trained and certified Federal agents wearing the appropriate personal protective equipment, and without any involvement of the motor carrier's driver. ATA also suggests an alternative inspection process with components addressing these issues. For the following reasons, we respectfully disagree with ATA's view of the package opening authority.

First, we agree with ATA's premise that transporting hazardous materials is inherently risky. And, as we stated in the PHM–7 final rule, we agreed that moving the inspection to the consignor/consignee's facility, if practicable, may be beneficial if it can be accomplished safely. Also, it is worth reiterating that, in practice, the location of inspections has not changed since we implemented this authority. All enforcement activities have continued to proceed as they have in the past. The package opening authority is merely an extra compliance inspection tool for DOT agents, but the premise for conducting inspections, the locations at which they are conducted, and the regulations under which the industry must comply remained unchanged. Additionally, we note that the proposed changes in the current rulemaking align with ATA's other concerns and recommendations, which include appropriate equipment for inspectors and notice of enforcement measures to affected parties.

Next, we again point to our discussion of the comments we received in the PHM–7 rulemaking. For example, in the PHM–7 final rule, we provided detailed explanations of each of the part 109 authorities and the issues raised by the commenters, and our responses. During that rulemaking, many commenters expressed many of the same concerns regarding the package opening authority that ATA has expressed here. Accordingly, we took measures to implement the enhanced inspection and investigation, and enforcement authority with appropriate safeguards that control risk and minimize burdens on the transportation system, while at the same time, meeting the Department's overriding mission of transportation safety.

Last, the safety standards mandated by the Department and the HMR are risk controls that provide a high degree of protection. We believe the enhanced inspection, investigation, and enforcement authority and the procedures being codified by this final rule are necessary risk controls. At this time, we do not have any data or other information that indicate the rules, policies, and operating procedures currently in place are inadequate or that addition regulations, other than those proposed here, are necessary.

In light of the above, we intend to proceed with the amendments and additions to the Department's hazardous materials procedural regulations for the opening of packages, for emergency orders, and for emergency recalls, as proposed in the NPRM.

IV. Summary of MAP–21 and Final Rule

In MAP–21 Congress directed the Secretary to address certain transportation matters related to the Department's enhanced inspection, investigation, and enforcement authority. The relevant MAP–21 mandates for this rulemaking are:

- Notice of enforcement measures;
- The safe and expeditious resumption of transportation of perishable hazardous material, including radiopharmaceuticals and other medical products that may require timely delivery due to life-threatening situations;
- The means by which non-compliant packages that present an imminent hazard are placed out-of-service until the condition is corrected;
- The means by which non-compliant packages that do not present a hazard are moved to their final destination;
- Appropriate training and equipment for inspectors; and
- The proper closure of packaging in accordance with the hazardous material regulations.

We are clarifying in this rulemaking, as described further below, the Department's position with respect to perishable hazardous material, by amending the opening of packages provision of the Department's hazardous materials procedural regulations for the opening of packages, for emergency orders, and for emergency recalls. The amendment recognizes the special characteristics and handling requirements of perishable hazardous material by clarifying that an agent will

stop or open a package containing a perishable hazardous material only after the agent has utilized appropriate alternatives. We are also codifying the statutory notification requirement in HMTSIA by incorporating into the regulations the Department's current notification procedures from the operations manual that was developed in conjunction with the PHM–7 final rule. Finally, we are adding a new provision to address appropriate equipment for inspectors.

For the remaining mandates to address certain matters related to the Department's enhanced inspection, investigation, and enforcement authority, no additional regulatory changes will be made. We believe that the Department's current rules that were previously established through notice and comment rulemaking and existing policies and operating procedures thoroughly address the hazmat transportation matters identified by Congress. In PHM–7, the Department established regulations in part 109 to provide procedures for opening packages, removing packages from transportation, and closing packages. These regulations include the definition of key terms, including perishable hazardous material. The regulations address how the Department's agents will handle non-compliant packages that present an imminent hazard and those that do not. Moreover, the rules address when and how the Department's agents will open a package. And, if an agent opens a package, there are procedural rules for closing the package and ensuring its safe resumption of transportation, if applicable. In addition, the Department developed an internal operations manual for training and use by its hazmat inspectors and investigators across all modes of transportation. The operations manual's guidance is intended to target and manage within the Department the use of the enhanced inspection and enforcement authority in a uniform and consistent manner. At this time, we do not have any data or other information that indicate the rules, policies, and operating procedures currently in place are inadequate or that additional rulemaking is necessary.

Notice of Enforcement Measures

In PHM–7, we established procedures to implement the enhanced inspection, investigation, and enforcement authority conferred on the Secretary through HMTSSRA. In the NPRM for that rule, in response to commenters' concerns about notifying offerors and consignees about a possible delay in arrival, we agreed that all parties responsible for a shipment that is opened or removed from transportation need to be notified of the action taken. We said that ''DOT inspectors will be required to communicate the findings made and enforcement measures taken to the appropriate offeror, recipient, and carrier of the package * * *''. 73 FR 57288. In the final rule, we outlined how we would notify affected parties when an agent exercises one of the new authorities. 76 FR 11580. In the preamble to the final rule, we explained that the notification procedures would be incorporated into the Department's joint operations manual. *Id.* The notification procedures that we developed for the joint operations manual address situations where an agent may exercise a 49 CFR part 109 authority for a package that is in transit. In this case, the person in possession of the package, such as a carrier, may not be the person responsible for the package, i.e., the offeror. Therefore, we set out separate procedures for immediately notifying the person in possession and the original offeror. Generally, the agent will verbally notify the person in possession. If the person in possession is not the original offeror, the agent will also take reasonable measures to notify the original offeror.

In MAP–21 Congress added a notification requirement to the Department's inspection and investigation authority. Under this mandate, an agent shall provide to the affected person reasonable notice of the agent's exercise of authority, any findings made, and any actions being taken for noncompliance. *See* 126 Stat. at 836–7.

We are codifying in this final rule the statutory notification requirement by incorporating into the regulations the Department's current notification procedures from the joint operations manual. As discussed above, the joint operations manual includes procedures and guidance to agents for providing notice of enforcement measures taken under 49 CFR part 109. The procedures in the manual are comprehensive and comport with the statutory mandate. As such, a new notification section will be added to part 109, subpart B of 49 CFR. It will require that an agent, after exercising a 49 CFR part 109 inspection or investigation authority, immediately take reasonable measures to notify the appropriate person of the reason for the action being taken, the results of any preliminary investigation including apparent violations of the HMR, and any further action that may be warranted.

The Safe and Expeditious Resumption of Transportation of Perishable Hazardous Material

We addressed the opening, reclosing, and resumption of transportation of perishable hazardous material in a previous rulemaking. In PHM–7, we defined ''perishable hazardous material'' as ''a hazardous material that is subject to significant risk of speedy decay, deterioration, or spoilage, or hazardous materials consigned for medical use, in the prevention, treatment, or cure of a disease or condition in human beings or animals where expeditious shipment and delivery meets a critical medical need.'' 76 FR 11592 (codified at 49 CFR 109.1). Further, we established procedures for reclosing a package containing a perishable hazardous material and its safe and expeditious resumption of transportation. Section 109.13 contains the requirements for the closing of packages and the safe resumption of transportation, including a specific requirement pertaining to perishable hazardous material.

We believe the definition of ''perishable hazardous material'' and the rules, current procedures, and guidance already developed for reclosing packages, sufficiently address Congress' concern and the need for expeditious treatment of these types of materials. We also note that in the Department's joint operations manual, we have significantly restricted an agent's ability to handle or open a package containing perishable hazardous material. For example, an agent must have been trained in the handling of the specific material and may only open a perishable hazardous material package in a designated facility, if required, and have all safety equipment, handling equipment, and materials to properly close the package. Notwithstanding these restrictions, in order to clarify the Department's position with respect to perishable hazardous materials, we are amending the opening of packages provision of the Department's hazardous materials procedural regulations for the opening of packages, for emergency orders, and for emergency recalls. The amendment recognizes the special characteristics and handling requirements of perishable hazardous material by clarifying that an agent will stop or open a package containing a perishable hazardous material only after the agent has utilized appropriate alternatives.

Handling of Non-Compliant Packages

In MAP–21 Congress mandated that the Department take all actions

necessary to finalize a regulation addressing the means by which non-compliant packages are processed when an agent exercises an authority under part 109. Per 126 Stat. 837, the matters to be addressed include how packages that present an imminent hazard are placed out-of-service, until corrected, and the means by which noncompliant packages that do not present a hazard are moved to their final destination.

The Department's procedural rules for opening of packages, for emergency orders, and for emergency recalls are in 49 CFR part 109. These procedures address the means by which a non-compliant package that is found to be an imminent hazard is placed out-of-service. Specifically, in 49 CFR 109.13, if an imminent hazard is found to exist after an agent opens a package, the operating administration's authorized official may issue an out-of-service order prohibiting the movement of the package. 49 CFR 109.13(b). The package must be removed from transportation until it is brought into compliance. *Id.* An out-of-service order is a type of emergency order. 49 CFR 109.1. Subpart C of part 109 contains the procedural regulations for issuing an out-of-service order and procedures for administrative review, reconsideration, and appellate review of an emergency order. For example, a recipient of an out-of-service order may appeal the order to PHMSA's Chief Safety Officer, under 49 CFR 109.17(b)(4), pursuant to procedures in 49 CFR 109.19. Furthermore, the joint operations manual provides inspection personnel with step-by-step procedures and additional guidance for issuing an out-of-service order. For example, at least two levels of review and consultation with the operating administration's legal office is required before an emergency order may be issued. Moreover, the operations manual addresses documentation requirements, notification, service, publication, and termination requirements.

It is important to note that a non-compliant package that does not present a hazard may not continue in transportation until all identified non-compliant issues are resolved. 49 CFR 109.13(d). In the PHM–7 final rule where we established the enhanced enforcement procedures, we stated that for a non-compliant package, the agent would not close the package and that there is no obligation to bring that package into compliance. 76 FR 11587. Further, we stated, ''[t]he Department's operating administrations will not be responsible for bringing an otherwise non-compliant package into compliance and resuming its movement in commerce.'' *Id.* We reasoned that if the package does not conform to the HMR at the time of inspection, the fact that a DOT official opened it in the course of an inspection or investigation will not make DOT or its agent responsible for bringing the package into compliance. *Id.*

In light of the above, we have already fulfilled the applicable mandate for the handling of non-compliant packages and no further action is required.

Appropriate Training and Equipment for Inspectors

Congress recognized that ''[t]here is currently no uniform training standard for hazardous materials ('hazmat') inspectors and investigators.'' H. Conf. Rep. No. 112–557 at 610 (2012). To address this problem, it mandated in MAP–21 that the Secretary establish uniform performance standards for training hazmat inspectors and investigators no later than eighteen months from the date of enactment of the Act. 126 Stat. at 836. The mandate authorizes the development of guidelines for hazmat inspector and investigator qualifications; best practices and standards for hazmat inspector and investigator training programs; and standard protocols to coordinate investigation efforts among Federal, State, and local jurisdictions on accidents or incidents involving the transportation of hazardous material. In order to achieve a uniform hazmat training standard, Congress required that the standards, protocols, and guidelines developed would be mandatory to the Department's multimodal personnel conducting hazmat enforcement inspections and investigations.

Additionally, Congress mandated that the Department take all actions necessary to finalize a regulation, no later than one year from the date of enactment of the Act, addressing appropriate training and equipment for inspectors when exercising an authority under 49 CFR part 109. *See* 126 Stat. at 837.

Although the MAP–21 mandates here are training related, it is evident that the development of a uniform training scheme is essential because it will establish the foundation upon which future training for hazmat inspectors and investigators is based. As such, it is premature to require the Department to promulgate enforcement procedural regulations for hazmat training and equipment before the Department has had the opportunity to develop uniform performance training standards. This approach does not appear to be the best way to meet Congress' objective to ensure that all hazmat inspectors and investigations receive uniform and standardized training. It would be more appropriate for the Department to establish the uniform performance training standards, best practices, and protocols before it develops additional training regulations for its hazmat personnel. This would ensure that new training rules are consistent with the uniform training scheme.

Notwithstanding the discussion above, we understand that proper training of inspectors and investigators is essential to ensure that the enhanced enforcement authority is used effectively and judiciously. In the NPRM for PHM–7, we explained that the operating administrations responsible for enforcement of the HMR—PHMSA, FMCSA, FAA, and FRA—worked together to develop the rule and a joint operations manual. 73 FR 57285. We further explained that the proposed regulations set out a framework for the procedures the operating administrations will employ when conducting inspections or investigations, thus ensuring consistency in approaches and enforcement measures among modes of transportation. Moreover, we stated that the final rule, implemented with the guidance of an operational manual, would ensure that this authority was properly used. *Id.* We expressed our confidence in this approach because with the cooperation of the operating administrations in the development of the rule, and the accompanying operations manual, it meant that all Department inspectors and investigators would have the same general training and modal specific instruction. 73 FR 57288.

Regarding equipment, we are adding a new provision to address appropriate equipment for inspectors when they exercise a part 109 authority. A new equipment section will be added to new Subpart D—Equipment, requiring an agent to use the appropriate safety, handling, and other equipment authorized by his or her operating administration's equipment requirements for hazardous material inspectors and investigators.

Consequently, we do not believe that we should develop rules for appropriate training in this rulemaking. Instead, we advocate addressing any performance standards as part of the larger hazardous materials performance standard development activity currently underway. In the meantime, we believe the existing rules in 49 CFR part 109 and the attendant operational procedures in the joint operations manual, as well as each operating

administration's specific guidance for its enforcement staff, sufficiently address the training concern identified by Congress in the MAP–21 directive. Therefore, PHMSA does not believe that further action is necessary at this time.

The Proper Closure of Packaging in Accordance With HMR

In MAP–21 Congress mandated that the Department take all actions necessary to finalize a regulation addressing ''the proper closure of packaging in accordance with the hazardous material regulations.'' 126 Stat. at 837.

In PHM–7 we addressed reclosing of packages opened under the enhanced inspection, investigation, and enforcement authority. In several of the comments in response to that rulemaking, the regulated community raised concerns about how we were going to reclose packages after they have been opened under the new authority. We responded by stating that the Department was developing internal operational procedures and guidance to address the proper closure of packaging in accordance with the HMR. We also solicited further comment from the public on the factors that should be considered in the development of these procedures and guidance. 73 FR 57286. However, we also stated that an agent's obligation to reclose a package only arose if, after opening the package, an imminent hazard was found not to exist and the package otherwise complied with the HMR. 76 FR 11587. More importantly, we also said that the Department's operating administrations would not be responsible for bringing an otherwise non-specification or non-compliant package into compliance and resuming its movement in commerce. *Id.* If the package did not comply with the HMR, the fact that a DOT official opened it in the course of an inspection or investigation would not make DOT or its inspector responsible for bringing the package into compliance. *Id.* In the final rule, we significantly revised the new rule for closing packages to cover each possible re-closure scenario: no imminent hazard found; imminent hazard found; package does not contain a hazardous material; and package contains a hazardous material not in compliance with the HMR. *Id.* Further, we stated that the inspector would only be required to reclose a package in accordance with the packaging manufacturer's closure instructions or other appropriate method when a package was opened and no imminent hazard was found. *Id.* In the joint operations manual we developed procedures for properly closing a package. These procedures include steps for reclosing a package. It also includes additional requirements and procedures to complete the re-closure process, including methods to thoroughly document the activities performed.

In light of the above, we believe the existing requirements in 49 CFR part 109 for closing opened packages (§ 109.13) and the attendant operational procedures in the joint operations manual sufficiently address the matter identified by Congress in the MAP–21 directive. Therefore, no further action is necessary.

V. Summary Review of Amendments

In this final rule we are amending the opening of packages provision of the Department's hazardous materials procedural regulations for the opening of packages, for emergency orders, and for emergency recalls. The amendment recognizes the special characteristics and handling requirements of perishable hazardous material by clarifying that an agent will stop or open a package containing a perishable hazardous material only after the agent has utilized appropriate alternatives. We are also adding a notification provision to part 109, Subpart B—Inspections and Investigations. The provision will provide for the immediate and reasonable notification of enforcement action taken by an inspector or investigator whenever he or she exercises one of the inspection and investigation authorities under part 109, subpart B, which includes the opening of packages; removing a package and related packages in a shipment from transportation; directing a package to be transported to a facility for examination and analysis; and authorizing properly qualified personnel to assist in activities conducted under subpart B. The notice will include the reason for the action being taken, the results of any preliminary investigation including apparent violations of the HMR, and any further action that may be warranted. Finally, we are adding a new provision to address appropriate equipment for inspectors when they exercise a part 109 authority. The new equipment section will be added to part 109 under new Subpart D—Equipment. The provision will require an agent to use the appropriate safety, handling, and other equipment authorized by his or her operating administration's equipment requirements for hazardous material inspectors and investigators.

VI. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under the authority of the Federal hazardous materials transportation law, 49 U.S.C. 5101 *et seq.* Section 5103(b) authorizes the Secretary to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. This final rule would revise the Department's procedural regulations for opening of packages, for emergency orders, and for emergency recalls to address certain matters identified in the Hazardous Materials Transportation Safety Act of 2012 related to Department's enhanced inspection, investigation, and enforcement authority. The final rule carries out the statutory mandate and clarifies DOT's role and responsibilities in ensuring that hazardous materials are being safely transported and promoting the regulated community's understanding and compliance with regulatory requirements applicable to specific situations and operations.

B. Executive Orders 12866, 13563, 13610, and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget (OMB). The final rule is not considered a significant rule under the Regulatory Policies and Procedures order issued by the U.S. Department of Transportation (44 FR 11034, February 26, 1979).

Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review that were established in Executive Order 12866 Regulatory Planning and Review of September 30, 1993. Executive Order 13563, issued January 18, 2011, notes that our nation's current regulatory system must not only protect public health, welfare, safety, and our environment but also promote economic growth, innovation, competitiveness, and job creation (76 FR 3821, January 21, 2011). Further, this executive order urges government agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. In addition, Federal agencies are asked to periodically review existing significant regulations, retrospectively analyze rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and modify, streamline, expand, or

repeal regulatory requirements in accordance with what has been learned.

Executive Order 13610, issued May 10, 2012, urges agencies to conduct retrospective analyses of existing rules to examine whether they remain justified and whether they should be modified or streamlined in light of changed circumstances, including the rise of new technologies (77 FR 28469, May 14, 2012).

By building off of each other, these three Executive Orders require agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.''

This final rule augments 49 CFR part 109, which contains regulations on DOT inspection and investigation procedures. These regulations are not part of the HMR, which governs the transportation of hazardous materials, thus they do not carry any additional compliance requirements or costs for entities that must comply with the HMR. The benefits of the rule are that the procedures being incorporated are transparent to the regulated community, and ensure that the shipper is notified of an enforcement action. This will eliminate any suspicion of malice on the part of the agency or any specific inspector, and provide information to the shipper that could be used to modify any remaining defective operations that led to the removal. Also, the operations manual ensures that DOT's procedures are consistent across all modes.

C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). 49 U.S.C. 5125(h) provides that the preemption provisions in Federal hazardous material transportation law do ''not apply to any procedure * * * utilized by a State, political subdivision of a State, or Indian tribe to enforce a requirement applicable to the transportation of hazardous material.'' Accordingly, this final rule has no preemptive effect on State, local, or Indian tribe enforcement procedures and penalties.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

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

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have significant impact on a substantial number of small entities. I hereby certify that the final rule will not have a significant economic impact on a substantial number of small entities. This final rule applies to offerors and carriers of hazardous materials, some of which are small entities; however, there will not be any economic impact on any person who complies with Federal hazardous materials law and the regulations and orders issued under that law.

Potentially affected small entities. The provisions in this final rule will apply to persons who perform, or cause to be performed, functions related to the transportation of hazardous materials in transportation in commerce. This includes offerors of hazardous materials and persons in physical control of a hazardous material during transportation in commerce. Such persons may primarily include motor carriers, air carriers, vessel operators, rail carriers, temporary storage facilities, and intermodal transfer facilities. Unless alternative definitions have been established by the agency in consultation with the Small Business Administration, the definition of ''small business'' has the same meaning as under the Small Business Act (15 CFR parts 631–657c). Therefore, since no such special definition has been established, PHMSA employs the thresholds (published in 13 CFR 121.201) of 1,500 employees for air carriers (North American Industry Classification System [NAICS] Subgroup 481), 500 employees for rail carriers (NAICS Subgroup 482), 500 employees for vessel operators (NAICS Subgroup 483), $18.5 million in revenues for motor carriers (NAICS Subgroup 484), and $18.5 million in revenues for warehousing and storage companies (NAICS Subgroup 493). Of the approximately 116,000 entities to which this final rule applies (104,000 of which are motor carriers), we estimate that about 90 percent are small entities.

Potential cost impacts. This final rule revises 49 CFR part 109, which contains regulations on DOT inspection and investigation procedures. These regulations are not part of the HMR, which govern the transportation of hazmat, thus they do not carry any additional compliance requirements or costs for entities that must comply with the HMR.

Alternate proposals for small business. Because this final rule addresses a Congressional mandate, we have limited latitude in defining alternative courses of action. The option of taking no action would be both inconsistent with Congress' direction and undesirable from the standpoint of safety and enforcement. Failure to implement these amendments will perpetuate the problem of undeclared hazardous material shipments and resulting incidents or releases. It will also leave PHMSA and other operating administrations without an effective plan to abate an imminent safety hazard.

F. Paperwork Reduction Act

PHMSA has analyzed this final rule in accordance with the Paperwork Reduction Act of 1995 (PRA). The PRA requires Federal agencies to minimize the paperwork burden imposed on the American public by ensuring maximum utility and quality of federal information, ensuring the use of information technology to improve government performance, and improving the Federal government's accountability for managing information collection activities. This final rule contains no new information collection requirements subject to the PRA.

G. Regulatory Identifier Number (RIN)

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

H. Unfunded Mandates Reform Act of 1995

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

I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347), and implementing regulations by the Council on Environmental Quality (40 CFR part

1500) require Federal agencies to consider the consequences of Federal actions and prepare a detailed statement on actions that significantly affect the quality of the human environment.

The purpose of this rulemaking is to amend the Department's existing enforcement procedures to (1) to clarify the Department's position with respect to perishable hazardous material, by amending the opening of packages provision; (2) provide notice of enforcement measures to affected parties; and (3) address appropriate equipment for inspectors. Because this final rule addresses Congressional mandates, we have limited latitude in defining alternative courses of action. The option of taking no action would be both inconsistent with Congress' direction and undesirable from the standpoint of safety and enforcement.

PHMSA sought comment on the environmental assessment in the NPRM. PHMSA did not receive any comments regarding the environmental assessment contained in that rulemaking. This action has been thoroughly reviewed by PHMSA. Given that the inspection and enforcement procedures in this final rule will not change the current inspection procedures for DOT, but will provide transparency into our existing operations and procedures, PHMSA concludes that the rule will not result in significant environmental impacts.

J. 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 (Volume 65, Number 70; Pages 19477–78) which may be viewed at: *http://www.gpo.gov/fdsys/pkg/FR-2000-04-11/pdf/00-8505.pdf.*

List of Subjects in 49 CFR Part 109

Equipment, Inspections and investigations.

The Final Rule

In consideration of the foregoing, part 109 of chapter I, subtitle B of title 49 of the Code of Federal Regulations is amended as follows:

PART 109—DEPARTMENT OF TRANSPORTATION HAZARDOUS MATERIALS PROCEDURAL REGULATIONS FOR OPENING OF PACKAGES, FOR EMERGENCY ORDERS, AND FOR EMERGENCY RECALLS

■ 1. The authority citation for part 109 is revised to read as follows:

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

■ 2. In § 109.5, paragraph (a) introductory text is revised, and paragraph (b) is added to read as follows:

§ 109.5 Opening of packages.

(a) *In general.* Except as provided in paragraph (b):

* * * * *

(b) *Perishable hazardous material.* To ensure the expeditious transportation of a package containing a perishable hazardous material, an agent will utilize appropriate alternatives before exercising an authority under paragraph (a) of this section.

■ 3. Add § 109.16 to subpart B as follows:

§ 109.16 Notification of enforcement measures.

In addition to complying with the notification requirements in § 109.7 of this part, an agent, after exercising an authority under this Subpart, will immediately take reasonable measures to notify the offeror and the person in possession of the package, providing the reason for the action being taken, the results of any preliminary investigation including apparent violations of subchapter C of this chapter, and any further action that may be warranted.

■ 4. Add subpart D, consisting of § 109.25, to read as follows:

Subpart D—Equipment

§ 109.25 Equipment.

When an agent exercises an authority under subpart B of this part, the agent shall use the appropriate safety, handling, and other equipment authorized by his or her operating administration's equipment requirements for hazardous material inspectors and investigators.

Issued in Washington, DC, on September 26, 2013 under authority delegated in 49 CFR 1.97.

Timothy P. Butters,

Deputy Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2013–23894 Filed 10–1–13; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 173

[Docket No. PHMSA–2013–0205; Notice No. 13–14]

Clarification on Fireworks Policy Regarding Approvals or Certifications for Firework Series

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

ACTION: Clarification.

SUMMARY: This notice clarifies PHMSA's policy regarding applications for firework device series. PHMSA has required separate applications for each individual firework device. Often one firework device has identical hazardous properties to another firework device that is intended to produce a similar result in a firework display. These similar firework devices are considered part of a series of firework devices. In this document, we are clarifying our policy to accept certain fireworks series applications.

DATES: October 2, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. Ryan Paquet, Director, Approvals and Permits Division, Office of Hazardous Materials Safety, (202) 366–4512, PHMSA, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Introduction

In this notice, PHMSA's Office of Hazardous Materials Safety (OHMS) is issuing its policy regarding firework device series applications, which details the categories of fireworks for which PHMSA firework series applications may be permitted, and the criteria necessary to be considered a firework series. PHMSA believes that by issuing fireworks approvals or certifications to firework device series, the application backlog will be reduced, the current level of safety will be sustained, and firework series will reach the market faster.

II. Background

The transportation of fireworks in Division 1.3 or 1.4 requires a classification approval issued by PHMSA, commonly referred to as an EX number, or in the case of Division 1.4G consumer fireworks, a classification certification may be issued by a fireworks certification agency (FCA).[1] The EX or FC number is a unique identifier that indicates the device has been classed and authorized for transportation in the U.S., and is specific to a particular device as specified in 49 CFR 173.64 or 173.65, and the American Pyrotechnic Association (APA) Standard 87–1, Version 2001 (IBR, see 49 CFR 171.7).

Often manufacturers create one firework that has comparable hazardous properties and chemical compositions to another firework that is intended to produce a similar result in a firework display. These similar fireworks are considered part of a firework series. For example, five display shells are all eight inches in diameter and all contain the same pyrotechnic powder weight, but each display shell produces a different pattern. The hazardous properties of these fireworks are identical, but currently each firework must have a separate application. This current policy creates added paperwork for both the manufacturers and PHMSA, results in delays in processing applications, and consequently, creates delays in shipping the fireworks.

Following a review of the current policy, PHMSA is revising its policy with respect to firework series approval or certification applications. Specifically, PHMSA will accept firework series applications that comply with the basic requirements of the APA Standard 87–1, and the conditions specified in this policy.

III. Category of Devices Allowed in Series Applications

The categories of firework series applications will be limited to the following devices:

Cone Fountain
Cylindrical Fountain
Illuminating Torch
Mine and Shell
Missile with Fin-type Rocket
Roman Candle
Sky Rocket/Bottle Rocket
Toy Smoke Device
Wire Sparkler/Dipped Sparkler
Display Aerial Shell (Fireworks, UN0335, 1.3G)

IV. General Requirements

PHMSA will accept firework series applications that comply with the basic requirements of the APA Standard 87–1, Version 2001 (IBR, see 49 CFR 171.7) and for all series applications the following apply:

(1) Series applications for PHMSA approval or FCA certification will be limited to one category of device and one hazard classification, e.g., Cone Fountain, Division 1.4G;

(2) There are two types of series applications: ''Effect Series'' and ''Dimensional Series.'' The combination of an ''Effect Series'' and a ''Dimensional Series'' is prohibited; and

(3) The thermal stability test must be performed on all combinations of the components (chemical mixtures) used together in the device, or on each ''Finished Product'' covered under the application.

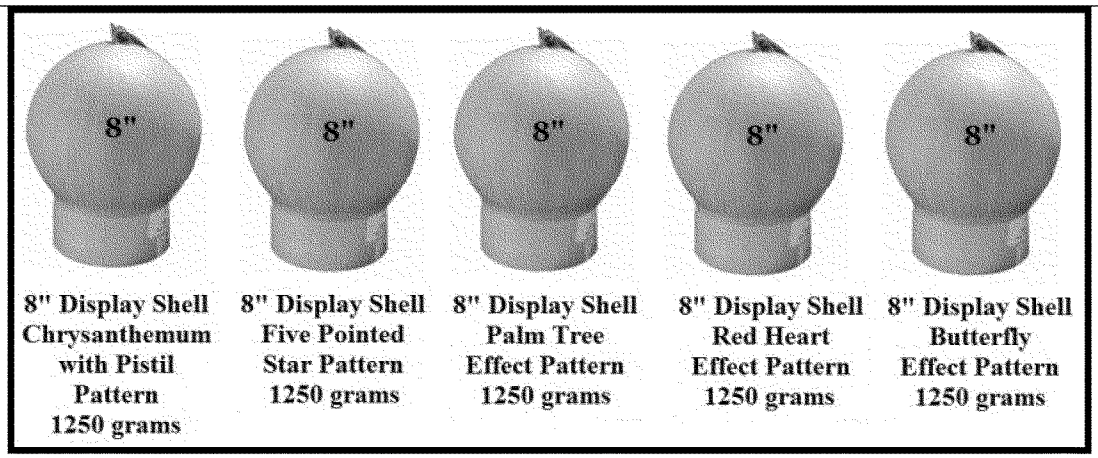


Figure 1 Effect" 8-inch Display Shell Series

V. Effect Series

For all effect series applications the following apply:

(1) Devices must be the same size and have the same maximum pyrotechnic powder weight (Figure 1—''Effect'' 8-inch Display Shell Series).

(2) Display shell diameter, tube diameter, the number of tubes in a device, and tube separation distances cannot change.

(3) A series may cover an assortment of different combinations of effects and patterns. A pattern is a the design created by the effects. (Examples: Figures 2 through 6).

[1] Manufacturers of Division 1.4G consumer fireworks have the option of applying to a DOT-approved fireworks certification agency (FCA) instead of applying to PHMSA. The fireworks still must conform to the requirements in the APA Standard 87–1, and pass a thermal stability test. Instead of applying to PHMSA, the manufacturer may apply in writing to an FCA with the information required in APA Standard 87–1. After reviewing the application, the FCA will notify the manufacturer, in writing, if the fireworks have been classed, certified, and assigned an FC number, or if the application is denied (see 49 CFR 173.65).



Figure 2 Chrysanthemum Pistil Pattern

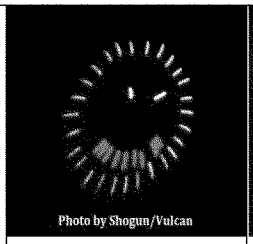


Figure 3 Smiley Face Pattern

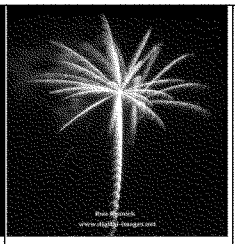


Figure 4 Palm Tree Pattern



Figure 5 Heart Pattern



Figure 6 Butterfly Pattern

(4) If devices contain single or multiple reports/salutes, the size, weight and number of reports/salutes must remain constant.

(5) The application must provide the following:

(i) A detailed table for each device that indicates the breakdown of all pyrotechnic composition names and weights;

(ii) A list of all effect combinations used in the application; and

(iii) Diagrams of each device that identifies all components and dimensions.

VI. Dimensional Series

For all dimensional series applications the following apply:

(1) Devices may increase in dimensional size and in total pyrotechnic composition weight. Change to the device size is limited to one of the following:

(i) Increasing the shell diameter (Example: Figure 7);

(ii) Increasing the tube diameter; or

(iii) Increasing the number of tubes in the device.

(2) Effect(s) must remain constant throughout the series.

(3) Tube separation distance must not change.

(4) If devices in the series contain single or multiple reports/salutes, all of the devices must include reports/salutes. However, the size, weight, and number of reports/salutes may vary.

(5) The application must provide the following:

(i) A detailed table of the different sizes that indicates the breakdown of all pyrotechnic composition names and weights; and

(ii) A diagram of the largest device in the series that details all components and dimensions.

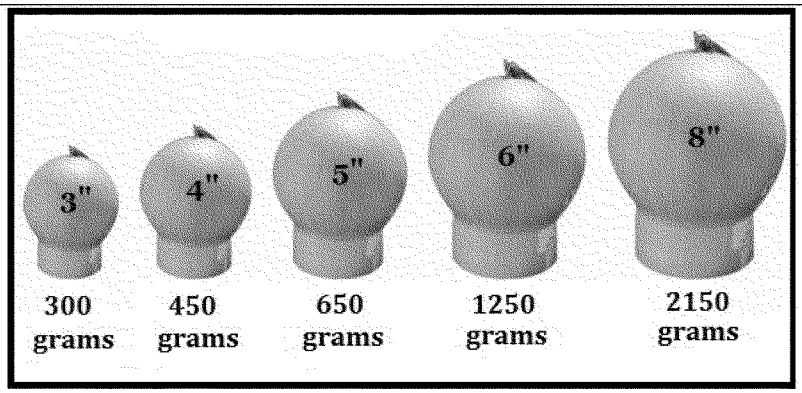


Figure 7 "Dimensional" Display Shell Series 3", 4", 5", 6", 8"

Issued in Washington, DC, under authority delegated in 49 CFR 1.97.

Magdy El-Sibaie,

Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2013–24082 Filed 10–1–13; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 173

[Docket No. PHMSA–2013–0206; Notice No. 13–15]

Clarification on Fireworks Policy Regarding Approvals or Certifications for Specialty Fireworks Devices

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

ACTION: Clarification.

SUMMARY: This document clarifies PHMSA's policy regarding applications for specialty fireworks devices. Specialty fireworks devices are fireworks devices in various shapes that produce multiple effects, simultaneously. In this document, we are establishing our policy regarding specialty fireworks devices.

DATES: October 2, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. Ryan Paquet, Director, Approvals and Permits Division, Office of Hazardous Materials Safety, (202) 366–4512, PHMSA, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Introduction

In this document, PHMSA's Office of Hazardous Materials Safety (OHMS) is issuing its policy regarding specialty fireworks devices, which sets forth the requirements for approval or certification applications for ''Specialty Fireworks Devices'' classified as Division 1.4G, consumer fireworks. This notice of our policy clarifies what is considered a ''Specialty Fireworks Device'' for fireworks manufacturers or their U.S. designated agents to enable them to accurately apply for PHMSA approval or Fireworks Certification Agency (FCA) certification [1] and minimize the delay in processing applications for these devices.

II. Background

PHMSA's OHMS, Approvals and Permits Division often receives approval applications for Division 1.4G, consumer fireworks that are in the shape of an animal or a small vehicle that produce multiple effects. In this notice, we are providing guidance for PHMSA-approval or FCA-certification of specialty fireworks devices.

III. General Requirements

Specialty fireworks devices [2] may include tanks, small fire trucks, cars, boats, animals, and other similarly shaped devices that produce multiple effects (whistles, lights, sparks, noises, etc.) simultaneously.[3] Specialty fireworks devices, which are classified as UN0336, consumer fireworks, of Division 1.4G, must comply with the requirements of 49 CFR 173.56(b), 173.64 or 173.65, the APA Standard 87–1 and the requirements below.

Specialty fireworks devices:

1. Must be ground based with or without movement;

2. May contain non-sequential fusing;

3. May not exceed 10 fiberboard or plastic tubes per device;

4. May not contain more than 2 grams of pyrotechnic composition per tube, and not more than 20 grams pyrotechnic composition in the finished device;

5. Have reports that do not contain more than 50 mg of explosive composition per report;

6. Must not contain aerial components and tubes with internal shells, which are prohibited; and

7. Must not be combined with other firework devices.

Issued in Washington, DC, under authority delegated in 49 CFR 1.97.

Magdy El-Sibaie,

Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2013–24092 Filed 10–1–13; 8:45 am]

BILLING CODE 4910–60–P

[1] Manufacturers of Division 1.4G, consumer fireworks have the option of applying to a DOT-approved fireworks certification agency (FCA) instead of applying to PHMSA. The fireworks still must conform to the requirements in the APA Standard 87–1, and pass a thermal stability test. Instead of applying to PHMSA, the manufacturer may apply in writing to an FCA with the information required in the APA Standard 87–1. After reviewing the application, the FCA will notify the manufacturer, in writing, if the fireworks have been classed, certified, and assigned an FC number, or if the application is denied (see 49 CFR 173.65).

[2] An example of a specialty fireworks device is a fire truck with 10 tubes, 2 grams per tube, for a total pyrotechnic weight of 20 grams.

[3] This policy only applies to UN0336, Fireworks, 1.4G, and does not apply to novelty fireworks devices. Requirements for novelty fireworks devices are found in the APA Standard 87–1, Section 3.2.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2012–0068]

RIN 1018–AY19

Endangered and Threatened Wildlife and Plants; Threatened Species Status for Spring Pygmy Sunfish

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine threatened species status under the Endangered Species Act of 1973 (Act), as amended, for the spring pygmy sunfish (*Elassoma alabamae*), which is found in Limestone County, Alabama. The effect of this regulation is to add this species to the List of Endangered and Threatened Wildlife and implement the Federal protections provided by the Act for this species.

DATES: This rule is effective December 2, 2013.

ADDRESSES: This final rule is available on the Internet at *http://www.regulations.gov* and at the Mississippi Ecological Services Field Office site. Comments and materials received, as well as supporting documentation used in the preparation of this rule, are available for public inspection at *http://www.regulations.gov*. All of the comments, materials, and documentation that we considered in this rulemaking are available by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Mississippi Field Office, 6578 Dogwood View Parkway, Jackson, MS 39213; telephone 601–321–1122; facsimile (601–965–4340).

FOR FURTHER INFORMATION CONTACT: Stephen Ricks, Field Supervisor, U.S. Fish and Wildlife Service, Mississippi Ecological Services Field Office (see **ADDRESSES** section). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Endangered Species Act (Act), a species warrants protection through listing if it is endangered or threatened throughout all or a significant portion of its range. Listing a species as an endangered or threatened species can only be completed by issuing a rule.

This rule lists the spring pygmy sunfish as a threatened species. In a separate, future rulemaking, we will finalize the designation of critical habitat for the spring pygmy sunfish.

The basis for our action. Under the Act, we can 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 have determined that the spring pygmy sunfish is threatened based on three of these five factors (Factors A, D, and E). Current threats to the species include ground and surface water withdrawal and impacts to water quality within the spring systems where this species currently occurs and historically occurred (Factor A). The species is also facing many potential threats in the foreseeable future. These include habitat modification in the form of planned urban and industrial development of land adjacent to spring pygmy sunfish habitat and the likely impacts to the spring system, including the surrounding aquifer recharge area. Increased urban and industrial development and associated secondary development and infrastructure can cause direct mortality as well as permanent loss and fragmentation of habitat (Factor A), which leads to isolated subpopulations, thereby impacting gene flow throughout the population (Factor E). Existing regulatory mechanisms are inadequate to reduce these threats (Factor D). However, conservation efforts that are currently being implemented through a candidate conservation agreement with assurances (CCAA), as well as additional conservation activities planned for the near future, reduce the impact of some of these threats. After carefully considering the current threats, current conservation activities, and future threats, we determined the spring pygmy sunfish meets the definition of a threatened species under the Act.

Peer review and public comment. We sought comments from three independent specialists knowledgeable in spring pygmy sunfish biology, basic conservation biology, and hydrology/spring system ecology to ensure that our determination is based on scientifically sound data, assumptions, and analyses. We invited these peer reviewers to comment on our listing proposal. We also considered all comments and information we received during two public comment periods.

Previous Federal Actions

Federal actions for the spring pygmy sunfish prior to October 2, 2012, are outlined in our proposed listing and critical habitat rule (77 FR 60180), which was published on that date. Publication of the proposed rule opened a 60-day comment period, which closed on December 3, 2012. On April 29, 2013 (78 FR 25033), we reopened the comment period for an additional 30 days, ending May 29, 2013. During this period, the public was invited to comment on the entire October 2, 2012, proposed rule as well as the draft economic analysis (DEA) of the proposed critical habitat designation. We did not receive any requests for a public hearing. We will finalize the designation of critical habitat for the spring pygmy sunfish in the near future.

Background

Species Information

Taxonomy and Species Description

The spring pygmy sunfish was discovered in 1937, but not described until 1993 (Mayden 1993, pp. 1–14). Genetic analysis by Quattro *et al.* (2001, p.1, pp. 27–226) confirmed the morphological diagnosis of the species by Mayden (1993, pp. 1–14) as valid. Sandel (2008, pp. 1–18; 2012, entire) determined the species to be the most distinctive member of the family Elassomatidae and provided preliminary population genetic data for the species.

We accept the characterization of the spring pygmy sunfish as a valid species based on the taxonomic characters distinguishing the species from other members of the *Elassoma* genus (Mayden 1993, p. 4). Its uniqueness is widely accepted by the scientific community, and there has been no discrepancy concerning its distinctiveness as a separate taxonomic entity (Boschung and Mayden 2004, p. 614).

A further description of the species is provided in the proposed rule (77 FR 60180; October 2, 2012).

Current Distribution

The range of the spring pygmy sunfish is very restricted. The species currently occupies about 5.9 miles (mi) (9.5 kilometers (km)) and 1,435 acres (ac) (580.6 hectares (ha)) of four spring pools and associated features confluent with the middle to upper Beaverdam Spring/Creek watershed. These spring pools, which include Moss, Beaverdam, Thorsen, and Horton springs, all in Limestone County, Alabama, along with associated spring runs, seeps, and wetlands, are collectively referred to as the Beaverdam Spring/Creek system. The Beaverdam Creek watershed is the least impacted groundwater-fed wetland in north Alabama as there are no other large springs in Lauderdale, Limestone, or Madison Counties that have not been developed for private or municipal use (Jandebeur 2012a, p. 1). The greatest concentration of spring pygmy sunfish occurs within the Beaverdam Spring site, which comprises 24 percent of the total occupied habitat for the species, and has experienced the least human-induced disturbance. However, Sandel (2011, p. 6) has documented declines in all sites within the system.

Historical Distribution and Status

The spring pygmy sunfish historically occurred at two other sites. This species was initially discovered in 1938, in Cave Springs, Lauderdale County, Alabama, where it was extirpated about a year later due to inundation from the formation of Pickwick Reservoir (Boschung and Mayden 2004, p. 615; Jandebeur 2012b, p. 1). In 1941, this species was also discovered in Pryor Spring within the Swan Creek watershed in Limestone County, Alabama, by Tarzwell and Bretton, where it was noted to be common (Jandebeur 2011a, pp. 1–5). Sampling efforts in the Pryor Springs complex between 1966 and 1979 indicated a sparse population of spring pygmy sunfish west of Highway 31. None has been reported east of Highway 31. The exact location of the original 1941 collection in Pryor Spring is uncertain, but Jandebeur (2011a, pp. 1–5) speculates the original site to be solely west of Highway 31, within the Pryor Spring Branch (spring-fed wetlands) and not in Pryor Spring proper (spring head and pool), east of the highway. However, in 1984, in an effort to enhance this population in Pryor Spring, fish were moved from Moss Spring (Beaverdam Spring/Creek system) into Pryor Spring on both sides of Highway 31 (Mettee and Pulliam 1986, pp. 14–15). Reintroduction efforts continued into 1986 and 1987 (Mettee and Pulliam 1986, pp. 6–7). However, by 2007, the population was determined to be extirpated due to impaired water quality and quantity, likely attributable to contaminants from agricultural runoff (Sandel 2008, p. 2; 2011, pp. 3, 6; Jandebeur 2012d, pp. 1–2). Fluker (*in. litt.* 2012) noted the species could still exist in Pryor Springs but at such low numbers as to not be detectable.

The spring pygmy sunfish exhibits metapopulation structure within the Beaverdam Spring/Creek system (Sandel 2008, pp. 15–16; 2011, p. 8). A metapopulation is a group of individual populations that have some level of gene flow between them but are spatially isolated by unfavorable intervening habitat created naturally or anthropogenically (Akcakaya *et al.* 1999, pp. 183–184). With continued temporal isolation and lack of gene flow, some populations of the group may go extinct. However, if extinction occurs, there is a probability that the empty habitat patches will be recolonized by some members of the metapopulation (Levins 1968, pp. vi, 39–65; Levins 1970, pp. 77–107; Gotelli 1991, p. 768). For the spring pygmy sunfish, migration and continuity between spring pools is essential in maintaining the species' genetic diversity within the Beaverdam Spring/Creek system, and the species as a whole.

Sandel (2008, pp. 15–16; 2011, p. 8) found that the spring pygmy sunfish metapopulation in Beaverdam Spring/Creek is composed of isolated populations within the spring pools and spring runs. These pools and runs are connected spatially and temporally with periods of isolation and connectivity that are dependent on the extent and composition of aquatic vegetation, water quality, water quantity, and other parameters such as unintentional fish barriers at road crossings (e.g., clogged pipe or culvert) (Drennen 2010, pers. observ.). The individual spring pygmy sunfish populations within the metapopulation are intermittently connected via migration and recolonization after local extinction events. Although no supporting data were provided, Jandebeur (2011b, pp. 1–13) presented an alternate hypothesis that these populations of spring pygmy sunfish may have evolved in relation to beaver ecology, and that during migration of spring pygmy sunfish from beaver pond habitats, the species may colonize or recolonize existing habitats downstream, even though individual subpopulations may be extirpated due to drought or other ecological issues.

Habitat

The spring pygmy sunfish is a spring-associated (Warren 2004, p. 185) and groundwater-dependent (Jandebeur 2011, pers. comm.) fish endemic to the Tennessee River drainage in the Eastern Highland Rim physiographic province and Dissected Tablelands (Marbut *et al.* 1913, p. 53) of Lauderdale and Limestone Counties in northern Alabama. Spring pygmy sunfish prefer clear to slightly stained spring water, occurring within spring heads (where cool water emerges from the ground), spring pools (water pool at spring head), spring runs (stream or channel downstream of spring pool), and associated spring-fed wetlands (Warren 2004, pp. 184–185). The recharge area for Beaverdam Spring is about 1.7 square miles (mi^2) (1,088 ac) and extends from the western Beaverdam Creek watershed boundary, eastward near Oakland Spring Branch, north toward Huntsville Browns Ferry Road, and south to the bluff line where the spring discharges (Cook *et al.* 2013, p. 9). No contemporary water flow rates from the springs are available. However, historical flow rates for Pryor Spring (where the species once occurred) and Moss Spring of 800 to 5,000 gallons per minute (gpm) (3,000 to 19,000 liters per minute (lpm)) (tabulated from Chandler and Moore 1987, pp. 3–4), respectively, indicate that the spring pygmy sunfish is associated with moderately flowing springs of the second to fourth order (after Meinzer 1923 in Chandler and Moore 1987, p. 5; McMaster and Harris 1963, p. 28).

In general, natural spring pool habitats are typically static, persisting without disruption for long periods, even during droughts, in the absence of water extraction. However, the Beaverdam Spring/Creek system contains three altered springheads (Moss, Horton, and Thorsen), and only one springhead (Beaverdam Spring) that can be considered a natural surface spring pool habitat. Over the last 50 years, Moss, Horton, and Thorsen Springs have all experienced some degree of anthropogenic disturbance (Sandel 2011, p. 1–11; Jandebeur 2012d, pp. 1–22). This includes mechanical enlargement and water withdrawals that can cause excessive pool level fluctuations and be particularly damaging to the spring pygmy sunfish during times of drought. These springs seemed to have recovered biologically at some level; however, lower population numbers of the species are associated with these springs (Sandel 2011, p. 6). The long-term impacts on these springs' geological and hydrological functions from disturbance are not known. Beaverdam Spring pool, which is unaltered, has seasonal water levels consistent throughout the year (Jandebeur 2012a, pp. 1–16). Cook *et al.* (2013, p. 13) reported the discharge rates in Beaverdam Spring as 1.7 to 4.5 cubic feet per second (cfs) (776 to 2,020 gallons per minute (gpm)) and suggested that this wide range of discharge may originate from a variety of sources including agricultural withdrawals, a lack of vegetation in the recharge area, or a function of the site-specific geology. During drought periods, subsurface water levels in Bobcat and Matthews Cave on Redstone Arsenal, about 8 mi (12.9 km) east of Beaverdam Spring/Creek watershed, are typically lower for longer periods of time compared to wetter years (Moser and Rheams 1992, pp. 6–8; Rheams *et al.* 1992, pp. 7–20). No direct correlation between groundwater levels in nearby caves and wells and spring discharge rates or water levels in Beaverdam Spring has been determined. Cook *et al.* (2013, p. 14) found that withdrawal for the March 2012 base flow (the water in a stream that originates from groundwater seepage or springs and is not from rain runoff) from Beaverdam Spring was about 3.5 percent (9.6 million gallons per day) of the total flow (base flow and stormwater) of Beaverdam Creek, indicating the current withdrawals have little effect on the discharge rate of Beaverdam Spring. However, effects of water withdrawal are more obvious in the other springheads, especially during drought (Sandel 2011, p. 6).

The species is most abundant at the spring outflow or water emergence (spring head) from the ground and spring pool area (Sandel 2009, p. 14), typically occupying areas with water depths from 5 to 40 inches (in) (13 to 102 centimeters (cm)) and rarely in the upper 5 in (13 cm) of the water column. The spring pygmy sunfish prefers patches of dense filamentous submergent vegetation, including *Ceratophyllum echinatum* (spineless hornwort), *Myriophyllum heterophyllum* (two-leaf water milfoil), and *Hydrilla verticillata* (native hydrilla). Other important plant species for this sunfish include emergent species such as *Sparganium* spp. (bur reed), *Polygonum* spp. (smartweed), *Nasturtium officinale* (watercress), *Juncus* spp. (rush), and *Carex* spp. (sedges); and semi-emergent vegetation including *Nuphar luteum* (yellow pond lily), *Utricularia* spp. (bladderwort), and *Callitriche* spp. (water starwort) (Mayden 1993, p. 11; Jandebeur 1997, pp. 42–44; Sandel 2011, pp. 3–5, 9–11; Kuhajda *in litt.* 2012). The spring pygmy sunfish is also associated with a variety of other spring-dwelling species, including amphipods, isopods, spring salamanders, crayfish, and snails (Mayden 1993, p. 11; Sandel 2011, pp. 11–12).

Life History

The spring pygmy sunfish has low fecundity (reproductive capacity) indicating a species that is adapted to

and requires highly stable groundwater-dependent habitats and an ecological dependence upon unchanging habitats in early life stages (Rakes *in litt.* 2012). The species is short-lived (essentially an ''annual'') and becomes shorter-lived and extremely vulnerable to population extirpation as water temperatures rise (Rakes *in litt.* 2012). Adults reproduce from January to October. Spawning begins in March and April, when water quality parameters are within a suitable range (pH of 6.0 to 7.7 and water temperatures of 57.2 to 68 degrees Fahrenheit (°F) (15 to 20 degrees Celsius (°C)) (Sandel 2007, p. 2; Mettee 2008, p. 36; Petty *et al.* 2011, p. 4). Spring pygmy sunfish produce about 65 eggs, and hatching occurs from April to September (Sandel 2004–2009, pers. observ.). Two spawning attempts per year have been reported in captivity (Petty *et al.* 2011, p. 4). In captivity, the spring pygmy sunfish may live slightly longer than 2 years, but normally their life span is 1 year or less (Boschung and Mayden 2004, pp. 614–615). Compared to other pygmy sunfishes, spring pygmy sunfish have the highest average number of eggs per spawn, but the lowest percentage of egg survival, which increases the species' vulnerability (Mettee 1974, p. 38).

Summary of Comments and Recommendations

In the proposed rule published on October 2, 2012 (77 FR 60180), we requested that all interested parties submit written comments on the proposal by December 3, 2012. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. A newspaper notice inviting general public comment was published in the Huntsville *Times* on October 14, 2012. We did not receive any requests for a public hearing. On April 29, 2013, we published a notice (78 FR 25033) reopening the comment period on the October 2, 2012, proposed rule (77 FR 60180), announcing the availability of our DEA on the proposed critical habitat designation, and requesting comments on both the proposed rule and the DEA. This comment period closed on May 29, 2013.

During the comment periods for the proposed rule, we received a total of 18 comments on the proposed listing of the spring pygmy sunfish and proposed designation of critical habitat. In this final rule, we address only the comments regarding the proposed listing of this species, and we will address comments related to critical habitat in the final critical habitat rule that will publish in the **Federal Register** in the near future. All comments we received either expressed an opinion on the proposed listing or provided additional background information on the species including its habitat, threats, and/or its conservation needs. Ten of the 18 commenters specifically commented on the species' proposed listing as threatened. Two expressed opposition to the listing, and the remaining eight supported the species' listing, with six of these eight recommending an endangered designation instead of the proposed threatened designation. Two commenters were affiliated with a State agency (Geological Survey of Alabama), and all remaining comments were received from nongovernmental organizations or individuals. All substantive information provided during both comment periods related to the listing decision has either been incorporated directly into this final determination or is addressed below.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from three knowledgeable individuals with scientific expertise that included familiarity with the spring pygmy sunfish and its habitat, biological needs, and threats. We received responses from all three of the peer reviewers.

We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding the listing of the spring pygmy sunfish. The peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve the final rule. Two of the three peer reviewers were in support of the listing, although they recommended that we list the species as endangered. The third peer reviewer provided additional information, clarification, and suggestions to improve the final rule and remarked about the difficulty in assessing the hydrology and groundwater issues in the area, but did not specifically comment on the species' proposed listing. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Reviewer Comments

This section focuses on comments from peer reviewers and our responses to them. However, we have also included other public comments in this section (referred to as ''other commenters'') if those comments were related in topic to peer reviewer comments.

(1) *Comment:* Two of the three peer reviewers and two other commenters stated that the species should be listed as endangered and not as threatened. They stated that endangered status was more appropriate for this species since it was confined to a single population that is at risk of extirpation. They cited the establishment of the current CCAA as insufficient justification for the proposed threatened status due to threats to the species outside the boundaries of the CCAA from the projected growth of the Huntsville area. In addition, they noted that all protection afforded to the species through the CCAA could be nullified as the landowner can opt to terminate the CCAA with notice.

Our Response: The determination to list the spring pygmy sunfish as threatened was based on the best available scientific and commercial data on its status, the existing and potential threats to the species, and current and proposed conservation measures through CCAAs (see Summary of Factors Affecting the Species and Determination sections, below). Though the spring pygmy sunfish is confined to a single population, the protection afforded to the species and its habitat through the established Belle Mina Farms CCAA ameliorates the current threats to the species to the point that threatened status is appropriate. The Belle Mina Farms CCAA provides protection for the largest population of the species within the springhead and spring pool of about 165 ac (66.8 ha) and 963 ac (390 ha) (88.5 percent) of the recharge area. The middle section of the species' range, which is downstream from Belle Mina Farms, is owned by two landowners who are currently working with the Service to protect and manage their section of habitat for the species through proposed CCAAs. These conservation actions will reduce the severity of certain threats to the species outlined under Factor A (see below) within the upper and middle portions of the Beaverdam Spring/Creek and Moss Spring sites. The remaining species' habitat in the lower reach of the Beaverdam Spring/Creek system, though of lower quality, is federally owned and protected within the Wheeler National Wildlife Refuge (NWR). We acknowledge that large-scale residential and industrial development in association with the growth of the City of Huntsville could pose a serious future threat to the species and its habitat.

The Belle Mina Farms CCAA includes conservation measures to minimize impacts to the species and its habitat

caused by livestock, chemical usage, stormwater runoff, deforestation, development, and groundwater removal (see specifics under *Factor A* discussion, below). Therefore, it reduces the immediacy of the threats to the species and its habitat to the point where the spring pygmy sunfish is not in danger of extinction (endangered). Rather, it is likely to become endangered throughout all or a significant portion of its range within the foreseeable future when considering the future threats it faces from potential residential, commercial, and industrial development in the vicinity and therefore, it meets the definition of a threatened species under the Act (16 U.S.C. 1531 *et seq.*). We acknowledge that landowners have the option to terminate CCAAs with notice; however, our assessment is based on the protection this agreement currently affords the species and its habitat.

(2) *Comment:* One peer reviewer commented that the case for excessive groundwater usage was not documented sufficiently in the proposed rule and the cause for low spring water levels has not been demonstrated to be seasonally variable, the result of extraction, or a combination of both. He further stated that basing species' habitat vulnerability on general statements of groundwater occurrence, recharge, and movement should be better documented with local data and monitoring information if possible. Another individual commented that there were no data to support the claim that groundwater withdrawal had negatively affected the species.

Our Response: We reviewed available hydrological information (Erman 2002; Field and Sullivan 2003; Younger 2007; Likens 2009; Healy 2010) in our assessment of threats to the species; this information included local hydrological information such as The Geological Survey of Alabama's (GSA) studies of caves in the Tennessee River Valley area near the Beaverdam system (Moser and Rheams 1992, pp. 6–8; Rheams *et al.* 1992, pp. 7–20) and Cook *et al.'s* (2013) recent study of the recharge area of the Beaverdam Spring/Creek system. We have incorporated information from these studies into appropriate sections in this final rule.

The effects of pumping or diversion of springs and its negative consequences to spring-dependent species, such as the spring pygmy sunfish, are well documented in the literature (e.g., Williams and Etnier 1982; Cooper 1993; Hubbs 1995; Kuhajda 2004; Likens 2009; see Summary of Factors Affecting the Species, *Factor A*). Sandel (in Kuhajda *et al.* 2009, pp. 16, 19) documented a negative relationship between excessive pumping activities and degraded habitat in Beaverdam Spring at Lowe's Ditch and in Horton and Thorsen springs. A 99-percent decline of the spring pygmy sunfish population was estimated at Thorsen Spring following water extraction and the resulting desiccation of vital aquatic vegetation (see Summary of Factors Affecting the Species). Information concerning the smaller springs within the system, i.e. Moss, Thorsen, and Horton, along with Pryor Spring, which is unoccupied by the species, indicates that groundwater and surface water extraction, along with drought, contributed to the destruction of the species' habitat (Sandel 2011, p. 6). Thus, based on the best scientific and commercial information available on spring systems and site-specific monitoring studies, we have determined that excessive groundwater extraction poses a current and future threat to the spring pygmy sunfish (see Summary of Factors Affecting the Species, *Factor A*). However, subsurface groundwater movement in this region of Alabama is quite complex, and more studies are needed. We agree that these additional studies will increase our understanding of the hydrological and biological dynamics of the spring system where the spring pygmy sunfish occurs.

(3) *Comment:* One peer reviewer commented that potential threats from chemical contaminants may be somewhat overstated based on generalized watershed information taken from overview book sources. Another individual commented that there were no data to support the claim that pesticides and nitrification were threats to the species.

Our Response: The best available scientific and commercial data, as presented in the Summary of Factors Affecting the Species section, on the prevalence of contaminants within the Beaverdam Spring/Creek watershed and their negative effects on aquatic organisms and specifically on the spring pygmy sunfish, indicate that contaminants have been a factor in the decline of the spring pygmy sunfish. Baseline contaminant trend information has been collected for decades within the Tennessee Valley surface and ground waters by the U.S. Geological Survey, GSA, and other sources documenting the general negative impacts of water quality contamination, whether from fertilizers or pesticides, on aquatic organisms. Specific information on the Lower Tennessee River Valley area concerning surface and groundwater contaminants, along with the susceptibility of the aquifers to surface contaminants (Bossong and Harris 1987; Hoos 1999; Kingsbury 1999; Hoos and Powell 2002; Kingsbury 2003; Powell 2003), was used to characterize groundwater aquatic systems within the specific spring pygmy sunfish sites. Between 1999 to 2001, 35 pesticides and volatile organic compounds were detected in wells and springs within the Lower Tennessee River Valley (Woodside *et al.* 2004, pp. 1–2). Within the Eastern Highland Rim, the Beaverdam Spring/Creek watershed was shown to have the highest annual crop harvest, the highest total annual nitrogen use, the second highest annual phosphorus use, and elevated pesticides in the groundwater (Kingsbury 2003, p. 20; National Water Quality Assessment Program (NAWQA) 2009a, b; Mooreland 2011, p. 2; Cook *et al.* 2013, pp. 17–20). The concentration of nitrate as nitrogen and total phosphorus found in Beaverdam Spring was 2.77 milligrams per liter (mg/L), and 0.061 mg/L respectively, which is four and 1.7 times above the upper limit for wildlife protection set by the State of Alabama (Cook *et al.* 2013, pp. 17–19). Pesticides were likely the causative factor in the extirpation of the Pryor Springs population, which began its decline after the application of the pesticide 2,4-dicholorophenoxyactic acid (2,4-D) to that area in the 1940s (Jandebeur 2012c, pp. 1–18).

(4) *Comment:* One peer reviewer commented that statements derived from general knowledge and field observation over short periods of time and presented as fact reveal a bias in the proposal about damage to (and status of) spring pygmy sunfish.

Our Response: We thoroughly reviewed all available scientific and commercial data in preparing the proposed rule and in completion of this final rule. We sought and reviewed historical and recent publications and unpublished reports concerning the spring pygmy sunfish as well as literature concerning springs and threats to these systems. This included reliable unpublished reports, non-literature documentation, and personal communications with experts. We have incorporated the most current and historical scientific information available concerning the habitat and natural history of the species (see ''*Species Information''* in Background section, above). Studies over the last decade have documented negative changes in the habitat and overall populations of the species (Sandel 2007, 2008, 2009, 2011; Jandebeur 2011a, 2012a). The proposed rule was reviewed by the public, which also included a peer review by three experts according

to our policy (see *Peer Review* section, above). The other two peer reviewers, while providing additional information on habitat, life history, and threats, agreed that our threat assessment supported our decision to list this species, though they stated endangered status was more appropriate (see Comment 1). In short, we based our decision on the best scientific and commercial data available, as required by section 4(b)(1) of the Act.

(5) *Comment:* One peer reviewer commented that sampling may be inadequate relative to technique and method or insufficient in scope to adequately assess population size and distribution. Another individual stated that documented population declines were questionable and were a reflection of inadequate sampling methods.

Our Response: Relative abundance of spring pygmy sunfish estimated by catch-per-unit-effort (CPUE), the method that was employed, is a standard metric in biological surveys and is an approved method by the American Fisheries Society for estimating fish abundance (Murphy and Willis 1996, pp. 158–159), as is comparing this information through time at various collection sites. The information gathered during the field work is of sufficient extent and duration to document the rarity of the spring pygmy sunfish and its population decline and adheres to the information standard in section 4(b)(1) of the Act, as the use of the best scientific and commercial data available.

Comments From States

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.'' We received two comments from individuals who are employees of a State agency. One of these individuals was also a peer reviewer of the proposed rule (see *Peer Reviewer Comments* section, above). Both provided additional information on the species' habitat and threats, which has been incorporated into this final rule, and neither stated a position on the proposed listing of the spring pygmy sunfish as threatened.

Public Comments

General Comments Issue 1: Science

(6) *Comment:* One individual commented that the listing of the spring pygmy sunfish is not supported by the best science and is not warranted. Service policy requires that peer-reviewed literature be considered scientifically superior. The Service based its proposed listing on information from the petition, which is scientifically unreliable since it consisted of unconfirmed information and personal observations. The Service should not base listing decision on potential threats that are pure speculation. Peer-reviewed literature and other data do not support a listing.

Our Response: See our responses to Comments 1, 2, 3 and 4, above. Under the Act, we determine whether a species is endangered or threatened due to any of the five factors (see Summary of Factors Affecting the Species, below), and we are required to make listings determinations on the basis of the best available scientific and commercial data available (16 U.S.C. 1533(a)(1) and (b)(1)(A)). The Service reviews and uses information on the biology, ecology, distribution, abundance, status, and trends of species, as well as information on current and potential threats, from a wide variety of sources as part of our responsibility under the Act. Some of this information is anecdotal, some of it is oral, and some of it is found in written documents. These documents include status surveys, biological assessments, and other unpublished material (i.e., ''gray literature'') from State natural resource agencies and natural heritage programs, Tribal governments, other Federal agencies, consulting firms, contractors, and individuals associated with professional organizations and higher educational institutions. We also use published articles from juried (peer-reviewed) professional journals whenever available.

All decisions are made on the basis of the best scientific and commercial data available and are subject to extensive internal review as well as external peer review by recognized authorities to help ensure that our decisions conform to contemporary scientific principles. We have incorporated the most current and historical scientific and commerical data available concerning the habitat and natural history of the species (see Background section, above). Our determination of threatened status for this species is supported by the information presented in our Summary of Factors Affecting the Species discussion, below, and complies with the Act's requirement to base our decision on the basis of the best scientific and commercial data available. We have also complied with our policy on peer review (59 FR 34270) as discussed under the *Peer Review* section above.

(7) *Comment:* One individual stated that our assertion that the spring pygmy sunfish occupies only 5 river miles of Beaverdam Creek is speculative and contradicted by prior research. It is unknown if the species has been extirpated from Pryor Springs, and based on previous surveys, Wheeler NWR contains numerous areas populated by the spring pygmy sunfish. Surveys to date have been limited to unaltered spring runs with filamentous, submergent vegetation. The habitat and range of spring pygmy sunfish is broader and more diverse, as there is documented evidence of sustained populations in areas of differing water qualities such as beaver dam impoundments, creek banks, and lake backwaters. Exploration of all potential habitats is needed to establish the range of the species and undertake any listing decision.

Our Response: Our determination that the spring pygmy sunfish's range is restricted to approximately 6 miles of Beaverdam Creek is supported by the best scientific and commercial data available as required under section 4(b)(1) of the Act. This species was historically known from three independent tributaries of the Tennessee River: Cave Spring, Pryor Spring/Branch, and Beaverdam Spring. The Cave Spring population was extirpated in 1934, and the Pryor Spring/Branch System population was extirpated in the 1940s. Reintroduction efforts into Pryor Spring in the 1980s were ultimately unsuccessful, as the species has not been observed in this system since 2007 (see ''Historical Distribution and Status'' in the Background section, above). All of these spring habitat localities shared similar biological and physical parameters (see ''Habitat'' in Background section, above). This type of habitat is rare today, as these systems were mostly developed to meet demand for public water supply and irrigation. In fact, Beaverdam Spring is the only remaining large spring in north Alabama that has not been similarly developed (see Summary of Factors Affecting the Species section, below). Extensive fish surveys within Limestone and Madison Counties in related spring systems with similar vegetation structure as in Beaverdam Spring, and also in different aquatic spring-related habitats, have not located any additional spring pygmy sunfish localities (Caldwell 1965; Armstrong 1967; Jandebeur 1979; Mettee and Pulliam 1986; Etnier 1990; Shute 1994; Jones 1995; Larson 1995; Mayden *et al.* 1995; Jandebeur 1997, 2011a; Sandel 2008, 2009, 2011). Though the species has been found in some habitats that have been altered from their original natural condition,

such as a beaverdam, there is no evidence that these are sustaining populations. To the contrary, the latest data reported by Sandel (2011, p. 6), for collections within the spring pygmy sunfish's current range between 2005 to 2010, indicate declines in all known populations including Beaverdam Creek, and Moss, Horton, and Thorsen Springs. The spring pygmy sunfish was last documented to occur on the Wheeler NWR approximately 20 years ago in 1993; thus, we consider this area in the lower range of Beaverdam Spring/Creek system to be part of the historical range. Based on our review of the best available scientific and commerical data, including analysis of the species habitat and previous status surveys, the surveys for the species have been appropriate and have confirmed its rarity, vulnerability, and range.

(8) *Comment:* One commenter postulated that mechanical disturbance and siltation actually benefit the spring pygmy sunfish. He stated that the spring pygmy sunfish tolerates and thrives where there has been substantial modification to the spring habitat through agricultural and animal husbandry practices as evidenced by its long-term coexistence with cattle.

Our Response: There is no information or evidence to support the premise that the species thrives in habitat modified by livestock or in areas with siltation and disturbance. The best available scientific and commercial data indicate that habitat alteration has been a causative factor in the decline of the spring pygmy sunfish. The species is known in greatest numbers from the spring head of Beaverdam Spring/Creek, where there is no livestock impact and no evidence of problems with excessive sedimentation. The spring pygmy sunfish may be able to tolerate some degree of habitat and water quality modification for short periods of time and may be able to reestablish themselves given improved conditions. However, livestock impacts to aquatic habitat are well-documented in the scientific literature, and suspended sediments, which are stressors to aquatic organisms, are typically increased in aquatic habitats used by livestock. Excessive sediment directly impacts fish health and decreases water clarity, which reduces light penetration needed for plant growth and indirectly results in impacts to fish, and in particular, the spring pygmy sunfish's spawning and feeding sites (see Summary of Factors Affecting the Species, *Factor A* section).

(9) *Comment:* One individual commented that there are no data to support a metapopulation hypothesis for the spring pygmy sunfish.

Our Response: The best scientific and commercial data available support our conclusion that the spring pygmy sunfish exhibits metapopulation structure within the Beavedam Spring/Creek system. Studies by Sandel (2008, pp. 15–16; 2011, p. 8) found that the spring pygmy sunfish population in Beaverdam Spring/Creek is composed of isolated populations within the spring pools and spring runs, and that the individual spring pygmy sunfish populations are intermittently connected via migration and recolonization after local extinction events. This population structure is consistent with the definition of metapopulations (see ''Historical Distribution and Status'' in Background section, above).

(10) *Comment:* One individual stated that the Service's assertion that the spring pygmy sunfish is a separate and distinct species is questionable.

Our Response: We disagree. The commenter did not provide any data to support his statement. The best scientific and commercial data indicate that the spring pygmy sunfish is a distinct, well-described taxon. We are not aware of any disagreement within the scientific community concerning its taxonomic status (see ''Taxonomy and Species Description'' in Background section, above).

(11) *Comment:* One individual stated that we characterized water withdrawal for irrigation usage incorrectly for the Beaverdam Spring system, and we should have used information that presents water quantity issues, withdrawal rates, water volume usage, and specific connectivity among the various water features of the spring system.

Our Response: We agree that more detailed studies would contribute to a better understanding of water withdrawal usage in the Beaverdam Spring system. However, in accordance with the information standard under section 4(b)(1) of the Act, we used the best scientific and commercial data available in assessing water extraction usage in the Beaver Spring/Creek system. We gathered water extraction information from the Limestone County Water and Sewer Board, along with information from a recent initial assessment of the aquifer and recharge area by GSA (Cook *et al.* 2013, entire). As discussed in the Summary of Factors Affecting the Species section of this rule, commercial water withdrawal from the aquifer by the Limestone County pumping station, between 2006 and 2011, was over 1 billion gallons (3.9 billion liters) at an estimated flow rate of 450 gpm (1,740 lpm) (Holland 2011, pers. comm.). Groundwater withdrawal by the cities of Huntsville and Madison (east of the spring pygmy sunfish habitat), and the adjacent rural population, is estimated at 16 million gallons per day (62 million liters per day) (Hoos and Woodside 2001, p. 1; Kingsbury 2003, p. 2; Sandel 2007–2009, pers. comm.). Negative impacts to the spring pygmy sunfish from excessive ground water extraction are discussed in the Summary of Factors Affecting the Species section, below, and also in our response to Comment 2, above.

General Comments Issue 2: Procedural and Legal Issues

(12) *Comment:* One individual commented that the Service must not only examine and evaluate the raw data but must also make those data available to others. Internal materials relied upon by the Service have not been made available for public review.

Our Response: Complete lists of references, including unpublished information, cited in the proposed rule (77 FR 60180; October 2, 2012) and in this final rule are available on the Internet at *http://www.regulations.gov* at Docket No. FWS–R4–ES–2012–0068 and upon request from the Mississippi Ecological Services Field Office (see **ADDRESSES,** above). In addition, as stated in our proposed rule, all supporting documentation used in preparing the proposed rule was available upon request and for public inspection, by appointment, at the U.S. Fish and Wildlife Service, Mississippi Ecological Services Field Office. All supporting documentation used in our rulemakings is a matter of public record; however, the number of sources referenced is often voluminous. Therefore, it is not possible for us to post all information sources used on the Internet.

(13) *Comment:* One individual commented that listing was unnecessary in light of the current and proposed CCAAs and that these agreements are more successful at protecting the species than listing. Threats to the species can be alleviated through less restrictive means such as the use of best management practices (BMPs).

Our Response: We agree that CCAAs are a cooperative mechanism to manage and protect the spring pygmy sunfish. The CCAA (Belle Mina Farms) developed for the species identifies BMPs that adequately protect the species and its habitats from current land use practices within the areas enrolled in the CCAA. The two

proposed CCAAs also identify similar BMPs. However, the conservation actions in the current and proposed CCAAs do not remove the threats to the species and its habitat to the point that listing is not necessary, especially when considering probable and potential impacts from planned residential and industrial development. In the Summary of Factors Affecting the Species and Determination sections, below, we discuss our analysis of the threats to the species weighed against the benefits provided through the current and proposed CCAAs. The primary threat to the species is from habitat modification (Factor A), most notably the large-scale industrial and residential development planned adjacent to this species' habitat, which has the potential to impact the hydrology and other aspects of the spring system. The use of BMPs outlined in the CCAAs are important measures in conserving the spring pygmy sunfish, particularly considering the current agricultural land use within the watershed. However, when land use changes to industrialization and urbanization, as is likely in this area, the standard BMPs from the CCAAs are inadequate to address the complex issues such as aquifer recharge, stormwater management, and chemical transport in association with development. In addition, there may be activities associated with the increased development, such as roadways and utility (e.g., water, sewer, and electrical) corridors outside of the landowner's control, that have the potential to impact land enrolled in the current and proposed CCAAs. Therefore, the spring pygmy sunfish needs the protection afforded to federally listed species under sections 7 and 9 of the Act to ensure its conservation.

(14) *Comment:* The Service does not have authority to take action for a purely intrastate species such as the spring pygmy sunfish. It is questionable if the Federal government can regulate such a species under the Commerce Clause of the U.S. Constitution. An action listing the spring pygmy sunfish is beyond the powers afforded to the Service and Federal Government.

Our Response: The constitutionality of the Act in authorizing the Services' protection of endangered and threatened species has consistently been upheld by the courts (e.g., *GDF Realty Investments, Ltd.* v. *Norton,* 326 F.3d 622 (5th Cir. 2003); *Gibbs* v. *Babbitt,* 214 F.3d 483 (4th Cir. 2000); *National Association of Homebuilders* v. *Babbitt,* 130 F.3d 1041 (D.C. Cir. 1997), *cert. denied,* 524 U.S. 937 (1998); *Rancho Viejo* v. *Norton,* No. 01–5373 (D.C. Cir. 2003); and *United States* v. *Hill,* 896 F. Supp. 1057 (D. Colo. 1995). All of these courts have held that regulation under the Act to protect species that live only in one State is within Congress' Commerce Clause power and that loss of animal diversity has a substantial effect on interstate commerce (*National Ass'n of Home Builders,* 130 F.3d at 1050–51; see *Rancho Viejo,* 323 F.3d at 310, n. 5). Thus, although the spring pygmy sunfish is currently known to occur only within the State of Alabama, the Service's application of the Act to add this species to the Federal List of Endangered and Threatened Wildlife is constitutional.

Summary of Changes From Proposed Rule

In response to comments, we have incorporated additional information pertaining to this species' conservation, life history, and habitat as provided by the peer reviewers and others. Specifically, we added new information on the hydrology of the Beaverdam Spring/Creek watershed into the Background and Summary of Factors Affecting the Species sections of this rule. In addition, we have edited our threat discussion under the Summary of Factors Affecting the Species section and most notably added new information pertaining to the proposed industrialization of the Beaverdam Spring/Creek watershed under the *Factor A* discussion.

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR 424) set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. 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. Listing actions may be warranted based on any of the above threat factors, singly or in combination. Each of these factors is discussed below.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Increased human population growth in Limestone County of over 20 percent between the 2000 and 2010 census (Hill *in litt.* 2013), and the accompanying demand for water could alter the Beaverdam Spring/Creek system and its recharge areas through increased water extraction (pumping), diversion, and retention (Erman 2002, p. 8; Cook *et al.* 2013, pp. 33–34). Because springs provide shelter, thermal refuge, breeding sites, movement corridors, and prey source habitat for the spring pygmy sunfish, the species is dependent on water quantities sufficient to provide spring habitat that is stable and permanent (Erman 2002, p. 8). Within the spring pygmy sunfish range, the Beaverdam Spring pool area, which has the greatest concentration of spring pygmy sunfish, is the least disturbed of all springs in the system. Moss, Thorsen, and possibly Horton Springs, which have been altered in some manner over the last 60 plus years, were allowed to recover and stabilize; however, these springs support lower numbers of the species than Beaverdam Spring. The condition of Pryor Springs and spring run continued to deteriorate over time (Sandel 2008, pp. 1–31; 2011, pp. 1–3, 1–11; Jandebeur 2012c, pp. 15–16; 2013, pp. 2–5) to the eventual demise of the species at this site in 2007.

Urban and Industrial Development

The history of development of large springs does not inspire confidence that the Beaverdam Spring environs will be conserved as a natural ecosystem (Jandebeur 2012a, p. 22). Groundwater-fed habitat suitable for the spring pygmy sunfish was historically more prevalent across the Tennessee Valley region of north Alabama than today, as these systems were mostly developed to meet demand for public water supply and irrigation, as well as recreational parks (Jandebeur 2012a, p. 1). Except for Beaverdam Spring, there are no large springs remaining in Lauderdale, Limestone, or Madison County that have not been developed for private or municipal use (Jandebeur 2012a, p. 22).

Urban development adjacent to the Beaverdam Spring/Creek system could fragment and directly impact suitable spring pygmy sunfish habitat by decreasing water quality and quantity, changing the aquatic vegetation structure, and limiting the species' movement throughout the system. When an area is urbanized, many impermeable surfaces are constructed such as roofs, pavements, and road surfaces. All are intentionally constructed to be far less permeable than natural soils and to remove stormwater quickly, which results in a reduction in direct recharge into the aquifer, increased stormwater

runoff (Younger 2007, p. 39), acute and chronic changes in water quality parameters such as decreased oxygen levels, increased temperature, concentrations of toxic heavy metals or other molecules (Cooper 1993, pp. 402–406; McGregor and O'Neil 2011, pp. 5–15; Cook *et al.* 2013, pp. 33–34), and increased water quantity and flow velocity (Field and Sullivan 2003, pp. 326–333).

The stormwater flow velocity carries sediments that may scarify (make scratches or cuts in) rock and gravel substrates (Waters 1995, pp. 57, 66) and uproot aquatic vegetation, thereby destroying important foraging, spawning, and refuge habitat for the species (Field and Sullivan 2003, pp. 326–333). Excessive sediment has been shown to wear away and suffocate periphyton (organisms that live attached to objects underwater), disrupt aquatic insect communities, and negatively impact fish growth, physiology, behavior, reproduction, and survival (Waters 1995, pp. 109–118). Fish gills are delicate and easily damaged by fine sediment. As sediment accumulates in the gills, fish respond by excessively opening and closing their gills to try to remove the silt. If irritation continues, mucus is produced to protect the gill surface, which may impede the circulation of water over gills and hence interfere with respiration. Under extreme or prolonged exposure to sediments, fish may actually die due to physically damaging and clogging their gills (Berg 1982, pp. 177–195).

The spring pygmy sunfish is currently facing threats from ongoing development and from planned large-scale residential and industrial projects within the vicinity of the Beaverdam Spring/Creek watershed (Bostick and Davis 2013, pers. comm.; Hill *in litt.* 2013). Sandel (2011, p. 11) observed declines in the species' population numbers and attributed it to sedimentation from two nearby construction activities: the construction of a new sewer line adjacent to the spring system and the ongoing construction of the Ashbury subdivision 2.3 mi (3.7 km) northeast of the species' habitat. The Ashbury subdivision, adjacent to Moores Branch and draining into the upper Beaverdam Spring/Creek watershed, filled adjacent wetlands when residential housing, roads, utility crossings, and stormwater drains were constructed (U.S. Army Corps of Engineers 2011, pp. 1–6).

The City of Huntsville's Master Plan for Western Annexed Land (Sasaki 2011, pp. 1–83) proposes developing a total of 10,823 ac (4,379.9 ha) adjacent to spring pygmy sunfish habitat. More than 68 percent of the proposed development area is adjacent to the Beaverdam Spring/Creek watershed and consists of four major industrial sites encompassing approximately 4,000 ac (1,619 ha) (Bostick and Davis 2013, pers. comm.). The Huntsville Master Plan would cover much of the known recharge area with residential, commercial, and industrial development (Jandebeur 2012a, p. 20). The restricted-use area for subdivision development, within the City of Huntsville, is a minimum of 25 ft (7.6 m) from the perimeter of a perennial spring. However, no restrictions are set forth for ephemeral springs or seasonal groundwater seepages (City of Huntsville 2007, p. 28), which include many of the ephemeral springs, seepages, and streams draining into the Beaverdam Spring/Creek watershed. These features are necessary for maintenance of seasonal flow rates. Filling them or converting them to developed areas could therefore adversely affect the spring pygmy sunfish. In addition, there are roads proposed to connect the planned developments with the Interstate 65 and Interstate 565 corridors (Sasaki 2011, pp. 1–83), along with feeder roads and improvements on primary and secondary existing roadways in support of new residential and industrial projects (Sasaki 2011, pp. 1–83; Hill *in litt.* 2013). Developed, paved-over areas (impervious substrate) promote runoff and inhibit infiltration, changing water flow rates from slow and incremental to fast and localized, because stormwater is directed via surface routes into specific areas of the receiving stream, rather than infiltrating into the soil or draining naturally into surface water.

Pumping or diversion of springs creates unstable conditions for spring-dependent species such as the spring pygmy sunfish through fluctuating water levels and temperature changes (Williams and Etnier 1982, pp. 11–18; Hubbs 1995, pp. 989–990; Kuhajda 2004, pp. 59–63). The incremental and cumulative groundwater recharge effects on the habitat of the spring pygmy sunfish may not become evident for years (Cooper 1993, pp. 402–406; Likens 2009, p. 90). Within north Alabama, the availability of large quantities of groundwater from springs has been an important factor in industrial and urban development (Warman and Causey 1963, p. 93). It is estimated that, by 2015, the population in Limestone and Lauderdale Counties will increase dramatically (Roop 2010, p. 1; Hill *in litt. 2013*), along with expanding urbanization and industrialization (Sasaki 2011, pp. 1–83). The potential over-development of groundwater resources, especially in the recharge areas for Beaverdam Spring, Moss Spring, and the Beaverdam Creek, raises concerns about the potential loss of groundwater-fed habitat essential to the only remaining population of the species (Jandebeur 2012a, p. 20–21).

The Fort Payne Chert of the Early Mississippian Age is the principal aquifer of spring pygmy sunfish habitat and provides groundwater to all of Limestone County (McMaster and Harris, Jr. 1963, p. 1; Cook *et al.* 2013, pp. 3–7). Groundwater in the County is ultimately derived from percolation of precipitation (McMaster and Harris, Jr. 1963, p. 17; Cook *et al.* 2013, pp. 3–13) into the aquifer system. In urban settings, percolation of rainwater to the aquifer may be disrupted due to less pervious zones and more shunting of rainfall into stormwater systems (Younger 2007, pp. 117–121; Healy 2010, pp. 70–72). Change in land use from rural to urban/industrial (Bostick and Davis 2013, pers. comm.) within the Beaverdam Spring/Creek area could be detrimental to the spring pygmy sunfish due to negative changes in the water quality parameters such as oxygen and temperature, along with changes in water quantity, such as increased stream flow and velocity, due to increased amounts of impervious materials and associated stormwater runoff in the watershed (Cook *et al.* 2013, pp. 33–34). This may be coupled with a subsequent reduction in precipitation infiltrating through the soil surface to the aquifer, which will ultimately reduce spring base flow (Field and Sullivan 2003, pp. 326–333; Healy 2010, p. 3).

Water Quantity

Excessive groundwater extraction from the aquifer supplying Beaverdam Spring/Creek is a threat to the spring pygmy sunfish (Drennen 2007–2011, pers. observ.; NAWQA 2009a,b; Sandel 2011, pp. 3–6) because of the reduction of the water levels in the aquifer and resultant decreased spring outflow (Williams and Etnier 1982, pp. 11–18; Hubbs 1995, pp. 989–990; Kuhajda 2004, pp. 59–63; Cook 2011, pers. comm.). Sandel (in Kuhajda *et al.* 2009, pp. 16, 19; 2011, pp. 3–6) documented a relationship between pumping activities in Beaverdam Spring (Lowes Ditch) area, and Horton and Thorsen Springs, and degraded spring pygmy sunfish habitat. Even though Moss Spring has never been directly pumped (Sewell *in litt.* 2013), the water extraction of the Beaverdam Spring area, specifically at Lowes Ditch, may have impacted Moss Spring water levels

(Sandel 2011, pp. 6) and aquatic vegetation (Drennen pers observ. 2011). In Thorsen Spring, during 2007, water was extracted to a level that, in conjunction with the drought, destroyed vital aquatic vegetation and decreased the abundance of the spring pygmy sunfish by 99 percent (Sandel 2004–2009, pers. observ.; Sandel 2011, p. 6). The proximity of the spring pygmy sunfish's habitat to agricultural land throughout its range makes it vulnerable to drought and associated impacts due to the extraction of groundwater and surface water for agricultural uses (Cooper 1993, pp. 402–406). Sandel (in Kuhajda *et al.* 2009, pp.16, 19) roughly estimated that up to 16,000 gpm (62,000 lpm) of water was extracted from the Beaverdam Spring/Creek watershed for agricultural purposes during drought conditions during the 2008 growing season. He further noted in the field that this level of withdrawal desiccated and killed aquatic vegetation necessary for the spawning, foraging, and shelter of the species.

Commercial water withdrawal from this same aquifer by the Limestone County pumping station, between 2006 and 2011, was over 1 billion gallons (3.9 billion liters) at an estimated flow rate of 450 gpm (1,740 lpm) (Holland 2011, pers. comm.). Groundwater withdrawal by the cities of Huntsville and Madison (east of the spring pygmy sunfish habitat), and the adjacent rural population, is estimated at 16 million gallons per day (62 million liters per day) (Hoos and Woodside 2001, p. 1; Kingsbury 2003, p. 2; Hutson *et al.* 2005; Sandel 2007–2009, pers. comm.). Withdrawal of groundwater by pumping, at high levels such as those above, especially during drought conditions, can cause changes to water budgets (Healy 2010, p. 15) and the natural flow of spring systems (Alley in Likens 2009, p. 91). Pumping from wells beside streams also lowers groundwater levels and reduces surface water flow within streams and spring runs. In smaller streams, decreased flow caused by pumping can be large enough to create harmful effects upon the stream and its wildlife (Hunt 1999, pp. 98–102). Water extraction by pumping also causes a loss of aquifer storage and lowers the pressure in the aquifer (Theis 1935, p. 519), resulting in decreased spring flow velocity and quantity to adjacent streams. These reductions in the natural flow regime may adversely affect the spring pygmy sunfish.

In several large springs in the United States, groundwater extraction for public consumption and agricultural use has impacted federally listed fish species by decreasing groundwater levels. Examples include the endangered Devil's Hole pupfish (*Cyprinodon diabolis*) (Hoffman *et al.* 2003, p. 1248) and the endangered fountain darter (*Etheostoma fonticola*) (U.S. Fish and Wildlife Service 1996, p. 19). The whiteline topminnow (*Fundulus albolineatus)* (Gilbert 1891), once endemic to Big Spring and Spring Creek, in Huntsville, Madison County, was determined to be extinct in 1971, due to over-pumping, cementing-over of streambank vegetation, and impoundment of the spring pool (Williams and Etnier 1982, pp. 10–11). Severe or excessive water extraction, along with drought in spring pygmy sunfish habitat, to the point that normal water levels may drop for a sustained time period, can cause desiccation, reduction, or change of essential aquatic vegetation necessary for the survival of the species (Sandel 2011, p. 6). A reduction in water quantity also exacerbates the concentration of pollutants that may have both an acute and a chronic negative impact on the species and its habitat (Cooper 1993, pp. 402–406).

The effects of water extraction on stream flow, in combination with drought, may be greater due to the overall decrease in water quantity in the stream. Decreased water levels, following pumping from the spring pool, correspond to decreased aquatic vegetation in the system. Less water quantity increases the dessication of vegetation, which may negatively impact the species (Jandebeur 1979, pp. 4–8; Mayden 1993, pp. 11–12) by reducing the vegetative cover and contributing to eutrophication of the water, as demonstrated by spring pygmy sunfish habitat impacts and subsequent population declines in Horton and Thorsen Springs (Sandel 2004–2009. pers. observ.; 2011, pp. 3–6). Duncan *et al.* (2010, pp. 18–20) showed a correlatation between the abundance of the endangered watercress darter (*Etheostoma nuchale)* in a similar spring system in Jefferson County, Alabama, to the abundance and diversity of aquatic vegetation.

Water Quality

The historical intensive use of chemicals within the Lower Tennessee River Valley in Alabama, including agricultural areas close to the Beaverdam Spring/Creek watershed and the recharge areas, may be a potential threat to the species. Contaminant transport occurring with sediment in surface stormwater runoff, or resulting from agricultural runoff, can enter the spring pool and spring run directly without first entering the groundwater. During 1999–2001, 35 pesticides and volatile organic compounds such as tetrachloroethylene and trichloroethylene were detected in wells and springs within the Lower Tennessee River Valley (Woodside *et al.* 2004. pp. 1–2). Increased toxic concentrations of herbicides coupled with increased desiccation of aquatic vegetation due to drought (Jandebeur 2012c, pp. 1–6, 13) may have contributed to the demise of the Pryor Spring/Branch population of the spring pygmy sunfish.

The ongoing, intensive agricultural practices and proposed urbanization and industrialization plans (Bostick and Davis 2013, pers. comm.; Hill *in litt.* 2013) within the immediate area of the watershed threaten to contaminate the groundwater in the aquifer supplying the Beaverdam Spring/Creek system (Healy 2010, p. 70). Along with volatile organic compounds, general-use pesticides applied along road and power line rights-of-way in urban areas to control woody vegetation and weeds (tebuthiuron and prometon) were detected in wells in Lower Tennessee River Valley aquifers between 1999–2001 (Woodside *et al.* 2004, pp. 16–20). Transportation of contaminants to the aquifer by recharge water can be slow and steady or highly episodic over time (Healy 2010, p. 75).

Fertilizers and pesticides are transported to the aquifer by recharge, or into surface stormwater routes, where they eventually enter springs and are a threat to the survival of fishes found there (Carson 1962, pp. 41–43; U.S. Fish and Wildlife Service 1996, pp. 35–36; Hoffman *et al.* 2003, p. 1248). Toxins can concentrate when spring flow is reduced, posing an even greater threat to spring fishes. The Beaverdam Spring/Creek watershed has the highest annual crop harvest, the highest total annual nitrogen use, and second highest annual phosphorus use, along with elevated pesticide usages detected in groundwater, within the Eastern Highland Rim (Kingsbury 2003, p. 20; NAWQA 2009a,b; Mooreland 2011, p. 2; Cook *et al.* 2013, pp. 17–18). Both the historical and extant spring pygmy sunfish populations in Limestone County (Beaverdam Spring/Creek, Pryor Springs) are within the Wheeler Lake Basin (southern boundary of Limestone County), where Tsegaye *et al.* (2006, pp. 175–176) found that rapid urbanization, with associated decrease in agricultural land cover, is likely responsible for water quality degradation in streams from non-point source phosphorus pollution. Natural background levels of phosphorus in groundwater are normally low (Wetzel 1983, p. 281; Cook *et al.* 2013, pp. 18). However,

urbanization increases the amount of phosphorus from residential fertilizers and storm sewer drainage (Wetzel 1983, p. 281) that may enter groundwater recharge areas. Phosphorus limits biological productivity (Wetzel 1983, p. 255) by impacting organismal metabolism. Nitrogen also impacts aquatic life. For instance, un-ionized ammonia (which contains nitrogen) is highly toxic to fish (Hoffman *et al.* 2003, p. 681). The planned housing and industrial development neighboring spring pygmy sunfish habitat is likely to increase phosphorus and nitrogen levels in the future. Surface water contamination sources are typically nitrate (from fertilizer and animal waste), bacteria, and urban runoff (runoff from yards and asphalt that has heavy metals and pesticides/herbicides). Ground water in karst areas is impacted by surface water with these same contaminants (Tennessee Department of Environment and Conservation 2012, p. 9; Cook *et al.* 2013, pp. 17–19). The concentration of nitrate as nitrogen and total phosphorus found in Beaverdam Spring was 2.77 mg/L, and 0.061 mg/L respectively, four and 1.7 times above the upper limit for wildlife protection (Cook *et al.* 2013, pp. 17–19). McGregor *et al.* (2008, pp. 5–20) found that increased urbanization around Matthews and Bobcat Caves, about 8 mi (12.9 km) east of Beaverdam Creek watershed, will likely affect the ground water and population abundance of the federally endangered Alabama cave shrimp (*Palaemonias alabamae*).

Specific aquatic plants, which the spring pygmy sunfish uses for spawning, shelter, and foraging, are also impacted by indiscriminate use of chemicals (Sandel 2011, pp. 1–5, 8–9; Jandebeur 2012c, p. 2). Since 1945, herbicide usage, cattle grazing, and irrigation have occurred throughout the spring systems and waterways that are habitat for this species (Jandebeur 1979, pp. 4–8). Aquatic vegetation management within Thorsen Spring, Horton Spring, and the Pryor Spring/Branch system has removed the spring pygmy sunfish's shelter vegetation, egg substrate, and food sites (Jandebeur 1979, pp. 4–8; Mayden 1993, p. 9; Jandebeur 2012d, p. 1–10). Agricultural chemical contamination results in sublethal toxic effects in fish species, affecting the immune system, hormone regulation, reproduction, and developmental stages (Hoffman *et al.* 2003, pp. 1056–1063, 1242). The spring pygmy sunfish's negative response to herbicides (Hoffman *et al.* 2003, p. 1242) is documented by the subsequent reduction and eventual loss of the population in Pryor Branch after the application of 2, 4-dichlorophenoxyacetic acid (2,4-D) to that area in the 1940s (Jandebeur 2012d, pp. 1–18). This herbicide is toxic to fish and aquatic invertebrates and has properties and characteristics associated with chemicals generally detected in groundwater contamination. Decaying vegetation caused by the application of this herbicide also impacts fishes by reducing dissolved oxygen levels (Environmental Protection Agency (EPA) Material Safety Data Sheet, undated, pp. 1–3).

Many of the same chemicals used in large-scale agricultural practices are also used by municipal entities, including urban and rural households. Stormwater runoff from city streets, construction sites, and storm sewers; household wastes; and leachate from septic tanks and landfills alter the sediment load in aquatic systems and deposit contaminants into surface and groundwater sources (Likens 2009, p. 90). Water quality degradation from chemicals will increase with the expected increase in urbanization and industrialization of the area.

Overgrazing by livestock is a major threat to springs, especially where animals have free range through spring systems and wetlands. Cows tend to congregate in wetland areas, where they consume and trample vegetation, thereby reducing shade around the spring and increasing the water temperature. Livestock also trample banks in springs and spring runs, leading to increased stormwater and sediment runoff, which eliminates habitat for invertebrate prey species (Sada *et al.* 2001, pp. 14–16; Erman 2002, p. 8). Excessive sediment runoff during stormwater events decreases water clarity, which reduces light penetration needed for plant growth and results in impacts to the spring pygmy sunfish's spawning and feeding sites (NAWQA 2009a,b; Sandel 2011, pp. 1–6, 8–9; Jandebeur 2012a, p. 2).

Timber harvesting and land clearing can also have impacts on spring water quality and associated spring species. Recent tree removal along the boundary of the Wheeler NWR, which is spring pygmy sunfish habitat and part of the Beaverdam Spring/Creek system, highlights the need for careful management of spring habitats (Hurt 2012, pers. comm.). The removal of the trees greatly reduced the buffer along the Beaverdam Spring/Creek system and will likely increase sedimentation into the stream during stormwater runoff. An appropriate mixture of shade and sunlight is needed for the proper growth and maintenance of vegetation in the spring environment. This vegetation is important to maintaining a stable water temperature and habitat for an invertebrate prey base. Reducing shade by mechanical logging and clearing can increase atypical spring flow, lead to greater spring run flow variability, and increase sedimentation (Erman 2002, p. 9) by altering the existing geomorphology and enhancing stormwater runoff.

Conservation Efforts To Reduce Habitat Destruction, Modification, or Curtailment of Its Range

When considering whether or not to list a species under the Act, we must identify existing conservation efforts and their effect on the species. Under the Act and our policy implementing this provision, known as the Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) (68 FR 15100; March 28, 2003), we must evaluate the certainty of an effort's effectiveness on the basis of whether the effort or plan: Establishes specific conservation objectives; identifies the necessary steps to reduce threats or factors for decline; includes quantifiable performance measures for the monitoring of compliance and effectiveness; incorporates the principles of adaptive management; is likely to be implemented; and is likely to improve the species' viability at the time of the listing determination. In general, in order to meet these standards for the spring pygmy sunfish, conservation efforts must, at minimum, report data on existing populations, describe activities taken toward conservation of the species, demonstrate either through data collection or best available science how these measures will alleviate threats, provide for a mechanism to integrate new information (adaptive management), and provide information regarding certainty of the implementation (e.g., funding and staffing mechanisms).

The Service entered into a CCAA for the benefit of the spring pygmy sunfish with Belle Mina Farms, Ltd., and the Land Trust of Huntsville and North Alabama (Land Trust) on June 7, 2012. The area covered under the CCAA is approximately 3,200 ac (1,295 ha) and encompasses the upper 24 percent of habitat occupied by the Beaverdam Spring/Creek metapopulation, which is currently the only known population for the species. It also includes most of the spring recharge area (Cook *et al.* 2013, p. 44). Under the CCAA, the landowner agrees to implement conservation measures to address known threats to the species. These measures will help protect the species on his property in

the near term and also minimize any incidental take of the species that might occur as a result of conducting other covered activities now that we are listing the species under the Act. Conservation measures to be implemented by the landowner on this property will assist in the reduction of chemical usage and stormwater runoff from agricultural fields by establishing and maintaining vegetated buffer zones around Moss and Beaverdam Springs. The landowner also agrees to restrict timber harvest and cattle grazing within the Beaverdam Spring/Creek and Moss Spring habitats and to refrain from any deforestation, industrial/residential development, aquaculture, temporary or permanent ground water removal installations, and other potentially damaging actions without prior consultation with the Service. These actions will minimize impacts and help to maintain groundwater recharge of the aquifer and adequate spring flow. New information received from the GSA (Cook *et al.* 2013, p. 3) identified the recharge area of the Beaverdam Spring, which is about 1,088 ac (440.3 ha) and described as wooded upland and agricultural fields. The majority (about 88.5 percent) of the delineated recharge area is within the enacted CCAA as enrolled lands. This CCAA and corresponding conservation measures that occur within the majority of the recharge area (maintain status quo land use as agriculture) will protect the groundwater and spring system on the enrolled land (within Belle Mina Farms, Ltd.). The spring pygmy sunfish inhabits the designated protected area within the CCAA. The species depends on the clean water from the recharge area within the enrolled lands. There is longstanding agricultural usage by Bella Mina Farms, including cattle and irrigated cropland operations. Since 1983, Bella Mina Farms has been cooperating with the Service in conserving and maintaining the integrity of species' habitat in the Beaverdam Spring/Creek system. Bella Mina Farms has created and maintained a buffer zone around the Moss Spring pond population of the spring pygmy sunfish and managed cattle consistent with current grazing research, BMPs, and the spring pygmy sunfish's ecology.

Through the CCAA, Bella Mina Farms, Ltd., will continue to implement the existing conservation efforts on the enrolled land, as well as implement long-term strategies to protect the spring pygmy sunfish and its habitat within the protected area. According to the CCAA, if there is a 15-percent decline in the population of the species, the Service may propose additional water use management practices within the enrolled land to maintain the status quo of historical water usage within the protected area. We have provided technical assistance to the landowners concerning conservation measures and BMPs for the surface portion of the delineated recharge area. The Land Trust will conduct monitoring on the progress of the conservation actions and annual habitat analyses. Initial planning for species' population and habitat monitoring has begun.

The CCAA and associated enhancement of survival permit have a duration of 20 years; however, under a special provision of this CCAA, if at any time a 15-percent decline in the status of the spring pygmy sunfish is determined, there will be a reevaluation of the conservation measures set forth in the CCAA. If such a reevaluation reflects a need to change the conservation measures, the amended measure(s) will be implemented or the CCAA will be terminated and the permit surrendered.

Conservation efforts set forth in this CCAA are a positive step toward the conservation of the spring pygmy sunfish. These conservation actions will reduce the severity of some of the threats to the species (see discussion above) within the upper portion of the Beaverdam Spring/Creek and Moss Spring sites, which encompasses the upper 24 percent of occupied habitat in the Beaverdam Spring/Creek system. Presently there is no active protection for the 19 percent of the species' habitat within the middle reach of the Beaverdam Spring/Creek system. However, since early 2012, the Service has been working with two landowners to protect and manage this area for the spring pygmy sunfish, and we are currently in the process of negotiating CCAAs with these landowners and preparing them for public review and comment. The lower portion of the species' habitat (57 percent) is federally owned and protected, though it is considered lower quality habitat.

Despite these efforts, the large-scale development planned adjacent to this species' habitat and outside the boundaries of the land enrolled in the current CCAA and the land potentially enrolled in the two proposed CCAAs continues to pose a significant future threat to the spring pygmy sunfish and its habitat. Furthermore, since the Belle Mina Farms' CCAA has been just recently executed, there has yet to be long-term monitoring, which is needed to evaluate the overall effectiveness of these efforts.

Summary of Factor A

As discussed above, the spring pygmy sunfish and its habitat are currently facing the threats of both declining water quality and quantity. Excessive groundwater usage, and the resultant reduction of the water levels in the aquifer/recharge areas and decreased spring outflow in the Beaverdam Spring/Creek system, is believed to have negatively impacted the spring pygmy sunfish and its habitat. Contamination of the recharge area and aquifer from the intensive use of chemicals (i.e., herbicides, pesticides, and fertilizers) within the spring pygmy sunfish's habitat poses a threat to the species' survival. Ongoing stormwater discharge from agricultural lands and urban sites compounds the water quality degradation by increasing sediment load and depositing contaminants into surface and groundwater sources. In addition, the large-scale residential and industrial development planned adjacent to the Beaverdam Spring/Creek system will likely exacerbate the decreasing water quantity and quality issues within the habitat of the spring pygmy sunfish's single metapopulation. Overgrazing by livestock and land clearing near and within the spring systems reduces the vegetation in the spring and increases stormwater and sediment runoff, posing a threat to the population, particularly in the middle and lower portions of its range.

Based on our review of the best commercial and scientific data available, we conclude that the present or threatened destruction, modification, and curtailment of its habitat or range is currently a threat to the spring pygmy sunfish and is expected to persist and possibly escalate in the future, particularly in light of the increasing demands for groundwater and large-scale development that is planned near this species' habitat. While the CCAA has reduced some of the threats under this factor, it only covers a portion of the extant range of the species, and will not ameliorate all threats of ongoing and potential water quantity and water quality degradation. Additional conservation measures being pursued with key landowners and other stakeholders would also aid in reducing these threats to the species, but likewise, not to the level that water quantity and quality degradation would cease to be threats to the species.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The spring pygmy sunfish is not a commercially valuable species.

However, this species has been actively sought by researchers since its discovery in 1937. Overcollecting may have been a localized factor in the historical decline of this species, particularly within the introduced population in Pryor Spring/Branch (Jandebeur 2012d, p. 14); however, the overall impact of collection on the spring pygmy sunfish population is unknown (Jandebeur 2012d, p. 14). The localized distribution and small size of known populations render them vulnerable to overzealous recreational or scientific collecting. However, at this time, we have no specific information indicating that overcollection rises to the level to pose a threat to the species now or in the future.

Therefore, we conclude that overutilization for commercial, recreational, scientific, or educational purposes does not constitute a threat to the spring pygmy sunfish at this time.

Factor C. Disease or Predation

We have no specific information indicating that disease occurs within spring pygmy sunfish populations or poses a threat to the species. Eggs, juveniles, and adult spring pygmy sunfish are preyed upon by some invertebrate species, parasites, and vertebrate species such as frogs, snakes, turtles, other fish, and piscivorus (fish-eating) birds. It is possible that predation increases when fish are concentrated in smaller areas when groundwater is depleted through water extraction and drought. However, we have no evidence of any specific declines in the spring pygmy sunfish due to predation.

Therefore, we conclude that the best scientific and commercial data available indicate, at the present time, that neither disease nor predation is a threat to the spring pygmy sunfish.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

The spring pygmy sunfish and its habitat are afforded some protection from surface water quality and habitat degradation under the Clean Water Act (CWA; 33 U.S.C. 1251 *et seq.*), the Alabama Water Pollution Control Act (Code of Alabama, sections 22–22–1 *et seq.*), and regulations promulgated by the Alabama Department of Environmental Management (Maynard and Gale 1995, pp. 20–28). While these laws have resulted in some improvement in water quality and stream habitat for aquatic life, such as requiring landowners engaged in agricultural practices to have an erosion prevention component within their farm plan, alone they have not been fully adequate to protect this species due to inconsistent implementation, monitoring, and enforcement. Furthermore, habitat degradation is ongoing despite the protection afforded by these laws.

The State of Alabama maintains water-use classifications through issuance of National Pollutant Discharge Elimination System (NPDES) permits to industries, municipalities, and others; these permits set maximum limits on certain pollutants or pollutant parameters. For water bodies on the CWA's section 303(d) List of Impaired Water Bodies, States are required under the CWA to establish a total maximum daily load (TMDL) for the pollutants of concern that will bring water quality into the applicable standard. Many of the water bodies within the occupied range of the spring pygmy sunfish do not meet Clean Water Act standards (Alabama 2008 section 303(d) List of Impaired Water Bodies).

The State of Alabama's surface water quality standards, adopted from the national standards set by the EPA, were established with the intent to protect all aquatic resources within the State of Alabama. These water quality regulations appear to be protective of the spring pygmy sunfish as long as discharges are within permitted limits and are enforced according to the provisions of the CWA. Unregulated and indiscriminate groundwater and surface water extraction has been identified as a threat to spring species (see *Factor A* discussion, above). Within the State of Alabama, regulations concerning groundwater issues are limited (Alabama Law Review 1997, p. 1). Alabama common law follows a ''reasonable use rule'' for the extraction of groundwater, and there is a statutory framework that regulates and governs groundwater extraction (Chapman and U.S. Forest Service 2005, p. 9; Alabama Water Resources Act, Code of Alabama, sections 9–10B–1 *et seq.*). Water users must file a declaration of beneficial use, be issued a certificate of use, and be permitted and monitored periodically. The Alabama Water Commission can place restrictions on certificates of use in certain designated water capacity stressed areas; however, the Alabama Water Commission has not identified any stressed groundwater areas in or near spring pygmy sunfish habitat. Large volumes of groundwater continue to be extracted in areas not identified as ''stressed groundwater areas'' such as the Beaverdam Spring/Creek watershed, and this likely depresses water levels in nearby wells (Hairston *et al.* 1990, p. 7) and springs (Younger 2007, p. 162). Thus, water use restrictions under common law (Chapman and U.S. Forest Service 2005, p. 10) provide minimal overall protection for the species.

Limited protection is provided to the Beaverdam Spring/Creek watershed during any construction in the area from Limestone County construction regulations (*http://www.limestonecounty-al.gov/PDFfiles/Engineering/LimestoneCountySDRegs-Complete.pdf*). Specifically, the regulations state that fill material may not be used to raise land in a floodway that restricts the flow of water and increases flood heights, nor can land within a designated floodway be platted for residential occupancy or building sites (Limestone County, Alabama, Subdivision Regulations section 5–3–11(6)32).

Summary of Factor D

The spring pygmy sunfish and its habitat are afforded limited protection from surface water quality and habitat degradation under Federal, State, and County regulations. Notwithstanding this limited protection, large volumes of groundwater and surface water are continually extracted, and these extractions may eventually threaten the aquifer that supplies water to spring pygmy sunfish habitat. Degradation of habitat within the current range of this species continues despite the protections afforded by these existing laws. Therefore, based on the best scientific and commercial data available, we conclude that existing regulatory mechanisms are inadequate to reduce or eliminate the threats to the spring pygmy sunfish.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Impediments to migration, connectivity, and gene flow between or within spring systems are threats to maintaining genetic diversity in the spring pygmy sunfish. Habitat connectivity is critical to maintaining heterozygosity (genetic diversity) within populations of the species and reducing inbreeding, thereby maintaining the integrity of the population (Hallerman 2003, pp. 363–364). Connectivity of spring pygmy sunfish habitats is also necessary for improvement in desired aquatic vegetation, water quality through flushing and diluting pollutants and increasing water quantity, and linking spring segments together. Connectivity maintains water flow between Beaverdam Spring/Creek habitats and allows for potential colonization of unoccupied areas when conditions become favorable for the species and for the necessary aquatic

vegetation needed by the species. Localized environmental changes caused by agriculture, urbanization, and other anthropogenic disturbances of the spring systems throughout the watersheds of the Eastern Highland Rim have exacerbated fragmentation of spring habitat (Sandel 2008, pp. 2–4, 13; 2011, pp. 3–6) and reduced the desired vegetation necessary for the species' survival and recovery. Over time, this fragmentation of the spring pygmy sunfish's habitat will impose negative selective pressures on the species' populations, such as genetic isolation; reduction of space for rearing, recruitment, and reproduction; reduction of adaptive capabilities; and increased likelihood of local extinctions (Burkhead *et al.* 1997, pp. 397–399; Sandel 2011, pp. 8–10). The Tuscumbia darter (*E. tuscumbia*), a species found in the Beaverdam Creek/Spring system that also exhibits metapopulation dynamics, has been impacted by fragmentation and cessation of inter-spring migration pathways, similar to the spring pygmy sunfish (Fluker *et al.* 2007, pp. 6–8). Impoundments (Pickwick Reservoir) now block both species' migration pathways, and isolated populations have experienced genetic bottlenecks (the genetic variation within a population and the potential to adapt to a changing environment decrease) (Fluker *et al.* 2007, pp. 6–8).

Climate Change

Our analyses under the Act include consideration of ongoing and projected changes in climate. The terms ''climate'' and ''climate change'' are 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 2007, p. 78). The term ''climate change'' thus refers to a change in the mean or variability of one or more measures of climate (e.g., temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007, p. 78).

Scientific measurements spanning several decades demonstrate that changes in climate are occurring, and that the rate of change has been faster since the 1950s. Examples include warming of the global climate system, and substantial increases in precipitation in some regions of the world and decreases in other regions (for these and other examples, see IPCC 2007, p. 30; Solomon *et al.* 2007, pp. 35–54, 82–85).

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 (GHG) emissions, to evaluate the causes of changes already observed and to project future changes in temperature and other climate conditions (e.g., Meehl *et al.* 2007, entire; Ganguly *et al.* 2009, pp. 11555, 15558; Prinn *et al.* 2011, pp. 527, 529). Although projections of the magnitude and rate of warming differ after about 2030, the overall trajectory of all the projections is one of increased global warming through the end of this century, even for the projections based on scenarios that assume that GHG emissions will stabilize or decline. Thus, 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 the extent of GHG emissions (IPCC 2007, pp. 44–45; Meehl *et al.* 2007, pp. 760–764 and 797–811; Ganguly *et al.* 2009, pp. 15555–15558; Prinn *et al.* 2011, pp. 527, 529).

Various changes in climate may have direct or indirect effects on species. These effects may be positive, neutral, or negative, and they may change over time, depending on the species and other relevant considerations, such as interactions of climate with other variables (e.g., habitat fragmentation) (IPCC 2007, pp. 8–14, 18–19).

While we do not have specific information concerning the effect of climate change on spring pygmy sunfish and its habitat, we do know that climate affects groundwater budgets (inflow and outflow) by influencing precipitation and evaporation and, therefore, the rates and distribution of recharge of the aquifer. Climate also affects human demands for groundwater and affects plant transpiration from shallow groundwater in response to solar energy and changing depths to the water table (Likens 2009, p. 91). Chronic regional drought between 2000 and 2005 within the Tennessee Valley decreased rates of surface water flow and aquifer recharge. Water extraction (both groundwater and surface water) during drought periods exacerbated damage to the spring pygmy sunfish and its habitat (Sandel 2009, p. 15). Even though aquifers in the region are not depleted but are sometimes seasonally low, especially during drought periods, drought has affected Beaverdam Spring/Creek since records were kept. The 1954 drought was more extreme than the 2007 drought (USGS Water-Supply Paper 2375, pp. 163–170, *http://md.water.usgs.gov/publications/wsp-2375/al;* Seager *et al.* 2009, pp. 5042–5043). Monthly normal temperatures for 1981–2010 show an increase by 1.8 °F and precipitation has decreased by 3.17 in per year (National Weather Service Forecast Office, Huntsville, Alabama 2011, *http://www.srh.noaa.gov/hun*).

Long-term droughts impact groundwater by increasing groundwater extraction for public consumption and agriculture, which in turn do not replenish surface waters (Likens 2009, p. 91). The assessment of long-term impacts of projected changes in climate, population, and land use and land cover on regional water resources is critical to sustainable development, especially in the southeastern United States (Sun *et al.* 2008, pp. 1141–1157). Across the southern United States, changes in climate had the greatest impacts on water stress, followed by population, and land use (Sun *et al.* 2008, pp. 1141–1157). The prolonged drought within northern Alabama during 2006 to 2008 was exceptional (Jandebeur 2012d, p. 13), and along with the severe drought of 1950 to 1963 (Jandebeur 2012d, p. 13), may have contributed to the demise of the Pryor Spring/Branch population of the spring pygmy sunfish in 2008, by increasing toxic concentrations of herbicides and by increasing the desiccation of aquatic vegetation.

Conservation Efforts To Reduce or Eliminate Other Natural or Manmade Factors Affecting Its Continued Existence

The signed CCAA with Belle Mina Farms, Ltd. and the two proposed CCAAs, will likely reduce some of the threats to groundwater caused by climate change by minimizing impacts and helping to maintain groundwater recharge of the aquifer, protecting surface water flow, and limiting groundwater extraction. Under the signed CCAA, the Service will provide technical assistance and groundwater management advice. Additionally, adaptive management measures of this CCAA concern groundwater usage, including pumping from the aquifer and avoidance of temporary or permanent groundwater removal installations. Also under this CCAA, the landowners will not engage in practices, such as pesticide and herbicide use, stock farm ponds, and aquaculture, within the designated protected areas that may disturb water quality during low water levels associated with drought periods. Similar conservation measures are outlined in the two proposed CCAAs. The conservation measures in the signed and proposed CCAAs will help

protect the species on these properties in the near term and also minimize any incidental take of the species that might occur as a result of conducting other covered activities now that we are listing the species under the Act. However, because of anthropogenic factors such as urbanization or intensive agriculture, these conservation measures may be inadequate during drought periods caused by climate change or other natural phenomena.

Summary of Factor E

Habitat fragmentation and its resulting effects on gene flow and potential demographic impacts within the population is a substantial threat to the spring pygmy sunfish. Increasing drought associated with climate change affects groundwater budgets (inflow and outflow) by influencing the rates and distribution of recharge of the aquifer, affects human demands for groundwater and surface water, and affects plant transpiration from shallow groundwater reserves. Based on the best available scientific and commercial data, we conclude that the spring pygmy sunfish faces threats from other natural or manmade factors affecting its continued existence. These threats continue, even though they are possibly lessened by the beneficial effects of the signed CCAA and the two proposed CCAAs.

Determination

We have carefully assessed the best scientific and commercial data available regarding the past, present, and future threats faced to the spring pygmy sunfish. The identified threats to the spring pygmy sunfish fall under Factors A, D, and E, as described in more detail in the Summary of Factors Affecting the Species section, above. Habitat modification (Factor A) is the primary threat to the species. This is due to ongoing threats associated with ground and surface water withdrawal and water quality within the spring systems where this species currently occurs and historically occurred. In the future, these current threats will likely be coupled with impacts from planned urban and industrial development of land adjacent to spring pygmy sunfish habitat and the resultant impacts to the spring system and surrounding aquifer recharge area. We find that this planned increase in urban and industrial development and associated infrastructure, along with the potential unsustainable use of the area, is a threat to the spring pygmy sunfish, with the potential to exacerbate direct mortality as well as permanent loss, fragmentation, or alteration of its habitat. The degradation of habitat throughout the species' range continues despite the protections afforded by existing Federal and State laws and policies (Factor D). Habitat fragmentation and its resulting effects on gene flow and potential demographic impacts within the population is a threat (Factor E) that affects the spring pygmy sunfish's continued existence. These threats are rangewide and expected to increase in the future.

The established Belle Mina Farms CCAA provides a measure of protection for the species in the upper reach of the population (24 percent of species' occupied habitat), with the implementation of conservation measures that increase or preserve water quantity, reduce water quality degradation, and prohibit any potentially damaging land use actions in that area (Factor A). In addition, a portion of the recharge area for the Beaverdam Spring/Creek is provided a measure of protection from impervious substrate and excessive storm water runoff under this CCAA since the 1,011 ac of enrolled lands are to be maintained in their present condition, which is mostly agriculture. Currently, conservation measures or protection extends to the portion of the species' habitat currently enrolled in the CCAA (24 percent) and to the lower 57 percent of the habitat in Federal ownership within the Wheeler NWR (although habitat here is of poorer quality). The current CCAA and Federal ownership of a portion of the habitat reduce many of the threats (under Factors A and E) within the immediate core of the species' current range; however, these protections are not able to ameliorate all of the threats to the species and its habitat, most notably impacts associated with the large-scale industrial and residential development planned in the area, which has potential to impact the hydrology and water quality of the spring system.

We note that the two proposed CCAAs, if finalized, would provide additional conservation benefit to the species in the middle portion of its range. However, we have determined that the additional conservation actions in the proposed CCAAs do not remove the threats to the species and its habitat to the point that listing is not necessary, especially when considering probable and potential impacts from planned residential and industrial development (Factor A). Therefore, the possible final approval of the proposed CCAAs following the public comment period would not change our determination to list the spring pygmy sunfish as a threatened species.

The Act defines an endangered species as any species that is in danger of extinction throughout all or a significant portion of its range, and a threatened species as one that is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. We find that the spring pygmy sunfish is likely to become endangered throughout all or a significant portion of its range within the foreseeable future, based on the immediacy, severity, and scope of the ongoing threats, expected future threats, and taking into considerations the protections afforded to the species by the Belle Mina Farms CCAA. Therefore, on the basis of the best available scientific and commercial data, we are listing the spring pygmy sunfish as threatened in accordance with sections 3(20) and 4(a)(1) of the Act. We find that endangered species status is not appropriate for the spring pygmy sunfish because: (1) Protections afforded by the CCAA help reduce some of the current threats to the species; and (2) many of the threats facing the species from planned industrial and residential development are likely to occur in the future. Therefore, the spring pygmy sunfish is not in danger of extinction.

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. The threats to the survival of the species occur throughout the species' range and are not restricted to any particular significant portion of that range. Accordingly, our assessment and determination applies to the species throughout its entire range.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation by Federal, State, Tribal, and local agencies; private organizations; and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective

measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan identifies site-specific management actions that set a trigger for review of the five factors that control whether a species remains endangered or may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (comprised of species experts, Federal and State agencies, nongovernment organizations, and stakeholders) are often established to develop recovery plans. When completed, the draft and final recovery plans will be available on our Web site (*http://www.fws.gov/endangered*) or from our Mississippi Ecological Services Field Office (see **ADDRESSES**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribal, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

The CCAA between the Service, Belle Mina Farms Ltd., and the Land Trust identifies several strategies that will support recovery efforts, including: (1) Maintenance of vegetation buffer zones along the springs; (2) prohibition of cattle within the spring; (3) prohibition of deforestation, land clearing, industrial development, residential development, aquaculture, temporary or permanent ground water removal installations, stocked farm ponds, pesticide and herbicide use, and impervious surface installation within the protected area of the CCAA; and (4) establishment of a biological monitoring program for the spring pygmy sunfish and its habitat. Similar conservation actions are outlined in the two proposed CCAAs.

When this species is listed (see **DATES**), funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, under section 6 of the Act, the State of Alabama will be eligible for Federal funds to implement management actions that promote the protection and recovery of the spring pygmy sunfish. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Please let us know if you are interested in participating in recovery efforts for the spring pygmy sunfish. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal agency actions within the species' habitat that may require consultation as described in the preceding paragraph include management and any other landscape-altering activities on Federal Lands administered by the U.S. Fish and Wildlife Service. Federal activities that may affect spring pygmy sunfish, include, but are not limited to: The carrying out, funding, or the issuance of permits for discharging fill material on wetlands for road or highway construction; installation of utility easements; development of residential, industrial, and commercial facilities; channeling or other stream geomorphic changes; discharge of contaminated or sediment-laden waters; wastewater facility development; and excessive groundwater and surface water extraction.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions of section 9(a)(1) of the Act, and its implementing regulations at 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt any of these), import, export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. The regulations at 50 CFR 17.31 extend the prohibitions listed above to threatened species, with certain exceptions. Under the Lacey Act (18 U.S.C. 42–43; 16 U.S.C. 3371–3378), it is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species, and at 17.32 for threatened species. With regard to endangered wildlife, a permit must be issued for take for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this

policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within the range of the listed species. The following activities could potentially result in a violation of section 9 of the Act; this list is not comprehensive:

(1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the species, including import or export across State lines and international boundaries, except for properly documented antique specimens of these taxa at least 100 years old, as defined by section 10(h)(1) of the Act;

(2) Introduction of species that compete with or prey upon the spring pygmy sunfish;

(3) The unauthorized release of biological control agents that attack this species' habitat or any of its life stages;

(4) Unauthorized modification of the vegetation composition or hydrology, or violation of any discharge or water withdrawal permit that results in harm or death to any individuals of this species or that results in degradation of its occupied habitat to an extent that essential behaviors such as breeding, feeding, and sheltering are impaired;

(5) Unauthorized destruction or alteration of the species' habitat (such as channelization, dredging, sloping, removing of substrate, or discharge of fill material) that impairs essential behaviors, such as breeding, feeding, or sheltering, or that results in killing or injuring spring pygmy sunfish; and

(6) Unauthorized discharges or dumping of toxic chemicals or other pollutants into the aquifer directly through wells or into the spring system or indirectly into recharge areas supporting spring pygmy sunfish that kills or injures the species or that otherwise impairs essential life-sustaining requirements, such as breeding, feeding, or sheltering (destruction of vegetation and substrate).

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Mississippi Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Requests for copies of the regulations concerning listed animals and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 1875 Century Blvd. NE., Atlanta, GA 30345 (telephone 404–679–7313; facsimile 404–679–7081).

Under section 4(d) of the Act, the Secretary has discretion to issue such regulations as she deems necessary and advisable to provide for the conservation of threatened species. Our implementing regulations (50 CFR 17.31) for threatened wildlife generally incorporate the prohibitions of section 9 of the Act for endangered wildlife, except when a ''special rule'' promulgated pursuant to section 4(d) of the Act has been issued with respect to a particular threatened species. In such a case, the general prohibitions in 50 CFR 17.31 would not apply to that species, and instead, the special rule would define the specific take prohibitions and exceptions that would apply for that particular threatened species, which we consider necessary and advisable to conserve the species. The Secretary also has the discretion to prohibit by regulation with respect to a threatened species any act prohibited by section 9(a)(1) of the Act. Exercising this discretion, which has been delegated to the Service by the Secretary, the Service has developed general prohibitions that are appropriate for most threatened species in 50 CFR 17.31 and exceptions to those prohibitions in 50 CFR 17.32. We are not promulgating a section 4(d) special rule at this time, and as a result, all of the section 9 prohibitions, including the ''take'' prohibitions, will apply to the spring pygmy sunfish.

Rationale for a 60-Day Effective Date

We have published a notice of availability in the **Federal Register** for public review and comment on the two proposed CCAAs, associated permit applications and draft environmental action statements. It is our intention to make a final determination on the proposed CCAAs before this rule becomes effective; however, we are not certain that this can be accomplished within 30 days after the issuance of this rule. Therefore, the effective date of the rule is 60 days from the publication date of this final rule (see **DATES**), rather than our typical 30 days, to provide adequate time for the public to review and comment on the two proposed CCAAs.

Required Determinations

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 (42 U.S.C. 4321 *et seq.*), need not be prepared in connection with listing a species as an endangered or threatened species under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited in this rule is available on the Internet at *http://www.regulations.gov* or upon request from the Field Supervisor, Mississippi Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this final rule are the staff members of the Mississippi Ecological Services Field Office.

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.

■ 2. Amend § 17.11(h) by adding an entry for ''Sunfish, spring pygmy'' to the List of Endangered and Threatened Wildlife in alphabetical order under FISHES 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						
*	*	*	*	*	*	*	
FISHES							
*	*	*	*	*	*	*	
Sunfish, spring pygmy.	*Elassoma alabamae*	U.S.A. (AL)	Entire	T	827	NA	NA.
*	*	*	*	*	*	*	

* * * * *

Dated: September 20, 2013.

Rowan Gould,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2013–23726 Filed 10–1–13; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 78, No. 191
Wednesday, October 2, 2013

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

OFFICE OF THE FEDERAL REGISTER

1 CFR Part 51

[Docket Number: OFR–13–0001]

RIN 3095–AB78

Incorporation By Reference

AGENCY: Office of the Federal Register, National Archives and Records Administration.

ACTION: Partial grant of petition, notice of proposed rulemaking.

SUMMARY: On February 13, 2012, the Office of the Federal Register received a petition to amend our regulations governing the approval of agency requests to incorporate material by reference into the Code of Federal Regulations. We agree with the petitioners that our regulations need to be updated, however the petitioners proposed changes to our regulations that go beyond our statutory authority. In this document, we propose that agencies seeking the Director's approval of their incorporation by reference requests add more information regarding materials incorporated by reference to the preambles of their rulemaking documents. We propose that they set out in the preambles a discussion of the actions they took to ensure the materials are reasonably available to interested parties or summarize the contents of the materials they wish to incorporate by reference.

DATES: Comments must be received on or before December 31, 2013.

ADDRESSES: You may submit comments, identified using the subject line of this document, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Email: Fedreg.legal@nara.gov.* Include the subject line of this document in the subject line of the message.
- *Mail:* the Office of the Federal Register (NF), The National Archives and Records Administration, 8601 Adelphi Road, College Park, MD.
- *Hand Delivery/Courier:* Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC 20001.

Docket materials are available at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC 20001, 202–741–6030. Please contact the persons listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection of docket materials. The Office of the Federal Register's official hours of business are Monday through Friday, 8:45 a.m. to 5:15 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Amy Bunk, Director of Legal Affairs and Policy, or Miriam Vincent, Staff Attorney, Office of the Federal Register, at *Fedreg.legal@nara.gov,* or 202–741–6030.

SUPPLEMENTARY INFORMATION: The Office of the Federal Register (OFR or we) published a request for comments on a petition to revise our regulations at 1 CFR part 51.[1] The petition specifically requested that we amend our regulations to define ''reasonably available'' and to include several requirements related to the statutory obligation that material incorporated by reference (IBR) be reasonably available. Our original request for comments had a 30 day comment period. Since we received requests from several interested parties to extend the comment period, we extended the comment period until June 1, 2012.[2]

Our current regulations require that agencies provide us with the materials they wish to IBR. Once we approve an IBR request, we maintain the IBR'd materials in our library until they are accessioned to the National Archives and Records Administration (NARA) under our records schedule [3]. NARA then maintains this material as permanent Federal records.

We agree with the petitioners that our regulations need to be updated, however the petitioners proposed changes to our regulations that go beyond our statutory authority. The petitioners contended that changes in technology, including our new Web site *www.federalregister.gov,* along with electronic Freedom of Information Act (E–FOIA) reading rooms, have made the print publication of the **Federal Register** unnecessary. They also suggested that the primary, original reason for allowing IBR was to limit the amount of material published in the **Federal Register** and Code of Federal Regulations (CFR). The petitioners argued that with the advent of the Internet and online access our print-focused regulations are out of date and obsolete. The petition then stated that statutory authority and social development since our current regulations were first issued require that material IBR'd into the CFR be available online and free of charge.

The petition further suggested that our regulations need to apply at the proposed rule stage of agency rulemaking projects and that the National Technology Transfer and Advancement Act of 1995 (NTTAA) and the Office of Management and Budget's (OMB) Circular A–119 distinguish between regulations that require use of a particular standard and those that ''serve to indicate that one of the ways in which a regulation can be met is through use of a particular standard favoring the use of standards as non-binding ways to meet compliance.'' [4] In addition, the petition argued that *Veeck* v. *S. Bldg. Code Cong. Int'l,* 293 F.3d 791 (5th Cir. 2002) casts doubt on the legality of charging for standards IBR'd. Finally, the petition stated that in the electronic age the benefits to the federal government are diminished by electronic publication as are the benefits to the members of the class affected if they have to pay high fees to access the standards. Thus, agencies should at least be required to demonstrate how they tried to contain those costs.

The petitioners proposed regulation text to enact their suggested revisions to part 51. The petitioners' regulation text would require agencies to demonstrate that material proposed to be IBR'd in the regulation text was available throughout the comment period: in the Federal Docket Management System (FDMS) in the docket for the proposal or interim rule; on the agency's Web site; or readable free of charge on the Web site of the voluntary standards organization that created it during the comment

[1] 77 FR 11414 (February 27, 2012).

[2] 77 FR 16761 (March 22, 2012).

[3] *http://www.archives.gov/federal-register/cfr/ibr-locations.html* last visited March 26, 2013.

[4] NARA–12–0002–0002.

period of a proposed rule or interim rule. The petition suggested revising 51.7—''What publications are eligible''—to limit IBR eligibility only to standards that are available online for free by adding a new (c)(3) that would ban any standard not available for free from being IBR'd. It also appeared to revise 51.7(a)(2) to include documents that would otherwise be considered guidance documents. And, it would revise 51.7(b) to limit our review of agency created materials to whether the material is available online. The petition would then revise 51.9 to distinguish between required standards and those that could be used to show compliance with a regulatory requirement. Finally, the petition would add a requirement that, in the electronic version of a regulation, any material IBR'd into that regulation would be hyperlinked.

The petitioners want us to require that: (1) All material IBR'd into the CFR be available for free online; and (2) the Director of the Federal Register (the Director) include a review of all documents agencies list in their guidance, in addition to their regulations, as part of the IBR approval process. We find these requirements go beyond our statutory authority. Nothing in the Administrative Procedure Act (APA) (5 U.S.C. chapter 5), E–FOIA, or other statutes specifically address this issue. If we required that all materials IBR'd into the CFR be available for free, that requirement would compromise the ability of regulators to rely on voluntary consensus standards, possibly requiring them to create their own standards, which is contrary to the NTTAA and the OMB Circular A–119.

Further, the petition didn't address the **Federal Register** Act (FRA) (44 U.S.C. chapter 15), which still requires print publication of both the **Federal Register** and the CFR, or 44 U.S.C. 4102, which allows the Superintendent of Documents to charge a reasonable fee for online access to the Federal electronic information, including the **Federal Register**.[5] The petition suggested that the Director monitor proposed rules to ensure the material proposed to be IBR'd is available during the comment period of a proposed rule. Then, once a rule is effective, we monitor the agency to make sure the IBR'd materials remain available online. This requirement that OFR continue monitoring agency rules is well beyond the current resources available to this office.

As for the petition's limitation on agency-created material, the Freedom of Information Act (FOIA), at 5 U.S.C. 552(a), mandates approval by the Director of material proposed for IBR to safeguard the **Federal Register** system. Thus, OFR regulations contain a provision that material IBR'd must not detract from the legal and practical attributes of that system.[6] An implied presumption is that material developed and published by a Federal agency is inappropriate for IBR by that agency, except in limited circumstances. Otherwise, the **Federal Register** and CFR could become a mere index to material published elsewhere. This runs counter to the central publication system for Federal regulations envisioned by Congress when it enacted the FRA and the APA.[7]

Finally, the petition didn't address the enforcement of these provisions. Agencies have the expertise on the substantive matters addressed by the regulations. To remove or suspend the regulations because the IBR'd material is no longer available online would create a system where the only determining factor for using a standard is whether it is available for free online. This would minimize and undermine the role of the Federal agencies who are the substantive subject matter experts and who are better suited to determine what standard should be IBR'd into the CFR based on their statutory requirements, the entities they regulate, and the needs of the general public. Additionally, the OFR's mission under the FRA is to maintain orderly codification of agency documents of general applicability and legal effect.[8] As set out in the FRA and the implementing regulations of the Administrative Committee of the **Federal Register** (ACFR) (found in 1 CFR chapter I), only the agency that issues the regulations codified in a CFR chapter can amend those regulations. If an agency took the IBR'd material offline, OFR could only add an editorial note to the CFR explaining that the IBR'd material was no longer available online without charge. We could not remove the regulations or deny agencies the ability to issue or revise other regulations. Revising our regulations as proposed by the petition would simply add requirements that could not be adequately enforced and thus, likely wouldn't be complied with by agencies.

In this proposed rule, we are proposing to require that if agencies seek the Director's approval of an IBR request, they must set out the following information in the preambles of their rulemaking documents: discussions of the actions the agency took to make the materials reasonably available to interested parties or; summaries of the content of the materials the agencies wish to IBR.

Discussion of Comments

Authority of the Director To Issue Regulations Regarding IBR

One commenter suggested that the OFR does not have the proper authority to amend the regulations in 1 CFR part 51. The commenter argued that because the FRA creates the ACFR and grants it rulemaking authority to issue regulations to carry out the FRA, it is the ACFR and not the Director who has the authority to amend these regulations.[9] The commenter made this claim relying on § 1505(a)(3), which requires publication of documents or classes of documents that Congress requires be published in the **Federal Register**.

We disagree with the commenter's analysis of these provisions. While the FRA does require publication of those documents, the FOIA does not require that documents IBR'd be published in the **Federal Register**. Section 552(a) states that persons cannot be adversely affected by documents that did not publish in the **Federal Register** but were required to be published unless the person has actual notice of the document. This section goes on to make an exception for documents IBR'd if they are reasonably available to the class of persons affected by the matter and approved by the Director. Under this section, once these criteria are met, material approved for IBR is ''deemed published in the **Federal Register**.'' Thus, persons affected by the regulation must comply with material IBR'd in the regulation even though the IBR'd document is not set out in the regulatory text. Because section 552(a) specifically states that the Director will approve agency requests for IBR and material IBR'd is not set out in regulatory text, the Director has the sole authority to issue regulations governing the IBR-approval request procedures. We have maintained this position since the IBR regulations were first issued in the 1960's.

The regulations on the IBR approval process were first issued by the Director in 1967 and found at 1 CFR part 20.[10] Even though this part was within the ACFR's CFR chapter, the preamble of the document states ''the Director of the Federal Register hereby establishes standards and procedures governing his approval of instances of incorporation

[5] See also 44 U.S.C. 4101.

[6] See also 44 U.S.C. 4101.

[7] 47 FR 34107 (August 6, 1982).

[8] 44 U.S.C. 1505 and 1510.

[9] See, 44 U.S.C. 1506.

[10] 32 FR 7899 (June 1, 1967).

by reference.''[11] And, while these regulations appear in the ACFR's CFR chapter, this final rule was issued and signed solely by the Director. These regulations were later republished, along with the entire text of Chapter I, by the ACFR in 1969;[12] however the ACFR stated that the republication contained no substantive changes to the regulations. In 1972, the ACFR proposed a major substantive revision of Chapter I.[13] In that proposed rule, the ACFR proposed removing the IBR regulations from Chapter I because ''part 20 . . . is a regulation of the Director of the Federal Register rather than the Administrative Committee.''[14] In that same issue of the **Federal Register**, the Director issued a proposed rule proposing to establish a new Chapter II in Title 1 of the CFR that governed IBR approval procedures.[15] These proposals were not challenged on this issue, so the final rules removing regulations from the ACFR chapter and establishing a new chapter for the Director were published on November 4, 1972 at 23602 and 23614, respectively.

We specifically requested comments on nine issues; we will address the comments we received to each question.

1. Does ''reasonably available'' a. Mean that the material should be available: i. for free and ii. to anyone online?

A majority of the commenters agreed that reasonably available means for free to anyone online but provided no additional comment on this. Several of these commenters seemed to agree with the general principle of access (as stated in the procedural requirements set out in various Federal statutes), specifically that any interested persons should be able to participate in informal notice and comment rulemaking by commenting on the standards an agency intends to IBR into its regulations, but didn't provide more specific details. Many commenters also agreed with the petitioners' contention that changes in technology and decreased costs of publication have made the print publication of the **Federal Register** unnecessary.

The commenters who were against defining reasonably available expressed concerns that current technology might make it easier to publish material online but did not change intellectual property rights or the substantial costs associated with developing standards. Several standards development organizations (SDOs), along with others, commented that ''reasonably available'' means that these materials are made available through a variety of means that may include appropriate compensation to the developer of the standard.

Another commenter agreed with the petitioners because its members are subject to enforcement actions that rely on standards IBR'd into the regulations. These standards play a critical role in its members' obligations because the standards define when members may face fines or disqualification. Thus, it is critical that they have access to the standards in part so that they can better comply with the regulations and can provide some oversight of the SDOs making these organizations more accountable for the standards.

While we understand the concerns of this commenter regarding possible enforcement actions, we do not believe that there is one solution to the access issue. Regulated entities, who may face enforcement actions that lead to the loss of a license, and their trade associations should work directly with the agencies issuing regulations to ensure that all regulated entities and their representatives have access to the content of materials IBR'd. OFR staff do not have the experience to determine how access works best for a particular regulated entity or industry.

One comment stated that charging a fee for access to material IBR'd prevents the poor from knowing the law. It stated that standards should cost the same amount as the **Federal Register,** which it said is free. It went on to state that having the material available for inspection at the agency or OFR imposed insurmountable barriers on the poor who live far from the District of Columbia. It also argued that 29 U.S.C. 794 requires agencies to make electronic materials accessible to those with disabilities, so not providing IBR'd materials for free online was inconsistent with the Rehabilitation Act.[16] Finally, this comment suggested that if the material were not free, OFR would need to set a dollar figure for the materials that ensured they were available to everyone, including the poor.

The daily **Federal Register** is not universally free. Section 1506(5) of the FRA authorizes the ACFR to set subscription rates for the **Federal Register** and other publications. Currently, a complete yearly subscription, that includes indexes, is $929.00. While GPO does not charge for online access to the **Federal Register** or to other federal government publications, including the CFR, Congress authorized the Superintendent of Documents to charge for online access to GPO publications. 44 U.S.C. 4101 requires the Superintendent of Documents, under the direction of the Public Printer, to maintain an electronic directory of Federal information and provide a system of electronic access to Federal publications, including the Congressional Record and the **Federal Register,** distributed by the Government Printing Office.[17] Section 4102 allows the Superintendent of Documents to ''charge reasonable fee for use of the directory and the system of access provided under section 4101.'' Paragraph (b) of this section states that the fees charged must be set to recover ''the incremental cost of dissemination of the information'' with the exception of the depository libraries, for electronic access to federal electronic information, including the **Federal Register**.[18] While the Superintendent of Documents has chosen not to charge for electronic access to the daily **Federal Register,** this section does indicate that the Congress understands that there are costs to posting and archiving materials online and that recovering these costs is not contrary to other Federal laws, including the FRA and the APA.[19]

[11] *Id.*

[12] 34 FR 19106 at 19115, December 2, 1969.

[13] 37 FR 6804 (April 4, 1972).

[14] *Id.*

[15] 37 FR 6817 (April 4, 1972).

[16] The Rehabilitation Act ''mandates only that services provided non-handicapped individuals not be denied [to a disabled person] because of he is handicapped.'' *Lincoln Cercpac* v. *Health and Hospitals Corp.,* 920 F. Supp. 488, 496 (S.D.N.Y. 1996), citing *Flight* v. *Gloeckler, et al.,* 68 F.3d 61, 63, (2d Cir. 1995) and *Rothschild* v. *Grottenthaler,* 907 F.2d 286, 289–90 (2d Cir. 1990).

[17] See H.R. Rep. No. 108 May 25, 1993, H.R. REP. 103–108

GOVERNMENT PRINTING OFFICE ELECTRONIC INFORMATION ACCESS ENHANCEMENT ACT OF 1993

Mr. FORD.

Mr. President, I am pleased today to introduce with the senior Senator from Alaska Mr. STEVENS the Government Printing Office Electronic Information Access Enhancement Act of 1993. This legislation will greatly enhance free public access to Federal electronic information.

The bill requires the Superintendent of Documents at the Government Printing Office to provide an online CONGRESSIONAL RECORD and **Federal Register** free to depository libraries and at the incremental costs of distribution to other users. The bill allows other documents distributed by the Superintendent of Documents to be added online as practicable and permits agencies to voluntarily disseminate their electronic publications through the same system.

I believe this bill goes a long way toward ensuring that taxpayers have affordable and timely access to the Federal information which they have paid to generate.

1993 WL 67458, 139 Cong. Rec. S2779–02, 1993 WL 67458.

[18] See, 44 U.S.C. 4102(b).

[19] One commenter also contends that charging for access would violate the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) and the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 et seq.). Both of those statutes require that agencies mitigate the effect of regulations on small

Congress required that within one year of enactment (January 2013) the Pipeline and Hazardous Materials Safety Administration (PHMSA) no longer IBR voluntary consensus standards into its regulations unless those standards have been made available free of charge to the public on the Internet.[20] Congress has not extended this requirement to all materials IBR'd by any Federal agency into their regulations. In fact, Congress has instructed the Consumer Product Safety Commission to use specific ASTM standards, which are not available for free.[21] Thus, we disagree with the petitioners and the commenters who argue that Federal law requires that all IBR'd standards must be available for free online. By placing the requirement on PHMSA not to IBR standards that are not available free of charge on the Internet (and on CPSC to IBR standards that are not available free of charge), Congress rightfully places the burden on the subject matter expert to work with the SDOs to provide access to the standards these subject matter experts believe need to be IBR'd.

One commenter also cited various Supreme Court and other lower Federal courts to further support their claim that IBR'd materials should be free online [22] by suggesting charging for access to these materials violates the APA. This commenter claimed that requiring interested parties to pay for materials an agency proposes to IBR in a notice of proposed rulemaking (NPRM) denies commenters the ability to fully participate in the rulemaking process because they can't learn the content of the standards without paying a fee. Further, this commenter claimed that because the APA allows interested parties to petition the government to amend regulations the IBR materials must remain free online while the regulation is effective. Thus, the APA requires that any material IBR'd must be available for free to be considered ''reasonably available.'' However, the cases that the commenter cited to support this claim, both civil and criminal, dealt with instances where the government proactively prevented access, in some instances by denying access to court hearings and, in another, by not disclosing scientific data relied on during a rulemaking, for example. IBR can be distinguished from these cases because the government is not prohibiting access to the materials. These materials may not be as easily accessible as the commenter would like, but they are described in the regulatory text in sufficient detail so that a member of the public can identify the standard IBR'd into the regulation. OFR regulations also require that agencies include publisher information and agency contact information so that anyone wishing to locate a standard has contact information for the both the standard's publisher and the agency IBRing the standard.

b. Create a digital divide by excluding people without Internet access?

Almost all commenters stated that no digital divide would be created because people without Internet access could go to a public library to access the standards online. Some commenters suggested that requiring print copies be available in libraries and other facilities would solve the digital divide problem. A couple of commenters stated that there was no digital divide because at least 60% of Americans have Internet access. A few commenters suggested that a digital divide was not the problem—our outdated regulations and the fact that some of the material is only available at the OFR was the real issue. One commenter suggested that a digital divide would be created if online access to standards was in a read-only format because someone reading the material at the library couldn't print the standard to review at home or ask someone to bring it to their home so they could examine the standard if they couldn't get to a library.

Our proposed revisions to the IBR approval regulations would maintain the current process of agencies maintaining a copy for public inspection and providing a copy of the standard to the OFR, while adding the requirement that agencies set out, in the preamble of the proposed and final rules, how they addressed access issues and made the material reasonably available. This prevents a digital divide by providing interested commenters the information to contact the agency directly to find out how to access the standard, whether it is online or accessible at an agency's facility close to the commenter.

2. Does ''class of persons affected'' need to be defined? If so, how should it be defined?

Whether or not commenters agreed with the petitioner, most believed that ''class of persons affected'' did not need to be defined. Some felt that the term included ''everyone'' or ''anyone interested.'' One group said it didn't need to be defined because it includes anyone who has standing to challenge the rule or intervene in a rulemaking proceeding. Most commenters stated that ''class of persons affected'' didn't need to be defined because it can change depending on the specific rulemaking and agencies involved, thus a definition will fail because it is either too broad to be meaningful or too restricted to capture a total class.

Some commenters suggested that various entities were within the class, for example: consumer groups because they play an important role in ensuring that the standards are sufficiently protective of the consumer health and welfare; and SDOs because they are impacted when an agency IBRs their standards.

Another commenter stated that ''affected persons'' in § 552(a) of the APA includes more persons than those who are the direct subject of the regulation. To support this claim, the commenter referenced 5 U.S.C. 702 (the APA's judicial review provision) [23] to allege that § 552(a)'s reasonably available provision is broader than § 702 and includes anyone who may have a stake in agency action. Thus, the class of persons affected extends beyond those who must comply with the regulation.

Two commenters suggested definitions. One of these commenters suggested that ''class of persons affected,'' ''means a business entity, organization, group, or individual who either: (i) Would be required to comply with the standard after, or if, it is IBR'd; (ii) would be benefitted from the standard's IBR'd into a federal regulation; (iii) needs to review and/or analyze the materials proposed to be IBR'd and/or being relied upon by a Federal agency in a regulatory proceeding, including (but not limited to) a proposed rulemaking, agency guidance, or similar agency

businesses but do not suggest that agencies can only issue regulations with no cost to small businesses. Similarly, the goal of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, is to prevent the Federal government from imposing a financial burden on state, local, and tribal governments. It does not suggest that agencies can only issue regulations without a cost of compliance.

[20] Section 24 of the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (Pub. L. 112–90).

[21] For example, 15 U.S.C. 2056b.

[22] See, for example *Portland Cement* v. *Rukelshaus,* 486 F.2d 375 (D.C. Cir 1973) and *United States* v. *Nova Scotia Food Products Corp.,* 568 F.2d 240 (2d Cir. 1977). In all of these cases, the government actively banned persons from a court proceeding or withheld information from the docket of an agency rulemaking. In these instances, the government actively prohibited access to a hearing or to information. This can be distinguished from IBR in that the government does disclose the relevant information regarding the standard it just may not provide free access to it.

[23] The commenter also cites *Clarke* v. *Securities Industry Ass'n,* 479 U.S. 388 (1987) and *Thompson* v. *North American Stainless,* 131 U.S. 863 (2011). These Supreme Court cases dealt with who is within the zone of interest under federal banking laws and Title VII of the U.S. Code.

publication.'' [24] The other suggested a 2-prong definition so that during the NPRM stage of the rulemaking ''class of persons affected'' would include anyone who wants to comment on the proposal, but during the final rule stage of the rulemaking the definition would refer primarily to ''those who have a need to know the standards to which their conduct will be held.'' [25]

We did not propose a definition in this NPRM because we share the concerns of the commenter who worried that defining this phrase would create differentiation and may encourage the formation of a complicated secondary bureaucracy. We are also concerned that any definition will fail because it is either too broad to be meaningful or too restricted to capture a total class. Thus, we are not proposing a definition so that agencies maintain the flexibility to determine who is within the class of persons affected by a regulation or regulatory program on a case-by-case basis to respond to specific situations.

3. Should agencies bear the cost of making the material available for free online?

When an SDO creates a standard, it expends resources which are separate from the actual expense of publication and distribution. We lack the knowledge and expertise to understand all of the costs involved with standard development, but we do acknowledge that those costs exist. The SDO can bear the cost of making its standard available for free, the agency can bear the cost by compensating the SDO for the lost sales, or industry and individuals can bear the cost by purchasing copies of the standard.

Many commenters addressed this issue solely from a technology standpoint. They argued that agencies already have scanners, servers, and Web sites, so scanning, storing, and posting files online would result in a negligible cost. Other commenters suggested that this was a tangential issue and that there were other options available to recover the costs, but didn't elaborate on those other options. It's arguably true that the technological (and publication) costs are continually decreasing, but these comments addressed only the cost of making something available online and did not address costs associated with making the standard available for free.

Other commenters suggested some complex ways for the agencies or the SDOs to recoup the cost of making the standards free online, including creating a new tax on SDOs whose standards are purchased in order to comply with regulations, and having SDOs design a per-use fee, in addition to royalties, so that individuals could pay a small fee to just access a standard but would have to pay royalties to actually use it. Amending the tax code and creating a new business model for SDOs are beyond the scope of the petition and outside our regulatory authority.

Most individuals (those not responding on behalf of an SDO, industry, or trade group) felt that agencies should bear the cost. One person felt that agencies should bear the cost of making standards free and online because if standards are not free, our government is not transparent. Others felt that this was a basic role of government and noted that we already pay taxes, implying that citizens shouldn't have to also pay for standards. One commenter asserted that interested persons with legitimate interest can't afford the cost of purchasing access, so agencies should provide free access, in the interests of reducing costs and burdens.

Transparency does not automatically mean free access. It is the long-standing policy of the Federal government to recoup its costs. OMB Circular A–25 was first issued in 1959 and then revised in 1993. Among its stated objectives is to ''allow the private sector to compete with the Government without disadvantage in supplying comparable services, resources, or goods where appropriate.'' It also notes that ''a user charge . . . will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public.'' [26] An implied intent is to reduce the costs and burdens on taxpayers by not making them pay extra for something they don't need.

A common theme throughout the comments from industry groups and individuals was the idea that SDOs would be willing to negotiate with the government for a bulk discount for licensing. However, the SDO comments noted that the licensing fee would still be substantial and would necessarily result in increased budgets and increased strain on taxpayers. Another common theme throughout these comments was the idea that the SDOs derive significant, sometimes intangible, benefits from having their work IBR'd into a regulation and those benefits more than offset the cost of developing the standards themselves. Some of these benefits include increased name-recognition and trust, increased revenue from additional training opportunities, and an increase in the demand for standards. We don't have the knowledge or expertise to have an opinion on this issue but believe that agencies and SDOs will continue to work together on this issue.

Several individuals and trade groups felt that if agencies had to bear the cost, that would ''maximize incentives to bargain over licensing agreements'' and encourage ''judicious use'' of an agency's rulemaking authority to ease the burden on small businesses.[27] However, agencies are already directed to take into account the impact a rulemaking will have on small businesses, including an assessment of the costs involved, by various Federal statutes and Executive Orders. After making that assessment, agencies must then determine which standard, if any, is required.

The OFR is a procedural agency. We do not have the subject matter expertise (technical or legal) to tell another agency how they can best reach a rulemaking decision. Further, we do not have that authority. Neither the FRA nor the FOIA authorizes us to review proposed and final rulemaking actions for substance. We agree that agencies should consider many factors when engaging in rulemaking, including assessing the cost and availability of standards. So, we are proposing to require agencies to either explain why material is reasonably available and how to get it or to summarize the pertinent parts of the standard in the preamble of both proposed and final rules.

Several SDOs commented that if the standards had to be freely available, then the government should bear the cost, but implied that industry and individuals should continue to bear the cost as needed. They noted that they would lose more than just the sales revenue from the standards if they had to bear the cost, including potential reduced value of membership and potential degradation to the value of standards and publications. Further, without compensation, creation of new standards would stop because the costs of procuring them for free would be prohibitively high resulting in an unsustainable business model.

One interest group felt that our question automatically assumed that the cost to an agency would be significant. It argued that SDOs would be able to make standards available like a digital lending library which would mitigate the costs. They offered an example of the American Petroleum Institute (API)

[24] See NARA–12–0002–0122.

[25] See NARA–12–0002–0009.

[26] *http://www.whitehouse.gov/omb/circulars_a025#5* last visited June 7, 2013.

[27] See, for example, NARA–12–0002–0098.

making certain standards freely available in response to the 2010 oil spill in the Gulf of Mexico (Gulf oil spill).[28]

We note that API did not offer to make all of its IBRed standards available. So, we cannot infer that API is making this a general practice or that we can apply this situation generally across all SDOs. And, as several other commenters noted, shifting the cost burden to agencies would result in the entire burden of the standards development process being borne by taxpayers. We can take this example, however, as evidence that agencies and SDOs do work together to choose the best solution for a particular situation.

One group asserted that since the Federal government bears the cost of making all Federal regulations available for free online, it should also make all IBR'd standards free and online. However, as we've discussed elsewhere in this petition, the Government Printing Office has the authority to charge for online access and it already charges for subscriptions to the paper **Federal Register** and CFR, so the Federal government does not have an obligation to bear the cost of making all regulations available for free online.

Several commenters suggested that we allow agencies to limit free Internet access only to parties that would suffer an undue burden if they were required to pay the going rate for private standards. These suggestions are impractical. They could create differentiation and encourage the formation of a complicated secondary bureaucracy, which we have touched on already.

As discussed, the OFR is a procedural agency and we publish documents from hundreds of Federal agencies. We would have neither the technological resources nor the staff to make sure agencies were making such a distinction, nor are we in the position to continually monitor outside Web sites. We wouldn't take steps to prevent such a determination, but have no authority to require it or enforce such a requirement.

One individual suggested that since standards organizations are non-profit entities they should provide their standards for free. Another asserted that the SDOs were already rewarded for their work since they draft standards on behalf of government or industry. One person implied that the government was already paying the SDOs to develop the standards.

Many SDOs are non-profit organizations, but not all are. Even if all SDOs were non-profit organizations, we don't have the authority to require that they give away assets, products, or services. Further, most SDOs develop standards in response to industry or member needs; they are not employed by the Federal government and very few, if any, draft standards at the direction of the Federal government, and even then, only in very limited and specific circumstances.

One SDO noted that the current Federal policy reflects a decision that regulated industry and individuals should bear costs of standards and that businesses are the intended users of certain standards. It added that most businesses already accept the cost of certain standards as a ''recognized, accepted, and tax-deductible cost of doing business.'' The SDO added that since the cost to business is not exorbitant but the cost would be ''exorbitant'' to the Federal government, ''imposing cost to taxpayers would be misguided.'' [29]

We choose to leave the burden on the agencies and their subject matter experts to work with the SDOs to provide access to the standards these subject matter experts believe need to be IBR'd. They continue to have the burden, but they also continue to have the flexibility to come up with the best solution for a particular situation.

One industry group asserted that agencies should bear the cost, but that the cost would not be significant because the Federal government could exercise its right under the Takings Clause of the Fifth Amendment for any copyrighted material it wished to use. This comment is outside the scope of this petition for rulemaking, as we discuss in section 10.

4. How would this impact agencies' budget and infrastructure, for example?

Several individuals replied that there would be minimal or no impact since all agencies should already have a web presence and document management systems.[30] Other commenters concluded that there was no evidence that agencies would have increased expense when providing standards for free online.

Many more commenters (individuals, industry groups, and SDOs) all agreed that there would be a significant impact to an agency's budget. One individual noted that the costs could be ''enormous and threaten the viability of regulatory programs.'' [31] If agencies chose not to use SDO material, they could revert to developing government-unique standards. Several other commenters disputed that option, noting that forcing an agency to hire subject matter experts and develop the expertise it lacks runs counter to OMB Circular A–119. Further, agencies might need additional IT support staff, contract management staff, and administrative staff to meet the new demands for access.

It seems clear that, if agencies must bear the burden to make material free online, and since most material is not currently free, then agency budgets would have to increase to make the material free. It is unclear if, or how, agency infrastructure would be impacted or how much budgets would need to increase.

Several other commenters noted that the budgetary impact should be irrelevant. If an agency chooses to use a standard, then it has to meet all of its legal and financial responsibilities. Another commenter added that if an agency didn't want to IBR material, it could simply republish the material in the regulation in the **Federal Register.**

While we agree that it should be an agency decision to use or not to use a standard, based on a variety of factors, agencies cannot simply republish material. The **Federal Register** and CFR have substantial limitations on what can be published. For example, we cannot publish in color, so any standard that relies on color could not be published, regardless of the copyright status.[32] Also, 1 CFR 51.7(c) states that material published in the **Federal Register** cannot be IBR'd. So if one agency chose to republish material rather than IBR it, no other agency would be able to IBR that material.

5. How would OFR review of proposed rules for IBR impact agency rulemaking and policy, given the additional time and possibility of denial of an IBR approval request at the final rule stage of the rulemaking?

Several commenters suggested that OFR review at the proposed rule stage would create substantial delays in the already long agency informal rulemaking process. Some suggested that OFR does not have the authority to review proposed rules because we are not subject matter experts in the areas regulated by other federal agencies. One commenter stated that if OFR were to circumvent the development of rules by

[28] See NARA–12–0002–0092.

[29] NARA–12–0002–0123.

[30] Again, these commenters focused only on the costs involved with posting a document and not with making it free.

[31] Again, these commenters focused only on the costs involved with posting a document and not with making it free.

[32] See, for example 1 CFR 51.7(b).

agencies with the statutory expertise and obligation, OFR would essentially drive the development of those rules which is not part of its mission. Another suggested that OFR review of NPRMs would also create a disincentive for agencies to use voluntary consensus standards. Other commenters suggested that our review of NPRMs was unnecessary because the SDOs use consensus development platforms that allow resolution of stakeholder concerns.

Another commenter stated that while OFR is already required to review IBR requests at the NPRM stage under 5 U.S.C. 552(a)(1)(E), we need to issue clear rules so that IBR review would not delay publication of the NRPM and so that agencies will see a reduced risk that their request will be denied.

We received a comment that stated OFR review at the NPRM stage may be constructive if it were limited to ensuring the availability of documents for public comment. Another stated that without adequate IBR review, agencies that failed to ensure that IBR'd standards were reasonably available were likely to face noncompliance and costly litigation. We agree with these comments. Even though a substantive review of IBR'd materials referenced in a proposed rule is beyond our authority and resources, OFR does have the authority to review NPRMs to ensure our publication requirements are met. We have not reviewed IBR'd material in NPRMs for approval because agencies may decide to request approval for different standards at the final rule stage based on changed circumstances, including public comments on the NPRM, requiring a new approval at the final rule stage. Or, agencies could decide to withdraw the NPRM. In this document, we propose to review agency NPRMs to ensure that the agency provides either: an explanation of how it worked to make the proposed IBR'd material reasonably available to commenters or; a summary of the proposed IBR'd material. This would not unduly delay publication of agency NPRMs and does not go beyond OFR's statutory authority.

At least two commenters suggested that the petition does not require or suggest review at the NPRM stage. These commenters asserted that this review isn't needed because their NPRM text requires agencies to demonstrate in their draft final rules that the IBR'd standard was available online during the comment period. Further, agencies would know that they can only expect approval if commenters had access to the proposed IBR'd material during the comment period. Thus, the burden on OFR would be reduced because we would not have to continue with case-by-case determinations of ''reasonable availability.'' Another commenter suggested OFR should automatically grant approval when proposed IBR'd materials are posted on Web sites that archive and authenticate, so there should be no delay in approval.

These suggestions imply that OFR should rubber stamp agency IBR approval requests as long as the agency states it provided the materials online. We can only carry out the intent of the petition if we review the NPRMs to make sure the proposed IBR'd materials are available online for free or verify that the proposed IBR'd material is actually online during the comment period. To adequately ensure that the proposed IBR'd proposed materials are online during the comment period, OFR would need to verify that fact during the comment period to effectively enforce this requirement. Adding a requirement that agencies need to make proposed IBR'd materials available online during the NPRM stage will not ensure that agencies actually follow that requirement; we need to have some way to verify compliance. Thus, in this NPRM, we are proposing to review agency NPRMs to ensure that the agency provides an explanation of how it worked to make the material it proposes to IBR reasonably available to commenters or to provide a summary of the proposed IBR'd material.

6. Should OFR have the authority to deny IBR approval requests if the material is not available online for free?

Of the commenters who felt that we should redefine ''reasonably available'' as meaning free and online, most agreed that we should also then deny requests if the IBR'd material is not available online for free. At least one group felt that we shouldn't deny a request but that instead we should negotiate an agreement between the agency and the SDO that would make the standard available for free and online. And, one commenter felt that OMB should also have the authority to deny requests if IBR'd material was not free and online.[33] One commenter felt that we should refuse to publish final rules that didn't have a link to the online IBR'd material. Another implied that if an agency established good cause for using a standard that wasn't free and online, we couldn't deny the request for IBR approval.

Other commenters were concerned that if we restricted agencies to this requirement, we would be put in the ''untenable position of supervising Federal standards policy.'' [34] They also noted that this could place OFR in the middle of a contentious fight over copyright limitations. We agree.[35] As discussed elsewhere, our authority is limited to procedural and publication issues. We do not have the authority to direct another agency on substantive rulemaking issues, including IBR. Our proposed regulatory changes would require agencies to describe how the IBR'd material is reasonably available, with free and online being but one option.

Several commenters recommended we adopt new and very complex regulatory schemes so that we wouldn't immediately deny IBR'd material that wasn't free and online but that we would make sure it eventually became available, even if not free and online.[36]

Not only would some of these new duties be outside the scope of our statutory authority, we do not have the resources or the expertise to implement and carry out these schemes.

7. The Administrative Conference of the United States Recently Issued a Recommendation on IBR. 77 FR 2257 (January 17, 2012). In light of this recommendation, should we update our guidance on this topic instead of amending our regulations?

Some commenters felt that we shouldn't update either our guidance or our regulations. Of the commenters who argued that we should use our regulations to require that IBR'd material be available for free and online, about half saw no point in also updating our guidance and the other half didn't object. A small number of commenters asserted that we should not update our Document Drafting Handbook (DDH) because it's not a policy document and we don't set Federal government policy.

The ACUS Recommendations didn't suggest that we develop policy for the Federal government regarding IBR. As

[33] As noted elsewhere, the Federal Register Act gives sole approval authority to the Director of the Federal Register.

[34] NARA–12–0002–0123.

[35] We discuss copyright concerns in more detail in section 10.

[36] One plan would require that we oversee negotiations between the agency and SDO and make sure that the SDO was negotiating in good faith. Then, if the material could still not be made available online for free, we would create and maintain a fair use library of material that we had not approved for IBR but that the agency wanted to enforce through actual notice. Under a second plan, we would first just recommend that agencies use material that is free and online, then we would give priority review to requests to IBR material that was free and online, and finally, after 10 years, we would deny any request to incorporate material that wasn't freely available online.

the name indicates, these are actions or considerations that agencies are recommended to think about when determining what, if any, material would be needed for IBR. We see no problem with updating our DDH with some of the recommendations to give agencies another resource or reminder on IBR best practices and procedures.

8. Given that the petition raises policy rather than procedural issues, would OMB be better placed to determine reasonable availability?

Some commenters felt that we need to define ''reasonable availability'' and that OMB should have no role in this process, citing the FOIA. Others thought that we should work in concert with OMB to determine ''reasonable availability.'' A third group asserted that OMB should set policy, noting that it already has in OMB Circular A–119.

As we've already discussed, requiring that agencies only use material that is free and online could effectively bar them from using material their subject matter experts have decided is the best option. So, that change would have significant and immediate policy implications. In response to question 7, commenters already noted that OFR does not set policy for the Federal government. In fact, OMB has the role of policy-maker. We have neither the authority nor the expertise to determine what material is appropriate to IBR into a rulemaking. OMB and the other agencies should work together to set policy that best meets their needs.

9. How would an extended IBR review period at both the NPRM and final rule stages impact agencies?

Many commenters raised the same issues in response to question 9 as they did in their responses to question 5. Some concluded there would be no impact since we would not need additional time to review either NPRMs or final rules because the IBR'd material is either available or it's not. Others suggested that our review would slow the process of a rulemaking, which would have detrimental effect and add levels of unnecessary complication. Some suggested that an extended IBR review period would diminish many of the benefits associated with the use of standards that are IBR'd. One commenter stated that OFR review would have a chilling effect on agencies' willingness to IBR voluntary standards in support of regulatory actions, which would undermine Federal law and policy, set forth in the NTTAA and OMB Circular A–119.

Another commenter believed that OFR approval of IBRs should be expeditious and involve limited review. This commenter recommended that where there is an approved method for public access, OFR review should normally occur in 3 days not 20 and that agencies should be allowed to state that all future editions are IBR'd with some type of administrative approval. This commenter further stated that ''because the FRA is nothing more than a reporting statute, the Director should delay or reject an agency filing only to promote clarity, authenticity, and—in the case of IBR—public availability.'' [37] Therefore, according to this commenter OFR should summarily approve IBR requests of materials that are posted on archival Web sites.

To the extent that one commenter suggested that we completely abandon our current regulations we disagree. Our current regulations, while issued 30 years ago, provide the foundations for transparency by requiring detailed information for the standard, including the title, date, revision, and publisher, be set out in the regulatory text. Without this basic information set out in the regulatory text no one could be sure which standard was actually IBR'd in a regulation. It wouldn't matter what standards were available online if it weren't clear which standard was IBR'd. Simply updating regulations by some type of administrative notice and then adding an editorial note to the CFR would not provide a means of orderly codification as required by the FRA and 1 CFR chapter 1. Therefore, we decline to propose this suggestion as a means of updating IBR references. Instead, our NPRM adds a requirement that agencies provide an explanation in the preambles of both their proposed and final rules that discusses how the IBR materials were made reasonably available (which could have been a summary of the IBR'd material in the NPRM) along with complying with the current regulations set out in part 51. This added requirement will not greatly increase the burden on OFR resources while providing interested parties more information on how agencies are working to ensure the IBR'd materials are reasonably available.

10. Other Issues

a. Constitutional Issues.
b. Copyright Issues.
c. Outdated standards IBR'd into the CFR.
d. Standards should be used as guidance not requirements.
e. Concerns regarding the misuse of the IBR process.
f. Indirect IBR of standards.
g. International stance—trade imbalance, Export Administration Regulations, International Traffic in Arms Regulations.
h. OFR mission.
i. Miscellaneous suggestions.

a. Constitutional Issues

Several commenters argued that the government could simply exercise the Takings Clause of the 5th Amendment. We are not experts in how the Federal government would exercise the Takings Clause. However, there is nothing ever ''simple'' about the process.[38] We will leave it up to the agencies to decide the best course of action for their situation and not try to substitute our judgment for theirs.

Another commenter questioned the constitutionality of the current system, arguing that forcing the public to pay for standards effectively limits access and thus restricts public participation in government. Most of the cases cited, however, dealt with the government or the courts preventing public access.[39] Given the Government Printing Office's statutory authority to charge for the **Federal Register** and CFR, we find this argument unpersuasive.

b. Copyright Issues

Several commenters claim that once a standard is IBR'd into a regulation it becomes law and loses its copyright protection.[40] Therefore, IBR'd standards must be available for free online. Other commenters, including the petitioners, don't go quite so far. Instead they claim that when agencies IBR copyrighted material into their regulations, the 5th Circuit's decision casts doubt on the legality of charging the public for access to that IBR'd material, see *Veeck* v. *Southern Building Code Congress International, Inc.*, 293 F.3d 791 (5th Cir. 2002).[41]

In *Veeck,* the court held that *in some instances* model building codes developed by an organization adopted

[37] See NARA–12–0002–0118.

[38] Inquiry as to whether a governmental action is an unconstitutional taking, by its nature, does not lend itself to any set formula, and a determination of whether justice and fairness require that economic injuries caused by public action be compensated by the government, rather than remain disproportionately concentrated on a few persons, is essentially ad hoc and fact intensive 10 A.L.R. Fed. 2d 231 (Originally published in 2006).

[39] *Globe Newspaper Co.* v. *Superior Court for Norfolk County,* 457 U.S. 596, 604 (US 1982) (quoting *Mills* v. *Alabama,* 384 U.S. 214, 218 (1966)); see also *Press Enterprise* v. *Superior Court,* 478 U.S. 1 (1986). Cf. *In re Gitto Global Corp.,* 422 F.3d 1 (1st Cir. 2005); *Leigh* v. *Salazar,* 677F.3d 892 (9th Cir.2012). The commenter also references Cf. *Harper* v. *Virginia Bd. Of Elections,* 383 U.S. 663, 666–68 (1966), overturning poll taxes.

[40] Citing *Banks* v. *Manchester,* 128 U.S. 244, (1888).

[41] *Veeck* v. *Southern Building Code Congress International, Inc.*, 293 F.3d 791 (5th Cir. 2002).

by government entities into regulations may become law, and to the extent that the building code becomes law it enters the public domain. Federal law still provides exclusive ownership rights for copyright holders [42] and provides that Federal agencies can be held liable for copyright infringement.[43] Additionally, both the NTTAA and OMB Circular A–119 require that federal agencies ''observe and protect'' the rights of copyright holders when IBRing into law voluntary consensus standards.[44]

Recent developments in Federal law, including the *Veeck* decision and the amendments to FOIA have not expressly overruled U.S. copyright law or the NTTAA, therefore, we agree with the commenters who said that when the Federal government references copyrighted works, those works should not lose their copyright. However, the responsible government agency should collaborate with the SDOs and other publishers of IBR'd materials to ensure that the public does have reasonable access to the referenced documents. Therefore, in this NPRM we propose to require that agencies discuss how they have worked with copyright holders to make the IBR'd standards reasonably available to commenters and to regulated entities.

Another commenter suggested that OFR loan out electronic versions of copyrighted standards much like a library. Unfortunately, this goes beyond our statutory authority and agency's resources.

One commenter stated that the OFR should work with agencies to take a collaborative approach to copyright, not one based solely on entitlement, to promote the consensus standard system. This commenter recommended a five-category approach to collaboration.[45]

1. *Free, but copyrighted*—the material would be marked as copyrighted but would be available free and online.

2. *Extraneous*—OFR would work with agencies to remove extraneous IBRs from the CFR.

3. *Generally approved limitations*—OFR would allow agencies to make further accommodations to standards developed by voluntary consensus organizations, such as read-only online access to IBR'd standards. (Here the commenter sets out several conditions both agencies and SDOs would need to meet to get IBR approval.)

4. *Good Cause*—OFR should approve additional restrictions access if the SDO shows good cause based on its business structure.

5. *Agency Necessity*—if a SDO refuses to collaborate with an agency without showing good cause or if the agency argues there is no alternative than using a highly restrictive standard, the OFR may not be able to require electronic public access. So OFR would encourage agencies to work with NIST to find an alternative standard.

We decline to take this commenters approach and note that we do not have the resources to establish such a complicated regulatory scheme for IBR approval. This plan would also increase the time needed to approve agency IBR requests, unnecessarily duplicate agencies' attempts to make standards available, and add delays to an already complicated rulemaking system.

c. Outdated Standards IBR'd Into the CFR

A few commenters mentioned that some of the standards IBR'd into the CFR were outdated or expressed concern that agencies were failing to update the IBR references in the CFR. One commenter suggested that greater public access to IBR'd standards might alert policy and industry communities to the fact that Federal regulations reference outdated private standards and need to be updated to improve public safety. Another commenter stated that some standards are out of date or out of print and are not easily available. This commenter noted that some OSHA IBR'd materials date from the 1950s.[46] This commenter expressed concern that the current version of a standard may contain valuable information even though the historical version is still IBR'd in the Federal regulation text. This commenter suggested that sales of historical documents are not related to support of the current version and should be free for the agency and the SDO and that SDOs should charge only for the current version. The commenter didn't want a situation where an employer must buy two versions of the same standard.

In the past few years, we have reviewed a number of agency IBR approval requests that seek to retain, expand, or create IBRs using very old standards of questionable availability. In some cases, there may be no appropriate alternative or recent standards and agencies may have no choice but to rely on older material for IBR.

To address this issue, we required that agencies provide additional contact information for older standards that are not readily available from their original publishers. Examples of regulations that include modified availability arrangements for old, difficult to obtain IBR'd documents include National Archives and Records Administration (NARA) regulations at 36 CFR part 1234 (74 FR 51004, October 2, 2009), Department of Energy (DOE) regulations at 10 CFR part 430 (74 FR 54445, October 22, 2009), and OSHA regulations at 29 CFR part 1926 (75 FR 47906, August 9, 2010). While we don't agree with the petitioners that we have the statutory authority to require that these agencies post these IBR materials online, we do require that they provide a way for interested parties to contact the agencies directly to work out an arrangement so that the IBR'd materials could be examined at an agency location more convenient to the requester.

In January of 2011, President Obama issued Executive Order 13563, ''Improving Regulation and Regulatory Review,'' dated January 18, 2011,[47] which was closely followed by OMB Memorandum M–11–10, ''Memorandum for the Heads of Executive Departments and Agencies, and of Independent Regulatory Agencies.'' After these documents were issued, the legal staff of the OFR wrote a blog post discussing section 6 of Executive Order 13563. This section instructs agencies to conduct periodic, retrospective review and analysis of existing regulations with an eye toward determining which, if any, ''may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them . . . so as to make the agency's regulatory program more effective and less burdensome in achieving regulatory objectives.'' OMB Memorandum M–11–10 reiterates and expands on this, stating that ''[w]hile systematic review should focus on the elimination of rules that are no longer justified or necessary, such review should also consider strengthening, complementing, or modernizing rules where necessary or appropriate. . .''. We suggested in our blog post that agencies use this regulatory review to pay special attention to any IBR'd materials cited in those regulations. Agencies should be mindful of the requirement that such materials be ''reasonably available to and useable by the class of persons affected by the publication'' [48] and that IBR approval is ''limited to the edition of the publication that is approved.'' [49] We further stated in this blog post that it is incumbent on agencies to periodically

[42] 17 U.S.C. 106.

[43] 28 U.S.C. 1498(b).

[44] OMB Circular A–119.

[45] See NARA–12–0002–0118.

[46] See NARA–12–002–0147.

[47] 76 FR 3821; January 21, 2011.

[48] See 1 CFR 51.7(a)(4).

[49] (see 1 CFR 51.1(f)).

review materials approved for IBR in their regulations and update them as appropriate. All IBR'd materials must be ''reasonably available'' to the regulated parties no matter their age or source. If this becomes a problem using the contact information included in the CFR, agencies are required to update the regulations with current, complete contact information or to arrange for—and publish—instructions for alternative means of availability if necessary.[50]

Another commenter listed agency regulations, some of which IBR standards others do not. This commenter then states that the average age of a standard IBR'd into the CFR is 24 years old. This, he claims, is ''in part . . . due to the antiquated practices of the **Federal Register**.'' [51] He continues by stating that at least part of the problem is that the OFR has not implemented an ACUS recommendation from 1979 that suggested OFR issue a rule establishing a procedure for Federal agencies to use a joint rule to update particular standards into their regulations.[52] According to the commenter, this procedure would allow any agency with a superseded standard to participate. The procedure would also allow for each agency to make its own decisions on how to use a particular standard.

Forcing all agencies that wish to IBR a particular standard to work together to issue a joint rule would not automatically shorten the time it takes for agencies to complete rulemaking projects. Coordinating among agencies is not always easy given their differing statutory authority and missions. ACUS Recommendation 78–4 suggests that when a standard is IBR'd by two or more agencies, the OFR should coordinate the publication of a joint rule to update the standard. The Recommendation suggests that OFR should prepare a NPRM that would publish under the name of each agency. However, ACFR regulations require each agency to publish their own regulations, so the OFR could not prepare such a document.[53]

The statute allows agencies to IBR standards with the approval of the Director. The OFR interprets this language to require that agencies make a request to the Director. There is no prohibition on agencies issuing a joint final rule to revise their regulations to update IBR'd materials within their own regulations, if they choose to work together as the Recommendation suggests.

d. Standards Should Be Used as Guidance Not Requirements

A couple of commenters suggested that SDO standards should be used in agency guidance materials instead of in regulations. If agencies did that, the public would not be required to comply with those standards and they wouldn't need to be posted online for free as discussed in the petition. According to these commenters, this is a better solution to IBR because the public can decide if purchasing the standard would help them comply with the regulation. It would also ensure that SDOs are compensated for their work, while creating a market incentive for them to keep their prices reasonable in relation to the alternative standards. SDO standards would be supportive of compliance and would not become the law. At least one commenter suggested ''the NTTAA and [OMB] Circular A–119 make a distinction between regulations affirmatively requiring a specified course of conduct and standards that serve to indicate but one means by which those requirements may be satisfied.'' [54] This commenter states that the benefits of using standards as guidance include:

1. Lessening burdens on the OFR. Guidance is not required to be published in the **Federal Register** so we don't have to review them.

2. Making it easier to update standards. Agencies wouldn't have to go through a rulemaking each time the SDO issued a new version of a standard.

Another commenter recommended that OMB Circular A–119 should discuss the distinction between rules and ''regulatory guidance.'' The commenter wanted OMB to encourage agencies to withdraw standards IBR'd in the CFR in favor of IBRing these standards into agency directives and interpretations, which the commenter claims are ''equally authoritative, but changeable by notice.'' [55] The commenter suggests that by doing this the public develops an awareness of the standard while SDOs copyrights are protected.

The FRA and the APA [56] require that documents of general applicability and legal effect be published in the **Federal Register** and codified in the CFR. Thus, what these commenters suggest could jeopardize agencies' enforcement of requirements needed to maintain the health and safety of the public by removing them from the CFR. In addition, agencies are not generally required to codify their guidance documents, policy letters, or directives in the CFR and thus, they may not be published in the **Federal Register**. [57] So, if standards are only referenced in guidance, some of the transparency is gone because there would be no uniformity as to how the standard is referenced in the guidance document. In many instances, agency-issued guidance and policy statements become binding as a practical matter.[58] But, because these documents might not be published in the **Federal Register** and are not codified, it's not clear how moving an IBR from regulation text to documents that are more difficult to locate provides the public with adequate knowledge of the document. If the documents are not submitted for publication in the **Federal Register**, then the OFR legal staff can't review them. We do not have the staff or other resources needed to check each agency's Web site for documents that should be published in the **Federal Register**. Also, it is not clear why

[50] See *https://www.federalregister.gov/blog/2011/02/executive-order-13563-and-incorporation-by-reference*, last visited on March 15, 2013.

[51] See comment NARA–12–0002–0118.

[52] See ACUS Recommendation 78–4 (44 FR 1357, January 5, 1979).

[53] See 1 CFR 21.21. While outside the scope of the petition, the commenter also states the OFR unreasonably limits agencies use of cross-referencing other agencies regulations in the CFR. The Federal Register Act requires orderly codification (44 U.S.C. 1510) and gives the ACFR the authority to issue regulations that ensure the orderly codification of agency rules and regulations. The ACFR's regulation on cross-referencing is found at 1 CFR 21.21. Paragraph (c) of this section requires that each agency set out its own regulations in the CFR in full text. It limits the use of cross-referencing to particular situations set out in this section. Orderly codification cannot be carried out without some boundaries and restrictions. We have found that many times cross references are not updated and thus are not useful.

[54] See NARA–12–0002–0149.

[55] See NARA–12–0002–0118. This commenter also suggests that OFR should allow agencies to IBR agency documents into **Federal Register** notice documents provided the agency provides an authenticated version of its document for **Federal Register** custody. As we discussed earlier, we discourage agencies from IBR'ing agency-created materials so that a shadow publication system is not established and the transparency of a centralized publication system established under the FRA is maintained.

[56] 44 U.S.C. 1505, 1510 and 5 U.S.C. 553, respectively.

[57] ACUS Recommendation 76–2 (41 FR 29653, July 19, 1976) recommends that agencies publish their statements of general policy and interpretations of general applicability in the **Federal Register** citing 5 U.S.C. 522(a)(1)(D). This recommendation further recommends that when these documents are of continuing interest to the public they should be ''preserved'' in the CFR. 41 FR 29654. The recommendation also suggests that agencies preserve their statements of basis and purpose related to a rule by having them published in the CFR at least once in the CFR edition for the year rule is originally codified. Many agencies have not followed this recommendation, most likely because some of the material is published in the United States Government Manual or they find the cost prohibitive.

[58] See NARA–12–0002–0162.

agencies would need IBR approval for these non-regulatory documents.

This commenter also stated that ''[t]o the extent standards remain in the codified rules, OMB should streamline the process of incorporating new editions.'' [59] It's not clear what the commenter is referring to with this statement. If this commenter wanted OMB to suggest ways agencies can work through their internal and OMB clearance processes to make that process more streamlined, then we agree. OMB should work with agencies to improve and expedite the clearance process. If the commenter is suggesting that OMB change the way IBR approval process works, we disagree with the commenter. Under statute, only the Director can approve agency requests to IBR material into the CFR, OMB may suggest ways to make the process more streamlined but it cannot change the regulations regarding IBR in 1 CFR part 51.

Other commenters offered similar suggestions to ''improve'' the IBR process. One suggestion would be to allow agencies to simply file an updated standard with the OFR. We would file it and the agency would not have to go through the rulemaking process to update its standards. Then, we would periodically annotate the CFR with editorial notes stating that the standard that is codified is no longer applicable. One commenter suggested that if an agency were required by Congress to update the standard, the agency could simply link to that annotation.

Going back to the FRA, the APA, 1 CFR chapters I and II, and the general principles of transparency already discussed, these suggestions are untenable. Notice, whether actual or constructive, is one of the main pillars of our Federal regulatory process. If an agency has given notice, through a final rule codified in the CFR, that a specific standard is required, it can't require something else. And since we don't consider annotations to the CFR part of the regulation, any editor's note we added would be unenforceable. But, we couldn't add such a note because we have no authority to substantively change another agency's regulations.

Another commenter suggested that agencies should be able to remove lengthy ''enforcement policies'' from the CFR and then IBR them. As we've already discussed, however, this would create a shadow system of regulations.

Several other commenters appeared to suggest that we allow and approve material to be IBR'd into preambles, guidance documents, informal procedures, and Notice documents. One theory appears to be that if agencies could IBR material into documents that were not in the CFR, it would be much easier and faster for them to update the standards with new versions. But, as we've already discussed, agencies IBR material in order to enforce compliance with that material. Only material in the CFR can be enforced, so IBR'ing material into documents that aren't enforceable won't meet agency needs. Agencies are already allowed to reference outside material in those documents, so adding a layer of review and approval, while significantly taxing our resources, would not make the IBR process quicker and simpler; it would have the exact opposite effect.

A second theory for expanding IBR to more than final rules seems to be to ensure that the public has access to all material they need to be able to comment on an agency NPRM, even if the agency never intends to IBR the document at a final rule stage. While the OFR endorses this idea, the agency docket is the appropriate (and current) place for this material. 5 U.S.C. § 552(a) clearly discusses IBR in the context of final rules and the requirements that are part of final rules. It is not concerned with ensuring adequate opportunity to comment. Other parts of the APA put that burden on the issuing agency, not on us, see 5 U.S.C. § 553.

A commenter was concerned that we would approve an IBR with a general reference to the Internet, rather than a specific instance, since Web sites and domains can easily change. However, the Director does not approve any ''general references,'' whether online or not. He approves specific editions or versions of specific standards. We strongly encourage agencies to include Web site addresses where the standard can be obtained, but even if that addresses changes, it won't affect the validity of the IBR approval.

e. Concerns Regarding the Misuse of the IBR Process

Several commenters expressed a general concern that allowing agencies to IBR material into the CFR circumvented the requirements of notice and comment rulemaking. One commenter claimed it is inappropriate to IBR consensus standards that have not gone through an economic analysis and an opportunity for broad public comment. The primary concern of this comment is that voluntary consensus organizations don't take into account the economic impact of their consensus standards. Since many standards offer a very complex and stringent protocol that industry can choose to adopt to enhance safety, these standards are not a replacement for a rulemaking because they don't account for the economic impact of the protocols.

As previously stated, we are not subject matter experts in the many subject areas in which agencies request IBR approval of standards into their regulations; we are not able to determine how a standard was developed or if there are alternative standards the agency could IBR instead. We believe it is up to the agency to determine these questions and examine the economic impact on regulated entities during the rulemaking process. We propose that agencies seeking the Director's approval of their IBR requests include in the preambles of their rulemaking documents a discussion of the actions the agency took to ensure the materials were reasonably available to interested parties or summaries of the contents of the materials the agencies are seeking to IBR.

At least 2 commenters raised concerns about the IBR of API's RP/1162 entitled *Public Awareness*.[60] They claim that IBR'ing this standard was a misuse of the IBR process because this standard is not technical in nature. These commenters assert that the NTTAA and OMB Circular A–119 envision that IBR will be limited to technical standards or specifications. They suggest that by IBR'ing this standard on developing a public awareness program to increase public awareness of pipeline operations and safety issues, the agency effectively transferred its authority to issue regulations to the private organization.

FOIA and the regulations in 1 CFR part 51 do not limit IBR approval to only technical standards. We don't have the resources to determine what types of standards are appropriate for an agency to IBR. We assume that agencies have fully considered the impact of any documents they wish to IBR, including whether they are in fact delegating their rulemaking authority to a third-party. We do not review material submitted for IBR to determine if it is technical in nature or is a performance-based requirement; we leave that determination to the agency subject matter experts. We review the IBR'd material to ensure it meets the requirements set out in part 51.

f. Indirect IBR'd Standards

At least 3 commenters raised the issue that some of the IBR'd standards also reference other standards in their text. These commenters stated that obtaining IBR'd material can cost several thousands of dollars a year. One

[59] See NARA–12–0002–0118.

[60] See NARA–12–0002–0077 and NARA–12–0002–0092.

commenter uses, as an example, the ASTM foundry standard, which the commenter said cross-references 35 other consensus standards.[61] These commenters mentioned that these costs may be cumulative, as companies or individuals must purchase multiple layers of IBR'd documents. In sum, these commenters seemed to suggest that OFR mandate that the primary IBR material and all tiered IBR material be placed online to greatly reduce the cost of access to IBR'd standards and expand the number of people who can view the IBR'd standards.

Our regulations have never contained any provision to allow for IBR of anything but the primary standards and, as a practical matter, we have no mechanism for approving anything but those primary standards. The OFR is a procedural agency and we do not have subject matter or policy jurisdiction over any agency or SDO. We must assume that agencies have fully considered the impact of any document, and, by extension, material IBR'd, they publish in the **Federal Register**. In many instances, agencies reference third-party standards in their NPRMs, so both the general public and the regulated public can review and comment on those standards before they are formally IBR'd in the CFR. We do not review material submitted for IBR to determine if it also has other materials IBR'd; we look only at the criteria set out in our regulations. Determining that an agency intends to require some type of compliance with documents referenced in third-party standards is outside our jurisdiction; similarly, we cannot determine whether or not the subject matter of a third-party standard is appropriate for any given agency.

We do recommend to agencies that they carefully consider what standards they wish to IBR and the impact of that standard on the regulated entities. If asked, we would suggest that the agency review the second tier standards to determine if it wished to IBR any of those standards. If the agency decides to IBR any second tier standards we will work with the agency on its IBR approval request for those standards. The agency could opt to discuss those ''second tier'' standards in the preamble.

One commenter stated that we shouldn't reject or delay IBR approval based on secondary references within a standard. For the reasons stated above we don't do this now and our NPRM does not suggest that we begin doing this.

[61] See NARA–12–0002–0147.

g. International Stance—Trade Imbalance, Export Administration Regulations, International Traffic in Arms Regulations

Several commenters expressed concern that granting the petition would create unnecessary problems under U.S. international obligations. These commenters stated that the U.S. standards development system is independent of government control and offers a level of assurance to the world that IBR'd standards are not crafted to establish or encourage trade barriers. They were concerned that any revisions to our regulations could fundamentally undermine this system and would cause the U.S. to lose this competitive advantage. It might also compromise the role that standards play in protecting health, safety, and the environment. These commenters also expressed concern that if the U.S. were to lose its competitive advantage, other countries would be quick to seize the opportunity.

We understand that the U.S. is a party to international agreements under which it is obligated to use relevant international standards in Federal regulations.[62] We strongly recommend that agencies work with the United States Trade Representative, and the Departments of State and Commerce to make sure their regulations meet U.S. international obligations. In part, this is why we decline to grant the petitions request to completely revise our regulations. Instead, we are proposing to revise our regulations to require that agencies discuss in the preambles of their rulemaking documents how the IBR'd materials were made reasonably available under Federal law and policy, including any international obligations if applicable.

One commenter voiced a concern that placing export-controlled information in the public domain could happen if we adopted the changes suggested in the petition. This commenter then stated that this type of information is subject to the Export Administration Regulations (EAR) or controlled by the International Traffic in Arms Regulations (ITAR). The Department of Commerce and the Department of State have the authority over these types of controlled information. This commenter then recommends that any revisions to part 51 include the following language: ''Nothing herein requires or authorizes the release to the public either directly or through incorporation by reference of any information subject to the export control restrictions as promulgated by the U.S. Department of State or the U.S. Department of Commerce.'' [63] Because we are not proposing to require agencies to post all materials IBR'd online, we decline to propose adding the commenter's suggested language to part 51.

[62] See for example, the World Trade Organization Agreement on Technical Barriers to Trade, Article 2.4.

h. OFR Mission

One commenter suggested that OFR needs to focus on a new mission related to IBR and provided the following suggestions related to public domain and privately created documents. In regard to public domain documents, this commenter appeared to recommend that we encourage agencies to IBR agency guidance and other agency documents into guidance documents, preambles, and notice documents.[64] This commenter also seemed to suggest that these types of documents be IBR'd into the CFR; for example, an agency would IBR the preamble of a NPRM into the final rule. Thus, he would have us do away with the current prohibition found in 1 CFR 51.7(c)(1) that prohibits agencies from IBR'ing material that published in the **Federal Register**. He suggested that this would ensure that we maintain archival records of important preambles and agency guidance. However, this misses the point of IBR and of its requirements. Any document that published in the **Federal Register** is automatically part of the Federal record, with its own permanent citation,[65] so IBRing a preamble, for example, would only create a more-complicated citation system with no apparent benefit.

As previously discussed, there is an implied presumption that material developed and published by a Federal agency is inappropriate for IBR by that agency, except in limited circumstances. Otherwise, the **Federal Register** and CFR could become a mere index to material published elsewhere. This runs counter to the central publication system for Federal regulations envisioned by Congress in the FRA and the APA.[66] We do not have the resources to review and approve IBR references in non-regulatory text including guidance documents, preambles, and notice documents. Our focus with IBR approval continues to be placed on CFR regulatory text when agencies wish to require the use of materials not published in the **Federal Register**.

[63] See NARA–12–0002–0134.

[64] See NARA–12–002–0118. This commenter also suggests that the Director IBR the OFR's Document Drafting Handbook into part 51.

[65] See 44 U.S.C. 1507.

[66] 47 FR 34107 (August 6, 1982).

As for privately created materials, this commenter wanted us to focus on helping agencies publish and archive legal materials in secure, electronic formats. This commenter believed 1 CFR part 51 is unnecessarily burdensome and prohibits agencies from using many of the efficient tools the Internet makes available.

We are not the Government Printing Office, whose mission is to help agencies publish and post online agency documents. Our mission is to publish the documents Congress required to be published in the FRA.[67] As for the commenter's suggestion that the current part 51 is burdensome and prohibits agencies from effectively using the Internet, we disagree. The current part 51 provides basic procedural requirements that ensure agencies are referencing IBR'd materials so that it is clear which documents are IBR'd into the CFR. Our requirements also provide that agencies include direct contact information in the regulatory text so that the reader does not have to search for agency and publisher contact information elsewhere. Our regulations allow agencies the flexibility to work with SDOs and other publishers to post the material online or provide other means of access to the materials IBR'd into the CFR.

Finally, this commenter wanted us to work with NIST to create a database with the IBR'd standards. He felt OFR's record schedule for IBR'd materials is burdensome because we accession some material to NARA while it's still IBR'd in current regulations. To correct this, the commenter seemed to suggest the OFR maintain digital scans of all IBR'd material and provide a high quality searchable Web site that links to the CFR and the IBR'd material. This commenter also suggested that we remove contact information from the CFR and maintain it only in this database.

We are happy to work with NIST so that its database of IBR'd standards on *www.standards.gov* is current. Since the NIST database only tracks consensus standards, we will continue to maintain our finding aid of IBR'd materials on the eCFR (*www.ecfr.gov*) to assist people looking for other types of documents that have been IBR'd. As discussed in detail previously, we disagree with the suggestion that Federal law and current technology require that copyright protections no longer apply to materials that have been IBR'd so decline to create a site that provides digital scans of IBR'd materials.[68] Finally, we believe that the contact information for OFR, agencies, and publishers of IBR'd materials is important and needs to remain in the CFR.

i. Miscellaneous Suggestions

One commenter requested that we require agencies to make all outside materials they relied on in drafting the rulemaking documents available online for free. We have statutory authority only with regard to material IBR'd, not to all other material referenced. While we encourage agencies to make that material available, but we cannot require them to do so.[69]

One commenter recommended that we eliminate IBR entirely and make agencies issue performance-based, rather than standards-based regulations. This is well outside our statutory authority. Agencies currently choose whether performance-based or prescriptive regulations, or a hybrid of both, is best for each specific rulemaking, and whether any part of the performance or prescriptive requirements are best found in existing standards. We do not have the authority or the expertise to substitute our judgment for theirs.

Another commenter also raised the issue of conformity assessment.[70] However, that too is outside the scope of our authority, our expertise, and this petition.

One commenter expressed frustration with private corporations and government corruption. Others objected to the idea that regulations could become law without allowing citizens access. One commenter asserted that agencies should not publish regulations individually, that there needed to be a central repository that published regulations which would be available online. He also recommended an elaborate file-naming convention for all regulations and NPRMs, not just those containing IBR material.[71] One submitter provided a copy of OSHA's acceptance of Industrial Consensus Standards from the General Agreement on Tariffs and Trade (GATT), but without explaining its relevance to the petition.[72]

We also received recommendations to:

- Create a government SDO and to nationalize existing standards
- Change the existing SDO model
- Make all standards open-source
- Host all online standards[73]
- Revise the tax code
- Amend HR 2854
- Make all agency drafts publically available
- Have Federal agencies use objective criteria to evaluate the potential IBR of voluntary non-consensus standards
- Analyze how other Federal agencies compile data and meta-data.

The OFR has no authority to create agencies, change how SDOs operate, or amend existing statutes. Further, we cannot make agency drafts publically available. The ACFR regulations,[74] which were upheld by a Federal court,[75] specifically state that we hold all documents in confidence until they are placed on public inspection and filed for publication Finally, we cannot implement changes in other agencies.

One commenter requested that OFR conduct an audit of all IBR'd standards. We decline. The last audit our office undertook lasted several years, with many more staff and many fewer IBR'd standards, and was done shortly after the Director became the sole person authorized to approve IBR requests. This commenter also requested permission to install a high speed copier in our office which non-OFR employees would use to copy and scan IBR'd material. The Antideficiency Act, 31 U.S.C. 1342, prevents us from accepting voluntary services and ethics rules prevent us from accepting gifts. Finally this commenter requested that NARA systematically archive all ANSI standards, even those not IBR'd, to ensure continuing access to these standards. Although we are an office within NARA, we are only involved in archiving records as a client—that is, we send our material for archiving according to our records schedule just like any other Federal agency. We don't

[67] See 44 U.S.C. 1505 and 1510.

[68] Within the past few years, we've begun allowing agencies to submit all electronic IBR approval requests. When agencies choose this request process, they provide us with electronic copies of the materials they wish to IBR. Because we have limited server space, we have a record schedule for these documents as well, so we will still need to research where the IBR'd materials are stored. Thus, having digital copies of documents does not solve the perceived problem.

[69] As noted in section 1, however, agencies are already required to disclose scientific data that they've relied on for rulemaking. *United States* v. *Nova Scotia Food Products Corp.,* 568 F.2d 240 (2d Cir. 1977).

[70] See, for example, NARA–12–0002–0063 and 0067.

[71] Since this describes fairly well the **Federal Register** system, as established in 1935, we agree with the comment regarding centralization of regulations. However, changing how documents are named is outside the scope of this petition.

[72] We do discuss international issues elsewhere in section 10, including the GATT.

[73] Online standards are, by definition, already online, so we see no need to also host them through our domains.

[74] 1 CFR 17.2(a).

[75] *Kennecott Utah Copper Corp.* v. *U.S. Dept. of Interior,* 88 F.3d 1191 (D.C. Cir. 1996).

have the authority to speak on behalf of NARA. In addition, ANSI is not a government agency so OFR has no authority to archive all of its standards.

Regulatory Analysis

The Director developed this NPRM after considering numerous statutes and Executive Orders related to rulemaking. Below is a summary of his determinations with respect to this rulemaking proceeding.

Executive Order 12866

The NPRM has been drafted in accordance with Executive Order 12866, section 1(b), ''Principles of Regulation.'' The Director has determined that this NPRM is a significant regulatory action as defined under section 3(f) of Executive Order 12866. The proposed rule has been submitted to OMB under section 6(a)(3)(E) of Executive Order 12866.

Regulatory Flexibility Act

This NPRM will not have a significant impact on small entities since it imposes requirements only on Federal agencies. Members of the public can access **Federal Register** publications for free through the Government Printing Office's Web site. Accordingly, the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

Federalism

This NPRM has no Federalism implications under Executive Order 13132. It does not impose compliance costs on state or local governments or preempt state law.

Congressional Review

This NPRM is not a major rule as defined by 5 U.S.C. 804(2). The Director will submit a rule report, including a copy of this NPRM, to each House of the Congress and to the Comptroller General of the United States as required under the congressional review provisions of the Small Business Regulatory Enforcement Fairness Act of 1986.

List of Subjects in 1 CFR Part 51

Administrative practice and procedure, Code of Federal Regulations, **Federal Register**, Incorporation by reference.

For the reasons discussed in the preamble, under the authority at 5 U.S.C. 552(a), the Director of the Federal Register, proposes to amend chapter II of title 1 of the Code of Federal Regulations as set forth below:

PART 51—INCORPORATION BY REFERENCE

■ 1. The authority citation for part 51 continues to read:

Authority: 5 U.S.C. 552(a).

■ 2. Revise § 51.3 to read as follows:

§ 51.3 When will the Director approve a publication?

(a)(1) The Director will informally approve the proposed incorporation by reference of a publication when the preamble of a proposed rule meets the requirements of this part (See § 51.5(a)).

(2) If the preamble of a proposed rule does not meet the requirements of this part, the Director will return the document to the agency (See 1 CFR 2.4).

(b) The Director will formally approve the incorporation by reference of a publication in a final rule when the following requirements are met:

(1) The publication is eligible for incorporation by reference (See § 51.7).

(2) The preamble meets the requirements of this part (See § 51.5(b)(2)).

(3) The language of incorporation meets the requirements of this part (See § 51.9).

(4) The publication is on file with the Office of the Federal Register.

(5) The Director has received a written request from the agency to approve the incorporation by reference of the publication.

(c) The Director will notify the agency of the approval or disapproval of an incorporation by reference in a final rule within 20 working days after the agency has met all the requirements for requesting approvals (See § 51.5).

■ 3. Revise § 51.5 to read as follows:

§ 51.5 How does an agency request approval?

(a) In a proposed rule, the agency does not request formal approval but must either:

(1) Discuss the ways in which it worked to make the materials it proposes to incorporate by reference reasonably available to interested parties in the preamble of the proposed rule, or

(2) Summarize the material it proposes to incorporate by reference in the preamble of the proposed rule.

(b) In a final rule, the agency must request formal approval by:

(1) Making a written request for approval at least 20 working days before the agency intends to submit the final rule document for publication;

(2) Discussing, in the preamble, the ways in which it worked to make the materials it incorporates by reference reasonably available to interested parties and how interested parties can obtain the materials;

(3) Sending a copy of the final rule document that uses the proper language of incorporation with the written request (See § 51.9); and

(4) Ensuring that a copy of the publication is on file at the Office of the Federal Register.

(c) Agencies may consult with the Office of the Federal Register at any time with respect to the requirements of this part.

■ 4. In § 51.7, revise paragraph (a) to read as follows:

§ 51.7 What publications are eligible?

(a) A publication is eligible for incorporation by reference under 5 U.S.C. 552(a) if it—

(1) Conforms to the policy stated in § 51.1;

(2) Either:

(i) Is published data, criteria, standards, specifications, techniques, illustrations, or similar material; or

(ii) Substantially reduces the volume of material published in the **Federal Register**; and

(3) Is reasonably available to and usable by the class of persons affected by the publication. In determining whether a publication is usable, the Director will consider—

(i) The completeness and ease of handling of the publication; and

(ii) Whether it is bound, numbered, and organized.

* * * * *

■ 5. In § 51.9, revise paragraphs (a) and (c) to read as follows:

§ 51.9 What is the proper language of incorporation?

(a) The language incorporating a publication by reference must be precise, complete, and clearly state that the incorporation by reference is intended and completed by the final rule document in which it appears.

* * * * *

(c) If the Director approves a publication for incorporation by reference in a final rule, the agency must include—

(1) The following language under the DATES caption of the preamble to the final rule document (See 1 CFR 18.12):

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of _____.

(2) The preamble requirements set out in § 51.5(b).

(3) The term ''incorporation by reference'' in the list of index terms (See 1 CFR 18.20 Identification of subjects in agency regulations).

Dated: September 30, 2013.

Charles A. Barth,

Director, Office of the Federal Register.

[FR Doc. 2013–24217 Filed 9–30–13; 4:15 pm]

BILLING CODE 1505–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0363; Directorate Identifier 2013–NM–031–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) for all Airbus Model A330–200, –300 and –200 Freighter series airplanes, and Model A340–200, –300, –500, and –600 series airplanes. The NPRM proposed to require, for certain airplanes, revising the airplane flight manual (AFM) to advise the flight crew of emergency procedures for addressing Angle of Attack (AOA) sensor blockage. The NPRM also proposed to mandate replacing the AOA sensor conic plates with AOA sensor flat plates, which is a terminating action for the AFM revision. The NPRM was prompted by a report that an airplane equipped with AOA sensors installed with conic plates recently experienced blockage of all sensors during climb, leading to autopilot disconnection and activation of the alpha protection (Alpha Prot) when Mach number was increased. For certain airplanes, this action revises the NPRM by adding a modification of the installation of certain AOA sensor flat plates. We are proposing this AD to prevent reduced control of the airplane. Since these actions impose an additional burden over that proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on these proposed changes.

DATES: We must receive comments on this proposed AD by November 18, 2013.

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

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

For service information identified in this proposed AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com; Internet http://www.airbus.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* 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 MCAI, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–227–1138; fax: 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0363; Directorate Identifier 2013–NM–031–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We proposed to amend 14 CFR part 39 with an earlier NPRM for the specified products, which was published in the **Federal Register** on May 3, 2013 (78 FR 25902). The earlier NPRM proposed to require actions intended to address the unsafe condition for the products listed above.

Actions Since Previous NPRM Was Issued

Since the NPRM (78 FR 25902, May 3, 2013) was issued, Airbus has issued revised service information, identified below, due to an error in the Accomplishment Instructions in the original service information for the installation. For airplanes on which the installation in the original service information was done, the revised service information adds a modification of that installation of the two AOA sensor flat plates on the right-hand side of the fuselage. The modification ensures that both plates are flush with the fuselage.

Revised Service Information

- Airbus Mandatory Service Bulletin A330–34–3293, Revision 01, including Appendix 01, dated June 12, 2013.
- Airbus Mandatory Service Bulletin A340–34–4273, Revision 01, including Appendix 01, dated June 12, 2013.
- Airbus Mandatory Service Bulletin A340–34–5093, Revision 01, including Appendix 01, dated June 12, 2013.

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

Comments

We gave the public the opportunity to comment on the NPRM (78 FR 25902, May 3, 2013). The following presents the comments received on the NPRM and the FAA's response to each comment.

Airbus asked that we replace the original issues of the service information specified in the earlier NPRM (Airbus Mandatory Service Bulletin A330–34–3293, dated January 31, 2013; and Airbus Mandatory Service Bulletins A340–34–4273 and A340–34–5093, both dated January 30, 2013). Airbus stated that revised service information was issued to correct an error in the Accomplishment Instructions of the original issues of the service information, as specified under

the ''Relevant Service Information'' section in the earlier NPRM (78 FR 25902, May 3, 2013).

We agree with the commenter and have replaced the references to accomplishing the actions in accordance with the original issue of the service information in the earlier NPRM (78 FR 25902, May 3, 2013) with accomplishing the actions in accordance with the revised service information identified previously.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Certain changes described above expand the scope of the earlier NPRM (78 FR 25902, May 3, 2013). As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this proposed AD.

Difference Between the Proposed AD and the MCAI or Service Information

The revised service information specifies an imprecise compliance time for modifying the installation of the AOA sensor conic plates (i.e., ''at next C-check at the latest''). The SNPRM would require modifying the installation within 5 months after the effective date of the AD. We have coordinated this difference with the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, and Airbus.

Costs of Compliance

We estimate that this proposed AD affects 64 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
AFM Revision	1 work-hour × $85 per hour = $85	$0	$85	$5,440
Replacement of certain AOA sensor conic plates.	7 work-hours × $85 per hour = $595	0	595	38,080
Modification of installations of certain AOA sensor flat plates.	5 work-hours × $85 per hour = $425	0	425	27,200

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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.

We prepared a regulatory 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 AD:

Airbus: Docket No. FAA–2013–0363; Directorate Identifier 2013–NM–031–AD.

(a) Comments Due Date

We must receive comments by November 18, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Airbus airplanes, certificated in any category, as identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes, all manufacturer serial numbers.

(2) Model A340–211, –212, –213, –311, –312, –313, –541 and –642 airplanes, all manufacturer serial numbers.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 34: Navigation.

(e) Reason

This AD was prompted by a report that an airplane equipped with Angle of Attack (AOA) sensors installed with conic plates recently experienced blockage of all sensors during climb, leading to autopilot disconnection and activation of the alpha protection (Alpha Prot) when Mach number

was increased. We are issuing this AD to prevent reduced control of the airplane.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Airplane Flight Manual Revision

For airplanes identified in paragraphs (g)(1) and (g)(2) of this AD, except as provided by paragraph (j) of this AD: Within 10 days after the effective date of this AD, revise the Emergency Procedures of the Airbus A330 and A340 Airplane Flight Manuals (AFMs), as applicable, by incorporating Airbus A330 Temporary Revision TR293, Issue 1.0, dated December 4, 2012; or Airbus A340 Temporary Revision TR294, Issue 1.0, dated December 4, 2012; as applicable; to advise the flight crew of emergency procedures for addressing AOA sensor blockage. This can be done by inserting the Airbus A330 Temporary Revision TR293, Issue 1.0, dated December 4, 2012; or Airbus A340 Temporary Revision TR294, Issue 1.0, dated December 4, 2012; into the applicable AFM. When the information in Airbus A330 Temporary Revision TR293, Issue 1.0, dated December 4, 2012; and Airbus A340 Temporary Revision TR294, Issue 1.0, dated December 4, 2012; is included in the general revisions of the applicable AFM, the general revisions may be incorporated into the AFM, and the temporary revisions may be removed.

(1) Model A330–201, –202, –203, –223, 223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes, all manufacturer serial numbers, on which Airbus modification 201609 or 201610 has been embodied in production; or on which Airbus Service Bulletin A330–34–3255 has been embodied in service.

(2) Model A340–211, –212, –213, –311, –312, –313, –541, and –642 airplanes, all manufacturer serial numbers, on which Airbus modification 201609 or 201610 has been embodied in production; or on which Airbus Service Bulletin A340–34–4250 or A340–34–5081, as applicable, has been embodied in service.

(h) Replacement

Except as provided by paragraph (j) of this AD: Within 5 months after the effective date of this AD, replace all AOA sensor conic plates having part number (P/N) F3411060200000 or P/N F3411060900000 with an applicable AOA sensor flat plate identified in paragraph (h)(1) or (h)(2) of this AD. Performing this replacement constitutes terminating action for the AFM revision required by paragraph (g) of this AD; and Airbus A330 Temporary Revision TR293, Issue 1.0, dated December 4, 2012, and Airbus A340 Temporary Revision TR294, Issue 1.0, dated December 4, 2012, to the Airbus A330 and A340 AFMs, as applicable, must be removed from the AFMs before further flight after doing the replacement.

(1) Replace with a flat plate having P/N F3411007920200 or P/N F3411007920300, as applicable, in accordance with the applicable service information specified in paragraph (h)(1)(i), (h)(1)(ii), or (h)(1)(iii) of this AD.

(i) Airbus Mandatory Service Bulletin A330–34–3293, Revision 01, including Appendix 01, dated June 12, 2013.

(ii) Airbus Mandatory Service Bulletin A340–34–4273, Revision 01, including Appendix 01, dated June 12, 2013.

(iii) Airbus Mandatory Service Bulletin A340–34–5093, Revision 01, including Appendix 01, dated June 12, 2013.

(2) Replace with a flat plate having P/N F3411007920000 or P/N F3411007920100, in accordance with a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) or its delegated agent.

(i) Modification of Installation

For airplanes on which any AOA sensor conic plate has been replaced with an AOA sensor flat plate, in accordance with the applicable service information specified in paragraph (i)(1)(i), (i)(1)(ii), or (i)(1)(iii) of this AD: Within 5 months after the effective date of this AD, modify the installation of the AOA sensor flat plates so that the plates are flush with the fuselage in accordance with the applicable service information identified in paragraph (h)(1)(i), (h)(1)(ii),or (h)(1)(iii) of this AD.

(i) Airbus Mandatory Service Bulletin A330–34–3293, including Appendix 01, dated January 31, 2013.

(ii) Airbus Mandatory Service Bulletin A340–34–4273, including Appendix 01, dated January 30, 2013.

(iii) Airbus Mandatory Service Bulletin A340–34–5093, including Appendix 01, dated January 30, 2013.

(j) Exception to Paragraphs (g) and (h) of This AD

For airplanes on which Airbus Modification 203285 (improved AOA flat plate protection treatment) has been embodied in production: The actions specified in paragraphs (g) and (h) of this AD are not required, provided that, since first flight, no AOA probe conic plate having P/N F3411060200000 or P/N F3411060900000 has been installed.

(k) Parts Installation Prohibition

As of the effective date of this AD, no person may install, on any airplane, an AOA sensor conic plate having P/N F3411060200000 or P/N F3411060900000 or an AOA protection cover having P/N 98D34203003000.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

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

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information EASA Airworthiness Directive 2013–0023, dated February 1, 2013, for related information, which can be found in the AD docket on the Internet at *http://www.regulations.gov.*

(2) For service information identified in this proposed AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.* You may review copies of the 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.

Issued in Renton, Washington, on September 23, 2013.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–24058 Filed 10–1–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0835; Directorate Identifier 2013–NM–095–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc. Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes. This proposed AD

results from fuel system reviews conducted by the manufacturer. This proposed AD would require accomplishing modifications to the fuel system. We are proposing this AD to prevent 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: We must receive comments on this proposed AD by November 18, 2013.

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

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

For service information identified in this proposed AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* 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 regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Morton Lee, Propulsion Engineer, Propulsion & Services Branch, ANE–173; FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7355; fax 516–794–5531.

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–2013–0835; Directorate Identifier 2013–NM–095–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, combination of failures, and unacceptable (failure) experience. For all three failure criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary 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.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2013–07, dated March 1, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Bombardier Aerospace has completed a system safety review of the aeroplane fuel system against fuel tank safety standards * * *. The identified non-compliances were then assessed * * * to determine if mandatory corrective action is required.
>
> The assessment showed that a number of modifications to the fuel system are required to mitigate unsafe conditions that could result in potential ignition sources within the fuel system.
>
> * * * * *

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier Inc. has issued the following service bulletins. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

- Bombardier Service Bulletin 8–28–35, Revision C, dated January 14, 2013.
- Bombardier Service Bulletin 8–28–36, Revision C, dated October 7, 2009.
- Bombardier Service Bulletin 8–28–39, Revision B, dated August 19, 2009.
- Bombardier Service Bulletin 8–28–41, Revision B, dated August 8, 2012.
- Bombardier Service Bulletin 8–28–42, Revision A, dated October 1, 2008.
- Bombardier Service Bulletin 8–28–43, Revision A, dated June 25, 2009.
- Bombardier Service Bulletin 8–28–44, Revision B, dated July 25, 2009.
- Bombardier Service Bulletin 8–28–47, dated May 2, 2008.

- Bombardier Service Bulletin 8–28–48, Revision A, dated February 27, 2012.
- Bombardier Service Bulletin 8–28–49, Revision A, dated July 23, 2012.
- Bombardier Service Bulletin 8–28–52, dated November 3, 2009.
- Bombardier Service Bulletin 8–28–53, dated November 3, 2008.
- Bombardier Service Bulletin 8–28–55, dated July 23, 2012.
- Bombardier Service Bulletin 8–28–56, dated July 23, 2012.
- Bombardier Service Bulletin 8–28–58, dated July 25, 2011.
- Bombardier Service Bulletin 8–57–44, Revision D, dated October 8, 2008.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD affects 94 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Modifications	519 work-hours × $85 per hour = $44,115	$58,924	$103,039	$9,685,666

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.

We prepared a regulatory 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 AD:

Bombardier, Inc.: Docket No. FAA–2013–0835; Directorate Identifier 2013–NM–095–AD.

(a) Comments Due Date

We must receive comments by November 18, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes; certificated in any category; serial numbers (S/Ns) 002 through 672.

(d) Subject

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

(e) Reason

This AD was prompted by results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent 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

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Modifications—Part I

Within 6,000 flight hours or 36 months, whichever occurs first, after the effective date of this AD, do the modifications specified in paragraphs (g)(1) through (g)(14) of this AD, as applicable.

(1) For airplanes having S/Ns 003 through 624 inclusive: Accomplish Modsum 8Q101512, ''Fuel System—Fuel Tank Mechanical Design, SFAR 88 Compliance (Retrofit),'' Revision G, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–57–44, Revision D, dated October 8, 2008.

(2) For airplanes having S/Ns 003 through 629 inclusive on which a long range fuel system has been installed as specified in Change Request (CR) 828CH00044, CR828SO08061, Special Order Option (SOO) 8061, CR828CH00027, or CF828SO00006: Accomplish Bombardier Modsum 8Q902091, ''Fuel System—Fuel Tank Mech. Design, SFAR 88 Compl.—Extended Range Tank Option (Retrofit),'' Revision C, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–28–39, Revision B, dated August 19, 2009.

(3) For airplanes having S/Ns 003 through 624 inclusive on which SOO 8155, 849SO08155, SOO 8098, SOO 8099, or SOO 6082; or Supplemental Type Certificate SA85–1; or Limited Supplemental Type Certificate W–LSA98–005/D has been incorporated: Accomplish Bombardier Modsum 8Q902144, ''Fuel System—Fuel Tank Mechanical Design, SFAR 88 Compliance—APU Option (Retrofit),''

Revision E, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–28–44, Revision B, dated July 25, 2009.

(4) For airplanes having S/Ns 003 through 624 inclusive: Accomplish Bombardier Modsum 8Q101865, ''Fuel System—Fuel Tank Mechanical Design, SFAR 88 Compliance (Retrofit),'' Revision B, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–28–47, dated May 2, 2008.

(5) For Models DHC–8–102, –103, and –106 having S/Ns 002 through 014 inclusive: Accomplish Bombardier Modsum 8Q101916, ''Fuel System—Fuel Tank Secondary Pressure Relief Valve Rework SFAR 88 Compliance (Retrofit),'' Revision A, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–28–58, dated July 25, 2011.

(6) For airplanes having S/Ns 002 through 629 inclusive on which a long range fuel system has been installed as specified in CR828CH00044, CR828SO08061, SOO 8061, CR828CH00027, or CR828SO00006, including airplanes on which metric refuel/defuel indicators were installed as specified in CR828CH00029: Accomplish Bombardier Modsum 8Q902122, ''Production/Retrofit—Fuel System—Long Range Wiring Installation—SFAR 88 Compliance,'' Revision F, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–28–41, Revision B, dated August 8, 2012.

(7) For airplanes having S/Ns 002 through 619 inclusive with imperial refuel/defuel indicators, excluding airplanes on which a long range fuel system has been installed as specified in CF828CH00044, CR828SO08061, SOO 0861, CF828CH00027, or CR828SO00006: Accomplish Bombardier Modsum 8Q101511, ''Production/Retrofit—Fuel System—Fuel Tank Wiring Installation—SFAR88 Compliance,'' Revision C, in accordance with the Accomplishment Instruction of Bombardier Service Bulletin 8–28–35, Revision C, dated January 14, 2013.

(8) For airplanes having S/Ns 002 through 619 inclusive on which metric refuel/defuel indicators have been installed as specified in CR828CH00020, excluding airplanes on which a long range fuel system has been installed as specified in CR828CH00044, CF828SO08061, SOO 8061, CR828CH00027, or CR828SO00006: Accomplish Bombardier Modsum 8Q901117, ''Production/Retrofit—Fuel System—Metric Indication—Fuel Tank Wiring Installation—SFAR 88,'' Revision C, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–28–43, Revision A, dated June 25, 2009.

(9) For airplanes having S/Ns 003 through 619 inclusive, excluding airplanes that have incorporated Modsum 8Q101652 in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–28–36, Revision A, dated November 17, 2006; or Revision B, dated February 12, 2008: Accomplish Bombardier Modsum 8Q101652, ''Electrical—Fuel Quantity Indication Wire Routing Segregation and Identification,'' Revision F, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–28–36, Revision C, dated October 7, 2009. In addition, for Models DHC–8–102, –103, –106, –201, and –202 airplanes on which an active noise and vibration suppression (ANVS) system has been installed, and on which Modsum 8Q101652 has been incorporated in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–28–36, Revision A, dated November 17, 2006; or Revision B, dated February 12, 2008: Do the actions specified in paragraph (h)(1) of this AD.

(10) For airplanes having S/Ns 003 through 672 inclusive on which Modsum 8Q101513 or 8Q101652 has been installed as specified in CR828CH00044, CR828SO08061, SOO 8061, CR828CH00027, or CR828CO00006, excluding airplanes having a long range fuel system: Accomplish Bombardier Modsum 8Q101907, ''Fuel System—Fuel Qty Ind., Wire Routing Segregation, Installation of Top Hat Support—SFAR88 (Standard Aircraft),'' Revision B, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–28–48, Revision A, dated February 27, 2012.

(11) For airplanes having S/Ns 003 through 619, excluding airplanes on which a long range fuel system has been installed as specified in CR828CH00044, CR828SO08061, SOO 8061, CR828CH00027, or CR828SO00006, and excluding airplanes on which Modsum 8Q101652 was incorporated in accordance with the Accomplishment Instructions in Bombardier Service Bulletin 8–28–36, Revision A, dated November 17, 2006; Revision B, dated February 12, 2008, or Revision C, dated October 7, 2009: Accomplish Modsum 8Q101908, ''Fuel System—Fuel Qty Ind., Wire Routing Segregation, Installation of Dual Spacers—SFAR88 (Standard A/C),'' Revision B, in accordance with the Accomplishment Instruction of Bombardier Service Bulletin 8–28–55, dated July 23, 2012. In addition, for airplanes on which Modsum 8Q101652 was incorporated in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–28–36, dated August 9, 2006; Revision A, dated November 17, 2006; Revision B, dated February 12, 2008; or Revision C, dated October 7, 2009: Do the actions in paragraph (i)(1) of this AD.

(12) For airplanes having S/Ns 002 through 629 inclusive, on which a long range fuel system has been installed as specified in CR828CH00044, CR828SO08061, SOO 8061, CF828CH00027, or CR828SO00006, excluding airplanes on which Modsum 8Q902064 has been incorporated in accordance with the Accomplishment Instructions contained in Bombardier Service Bulletin 8–28–42: Accomplish Bombardier Modsum 8Q902064, ''Electrical—Long Range Fuel Quantity Indication Wire Routing Segregation and Identification—SFAR 88,'' Revision G, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–28–42, Revision A, dated October 1, 2008.

(13) For airplanes having S/Ns 003 through 672 inclusive on which a long range fuel system has been installed as specified in CR828CH00044, CR828SO08061, SOO 8061, CR828CH00027, or CR828SO00006; and with Modsum 8Q902064 and either Modsum 8Q101513 or Modsum 8Q101652: Accomplish Bombardier Modsum 8Q902382, ''Fuel System—Fuel Qty Ind., Wire Routing Segregation, Installation of Top Hat Support—SFAR88 (Long Range Aircraft),'' Revision B, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–28–49, Revision A, dated July 23, 2012.

(14) For airplanes having S/Ns 003 through 629 inclusive on which a long range fuel system has been installed as specified in CR828CH00044, CR828SO08061, SOO 8061, CR828CH00027, or CR828SO00006, excluding airplanes on which Modsum 8Q902064 has been incorporated in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–28–42, dated December 21, 2008 or Revision A, dated October 1, 2008: Accomplish Bombardier Modsum 8Q902383, ''Fuel System—Fuel Qty Ind., Wire Routing Segregation, Installation of Dual Spacers—SFAR88 (Long Range A/C),'' Revision B, including installing dual spacers inside the center fuselage at certain locations, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–28–56, dated July 23, 2012.

(h) Inspections, Modifications, and Corrective Actions—Part II

For the airplanes identified in paragraphs (h)(1), (h)(2), or (h)(3) of this AD: Within 12,000 flight hours or 72 months, whichever occurs first, after the effective date of this AD, do the actions specified in paragraphs (h)(1), (h)(2), and (h)(3) of this AD, as applicable.

(1) For Model DHC–8–102, –103, –106, –201, and –202 airplanes having S/Ns 003 through 619 inclusive, on which an ANVS system has been installed and on which Modsum 8Q101652 has been incorporated in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–28–36, dated August 9, 2006; or Revision A, dated November 17, 2006; or Revision B, dated February 12, 2008: Accomplish Bombardier Modsum 8Q101652, ''Electrical—Fuel Quantity Indication Wire Routing Segregation and Identification,'' Revision F, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–28–36, Revision C, dated October 7, 2009.

(2) For Model DHC–8–102, –103, –106, –201, and –202 airplanes having S/Ns 002 through 629 inclusive, on which an ANVS system has been installed and on which Modsum 8Q902064 has been incorporated in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–28–42, dated December 21, 2008: Accomplish Bombardier Modsum 8Q902064, ''Electrical—Long Range Fuel Quantity Indication Wire Routing Segregation and Identification—SFAR 88,'' Revision G, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–28–42, Revision A, dated October 1, 2008.

(3) For Model DHC–8–102, –103, –106, –201, and –202 airplanes having S/Ns 620 through 666 inclusive, on which an ANVS system has been installed: Do a one-time visual inspection to determine whether the

fuel quantity indicating system (FQIS) wiring harness is routed correctly and relocate if necessary, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–28–52, dated November 3, 2009.

(i) Wire Routing Segregation and Installation of Dual Spacers—Part III

Within 18,000 flight hours or 108 months, whichever occurs first, after the effective date of this AD, do the modification specified in paragraphs (i)(1) and (i)(2) of this AD, as applicable.

(1) For airplanes having S/Ns 003 through 672 inclusive, on which Modsum 8Q101513 has been incorporated or on which Modsum 8Q101652 has been incorporated in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–28–36, dated August 9, 2006; Revision A, dated November 17, 2006; Revision B, dated February 12, 2008; or Revision C, dated October 7, 2009; excluding airplanes on which a long-range fuel system has been installed as specified in CF828CH00044, CR828SO08061, SOO 8061, CR828CH00027, or CR828SO00006: Accomplish Bombardier Modsum 8Q101908, ''Fuel System—Fuel Qty Ind., Wire Routing Segregation, Installation of Dual Spacers—SFAR88 (Standard A/C),'' Revision B, including installing dual spacers inside certain center fuselage locations, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–28–55, dated July 23, 2012.

(2) For airplanes having S/Ns 003 through 672 inclusive on which a long-range fuel system has been installed as specified in CF828CH00044, CR828SO08061, SOO 8061, CR828CH00027, or CR828SO00006, and on which Modsum 8Q902064 has been incorporated, or on which Modsum 8Q902064 has been incorporated in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–28–42, dated December 21, 2008; or Revision A, dated October 1, 2008: Accomplish Bombardier Modsum 8Q902383, ''Fuel System—Fuel Qty Ind., Wire routing Segregation, Installation of Dual Spacers—SFAR88 (Long Range A/C),'' Revision B, including installing dual spacers inside certain center fuselage locations, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–28–56, dated July 23, 2012.

(j) Credit for Previous Actions

(1) This paragraph provides credit for actions required by paragraph (g)(2) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 8–28–39, Revision A, March 15, 2007.

(2) This paragraph provides credit for actions required by paragraph (g)(3) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 8–28–44, dated August 9, 2006; or Revision A, dated November 15, 2006.

(3) This paragraph provides credit for actions required by paragraph (g)(6) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 8–28–41, Revision A, dated April 11, 2007.

(4) This paragraph provides credit for actions required by paragraph (g)(8) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 8–28–43, dated August 10, 2006.

(5) This paragraph provides credit for actions required by paragraph (g)(10) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 8–28–48, dated October 1, 2010.

(6) This paragraph provides credit for actions required by paragraph (g)(13) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 8–28–49, dated October 1, 2010.

(7) This paragraph provides credit for actions required by paragraph (h)(3) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 8–28–53, dated November 3, 2008.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, ANE–170, 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 ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2013–07, dated March 1, 2013, for related information, which can be found in the AD docket on the internet at *http://www.regulations.gov*.

(2) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com*. You may review copies of this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on September 19, 2013.

Ross Landes,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–24077 Filed 10–1–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0836; Directorate Identifier 2013–NM–126–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede airworthiness directive (AD) 2005–07–12 that applies to certain The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. AD 2005–07–12 requires detailed and eddy current inspections to detect cracking of the frame web around the cutout for the doorstop intercostal strap at the aft side of the station (STA) 291.5 frame at stringer 16R, and corrective action if necessary. Since we issued AD 2005–07–12, we received reports of new findings of cracking at various locations of the STA 277 to STA 291.5 frames and intercostals, including webs, chords, clips, and shear ties, between stringers 7R and 17R. This proposed AD would add new inspections for cracking at the forward galley door cutout, and corrective actions if necessary. This proposed AD would also reduce a certain inspection threshold required by AD 2005–07–12. We are proposing this AD to detect and correct fatigue cracking of the aft frame and frame support structure of the forward galley door, which could result in a severed fuselage frame web, rapid decompression of the airplane, and possible loss of the forward galley door.

DATES: We must receive comments on this proposed AD by November 18, 2013.

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 Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Ave. SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* 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: Alan Pohl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6450; fax: 425–917–6590; email: *alan.pohl@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–2013–0836; Directorate Identifier 2013–NM–126–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 March 25, 2005, we issued AD 2005–07–12, Amendment 39–14036 (70 FR 17596, April 7, 2005), for certain The Boeing Company Model 737–100, –200, –300, –400, and –500 series airplanes. AD 2005–07–12 requires repetitive detailed and eddy current inspections to detect cracking of the frame web around the cutout for the doorstop intercostal strap at the aft side of STA 291.5 frame at stringer 16R, and corrective actions if necessary. We issued AD 2005–07–12 to detect and correct fatigue cracking of the aft frame and frame support structure of the forward galley door.

Actions Since AD 2005–07–12, Amendment 39–14036 (70 FR 17596, April 7, 2005) Was Issued

Since we issued AD 2005–07–12, Amendment 39–14036 (70 FR 17596, April 7, 2005) Boeing has received 24 reports of cracking of the STA 291.5 frame web around the doorstop intercostal strap cutout at stringer 16R. There have been 23 reports of cracks propagating down from the lower radius of the cutout on airplanes that had accumulated between 35,597 and 68,133 total flight cycles. Boeing also received one report of a crack propagating outboard from the upper radius through two countersunk fastener locations on an airplane that had accumulated 31,611 total flight cycles. In addition, Boeing received reports of cracking in other areas of the forward galley door cutout that are determined to be safety related.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin 737–53A1241, Revision 1, dated June 11, 2013. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for Docket No. FAA–2013–0836.

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

Although this proposed AD does not explicitly restate the requirements of AD 2005–07–12, Amendment 39–14036 (70 FR 17596, April 7, 2005) this proposed AD would retain all of the requirements of AD 2005–07–12. Those requirements are referenced in the service information identified previously, which, in turn, is referenced in paragraph (h) of this proposed AD. For certain airplanes, this proposed AD would reduce the compliance threshold for a certain inspection. This proposed AD would also require accomplishing the actions identified in the service information identified previously, except as discussed under ''Differences Between the Proposed AD and the Service Information.''

The phrase ''corrective actions'' is used in this proposed AD. ''Corrective actions'' are actions that correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

Differences Between the Proposed AD and the Service Information

Boeing Alert Service Bulletin 737–53A1241, Revision 1, dated June 11, 2013, specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

• In accordance with a method that we approve; or

• Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Costs of Compliance

We estimate that this proposed AD affects 419 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections [retained from AD 2005–07–12, Amendment 39-14036 (70 FR 17596)].	2 work-hours × $85 per hour = $170 per inspection cycle.	None	$170 per inspection cycle.	$71,230 per inspection cycle.
Inspections [new proposed action]	40 work-hours × $85 per hour = $3,400 per inspection cycle.	None	$3,400 per inspection cycle.	$1,424,600 per inspection cycle.

We have received no definitive data that would enable us to provide a cost estimate for the on-condition actions specified in the service information.

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 proposed 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, 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) 2005–07–12, Amendment 39–14036 (70 FR 17596, April 7, 2005), and adding the following new AD:

The Boeing Company: Docket No. FAA–2013–0836; Directorate Identifier 2013–NM–126–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by November 18, 2013.

(b) Affected ADs

This AD supersedes AD 2005–07–12, Amendment 39–14036 (70 FR 17596, April 7, 2005).

(c) Applicability

This AD applies to The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, as identified in Boeing Alert Service Bulletin 737–53A1241, Revision 1, dated June 11, 2013.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of new findings of cracking at various locations of the stations (STA) 277 to STA 291.5 frames and intercostals, including webs, chords, clips, and shear ties, between stringers 7R and 17R. We are issuing this AD to detect and correct fatigue cracking of the aft frame and frame support structure of the forward galley door, which could result in a severed fuselage frame web, rapid decompression of the airplane, and possible loss of the forward galley door.

(f) Compliance

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

(g) Group 1 Airplanes: Inspections and Corrective Actions

For airplanes identified as Group 1 in Boeing Alert Service Bulletin 737–53A1241, Revision 1, dated June 11, 2013: Within 120 days after the effective date of this AD, do inspections for cracking from STA 277 to STA 328, stringer 7R to 17R of the forward galley door cutout, using a method approved in accordance with the procedures specified in paragraph (l) of this AD. Do all applicable corrective actions before further flight using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(h) Group 2 and Group 3 Airplanes: Inspections and Corrective Actions

(1) For airplanes identified as Group 2 and Group 3 in Boeing Alert Service Bulletin 737–53A1241, Revision 1, dated June 11, 2013: Except as provided by paragraph (j)(2) of this AD, at the applicable times specified in tables 1 and 2 in paragraph 1.E, ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1241, Revision 1, dated June 11, 2013, do detailed and surface HFEC inspections, as applicable, for cracking in the forward galley door cutout, in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1241, Revision 1, dated June 11, 2013. Repeat the detailed and surface HFEC inspections thereafter at the applicable intervals specified in tables 1 and 2 in paragraph 1.E, ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1241, Revision 1, dated June 11, 2013. If any crack is found, before further flight, do all applicable corrective actions in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1241, Revision 1, dated June 11, 2013, except as required by paragraph (j)(1) of this AD. Doing the repair in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1241, Revision 1, dated June 11, 2013, terminates the repetitive inspections required by this paragraph for the repaired area only.

(2) Removal and replacement of a cracked part, in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1241, Revision 1, dated June 11, 2013, does not terminate the

repetitive inspections required by paragraph (h)(1) of this AD.

(i) Optional Terminating Action

Accomplishment of the preventive modification on the STA 291.5 frame web, in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1241, Revision 1, dated June 11, 2013, terminates the repetitive inspections required by paragraph (h)(1) of this AD for the area that is common to the preventive modification.

(j) Exceptions to the Service Information

(1) Where Boeing Alert Service Bulletin 737–53A1241, Revision 1, dated June 11, 2013, specifies to contact Boeing for a corrective action: Before further flight, do the applicable action using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(2) Where paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1241, Revision 1, dated June 11, 2013, specifies a compliance time ''after the date on Revision 1 of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(k) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraph (h)(1) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin 737–53A1241, dated June 13, 2002, which is not incorporated by reference in this AD.

(l) Alternative Methods of Compliance (AMOCs)

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

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle 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 the actions specified in AD 2005–07–12, Amendment 39–14036 (70 FR 17596, April 7, 2005), are approved as AMOCs for the corresponding provisions of this AD.

(m) Related Information

(1) For more information about this AD, contact Alan Pohl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6450; fax: 425–917–6590; email: *alan.pohl@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Ave. SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington on September 25, 2013.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–24040 Filed 10–1–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0837; Directorate Identifier 2013–NM–112–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 737–200, –200C, –300, –400, and –500 series airplanes. This proposed AD was prompted by reports of cracking found in the skin at the lower aft corner of the forward entry doorway on airplanes that do not have an airstair door cutout. This proposed AD would require repetitive inspections for cracking in the lower corners of the forward entry doorway on airplanes that do not have an airstair door cutout, and repair if necessary. We are proposing this AD to detect and correct cracking in the lower corners of the forward entry doorway, which could lead to crack progression and consequent rapid decompression of the airplane.

DATES: We must receive comments on this proposed AD by November 18, 2013.

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 Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* 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: Alan Pohl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 917–6450; fax: (425) 917–6590; email: *alan.pohl@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0837; Directorate Identifier 2013–NM–112–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

We have received five reports of cracking found in the skin at the lower aft corner of the forward entry doorway on airplanes that do not have an airstair door cutout. The cracks ranged from 0.25 to 2.0 inches in length. The airplanes had accumulated between 34,813 and 73,083 total flight cycles. Cracking in the lower corners of the forward entry doorway is caused by fatigue loads in the skin and bear strap, and are magnified by local stress concentrations due to the door cutout and edge margin effects at fastener locations near the corner radius. Cracking can also be initiated from impact damage due to a high usage rate of the forward entry door. This condition, if not corrected, could result in crack progression and consequent rapid decompression of the airplane.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin 737–53A1329, dated June 4, 2013. This service bulletin describes procedures for repetitive inspections for cracking in the skin assembly and bear strap at the lower corners of the forward entry doorway. This service bulletin describes the following actions:

- Internal detailed inspection of the skin assembly and bear strap;
- Internal high frequency eddy current (HFEC) inspection of the bear strap;
- External detailed and HFEC inspections of the skin assembly; and,
- Contacting Boeing for inspection (for Group 1 airplanes), inspection (for Groups 2 and 3 airplanes), and crack repair instructions (Group 3 airplanes).

Boeing Alert Service Bulletin 737–53A1329, dated June 4, 2013, specifies compliance times for the initial inspection as before the accumulation of 27,000 total flight cycles or within 4,500 flight cycles after the issue date of the service bulletin, whichever occurs later. The repetitive interval is 4,500 flight cycles. Repairs are to be done before further flight.

Other Relevant Rulemaking

For The Boeing Company Model 737–300, –400, and –500 series airplanes, the repair identified in Boeing Alert Service Bulletin 737–53A1329, dated June 4, 2013, may affect certain areas of Significant Structural Item F–13A inspections required by paragraphs (g) and (h) of AD 2008–09–13, Amendment 39–15494 (73 FR 24164, May 2, 2008).

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 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

Boeing Alert Service Bulletin 737–53A1329, dated June 4, 2013, specifies contacting the manufacturer for inspection instructions (for Group 1 airplanes) and for repair instructions (all airplanes), but this proposed AD would require accomplishing those actions in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization whom we have authorized to make those findings.

This difference has been coordinated with Boeing.

Costs of Compliance

We estimate that this proposed AD affects 376 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection of the lower corners of the forward entry doorway (Groups 2 and 3 airplanes) [1].	5 work-hours × $85 per hour = $425, per inspection cycle.	$0	$425, per inspection cycle	$159,800, per inspection cycle.

[1] We have received no definitive data that would enable us to provide cost estimates for the inspection on Group 1 airplanes.

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

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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):

The Boeing Company: Docket No. FAA–2013–0837; Directorate Identifier 2013–NM–112–AD.

(a) Comments Due Date

We must receive comments by November 18, 2013.

(b) Affected ADs

For The Boeing Company Model 737–300, –400, and –500 series airplanes: Certain requirements of AD 2008–09–13, Amendment 39–15494 (73 FR 24164, May 2, 2008), may be affected by certain requirements of this AD.

(c) Applicability

This AD applies to The Boeing Company Model 737–200, –200C, –300, –400, and –500 series airplanes, certificated in any category, without an airstair door cutout, as identified in Boeing Alert Service Bulletin 737–53A1329, dated June 4, 2013.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of cracking found in the skin at the lower aft corner of the forward entry doorway on airplanes that do not have an airstair door cutout. We are issuing this AD to detect and correct cracking in the lower corners of the forward entry doorway, which could lead to crack progression and consequent rapid decompression of the airplane.

(f) Compliance

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

(g) Repetitive Inspections

Except as provided by paragraph (i)(1) of this AD, at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1329, dated June 4, 2013, do the actions specified in paragraph (g)(1) or (g)(2) of this AD, as applicable.

(1) For Group 1 airplanes, as identified in Boeing Alert Service Bulletin 737–53A1329, dated June 4, 2013: Except as provided by paragraph (i)(2) of this AD, inspect the lower corners of the forward entry doorway for cracking, using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(2) For Group 2 and Group 3 airplanes, as identified in Boeing Alert Service Bulletin 737–53A1329, dated June 4, 2013: At the forward entry doorway lower forward and aft corners, as applicable, do an internal detailed inspection of the skin assembly and bear strap, an internal high frequency eddy current (HFEC) inspection of the bear strap, and external detailed and HFEC inspections of the skin assembly for cracking, in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1329, dated June 4, 2013. If no cracking is found during any inspection required by this paragraph: Except as provided by paragraph (i)(1) of this AD, repeat the applicable inspections at the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1329, dated June 4, 2013.

(h) Repair

(1) If any cracking is found during any inspection required by paragraph (g) of this AD: For Group 3 airplanes with cracking at the aft lower corner of the forward entry doorway, before further flight, repair in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1329, dated June 4, 2013. Accomplishment of this repair terminates the repetitive inspections required by this AD in the area common to the repair for Group 3 airplanes only. For all other cracking found, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(2) Installation of a repair approved in accordance with paragraph (j) of this AD terminates the repetitive inspections required by this AD for the repaired area only.

(i) Exceptions to Service Information Specifications

(1) Where Boeing Alert Service Bulletin 737–53A1329, dated June 4, 2013, specifies a compliance time ''after the original issue date of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) Although Boeing Alert Service Bulletin 737–53A1329, dated June 4, 2013, specifies contacting Boeing for information on certain inspections and repairs, this AD requires that those actions be done by using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by The Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle 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.

(k) Related Information

(1) For more information about this AD, contact Alan Pohl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 917–6450; fax: (425) 917–6590; email: *alan.pohl@faa.gov.*

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

Issued in Renton, Washington, on September 25, 2013.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–24121 Filed 10–1–13; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1983–0002; FRL–9901–59-Region 2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Ludlow Sand & Gravel Superfund Site

AGENCY: United States Environmental Protection Agency.

ACTION: Proposed rule; notice of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region 2 is issuing a Notice of Intent to Delete the Ludlow Sand & Gravel Superfund Site (Site), located in Paris, New York, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). EPA and the State of New York, through the New York State Department of Environmental Conservation, have determined that all appropriate response actions under CERCLA, other than monitoring and maintenance and five-year reviews, have been completed. However, the deletion does not preclude future action under Superfund.

DATES: Comments must be received by November 1, 2013.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1983–0002, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: rodrigues.isabel@epa.gov.*
- *Fax:* To the attention of Isabel Rodrigues at 212–637–4284.
- *Mail:* To the attention of Isabel Rodrigues, Remedial Project Manager, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 20th Floor, New York, NY 10007–1866.
- *Hand Delivery:* Superfund Records Center, 290 Broadway, 18th Floor, New York, NY 10007–1866 (telephone: 212–637–4308). Such deliveries are only accepted during the Record Center's normal hours of operation (Monday to Friday from 9:00 a.m. to 5:00 p.m.). Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–1983–0002: EPA's policy is that all comments received will be included in the Docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or via email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comments. If you send comments to EPA via email, your email address will be included as part of the comment that is placed in the Docket and made available on the Web site. If you submit electronic comments, EPA recommends that you include your name and other contact information in the body of your comments and with any disks or CD–ROMs that you submit. If EPA cannot read your comments due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comments. Electronic files should avoid the use of special characters and any form of encryption and should be free of any defects or viruses.

Docket: All documents in the Docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available Docket materials can be viewed electronically at *http://www.regulations.gov* or obtained in hard copy at:

U.S. Environmental Protection Agency, Region 2, Superfund Records Center, 290 Broadway, 18th Floor, New York, NY 10007–1866, Phone: 212–637–4308, Hours: Monday to Friday from 9:00 a.m. to 5:00 p.m., and

Town of Paris, Town Hall, 2580 Sulphur Springs Road, Sauquoit, NY 13456–0451, Phone: 315–839–5400, Hours: Monday-Thursday from 9:00 a.m. to 4:00 p.m., Friday from 9:00 a.m. to 12:00 p.m., and

NYSDEC Central Office, 625 Broadway, Albany, NY 12233–7016, Phone: 518–402–9775, Hours: Monday-Friday from 9:00 a.m. to 5:00 p.m., Please call for an appointment, and

NYSDEC Region 6 Sub-Office, State Office Building, 207 Genesee Street, Utica, NY 13501, Phone: 315–793–2555, Hours: Monday-Friday from 8:30 a.m. to 4:45 p.m., Please call for an appointment.

FOR FURTHER INFORMATION CONTACT: Isabel Rodrigues, Remedial Project Manager, by mail at Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 20th floor, New York, NY 10007–1866; telephone at 212–637–4248; fax at 212–637–4284; or email at *rodrigues.isabel@epa.gov.*

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' Section of today's **Federal Register**, EPA is publishing a direct final Notice of Deletion of the Site without prior Notice of Intent to Delete because EPA views this as a noncontroversial revision and anticipate no adverse comment. EPA has explained its reasons for this deletion in the preamble to the direct final Notice of Deletion. If EPA receives no adverse comment(s) on this Notice of Intent to Delete or the direct final Notice of Deletion, EPA will proceed with the deletion without further notice on this Notice of Intent to Delete. If EPA receives adverse comment(s), EPA will withdraw the direct final Notice of Deletion and it will not take effect. EPA will, as appropriate, address all public comments in a subsequent final Notice of Deletion based on this Notice of Intent to Delete. EPA will not institute a second comment period on this Notice of Intent to Delete. Any parties interested in commenting must do so at this time.

For additional information, see the direct final Notice of Deletion, which is located in the ''Rules'' section of this **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: September 20, 2013.

Judith A. Enck,

Regional Administrator, EPA, Region 2.

[FR Doc. 2013–24115 Filed 10–1–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 121

RIN 0906–AB02

Change to the Definition of ''Human Organ'' Under Section 301 of the National Organ Transplant Act of 1984

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice seeks public comment on the proposed change in the definition of ''human organ'' in section

301 of the National Organ and Transplant Act of 1984, as amended, (NOTA) to explicitly incorporate hematopoietic stem cells (HSCs) within peripheral blood in the definition of ''bone marrow.'' This would clarify that the prohibition on transfers of human organs for valuable consideration applies to HSCs regardless of whether they were recovered directly from bone marrow (by aspiration) or from peripheral blood (by apheresis). This amendment will also conform section 301 to the provisions of the Stem Cell Research and Therapeutic Act of 2005, as amended.

DATES: To be considered, comments should be submitted by December 2, 2013. Subject to consideration of the comments submitted, the Department intends to publish final regulations.

ADDRESSES: You may submit comments, identified by Regulatory Information Number RIN 0906–AB02, by any of the following methods, but the first option is preferred:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Agency Web site: http://www.hrsa.gov/.* Follow the instructions for submitting comments on the Agency Web site.
- *Email: SGrant@hrsa.gov.* Include RIN 0906–AB02 in the subject line of the message.
- *Fax:* (301) 594–6095.
- *Mail:* Shelley Grant, MHSA, Branch Chief, Blood Stem Cell Transplantation Program, Division of Transplantation, Healthcare Systems Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 12C–06, Rockville, Maryland 20857.

Instructions: All submissions must include the agency name and RIN for this rulemaking. All comments received will be posted without change to *http://www.hrsa.gov/*, including any personal information provided. Additional information concerning the submission of comments and/or the rulemaking process can be obtained from the Regulations Officer, Division of Policy Information and Coordination, Health Resources and Services Administration, 5600 Fishers Lane, Room 14–101, Rockville, Maryland 20857.

Docket: For access to the docket to read background documents or comments received, go to the Division of Transplantation, Healthcare Systems Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 12C–06, Rockville, Maryland 20857, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m. To schedule an appointment to view public comments, phone (301) 443–7757.

FOR FURTHER INFORMATION CONTACT: Shelley Grant, MHSA, at the above address; telephone number (301) 443–8036.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Background

Congress enacted the National Organ Transplant Act of 1984 (NOTA), Public Law 98–507, to develop a national comprehensive policy regarding organ transplantation. Within NOTA, section 301 criminalizes the transfer of organs for use in human transplantation for ''valuable consideration.'' ''Human organ'' is defined to include ''bone marrow * * * or any subpart thereof'' or any organ specified by the Secretary in regulation. NOTA section 301(c)(1) [codified at 42 U.S.C. 274e(c)(1)]. The law criminalizes the transfer of any human organ for valuable consideration with a fine of up to $50,000 and imprisonment up to five years. Though the general prohibition has been in place since 1984, Congress has made numerous amendments to NOTA and otherwise has focused recurring attention on organ and bone marrow donation and transplantation. In 1988, Congress specifically amended section 301 to broaden the definition of ''human organ'' to include ''any subpart thereof.'' Organ Transplant Amendments of 1988, Pub. L. 100–607, section 407, 102 Stat. 3048, 3116 (Nov 4, 1988). Congress again amended section 301 in 2007 to exclude paired donation from the definition of ''valuable consideration.'' Charlie Norwood Living Organ Donation Act. Sec. 102, Public Law 110–144, section 102, 121 Stat. 1813 (2007).

When enacted, NOTA provided for a demonstration study on the feasibility of a ''national registry of voluntary bone marrow donors.'' Sec. 401, Public Law 98–507, 98 Stat. 2347 (1984). In 1988, in the same law which broadened the definition of organ to ''any subpart thereof,'' Congress directed the Secretary to establish a national bone marrow registry. Sec. 404, Public Law 100–607, 102 Stat. 3116 (1988). Subsequently, Congress established the National Bone Marrow Donor Registry. Transplant Amendments Act of 1990. Sec.101, Public Law 101–616, 104 Stat. 3279 (1990). The National Bone Marrow Donor Registry is now called the C.W. Bill Young Cell Transplantation Program, Public Law 109–129, 119 Stat. 2250 (2005) [42 U.S.C. 274k, *et seq.*]. Enacted in 2005, and reauthorized in 2010, the statute defines ''bone marrow'' as ''the cells found in adult bone marrow *and* peripheral blood.'' 42 U.S.C. 274l–1 (emphasis added).

B. Scientific Development

Hematopoietic stem cells (HSCs) originate in the spongy tissue within bones commonly referred to as ''bone marrow'' and give rise to mature blood cells, namely red blood cells, white blood cells, and platelets. HSCs are found in the highest concentration in bone marrow and in lower concentrations in circulating (peripheral) blood. What are commonly referred to as ''bone marrow'' transplants are actually transplants of hematopoietic stem cells, regardless of source. ''Bone marrow'' transplantation (*i.e.,* HSC transplantation) is commonly used to treat certain blood cancers like leukemia, other blood diseases like aplastic anemia, and immune-deficiency diseases.

Until recently, available techniques required that HSCs be obtained from the marrow by inserting a needle into the marrow to extract liquid containing the HSCs. The extracted material is then put through a filtration process to separate HSCs from other marrow components and concentrate them, before the HSCs are then transplanted into the transplant recipient. This type of HSC collection is known as the ''aspiration method.''

Under a newer process, known as peripheral blood stem cell apheresis, donors receive five daily injections of an HSC stimulating drug that causes increased production and mobilization of HSCs from the bone marrow into the circulating blood stream (peripheral blood). Once these drug doses have been administered, a sufficient quantity and concentration of HSCs become available for retrieval in a donor's peripheral blood. At this point, a needle is inserted into one of the donor's peripheral or central veins, and his or her blood then passes through an apheresis machine that isolates and collects the hematopoietic stem cells. The remaining blood components are then returned to the donor through the intravenous catheter. The apheresis collection procedure can take up to eight hours. Most apheresis donations occur in one daylong session, although some are completed over the course of two days. A donor's total blood volume is run through the process three to five times to collect a sufficient number of hematopoietic stem cells necessary for successful transplantation. The C.W. Bill Young Cell Transplantation Program and its predecessor program, the National Bone Marrow Donor Registry, have coordinated apheresis donations since 1999. U.S. General

Accounting Office, *Bone Marrow Transplants: Despite Recruitment Success, National Program may be Underutilized* 6 (2002). Hematopoietic stem cells themselves have always been recognized as the critical component of bone marrow donation. *Thomas' Hematopoietic Cell Transplantation* 36–37, 72–7, 618 (Frederick Appelbaum, *et al.,* eds. 4th ed. 2009).

Though safer and less invasive than aspiration, apheresis still carries risks to the donor. Side-effects of the HSC stimulating drug may include rupture of the spleen or a low platelet count (thrombocytopenia). There may also be serious risks related to the placement of a central venous line in larger veins (jugular, subclavian, or femoral) in donors without adequate peripheral vein access. More importantly, aspiration is the medically indicated method of donation for a substantial number of transplants. *American Society of Hematology,* ''Increased Incidence of Chronic Graft-Versus-Host Disease (GVHD) and No Survival Advantage with Filgrastim-Mobilized Peripheral Blood Stem Cells (PBSC) Compared to Bone Marrow (BM) Transplants From Unrelated Donors: Results of Blood and Marrow Transplant Clinical Trials Network (BMT CTN) Protocol 0201, a Phase III, Prospective, Randomized Trial,'' Anasetti, Claudio, Confer, Dennis, *et al.,* 2011; *Biology of Blood and Marrow Transplantation,* ''Peripheral Blood Grafts from Unrelated Donors Are Associated with Increased Acute and Chronic Graft-Versus-Host Disease without Improved Survival,'' Eapen, Mary, Anasetti, Claudio, *et al.,* 2007. It is important to note that, even assuming the relative safety of apheresis, a substantial number of potential transplant recipients will continue to require HSCs obtained by aspiration.

Congress has consistently updated the law as advances in organ donation technology have been made. As noted above, Congress expanded the scope of NOTA's definition of organ in 1988 to include ''any subpart thereof.'' In the 2005 Act, Congress defined ''bone marrow'' to include HSCs in the ''peripheral blood.'' And, as previously stated, Congress expressly granted the Secretary authority to define organs through regulation as the field of transplantation evolves.

C. Litigation

On March 27, 2012, a panel of the United States Ninth Circuit Court of Appeals issued an opinion holding that bone marrow donors may be compensated if the apheresis method of donation is used. *Flynn* v. *Holder,* 684 F.3d 852 (9 Cir. 2012). The plaintiffs in the case alleged that the ban on sale of ''bone marrow'' under NOTA lacked a ''rational basis'' under the equal protection clause of the Fifth Amendment. Plaintiffs sought to operate a program offering $3,000 awards, in the form of scholarships, housing allowances, or gifts to charity, to bone marrow donors. The district court found multiple rational bases for the prohibition. However, the Ninth Circuit panel held there was no constitutional question since the apheresis method of marrow harvesting was not covered by the statutory prohibition on the transfer of organs for ''valuable consideration.''

In rejecting the government's arguments that bone marrow included HSCs in the peripheral blood, the Ninth Circuit panel instead focused on the recent development of apheresis technology as foreclosing the possibility that Congress intended the NOTA, when enacted, to cover HSCs in the blood stream. Since apheresis was not used to procure HSCs in 1984, the Court held that Congress could not have intended HSCs obtained through this method to fall under the ban in section 301. Therefore, the Ninth Circuit panel believed that the non-commodification principle and other negative consequences Congress sought to avoid were not relevant to HSCs in the peripheral blood. Importantly, however, the Ninth Circuit panel did recognize in its written opinion that the Secretary had regulatory authority to define peripheral blood stem cells as organs. The effect of exercising this authority through this proposed amendment is to clarify that HSCs are covered by the prohibition on transfers of human organs for valuable consideration found in NOTA section 301(c)(1) [codified at 42 U.S.C. 274e(c)(1)].

While focused on the proposal of the plaintiffs before it, the Court's holding does not limit the compensation donors can demand to scholarships, housing allowances, or charitable gifts. Particularly in light of the much more stringent matching required between donor and recipient for HSC transplants to be successful, the opportunities for exploitation of those in medical need of HSC transplantation are much greater than for solid organ transplantation.

II. Proposed Rule

In light of the Congressional, Departmental, and scientific community's long understanding of bone marrow as encompassing HSCs in peripheral blood, the Department is proposing to amend the definition of ''human organ'' in section 301 to explicitly include HSCs in peripheral blood as part of the definition of ''bone marrow'' for the purposes for section 301. Notwithstanding the Ninth Circuit's decision in the *Flynn* case, the statute expresses a Congressional intent to ban the commodification of HSCs that are used in human transplants, curb opportunities for coercion and exploitation, encourage altruistic donations, and decrease the likelihood of disease transmission resulting from paid donations. Furthermore, the Department has clear regulatory authority to clarify the regulatory definition of ''human organ'' to make explicit that the prohibition applies to both types of collection methods (apheresis and aspiration)—authority that the Ninth Circuit expressly recognized.

For these reasons, the Department is proposing to amend 42 CFR 121.13 to read: ''Human organ'' as covered by section 301 of the National Organ Transplant Act, as amended, means the human (including fetal) kidney, liver, heart, lung, pancreas, bone marrow and other hematopoietic stem/progenitor cells without regard to the method of their collection, cornea, eye, bone, skin, and intestine, including the esophagus, stomach, small and/or large intestine, or any portion of the gastrointestinal tract.'' The Department has amended, and proposed to amend, the definition of ''human organ'' on several occasions, as medical knowledge has progressed. *See* 72 FR 10616 (March 9, 2007) (defining prohibition in section 301 to include intestines), and 76 FR 78216 (December 16, 2011) (proposing to include vascularized composite allografts in the definition of ''human organ''). The proposed change will clarify that the meaning of ''bone-marrow,'' for purpose of the prohibition, does not hinge on the collection method used to obtain the cells. The proposed change to the definition of ''human organ'' in section 301 does not affect the Food and Drug Administration's regulation of whole blood and blood components, and of human cells, tissues, and cellular-and tissue-based products (HCT/Ps).

III. Impact Analysis

Executive Order 12866 and Paperwork Reduction Act

Economic and Regulatory Impact

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that provide the greatest net benefits (including potential economic, environmental, public health, safety, distributive, and equity effects).

In addition, under the Regulatory Flexibility Act, if a rule has a significant economic effect on a substantial number of small entities the Secretary must specifically consider the economic effect of a rule on small entities and analyze regulatory options that could lessen the impact of the rule.

The Secretary has determined that minimal resources are required to implement the requirements in this rule because the organizations involved (*e.g.,* marrow registries and transplant hospitals) currently implement their programs in accordance with the procedures announced in this proposed rule. Therefore, in accordance with the Regulatory Flexibility Act of 1980 (RFA), and the Small Business Regulatory Enforcement Act of 1996, which amended the RFA, the Secretary certifies that this rule will not have a significant impact on a substantial number of small entities.

The Secretary also has determined that this proposed rule does not meet the criteria for a major rule as defined by Executive Order 12866 and would not have a major effect on the economy or Federal expenditures. We have determined that the proposed rule is not a major rule within the meaning of the statute providing for Congressional Review of Agency Rulemaking, 5 U.S.C. 801. Similarly, it will not have effects on state, local, and tribal governments or on the private sector such as to require consultation under the Unfunded Mandates Reform Act of 1995.

The provisions of this rule will not affect the following elements of family well-being: Family safety, family stability, marital commitment; parental rights in the education, nurture, and supervision of their children; family functioning, disposable income, or poverty; or the behavior and personal responsibility of youth, as determined under section 654(c) of the Treasury and General Government Appropriations Act of 1999.

Section 202 (a) of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits before issuing any rule that includes a federal mandate that could result in expenditure in any one year by state, local, or tribal governments, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. The current threshold after adjustment for inflation using the Implicit Price Deflator for Gross Domestic Product is about $141 million. This rule would not meet or exceed that threshold.

This rule is not economically significant under section 3(f) of Executive Order 12866 and is not being treated as a ''significant regulatory action'' under section 3(f). Accordingly, the rule has not been reviewed by the Office of Management and Budget.

As stated above, this proposed rule would modify the regulations governing the nation's Organ Procurement and Transplantation Network (OPTN) and section 301 of NOTA based on legal authority.

Paperwork Reduction Act of 1995

The amendments proposed in this Rule will not impose any additional data collection requirements beyond those already imposed under the current information collection requirements, which have been approved by the Office of Management and Budget (OMB No. 0915–0310). The currently approved data collection includes worksheets and burden for all marrow transplants.

List of Subjects in 42 CFR Part 121

Healthcare, Hospitals, Organ transplantation.

Dated: September 19, 2013.

Mary K. Wakefield,

Administrator, Health Resources and Services Administration

Approved: September 25, 2013.

Kathleen Sebelius,

Secretary.

Therefore, under the authority of section 301 of NOTA, as amended, and for the reasons stated in the preamble, the Department proposes to amend 42 CFR part 121 as follows:

PART 121—ORGAN PROCUREMENT AND TRANSPLANTATION NETWORK

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

Authority: Sections 215, 371–376 of the Public Health Service Act (42 U.S.C. 216, 273–274d); sections 1102, 1106, 1138 and 1871 of the Social Security Act (42 U.S.C. 1302, 1306, 1320b-8 and 1395hh); and section 301 of the National Organ Transplant Act, as amended (42 U.S.C. 274e).

■ 2. Section 121.13 is revised to read as follows:

§ 121.13 Definition of human organ under section 301 of the National Organ Transplant Act of 1984, as amended.

''Human organ,'' as covered by section 301 of the National Organ Transplant Act, as amended, means the human (including fetal) kidney, liver, heart, lung, pancreas, bone marrow and other hematopoietic stem/progenitor cells without regard to the method of their collection, cornea, eye, bone skin, and intestine, including the esophagus, stomach, small and/or large intestine, or any portion of the gastrointestinal tract.''

[FR Doc. 2013–24094 Filed 10–1–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–HQ–ES–2013–0073; FXES11130900000C2–134–FF09E32000]

RIN 1018–AY00

Endangered and Threatened Wildlife and Plants; Removing the Gray Wolf (Canis lupus) From the List of Endangered and Threatened Wildlife and Maintaining Protections for the Mexican Wolf (Canis lupus baileyi) by Listing It as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; announcement of public hearing.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), recently published a proposal to remove the gray wolf from the List of Endangered and Threatened Wildlife (List) but to maintain endangered status for the Mexican wolf by listing it as a subspecies (*Canis lupus baileyi*). On September 5, 2013, we announced three public hearings on the proposed rule and extended the public comment period to October 28, 2013. We now announce an additional public hearing to be held on October 17, 2013, in Denver, Colorado.

DATES: *Written Comments:* The public comment period on the proposal to remove the gray wolf from the List of Endangered and Threatened Wildlife but to maintain endangered status for the Mexican wolf by listing it as a subspecies is open through October 28, 2013. Please note that 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. If you are submitting your comments by hard copy, please mail them by October 28, 2013, to ensure that we receive them in time to give them full consideration.

Public Hearings: We will hold a public hearing on October 17, 2013, from 6 p.m. to 8:30 p.m. in Denver, Colorado.

ADDRESSES: *Written Comments:* You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Search for FWS–HQ–ES–2013–0073, which is the docket number for this rulemaking. Please ensure you have found the correct document before submitting your comments. 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. Submissions of electronic comments on our Proposed Revision to the Nonessential Experimental Population of the Mexican Wolf, which also published in the **Federal Register** on June 13, 2013, should be submitted to Docket No. FWS–R2–ES–2013–0056 using the method described above.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–HQ–ES–2013–0073; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

(3) *At the public hearing:* Written comments will be accepted by Service personnel at the public hearing.

We will post all comments that we receive on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

Public Hearing: The public hearing will be held at: Paramount Theatre, 1621 Glenarm Place, Denver, Colorado 80202; (303) 405–1245.

FOR FURTHER INFORMATION CONTACT: Headquarters Office, Ecological Services; telephone (703) 358–2171. Direct all questions or requests for additional information to: GRAY WOLF QUESTIONS, U.S. Fish and Wildlife Service, Headquarters Office, Ecological Services, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203. Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 1–800–877–8337 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Public Hearings

We are holding a public hearing on the date listed in **DATES** at the location listed in **ADDRESSES**. For information on additional public hearings related to this proposed rulemaking action, see our previous notice of public hearings that published in the **Federal Register** on September 5, 2013, at 78 FR 54614.

We are holding public hearings to provide interested parties the opportunity to present verbal testimony (formal, oral comments) or written comments regarding the June 13, 2013 (78 FR 35664), proposal to remove the gray wolf from the List and maintain protections for the Mexican wolf by listing it as endangered. A public hearing is not, however, an opportunity for dialogue with the Service or its contractors; it is a forum for accepting formal verbal testimony. Anyone wishing to make an oral statement at the public hearings for the record is encouraged to provide a written copy of their statement to us at the hearings. In the event of a large attendance, the time allotted for oral statements may be limited. Speakers can sign up at the hearings 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 the public hearings should contact the Headquarters Office (see **FOR FURTHER INFORMATION CONTACT**). Reasonable accommodation requests should be received at least 3 business days prior to the hearing to help ensure availability; at least 2 weeks prior notice is requested for American-sign-language or English-as-a-second-language interpreter needs.

Public Comments

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. In particular, we are seeking targeted information and comments on our proposed removal of *C. lupus* from the List of Endangered and Threatened Wildlife and addition of *C. l. baileyi* as an endangered subspecies. We also seek comment on the following categories of information.

(1) Biological, commercial trade, or other relevant information concerning our analysis of the current *C. lupus* listed entity and the adequacy of the approach taken in this analysis, with particular respect to our interpretation of the term ''population'' as it relates to the 1996 Policy Regarding the Recognition of Distinct Vertebrate Population Segments (DPS policy) (61 FR 4722, February 7, 1996) and specifically to gray wolves.

(2) Information concerning the genetics and taxonomy of the eastern wolf, *Canis lycaon.*

(3) Information concerning the status of the gray wolf in the Pacific Northwest United States and the following gray wolf subspecies: *Canis lupus nubilus, Canis lupus occidentalis,* and *C. l. baileyi,* including:

(a) Genetics and taxonomy;

(b) New information concerning range, distribution, population size, and population trends;

(c) New biological or other relevant data concerning any threat (or lack thereof) to these subspecies, their habitat, or both; and

(d) New information regarding conservation measures for these populations, their habitat, or both.

As this proposal is intended to replace our May 5, 2011, proposal to remove protections for *C. lupus* in all or portions of 29 eastern contiguous States (76 FR 26086), we ask that any comments previously submitted that may be relevant to the proposal presented in this rule be resubmitted at this time.

Please note that 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. You may submit your comments and materials by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**. Verbal testimony may also be presented during the public hearings (see **DATES** and **ADDRESSES** sections).

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* If you provide personal identifying information, such as your street address, phone number, or email address, 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 some of the supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–HQ–ES–2013–0073, or by appointment, during normal business hours at U.S. Fish and Wildlife Service, Headquarters Office, Endangered Species Program, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203.

Our final determination concerning the proposed action will take into

consideration all written comments we receive during all comment periods, comments from peer reviewers, and comments received during the public hearings. The comments will be included in the public record for this rulemaking, and we will fully consider them in the preparation of our final determination.

If you previously submitted comments or information on this proposed rule, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and will fully consider them in the preparation of our final determination.

Authors

The primary authors of this notice are the Ecological Services staff of the Headquarters Office, U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 24, 2013.

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2013–24104 Filed 10–1–13; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 78, No. 191
Wednesday, October 2, 2013

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Senior Executive Services (SES) Performance Review Board: Update

AGENCY: U.S. Agency for International Development, Office of Inspector General.

ACTION: Notice.

SUMMARY: This notice is hereby given of the appointment of members of the updated U.S. Agency for International Development, Office of Inspector General's Senior Executive Service Performance Review Board.

DATES: September 23, 2013

FOR FURTHER INFORMATION CONTACT: Robert S. Ross, Assistant Inspector General for Management, Office of Inspector General, U.S. Agency for International Development, 1300 Pennsylvania Avenue NW., Room 8.08–029, Washington, DC 20523–8700; telephone 202–712–0010; FAX 202–216–3392; Internet Email address: *rross@usaid.gov* (for Email messages, the subject line should include the following reference—USAID OIG SES Performance Review Board).

SUPPLEMENTARY INFORMATION: 5 U.S.C. 4314 (b)(c) requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management at 5 CFR part 430, subpart C and Section 430.307 thereof in particular, one or more SES Performance Review Boards. The board shall review and evaluate the initial appraisal of each USAID OIG senior executive's performance by his or her supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive. This notice updates the membership of the USAID OIG's SES Performance Review Board as it was last published on October 12, 2012.

Approved: September 23, 2013.

The following have been selected as regular members of the SES Performance Review Board of the U.S. Agency for International Development, Office of Inspector General:

Lisa Risley, Assistant Inspector General for Investigations
Robert S. Ross, Assistant Inspector General for Management
Lisa S. Goldfluss, Legal Counsel
Alvin A. Brown, Deputy Assistant Inspector General for Audit
Melinda Dempsey, Deputy Assistant Inspector General for Audit
Lisa McClennon, Deputy Assistant Inspector General for Investigations
Winona Varnon, Deputy Chairman for Management and Budget, National Endowment for the Arts
Robert Peterson, Assistant Inspector General for Inspections, Department of State
Richard Clark, Deputy Assistant Inspector General, Investigations, Department of Labor

Dated: September 20, 2013.

Michael Carroll,

Acting Inspector General.

[FR Doc. 2013–24075 Filed 10–1–13; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596–AD13

Proposed Directive for Additional Seasonal or Year-Round Recreation Activities at Ski Areas

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed directive; request for public comment.

SUMMARY: The Forest Service is proposing to revise its directives for ski areas authorized under the National Forest Ski Area Permit Act of 1986 (Ski Area Permit Act) (16 U.S.C. 497b) to provide additional guidance for implementing the 2011 amendment to this Act, known as the Ski Area Recreational Opportunity Enhancement Act (SAROEA) (Pub. L. 112–46, 125 Stat. 538). Current directives limit the criteria for determining whether additional seasonal and year-round recreation activities may be approved at ski areas to those listed in SAROEA. The proposed directives would add criteria to help Authorized Officers determine whether proposals for these activities are consistent with SAROEA. The proposed directive also would provide guidance on non-exclusive use at ski areas, that is, recreational use at ski areas, such as snowshoeing or cross-country skiing, by the non-paying public. Furthermore, the proposed directive would clarify policy regarding advertising. Timely comments will be considered in the development of the final directive.

DATES: Comments must be received in writing by December 2, 2013.

ADDRESSES: Submit comments electronically by following the instructions at the Federal eRulemaking portal at *http://www.regulations.gov.* Comments also may be submitted by mail to USDA Forest Service Ski Area Comments, Pacific Southwest Regional Office, 1323 Club Drive, Vallejo, CA 94592. If comments are submitted electronically, duplicate comments should not be sent by mail. Hand-delivered comments will not be accepted, and receipt of comments cannot be confirmed. Please confine comments to issues pertinent to the proposed directive, explain the reasons for any recommended changes, and, where possible, reference the specific section and wording being addressed. All comments, including names and addresses when provided, will be placed in the record and will be made available to the public for review and copying. Those wishing to review comments should call Sean Wetterberg at 707–562–8842 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Sean Wetterberg, Acting National Winter Sports Program Manager, 707–562–8842. Individuals who use telecommunication devices for the deaf may call the Federal Information Relay Service at 800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Daylight Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

1. Background and Need for the Proposed Directive

Most of the 122 ski areas operating on National Forest System (NFS) lands in the United States are authorized under a special use permit issued per the Ski Area Permit Act. As originally enacted, the Ski Area Permit Act authorized Nordic and alpine skiing at ski areas on NFS lands. On November 7, 2011,

Congress enacted SAROEA, which amended the Ski Area Permit Act to authorize additional seasonal and year-round recreation activities and associated facilities that may be approved at ski areas. SAROEA contains a non-exhaustive list of additional seasonal and year-round recreation activities and associated facilities that may, if certain criteria are met, be approved and a non-exhaustive list of additional seasonal and year-round recreation activities and associated facilities that may not be approved at ski areas. On August 5, 2013, the Forest Service amended FSM 2340 to incorporate the self-executing portions of SAROEA, that is, the list of additional seasonal and year-round activities and associated facilities that may be authorized at ski areas and the criteria that must be met for those activities to be authorized.

Summer uses at ski areas, both on private and NFS lands, have been increasing in recent years. This increase has been driven in part by new technologies and by the growing number of people seeking recreation activities in more managed settings. Some of these summer uses, such as zip lines, canopy tours (often a combination of zip lines, suspension bridges, and belay points), and mountain bike parks, can be natural-resource based, encourage outdoor recreation and enjoyment of nature, and harmonize with the natural environment, consistent with SAROEA. Other summer uses have facilities that are common at amusement parks, such as merry-go-rounds, Ferris wheels, miniature train rides, and roller coasters, that do not meet the criteria in SAROEA. Given recent trends in use at ski areas, the Agency believes that it would be helpful to ski area permit holders and permit administrators to add criteria into policy for determining whether proposals for additional seasonal and year-round recreation activities and associated facilities are consistent with SAROEA. The Agency also believes that it will be helpful to include the list of additional seasonal and year-round recreation activities and associated facilities that are prohibited at ski areas based on the exclusions in SAROEA. This list of prohibited activities and facilities is not included in the current directive (published August 5, 2013) because its purpose was to allow authorization of only those additional seasonal and year-round recreation activities and associated facilities that are specifically permitted under SAROEA. Therefore, there was no need in the current directive to list additional seasonal and year-round recreation activities and associated facilities that are precluded under SAROEA.

The Agency recognizes that additional seasonal and year-round recreation activities and associated facilities are important to the long-term viability of ski areas, and that the more managed outdoor recreation settings at ski areas could introduce urban-based population segments, especially youth, to outdoor recreation. This exposure could build a deeper appreciation for nature that could lead to further exploration of NFS lands beyond ski areas. Further guidance on authorization of additional seasonal and year-round recreation activities and associated facilities at ski areas will help permit administrators review proposals for these activities consistent with these objectives and SAROEA.

Forest Service regulations and ski area permits provide that authorized uses of NFS lands are not exclusive, and that the Forest Service may require common use of the lands or use by others in any way that is not inconsistent with the permit holder's rights and privileges, after consultation with all affected parties. Several ski areas on NFS lands have experienced a significant increase in the number of recreationists using snowshoes or cross-country skis or simply traveling on foot on slopes within ski areas. The Agency has identified a need to address how this type of public use may be conducted efficiently and safely. Consequently, the proposed directives would provide guidance on recreational use at ski areas by the non-paying public.

2. Section-by-Section Analysis of Proposed Changes to FSM 2340, Publicly Provided Recreation Opportunities

2340.5—Definitions

Definitions would be added for ''amusement park,'' ''amusement park ride,'' and ''natural resource-based recreation'' because they are used in the proposed directive to help determine what types of additional seasonal or year-round recreation activities and associated facilities are appropriate at ski areas. The definition for Terrain Park would be revised to add bicycles.

2343.03—Policy (Concession Uses Involving Privately Developed Facilities)

Proposed Paragraph 11.d

The paragraph would be modified to add ''business partners'' to the list of entities that may display their name and logo on company vehicles.

Proposed Paragraph 11.f

The title and text would be revised to add ''recreation events'' to clarify that temporary approval of outdoor advertising is not limited to competitive events.

Proposed Paragraph 11.g

The text would be revised to add ''race gates'' to the locations where support for snow sport race courses and terrain parks may be recognized.

2343.11—Policy (Ski Areas)

Proposed Paragraph 3

The list of allowable additional seasonal and year-round recreation activities and associated facilities in SAROEA that was included in this paragraph would be relocated to FSM 2343.14. New paragraph 3 would provide direction to encourage additional seasonal or year-round recreation opportunities at ski areas that connect visitors to the natural environment and that support the Forest Service's mission. This paragraph would establish a broad framework to guide proposals for additional seasonal or year-round recreation activities and associated facilities at ski areas.

Proposed Paragraph 4

The list of factors governing additional seasonal or year-round recreation activities and associated facilities that was included in this paragraph would be relocated to FSM 2343.14. New paragraph 4 would be added to clarify that ski area permit holders may be allowed to charge fees for use of improvements and services in which they have made capital investments, such as ski trails or other facilities they constructed, groom, or otherwise maintain, and to clarify that ski area permit holders may not be allowed to charge for use of non-motorized or motorized trails that are constructed and maintained by the Forest Service.

Proposed Paragraph 5

The text regarding utilization of existing facilities included in this paragraph would be relocated to FSM 2343.14. New paragraph 5 would preclude authorization of an entrance fee at ski areas, and would allow authorization of fees for facilities and services the holders provide, such as lifts, parking lots, and slopes and trails that have been cleared, graded, groomed or covered with manmade snow. Additionally, this paragraph would encourage authorized officers to ensure that some portions of the permit area remain open to the public without

charge, so that the holder's charges do not constitute de facto entrance fees.

Proposed Paragraph 6

The text regarding the basis for modifying acreage under a ski area permit that was included in this paragraph would be relocated to FSM 2343.14. New paragraph 6 would direct Authorized Officers to ensure that ski area operations comply with Forest Service regulations and permit requirements for non-exclusive use and that ski areas remain open to the non-paying public for all lawful uses that are not inconsistent with the holder's rights and privileges. Additionally, this paragraph would require documentation in the operating plan of authorized restrictions on use by the non-paying public and posting of those restrictions in locations where they would be effective in informing the public. This paragraph also would provide that in most cases it would not be appropriate for restrictions to preclude all public use during the ski season other than by those purchasing a lift ticket or paying for other services.

2343.14—Additional Seasonal or Year-Round Recreation Activities and Associated Facilities at Ski Areas

Proposed Paragraph 1

Paragraph 1 would include criteria in addition to those enumerated at 36 CFR 251.54(e)(1) to be applied during initial screening of proposals involving additional seasonal or year-round recreation activities and associated facilities at ski areas. These additional initial screening criteria include all the requirements in SAROEA that must be met for authorization of additional seasonal and year-round recreation activities and associated facilities at ski areas, except for consistency with applicable law and the applicable land management plan. These additional criteria include not changing the primary purpose of the ski area to other than snow sports; encouraging outdoor recreation and enjoyment of nature and providing natural resource-based recreation opportunities; to the extent practicable, being located within the developed portions of the ski area or areas that will be developed pursuant to a master development plan; and, to the extent practicable, harmonizing with the natural environment of the site where they would be located. Including consistency with applicable law and the applicable land management plan in paragraph 1 would be redundant, as this criterion is already included in initial screening of special use proposals under 36 CFR 251.54(e)(1)(i) and (e)(1)(ii). The requirement ''to the extent practicable, to be located within the developed portions of the ski area'' was modified to require, to the extent practicable, location within the portions of the ski area that are developed or that will be developed pursuant to the master development plan. Locations in a ski area that are zoned for development pursuant to a master development plan may become developed portions of the ski area.

In addition, the Agency is proposing to clarify what is meant by harmonizing with the natural environment of the site where the proposed activities would be located by providing that they must:

(1) Be visually subordinate to the ski area's existing vegetation and landscape, and

(2) Not require significant modifications to topography to facilitate construction or operations.

The Agency is also proposing to add that the proposed additional seasonal or year-round recreation activities and associated facilities must:

(1) Be consistent with the level of development for snow sports and the zoning established in the ski area's master development plan;

(2) Not compromise snow sports operations or functions; and

(3) Increase utilization of snow sports infrastructure and not require extensive new support facilities, such as parking lots, restaurants, and lifts.

These additional criteria are consistent with the criteria in SAROEA. Consistency with the master development plan is akin to consistency with the applicable land management plan. Since SAROEA provides that snow sports must remain paramount at ski areas on NFS lands, additional seasonal and year-round recreation activities and associated facilities must not compromise snow sports operations or functions. Requiring that proposals for these activities increase utilization of snow sports infrastructure and not require extensive new support facilities is consistent with the requirements not to change the primary purpose of the ski area to other than snow sports and to be located in the developed portions of the ski area. Thus, these additional criteria would assist ski area permit holders in developing proposals for these activities that meet the requirements of SAROEA and would assist Authorized Officers in evaluating these proposals consistent with SAROEA.

Proposed Paragraph 2

This paragraph lists the four additional seasonal or year-round recreation activities and associated facilities enumerated in SAROEA (zip lines, mountain bike terrain parks and trails, Frisbee golf courses, and ropes courses) that may be approved if they meet the criteria in proposed paragraph 1. This list is not exhaustive. Other additional seasonal or year-round recreation activities and associated facilities may meet the criteria in proposed paragraph 1.

Proposed Paragraph 3

This paragraph lists the five additional seasonal or year-round recreation activities and associated facilities enumerated in SAROEA (tennis courts, water slides and water parks, swimming pools, golf courses, and amusement parks) that may not be approved at ski areas on NFS lands. This list is not exhaustive. Other additional seasonal or year-round recreation activities and associated facilities may not meet the criteria in proposed paragraph 1.

Proposed Paragraph 4

This paragraph would enumerate a non-exhaustive list of factors that may affect whether other additional seasonal or year-round recreation activities and associated facilities besides those listed in paragraph 2 may be approved, including but not limited to extensive use of synthetic materials, the degree to which visitors are able to engage with the natural setting, the extent to which the activity could be expected to lead to further exploration and enjoyment of other NFS lands, and the similarity of the activities and associated facilities to those enumerated in paragraph 2 or paragraph 3. These factors would assist in application of the criteria in paragraph 1 and would help establish similarity to activities and associated facilities listed in paragraph 2 or paragraph 3. For example, extensive use of synthetic materials and the extent to which an activity and associated facilities could be expected to lead to further exploration and enjoyment of other NFS lands may affect whether a proposed activity and associated facilities would encourage outdoor recreation and enjoyment of nature, provide natural resource-based recreation opportunities, and harmonize with the natural environment. The speed at which visitors travel and are able to engage with the natural setting may affect whether a proposed activity and associated facilities are more like a zip line or more like an amusement park ride.

Proposed Paragraph 5

Consistent with the requirement in SAROEA that additional seasonal and year-round recreation activities and

associated facilities provide natural resource-based recreation opportunities, paragraph 5 would provide that attributes common in national forest settings must be essential to the recreation experience provided by additional seasonal and year-round recreation activities and associated facilities.

Proposed Paragraph 6

This paragraph would allow temporary activities at ski areas that rely on existing infrastructure, such as concerts and weddings, even if they are not necessarily dependent on but could be enhanced by a National Forest setting. This paragraph also would preclude authorizing new facilities solely for these temporary activities.

Proposed Paragraph 7

Paragraph 7 would encourage holders to utilize existing facilities to provide additional seasonal or year-round recreation activities. This paragraph was previously codified at FSM 2343.11, paragraph 5.

Proposed Paragraph 8

This paragraph would provide for utilization of master development plans to guide the placement and design of additional seasonal or year-round recreation facilities. Additionally, this paragraph would require the following three steps to be followed as part of the master development planning process, in this sequence: (1) Establish zones to guide placement and design of additional seasonal or year-round recreation facilities, basing the zones on the existing natural setting and level of development to support snow sports, (2) depict the location of the facilities, and (3) establish a timeframe for their construction. These requirements would provide a consistent planning framework for the development of additional seasonal or year-round recreation facilities, thereby avoiding piece-meal development, and would ensure that the level of development supporting snow sports is not exceeded by the level of development supporting facilities for additional seasonal or year-round recreation activities.

Proposed Paragraph 9

Paragraph 9 would provide for use of the Forest Service's Scenery Management System (FSM 2380), Built Environment Image Guide (Publication FS–710), and Recreation Opportunity Spectrum (FSM 2310) to ensure that additional seasonal or year-round recreation activities and associated facilities are located and constructed to harmonize with the surrounding natural environment.

Proposed Paragraph 10

Consistent with SAROEA, this paragraph would provide that authorization of additional seasonal or year-round recreation activities and associated facilities is subject to terms and conditions deemed appropriate by the authorized officer. This provision was previously codified at FSM 2343.11, paragraph 4c.

Proposed Paragraph 11

Consistent with SAROEA, paragraph 11 would provide that the acreage necessary for additional seasonal or year-round recreation activities and associated facilities may not be considered in determining the acreage encompassed by a ski area permit and that permit area expansions must be based on needs related to snow sports rather than additional seasonal or year-round recreation. This provision was previously codified at FSM 2343.11, paragraph 6.

Proposed Paragraph 12

Consistent with SAROEA, this paragraph would provide that additional seasonal or year-round recreation activities and associated facilities that were authorized before enactment of SAROEA and that do not meet the criteria in the preceding paragraphs of FSM 2343.14 may continue to be authorized during the term of the current permit. Also consistent with SAROEA, this paragraph would provide that when the current permit terminates or is revoked, these non-conforming activities and associated facilities may not be reauthorized.

Proposed Paragraph 13

Consistent with SAROEA, this paragraph would provide that proposals for additional seasonal and year-round recreation activities and associated facilities at ski areas that comply with paragraphs 1 through 12 may be approved notwithstanding FSM 2340.3, paragraph 3, and 2343.03, paragraph 1, which preclude authorization of development on NFS lands if it could be provided on non-NFS lands in the vicinity.

3. Section-by-Section Analysis of Proposed Change to FSM 2710, Special Uses

2711.3—Term Permits

A new subsection 2711.32 would be added, entitled Ski Area Term Permit, that would refer readers to FSM 2721.61e for more information on these types of permits.

4. Section-by-Section Analysis of Proposed Changes to FSH 2709.14, Recreation Special Uses Handbook

Chapter 10—Organizational Camps and Other Privately Owned Improvements

13.2—Policy

New paragraph 9 would be added to provide for the proposal, authorization, construction, operation, and maintenance of zip lines and ropes courses at organizational camps. This paragraph would also provide direction to require a site plan showing the placement of facilities and addressing how access will be restricted, require that design and construction conform to standards in FSM 7330, and require an operating plan that conforms to FSM 7330 and restricts access to these facilities to times of supervised operation. Additionally, a cross-reference to FSM 2340 and 7330 would be added for further guidance.

Chapter 60—Winter Recreation Resorts and Other Concessions Involving Winter Sports

61.1—Ski Area Term Permit

The heading for section 61.1 would be changed to ''Ski Area Term Permit'' to clarify that ski area permits are term permits and to be consistent with the wording in FSM 2711.3. Consistent with SAROEA, paragraph 12 would be added to direct that the acreage necessary for additional seasonal or year-round recreation activities and associated facilities may not be considered in determining the acreage encompassed by a ski area term permit. Also, permit expansions would have to be based on needs related to snow sports rather than additional seasonal or year-round recreation.

5. Regulatory Certifications

Environmental Impact

These proposed directives would revise national Forest Service policy governing ski area permits issued under the Ski Area Permit Act. Forest Service regulations at 36 CFR 220.6(d)(2) exclude from documentation in an environmental assessment or environmental impact statement ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.'' The Agency has concluded that these proposed directives fall within this category of actions and that no extraordinary circumstances exist which would require preparation of an

environmental assessment or environmental impact statement.

Regulatory Impact

These proposed directives have been reviewed under USDA procedures and Executive Order (E.O.) 12866 on regulatory planning and review. The Office of Management and Budget has determined that these proposed directives are not significant. These proposed directives would increase opportunities for recreation activities at ski areas consistent with SAROEA. These proposed directives would not have an annual effect of $100 million or more on the economy, nor would they adversely affect productivity, competition, jobs, the environment, public health and safety, or State or local governments. These proposed directives would not interfere with an action taken or planned by another agency, nor would they raise new legal or policy issues. Finally, these proposed directives would not alter the budgetary impact of entitlement, grant, or loan programs or the rights and obligations of beneficiaries of those programs. Accordingly, these proposed directives are not subject to the Office of Management and Budget review under E.O. 12866.

Moreover, the Agency has considered these proposed directives in light of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). Pursuant to a threshold Regulatory Flexibility Act analysis, the Agency has determined that these proposed directives would not have a significant economic impact on a substantial number of small entities as defined by the Act because these proposed directives would not impose new record-keeping requirements on them; affect their competitive position in relation to large entities; or significantly affect their cash flow, liquidity, or ability to remain in the market.

To the contrary, these proposed directives would likely have a positive economic effect on ski areas and local communities because these proposed directives would enhance opportunities for recreation activities at ski areas. These benefits are not likely to alter costs to small businesses.

No Takings Implications

The Agency has analyzed these proposed directives in accordance with the principles and criteria contained in E.O. 12630 and has determined that these proposed directives would not pose the risk of a taking of private property.

Civil Justice Reform

The Agency has reviewed these proposed directives under E.O. 12988 on civil justice reform. If these proposed directives were adopted, (1) all State and local laws and regulations that conflict with these proposed directives or that would impede their full implementation would be preempted; (2) no retroactive effect would be given to these proposed directives; and (3) they would not require administrative proceedings before parties may file suit in court challenging their provisions.

Federalism and Consultation and Coordination with Indian Tribal Governments

The Agency has considered these proposed directives under the requirements of E.O. 13132 on federalism and has concluded that these proposed directives conform with the federalism principles set out in this E.O.; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the Agency has determined that no further assessment of federalism implications is necessary at this time.

Moreover, these proposed directives do not have tribal implications as defined by E.O. 13175, entitled ''Consultation and Coordination With Indian Tribal Governments,'' and therefore advance consultation with Tribes is not required.

Energy Effects

The Agency has reviewed these proposed directives under E.O. 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.'' The Agency has determined that these proposed directives do not constitute a significant energy action as defined in the E.O.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Agency has assessed the effects of these proposed directives on State, local, and Tribal governments and the private sector. These proposed directives would not compel the expenditure of $100 million or more by any State, local, or Tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Controlling Paperwork Burdens on the Public

These proposed directives do not contain any new record-keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Any information collected from the public that would be required by these proposed directives have been approved by the Office of Management and Budget and assigned control number 0596–0082. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

4. Access to the Proposed Directive

The Forest Service organizes its directive system by alphanumeric codes and subject headings. The intended audience for this direction is Forest Service employees charged with issuing and administering ski area permits. To view these proposed directives, visit the Forest Service's Web site at *http://www.fs.fed.us/specialuses.* Only the sections of the FSM that are the subject of this notice have been posted, that is, FSM 2340.5, Definitions; FSM 2343.11, Policy; 2343.14, Additional Seasonal or Year-Round Recreation Activities and Associated Facilities at Ski Areas; FSM 2711.32, Ski Area Term Permit; FSH 2709.14, chapter 10, section 13.2; and FSH 2709.14, chapter 60, section 61.1.

Dated: September 26, 2013.

Thomas L. Tidwell,

Chief, U.S. Forest Service.

[FR Doc. 2013–23998 Filed 10–1–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Request for Extension and Revision of a Currently Approved Information Collection Under the Packers and Stockyards Act

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice and request for comments.

SUMMARY: This notice announces the Grain Inspection, Packers and Stockyards Administration's (GIPSA) intention to request approval from the Office of Management and Budget (OMB) for an extension of a currently approved information collection in support of the reporting and

recordkeeping requirements under the Packers and Stockyards Act of 1921, as amended and supplemented (P&S Act). This approval is required under the Paperwork Reduction Act of 1995 (PRA).

DATES: We will consider comments that we receive by December 2, 2013.

ADDRESSES: We invite you to submit comments on this notice. You may submit comments by any of the following methods:

- Internet: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- Hardcopy: Mail, hand deliver, or courier to Dexter Thomas, GIPSA, USDA, 1400 Independence Avenue SW., Room 2530–S, Washington, DC 20250–3604.
- Fax: (202) 690–2173.

Instructions: All comments should refer to the date and page number of this issue of the **Federal Register**. The comments and other documents relating to this action will be available for public inspection during regular business hours.

FOR FURTHER INFORMATION CONTACT: Catherine M. Grasso, Program Analyst, Policy and Litigation Division at (202) 720–7201 or *Catherine.M.Grasso@usda.gov.*

SUPPLEMENTARY INFORMATION: GIPSA administers and enforces the P&S Act (7 U.S.C. 181–229, 229c). The P&S Act prohibits unfair, deceptive, and fraudulent practices by livestock market agencies, dealers, stockyard owners, meat packers, swine contractors, and live poultry dealers in the livestock, poultry, and meatpacking industries.

Title: Packers and Stockyards Program Reporting and Recordkeeping Requirements.

OMB Number: 0580–0015.

Expiration Date of Approval: March 31, 2014.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The P&S Act and the regulations issued under the P&S Act authorize the collection of information for the purpose of enforcing the P&S Act and regulations and for conducting studies requested by Congress. Through the forms in this information collection, GIPSA's Packers and Stockyards Program (P&SP) gathers information that keeps P&SP current on the ownership and operations of regulated entities which permit P&SP oversight of the regulated entities. For example, P&SP gathers information regarding the number of head of livestock purchased and the cost of the livestock to determine if the entity is adequately bonded to protect the livestock sellers. The information regarding the amount of livestock purchased is also consolidated for public reporting in GIPSA's annual report. Other financial information is gathered to determine if the regulated entities are operating while solvent as required by the P&S Act. This information collection is necessary for GIPSA to monitor and examine financial, competitive, and trade practices in the livestock, meat packing, and poultry industries. The purpose of this notice is to solicit comments from the public concerning GIPSA's information collection.

Estimate of Burden: Public reporting and recordkeeping burden for this collection of information is estimated to average 1.73 hours per response.

Respondents (Affected Public): Livestock auction markets, livestock dealers, packer buyers, meat packers, and live poultry dealers.

Estimated Number of Respondents: 22,900.

Estimated Number of Responses per Respondent: 3.2.

Estimated Total Annual Burden on Respondents: 348,328 hours.

As required by the PRA (44 U.S.C. 3506(c)(2)(A)) and its implementing regulations (5 CFR 1320.8(d)(1)(i)), GIPSA specifically requests comments on: (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 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.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Authority: 44 U.S.C. 3506 and 5 CFR 1320.8.

Larry Mitchell,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2013–23976 Filed 10–1–13; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Request for Extension and Revision of a Currently Approved Information Collection Under the Clear Title Program

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice and request for comments.

SUMMARY: This notice announces the Grain Inspection, Packers and Stockyards Administration's (GIPSA) intention to request approval from the Office of Management and Budget (OMB) for an extension of a currently approved information collection in support of the reporting and recordkeeping requirements under the ''Clear Title'' regulations as authorized by Section 1324 of the Food Security Act of 1985, as amended (Act). This approval is required under the Paperwork Reduction Act of 1995 (PRA).

DATES: We will consider comments that we receive by December 2, 2013.

ADDRESSES: We invite you to submit comments on this notice. You may submit comments by any of the following methods:

- *Internet:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Hardcopy:* Mail, hand deliver, or courier to Dexter Thomas, GIPSA, USDA, 1400 Independence Avenue SW., Room 2530–S, Washington, DC 20250–3604.
- *Fax:* (202) 690–2173

Instructions: All comments should refer the date and page number of this issue of the **Federal Register.** The comments and other documents relating to this action will be available for public inspection during regular business hours.

FOR FURTHER INFORMATION CONTACT: Catherine M. Grasso, Program Analyst, Policy and Litigation Division at (202) 720–7201, or *Catherine.M.Grasso@usda.gov.*

SUPPLEMENTARY INFORMATION: GIPSA administers the Clear Title Program under the Act (7 U.S.C. 1631) for the Secretary of Agriculture (Secretary). Regulations implementing the Clear Title Program require that States implementing central filing system for notification of liens on farm products have such systems certified by the Secretary. These regulations are contained in 9 CFR 205, ''Clear Title—

Protection for Purchasers of Farm Products.'' Nineteen States have certified central filing systems currently.

Title: ''Clear Title'' Regulations to implement section 1324 of the Food Security Act of 1985.

OMB Number: 0580–0016.

Expiration Date of Approval: May 31, 2014.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The information is needed to carry out the Secretary's responsibility for certifying a State's central filing system under section 1324 of the Act. Section 1324 of the Act enables States to establish central filing systems to notify potential buyers, commission merchants, and selling agents of security interests (liens) against farm products. The Secretary has delegated authority to GIPSA for certifying these systems. Currently, 19 States have certified central filing systems. The purpose of this notice is to solicit comments from the public concerning our information collection.

Estimate of Burden: Public reporting and recordkeeping burden for this collection of information is estimated to be 5 to 40 hours per response (amendments to certified systems require less time, new certifications require more time).

Respondents (Affected Public): States seeking certification of central filing systems to notify buyers of farm products of any mortgages or liens on the products.

Estimated Number of Respondents: Less than 1 per year. However, since the enactment of the Food Conservation and Energy Act of 2008, otherwise known as the 2008 Farm Bill, which amended the Act to allow States to maintain master debtor lists with Social Security numbers or taxpayer identification numbers that are encrypted for security purposes, we have had 3 requests for amendments.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 5–40 hours.

As required by the PRA (44 U.S.C. 3506(c)(2)(A)) and its implementing regulations (5 CFR 1320.8(d)(1)(i)), GIPSA specifically requests comments on: (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 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.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Authority: 44 U.S.C. 3506 and 5 CFR 1320.8.

Larry Mitchell,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2013–23973 Filed 10–1–13; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Funding Availability for the Biorefinery Assistance Program

AGENCY: Rural Business-Cooperative Service, United States Department of Agriculture (USDA).

ACTION: Notice.

SUMMARY: This Notice announces the acceptance of applications for funds available under the Biorefinery Assistance Program (the ''Program'') to provide guaranteed loans for the development and construction of commercial-scale biorefineries or for the retrofitting of existing facilities using eligible technology for the development of advanced biofuels. This Notice announces approximately $76 million in carry over budget authority that will support a program level of approximately $181 million.

DATES: Applications must be received in the USDA Rural Development National Office no later than 4:30 p.m. local time on January 30, 2014, to compete for program funds. Any application received after 4:30 p.m. local time on January 30, 2014, regardless of the application's postmark, will not be considered under this Notice.

ADDRESSES: Applications and forms may be obtained from:

- USDA, Rural Development, Business Programs, Energy Division, Attention: Biorefinery Assistance Program, 1400 Independence Avenue SW., STOP 3225, Washington, DC 20250–3225.
- Agency Web site: *http://forms.sc.egov.usda.gov/eForms.* Follow instructions for obtaining the application and forms.

Submit an original completed application with two copies to USDA's Rural Development National Office, Business Programs, Energy Division, Attention: Biorefinery Assistance Program, 1400 Independence Avenue SW., STOP 3225, Washington, DC 20250–3225.

FOR FURTHER INFORMATION CONTACT: Todd Hubbell, Rural Development, Business Programs, Energy Division, Biorefinery Assistance Program, USDA, 1400 Independence Avenue SW., Mail Stop 3225, Washington, DC 20250–3225. Telephone: 202–690–2516. Email: *Todd.Hubbell@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the information collection requirements associated with the Program, as covered in this Notice, has been approved by the Office of Management Budget (OMB) under OMB Control Number 0570–0065.

Overview

Federal Agency Name: Rural Business-Cooperative Service (an Agency of USDA in the Rural Development mission area).

Solicitation Opportunity Title: Biorefinery Assistance Program.

Announcement Type: Initial announcement. Catalog of Federal Domestic Assistance (CFDA) Number: The CFDA number for this Notice is 10.865.

Dates: Complete applications must be received in the USDA Rural Development National Office no later than 4:30 p.m. local time on January 30, 2014, in order to be considered for funds made available under this Notice. Any application received after 4:30 p.m. local time on January 30, 2014, regardless of the application's postmark, will not be considered.

Availability of Notice and Rule: This Notice and the interim rule for the Program are available on the USDA Rural Development Web site at *http://www.rurdev.usda.gov/BCP_Biorefinery.html.*

I. Funding Opportunity Description

A. *Purpose of the Program.* The purpose of this Program is to assist in the development and construction of commercial-scale biorefineries and the retrofitting of existing facilities using eligible technology for the development of advanced biofuels. The Agency will make guarantees available on loans for eligible projects that will provide for the development, construction, and/or retrofitting of commercial biorefineries

using eligible technology, as defined in 7 CFR 4279.202(a).

B. *Statutory Authority.* This Program is authorized under 7 U.S.C. 8103. Regulations are contained in 7 CFR Part 4279, subpart C and in 7 CFR Part 4287, subpart D.

C. *Definition of Terms.* The definitions applicable to this Notice are published at 7 CFR 4279.202(a) and 7 CFR 4287.302.

For the purposes of this Notice, a local owner is defined as ''An individual who owns any portion of an eligible advanced biofuel biorefinery and whose primary residence is located within 50 miles of the biorefinery.''

D. *Application awards.* The Agency will review, evaluate, and score applications received in response to this Notice based on the provisions found in 7 CFR 4279, subpart C and as indicated in this Notice. However, the Agency advises all interested parties that the applicant bears the burden in preparing and submitting an application in response to this Notice.

II. Award Information

A. *Available funds.* This Notice provides approximately $76 million in available budget authority that will support a program level of approximately $181 million. Program funds are subject to the characteristics of the loan applications received.

B. *Type of Award.* Guaranteed loan.

C. *Approximate Number of Awards.* To be determined.

D. *Guarantee Loan Funding.* The provisions of 7 CFR 4279.229 apply to this Notice. The borrower needs to provide the remaining funds from other non-Federal sources to complete the project.

E. *Guarantee and Annual Renewal Fees.* The guarantee and annual renewal fees specified in 7 CFR 4279.226 are applicable to this Notice.

F. *Anticipated Award Date.* To be determined.

III. Eligibility Information

A. *Eligible Lenders.* To be eligible for this Program, lenders must meet the eligibility requirements in 7 CFR 4279.202(c).

B. *Eligible Borrowers.* To be eligible for this Program, borrowers must meet the eligibility requirements in 7 CFR 4279.227.

C. *Eligible Projects.* To be eligible for this Program, projects must meet the eligibility requirements in 7 CFR 4279.228.

D. *Application Completeness.* Incomplete applications will be rejected. Lenders will be informed of the elements that made the application incomplete. If a resubmitted application is received in the USDA Rural Development's National Office by 4:30 p.m. January 30, 2014, the Agency will reconsider the application for available program funds.

IV. Fiscal Year 2013 Application and Submission Information

A. *Application Submittal.* The lender must submit a separate application for each project for which a loan guarantee is sought under this Notice. It is recommended that applicants refer to the application guide for this program, ''Instructions for Application for Loan Guarantee—Section 9003 Biorefinery Assistance Loan Guarantees'', which can be found on the Agency's Web site at *http://www.rurdev.usda.gov/BCP_Biorefinery.html.*

B. *Content and Form of Submission.* Approved lenders must submit an Agency-approved application form for each loan guarantee sought under this Notice. Loan guarantee applications from approved lenders must contain the information specified in 7 CFR 4279.261(a) through (n), organized pursuant to a table of contents in a chapter format, and in 7 CFR 4279.261(o) as applicable.

C. *Submission Dates and Times.* The original complete application must be received by the USDA Rural Development National Office no later than 4:30 p.m. local time by January 30, 2014, regardless of the postmark date, in order to be considered for program funds.

D. *Application Withdrawal.* During the period between the submission of an application under this Notice and the execution of documents, the lender must notify the Agency, in writing, if the project is no longer viable or the borrower is no longer requesting financial assistance for the project. When the lender so notifies the Agency, the selection will be rescinded or the application withdrawn.

V. General Program Information

A. *Loan Origination.* Lenders seeking a loan guarantee under this Notice must comply with the provisions found in 7 CFR 4279.202.

B. *Loan Processing.* The Agency will process loans guaranteed under this Notice in accordance with the provisions specified in 7 CFR 4279.224 through 4279.290.

Refinancing, according to the provisions of 7 CFR 4279.228(g), is an eligible project cost under 7 CFR 4279.229(e)(7).

C. *Evaluation of Applications and Awards.* Awards under this Notice will be made on a competitive basis; submission of an application neither reserves funding nor ensures funding. The Agency will evaluate each complete application received in the USDA Rural Development National Office and will make awards using the provisions specified in 7 CFR 4279.265(a) through (f).

Due to limited funding, there will only be one round of competition.

In all instances in which a ranked application is not funded, the Agency will notify the lender in writing. If an application has been selected for funding, but has not been funded because additional information is needed, the Agency will notify the lender of what information is needed, including a timeframe for the lender to provide the information. If the lender does not provide the information within the specified timeframe, the Agency will remove the application from further consideration and will so notify the lender.

D. *Guaranteed Loan Servicing.* The Agency will service loans guaranteed under this Notice in accordance with the provisions specified in 7 CFR 4287.301 through 4287.307.

E. *Transfers and Assumptions.* At present, the transfer fee rate for all transfers and assumptions is 1 percent. The transfer fee will be equal to the transfer fee rate multiplied by the outstanding principal loan balance as of the date of the transfer multiplied by the percent of guarantee.

VI. Administration Information

A. *Notifications.* The Agency will notify, in writing, lenders whose applications have been selected for funding. If the Agency determines it is unable to guarantee the loan, the lender will be informed in writing. Such notification will include the reasons for denial of the guarantee.

B. *Administrative and National Policy Requirements.*

1. *Review or Appeal Rights.* A person may seek a review of an Agency decision or appeal to the National Appeals Division in accordance with 7 CFR 4279.16.

2. *Exception Authority.* The provisions specified in 7 CFR 4279.202(b) and 7 CFR 4287.303 apply to this Notice.

C. *Environmental Review.* The Agency has reviewed the types of applicant proposals that may qualify for assistance under this section and has determined, in accordance with 7 CFR Part 1940–G, that all proposals shall be reviewed as a Class II Environmental Assessment (EA) as the development of new and emerging technologies would not meet the classification of a Categorical

Exclusion (CE) in accordance with 7 CFR 1940.310 or a Class I EA in accordance with 7 CFR 1940.311. Furthermore, if after Agency review of proposals the Agency has determined that the proposal could result in significant environmental impacts on the quality of the human environment, an Environmental Impact Statement may be required pursuant to 7 CFR 1940.313.

VII. Agency Contacts

For general questions about this Notice, please contact Todd Hubbell, Rural Development, Business Programs, Energy Division, Biorefinery Assistance Program, U.S. Department of Agriculture, 1400 Independence Avenue SW., Mail Stop 3225, Washington, DC, 20250–3225. Telephone: 202–690–2516. Email: *Todd.Hubbell@wdc.usda.gov.*

Nondiscrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination against its customers, employees, and applicants for employment on the bases of race, color, national origin, age, disability, sex, gender identity, religion, reprisal, and where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or all or part of an individual's income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the Department. (Not all prohibited bases will apply to all programs and/or employment activities.)

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form (PDF), found online at *http://www.ascr.usda.gov/complaint_filing_cust.html,* or at any USDA office, or call (866) 632–9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250–9410, by fax (202) 690–7442 or email at *program.intake@usda.gov.*

Individuals who are deaf, hard of hearing or have speech disabilities and you wish to file either an EEO or program complaint please contact USDA through the Federal Relay Service at (800) 877–8339 or (800) 845–6136 (in Spanish).

Persons with disabilities, who wish to file a program complaint, please see information above on how to contact us by mail directly or by email. If you require alternative means of communication for program information (e.g., Braille, large print, audiotape, etc.) please contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Dated: September 16, 2013.

Lillian E. Salerno,

Administrator, Rural Business—Cooperative Service.

[FR Doc. 2013–24081 Filed 10–1–13; 8:45 am]

BILLING CODE 3410–XY–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: 2014 Survey of Income and Program Participation (SIPP) Panel.

OMB Control Number: None.

Form Number(s): SIPP–105(L)2014— Director's Letter; SIPP–105(L)(SP)2014— Director's Letter Spanish; SIPP/CAPI Automated Instrument.

Type of Request: New collection.

Burden Hours: 73,500.

Number of Respondents: 73,500.

Average Hours per Response: 1 hour.

Needs and Uses: The Census Bureau plans to conduct the 2014 Survey of Income and Program Participation (SIPP) Panel in four waves beginning in February 2014. The Census Bureau's SIPP computer-assisted personal interviewing (CAPI) will use an Event History Calendar (EHC) interviewing method and a 12-month, calendar-year reference period in place of the current SIPP questionnaire approach that uses a sliding 4-month reference period. The Census Bureau is re-engineering the SIPP to accomplish several goals including re-engineering the collection instrument and processing system, development of the EHC in the instrument, use of administrative records data where feasible, and increased stakeholder interaction.

The main objective of the SIPP has been, and continues to be, to provide accurate and comprehensive information about the income and program participation of individuals and households in the United States. The survey's mission is to provide a nationally representative sample for evaluating: (1) Annual and sub-annual income dynamics; (2) movements into and out of government transfer programs; (3) family and social context of individuals and households; and (4) interactions among these items. A major use of the SIPP has been to evaluate the use of and eligibility for government programs and to analyze the impacts of modifications to those programs. The re-engineering of SIPP pursues these objectives in the context of several goals including cost reduction, improved accuracy, increased relevance and timeliness, reduced burden on respondents, and increased accessibility. The 2014 SIPP Panel will collect detailed information on cash and non-cash income (including participation in government transfer programs) once per year.

A key component of re-engineering the SIPP is a shift from the every-four-month data collection schedule of historical SIPP (most recently in the 2008 Panel) to an annual data collection schedule for the re-engineered survey. To accomplish this shift with minimal impact on data quality, the Census Bureau will use an EHC based instrument to gather SIPP data. The EHC is intended to help respondents recall information in a more natural ''autobiographical'' manner by using life events as triggers to recall other economic events. For example, a residence change may often occur contemporaneously with a change in employment. The entire process of compiling the calendar focuses, by its nature, on consistency and sequential order of events, and attempts to correct for otherwise missing data. For example, unemployed respondents may undertake a lengthy job search before successfully finding employment. The EHC allows recording dates of events and spells of coverage and will provide measures of monthly transitions of program receipt and coverage, labor force transitions, health insurance transitions, and others. The EHC was previously used in the 2010, 2011, 2012, and 2013 SIPP–EHC field tests. Results from the 2010–2013 Field Tests and the 2008 SIPP Panel were used to inform final decisions regarding the design, content, and implementation of the 2014 SIPP Panel. The content of the 2014 SIPP Panel will match that of the 2013 SIPP–EHC very closely. The 2014 SIPP Panel design does not contain freestanding topical modules as in the prior production SIPP instruments; however, a portion of traditional SIPP topical module content is integrated into the main body of the 2014 SIPP interview.

The start of the 2014 SIPP Panel was scheduled at the earliest possible start (February 2014) that would allow the

use of a 2010 Census based sample. The 2014 SIPP Panel wave 1 will interview respondents using the previous calendar year 2013 as the reference period and will proceed with annual interviewing going forward. The 2014 SIPP Panel will use a revised interviewing method structure that will follow persons aged 15 years and older who move from the prior wave household. Consequently, future waves will incorporate dependent data, which is information collected from the prior wave interview brought forward to the current interview.

The Census Bureau plans to use Computer Assisted Recorded Interview (CARI) technology during the 2014 SIPP Panel. CARI is a data collection method that captures audio along with response data during computer-assisted personal and telephone interviews (CAPI & CATI). With the respondent's consent, a portion of each interview is recorded unobtrusively and both the sound file and screen images are returned with the response data to a central location for coding. By reviewing the recorded portions of the interview, quality assurance analysts can evaluate the likelihood that the exchange between the field representative and respondent is authentic and follows critical survey protocol as defined by the sponsor and based on best practices. Additionally, the recordings will be reviewed to develop standards for coaching interviewers and develop options to use them as supplements to both in-person observation and reinterview. The 2014 SIPP Panel instrument will utilize the CARI Interactive Data Access System (CARI System), an innovative, integrated, multifaceted monitoring system that features a configurable web-based interface for behavior coding, quality assurance, and coaching. This system assists in coding interviews for measuring question and interviewer performance and the interaction between interviewers and respondents.

The 2014 SIPP Panel Wave 1 instrument will be evaluated in several domains including field implementation issues and data comparability vis-à-vis the 2008 SIPP Panel and administrative records. Distributional characteristics such as the percent of persons receiving Temporary Assistance for Needy Families (TANF), Food Stamps, Medicare, who are working, who are enrolled in school, or who have health insurance coverage reported in the EHC will be compared to the same distributions from the 2008 SIPP Panel. The primary focus will be to examine the quality of data that the new instrument yields for low-income programs relative to the current SIPP and other administrative sources. The 2014 SIPP Panel sample is nationally representative, with an oversample of low-income areas in order to increase the ability to measure participation in government programs. In general, there are two ways we will evaluate data quality:

First, we will compare monthly estimates from the 2014 SIPP Panel to estimates from the 2008 SIPP Panel for characteristics such as participation in Food Stamps, TANF, Supplemental Security Income (SSI), the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), and Medicaid. We plan to conduct a rigorous statistical analysis using the model established for the 2010–2013 SIPP–EHC evaluations, where data from the 2008 Panel and 2010–2013 SIPP–EHC for the previous calendar years were mapped to a common analysis standard. The tests of significance conducted for the differences in monthly participation levels, identification of patterns of significance, and the likelihood of transition will again be applied to the 2013 calendar year comparison mapped data. Additional content will be included in the mapped data to expand the comparisons beyond the focus of the EHC section of the instrument comparisons made with the SIPP–EHC field tests. As with the 2010–2013 SIPP–EHC field tests, we will also compare paradata related to interview performance (interview length and non-response) by region, interviewer and household characteristics, and training performance as measured by the certification test.

Second, for a small subset of characteristics, and for a subset of sample areas, we will have access to administrative record data, which should allow for a more objective data quality assessment of the validity of the survey estimates for respondents matched to administrative data. The acquisition of administrative data from national sources and especially from states is difficult and time consuming. We continue to work with Texas, Maryland, Illinois, and Wisconsin to acquire state-level data (primarily focused on Food Stamps or the Supplemental Nutrition Assistance Program (SNAP) and TANF), and additional state discussions are in progress. From national-level administrative records, we are working to acquire additional data from the Internal Revenue Service, the detailed and summary earnings records, Old-Age, Survivors, and Disability Insurance (OASDI), SSI, Medicare, and Medicaid (from Centers for Medicare and Medicaid services (CMS)). To the extent that data can be obtained in a timely way for calendar year 2013 we will include validation evaluations of the responses given both in the 2008 Panel and the 2014 SIPP Panel Wave 1 data. These administrative data can tell us the rate of both false positive and false negative reporting, as well as some indication of the accuracy of the timing of reports. The ability to make effective comparisons with administrative data is dependent on the match rate of administrative data to SIPP and re-engineered SIPP data, the timing of the receipt of the data, and the accuracy and quality of the administrative records. This project will continue to show the importance of developing systems that can integrate administrative reports with survey data.

This OMB clearance request is for the full 2014 SIPP Panel (Waves 1, 2, 3, and 4). Wave 1 of the SIPP 2014 Panel will be conducted from February to May of 2014. Wave 2 is scheduled to be conducted from January to April of 2015. Wave 3 is scheduled to be conducted from January to April of 2016. Wave 4 is scheduled to be conducted from January to April of 2017. Approximately 52,000 households will be sampled to be interviewed for the 2014 Panel. From these sampled households, we expect approximately 35,000 interviewed households. We estimate that each household contains 2.1 people aged 15 and above, yielding approximately 73,500 person-level interviews per wave in this panel. Interviews take approximately 60 minutes per adult on average, consequently the total annual burden for 2014 SIPP–EHC interviews will be 73,500 hours per year in FY 2014, 2015, 2016, and 2017.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *jjessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB

Desk Officer either by fax (202–395–7245) or email (*bharrisk@omb.eop.gov*).

Dated: September 27, 2013.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–24028 Filed 10–1–13; 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: National Institute of Standards and Technology (NIST).

Title: Building Construction Technology Extension Pilot (BCTEP) Client Impact Survey.

OMB Control Number: None.

Form Number(s): NA.

Type of Request: Regular submission (new information collection).

Number of Respondents: 50.

Average Hours per Response: 15 minutes.

Burden Hours: 13.

Needs and Uses: The Building Construction Technology Extension Pilot (BCTEP) sponsored by the National Institute of Standards and Technology (NIST), the Manufacturing Extension Partnership (MEP) and the Department of Energy (DOE), Energy Efficiency and Renewable Energy/Building Technologies Office (EERE/BTO), is focused on training building operators in the principles and practices of building energy systems re-tuning. Re-tuning is a systematic semi-automated process of identifying operational problems in commercial and industrial buildings. The information collected under this request will be used to monitor and evaluate the Competitive Award Recipients' participation in the project as well as providing Congress with quantitate information required for government-supported programs. The reporting criterion is: Project accountability; project evaluation; award recipient evaluation; analysis and research; reports to stakeholders; continuous improvement; knowledge sharing; and identification of distinctive practices.

Affected Public: Business or other for-profit organizations; Not for-profit institutions.

Frequency: Annually.

Respondent's Obligation: Voluntary.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jasmeet Seehra, OMB Desk Officer, FAX number (202) 395–5167 or via the Internet at *Jasmeet_K._Seehra@omb.eop.gov.*

Dated: September 26, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–24023 Filed 10–1–13; 8:45 am]

BILLING CODE 3510–13–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: National Oceanic and Atmospheric Administration (NOAA).

Title: California Recreational Groundfish Survey.

OMB Control Number: None.

Form Number(s): NA.

Type of Request: Regular submission (request for a new information collection).

Number of Respondents: 1,500.

Average Hours per Response: 25 minutes.

Burden Hours: 208.

Needs and Uses: The National Marine Fisheries Service (NMFS) plans to collect data to increase the agency's understanding of California saltwater angler preferences relative to Pacific groundfish. Pacific groundfish caught in California's recreational fishery include about 17 species of rockfish, as well as lingcod, cabezon, and California scorpionfish. The number and diversity of species caught in this fishery poses a regulatory challenge for State and Federal fisheries managers. Information to be collected pertains to anglers' recreational saltwater fishing activities in California (including groundfish); their attitudes and preferences regarding particular groundfish species and groundfish regulations; and angler demographics. The data collected will provide NMFS, as well as state agency partners such as the California Department of Fish and Wildlife (CDFW), with information useful for understanding current groundfish fishing behavior and possible responses to potential regulatory changes.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: OIRA_Submission@omb.eop.gov.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

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.*

Dated: September 26, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–24022 Filed 10–1–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

Foreign-Trade Zone 155—Calhoun/Victoria Counties, Texas; Authorization of Production Activity; Caterpillar, Inc. (Excavator and Frame Assembly Production); Victoria, Texas

On May 29, 2013, The Calhoun-Victoria Foreign Trade Zone, Inc., grantee of FTZ 155, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board on behalf of Caterpillar, Inc., within FTZ 155-Site 5, in Victoria, Texas.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400) including notice in the **Federal Register** inviting public comment (78 FR 35604, 06/13/2013). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14.

Dated: September 28, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–24114 Filed 10–1–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–844, A–489–818]

Steel Concrete Reinforcing Bar From Mexico and Turkey: Initiation of Antidumping Duty Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: Effective October 2, 2013.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore at (202) 482–3692 (Mexico); George McMahon at (202) 482–1167 (Turkey), AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petitions

On September 4, 2013, the Department of Commerce (the ''Department'') received antidumping duty (''AD'') petitions [1] concerning imports of steel concrete reinforcing bar (''rebar'') from Mexico and Turkey filed in proper form on behalf of the Rebar Trade Action Coalition (''RTAC'') and its individual members (collectively, ''Petitioners'').[2] Petitioners are domestic producers of rebar. On September 10–11, 2013, the Department requested additional information and clarification of certain areas of the Petitions.[3] Petitioners filed responses to these requests on September 13, 2013.[4]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the ''Act''), Petitioners allege that imports of rebar from Mexico and Turkey are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that such imports are materially injuring, or threatening material injury to, an industry in the United States. Also, consistent with section 732(b)(1) of the Act, the Petitions are accompanied by information reasonably available to Petitioners supporting their allegations.

The Department finds that Petitioners filed these Petitions on behalf of the domestic industry because Petitioners are interested parties as defined in sections 771(9)(C), (E), and (F) of the Act. The Department also finds that Petitioners have demonstrated sufficient industry support with respect to the initiation of the AD investigations that Petitioners are requesting. *See* the ''Determination of Industry Support for the Petitions'' section below.

Period of Investigation

Because the Petitions were filed on September 4, 2013, the period of investigation (''POI'') for the Mexico and Turkey investigations is July 1, 2012, through June 30, 2013.[5]

Scope of the Investigations

The product covered by these investigations is steel concrete reinforcing bar from Mexico and Turkey. For a full description of the scope of the investigations, *see* the ''Scope of the Investigations,'' in the Appendix of this notice.[6] Petitioners note that, in addition to the Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings included in the scope, it is possible that rebar previously entered under HTSUS numbers 7222.30.0011 and 7222.11.0056; however, these HTSUS numbers are no longer in effect.

Comments on Scope of Investigations

During our review of the Petitions, we discussed the scope with Petitioners to ensure that it is an accurate reflection of the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations,[7] we are setting aside a period for interested parties to raise issues regarding product coverage.

All comments must be filed on the record of both the Mexico and the Turkey AD investigations and the companion Turkey Countervailing Duty rebar investigation by 5:00 p.m. Eastern Daylight Time on Tuesday, October 15, 2013. All comments and submissions to the Department must be filed electronically using Import Administration's Antidumping Countervailing Duty Centralized Electronic Service System (''IA ACCESS'').[8] An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by the time and date noted above. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, and stamped with the date and time of receipt by the deadline noted above.

The period of scope comments is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determinations.

---

[1] *See* Petitions for the Imposition of Antidumping Duties on Steel Concrete Reinforcing Bar from Mexico and Turkey and the Imposition of Countervailing Duties on Steel Concrete Reinforcing Bar from Turkey, dated September 4, 2013 (''the Petitions'').

[2] Petitioners are RTAC and its individual members: Byer Steel Group, Inc., Schnitzer Steel Industries d/b/a Cascade Steel Rolling Mills, Inc., Commercial Metals Company, Gerdau Ameristeel U.S. Inc., and Nucor Corporation.

[3] *See* letters from the Department titled, ''Petitions for the Imposition of Antidumping Duties on Imports of Steel Concrete Reinforcing Bar from Mexico and the Republic of Turkey and Countervailing Duties on Imports of Steel Concrete Reinforcing Bar from the Republic of Turkey: Supplemental Questions,'' (A–201–844, A–489–818, and C–489–819), dated September 10, 2013; ''Petition for the Imposition of Antidumping Duties on Imports of Steel Concrete Reinforcing Bar from Mexico: Supplemental Questions, (A–201–844), dated September 10, 2013; ''Petition for the Imposition of Antidumping Duties on Imports of Steel Concrete Reinforcing Bar from the Republic of Turkey: Supplemental Questions, (A–489–818), dated September 10, 2013; ''Petition for the Imposition of Countervailing Duties on Imports of Steel Concrete Reinforcing Bar from the Republic of Turkey: Supplemental Questions, (C–489–819), dated September 10, 2013; and ''Petition for the Imposition of Countervailing Duties on Imports of Steel Concrete Reinforcing Bar from the Republic of Turkey: Additional Supplemental Questions, (C–489–819), dated September 11, 2013; *see* also letter from the Department titled, ''Petitions for the Imposition of Antidumping Duties on Imports of Steel Concrete Reinforcing Bar from Mexico and the Republic of Turkey and Countervailing Duties on Imports of Steel Concrete Reinforcing Bar from the Republic of Turkey: Request for Extension.''

[4] *See* Steel Concrete Reinforcing Bar from Mexico: Supplement to the Petition for the Imposition of Antidumping Duties, dated September 13, 2013 (''Mexico AD Supplement''); *see* also ''Steel Concrete Reinforcing Bar from Turkey: Supplement to the Petition for the Imposition of Antidumping Duties,'' dated September 13, 2013 (''Turkey AD Supplement''); *see* also ''Steel Concrete Reinforcing Bar from Mexico and the Republic of Turkey: Supplement to the Petition for the Imposition of Antidumping and Countervailing Duties'' dated September 13, 2013 (''General Issues Supplement'').

[5] *See* 19 CFR 351.204(b)(1).

[6] *See* Memorandum to the File titled, ''Petitions for the Imposition of Antidumping Duties on Imports of Steel Concrete Reinforcing Bar from Mexico and the Republic of Turkey and Countervailing Duties on Imports of Steel Concrete Reinforcing Bar from the Republic of Turkey: Scope Clarification,'' dated September 18, 2013.

[7] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[8] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011) for details of the Department's electronic filing requirements, which went into effect on August 5, 2011. Information on help using IA ACCESS can be found at *https://iaaccess.trade.gov/help.aspx* and a handbook can be found at *https://iaaccess.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

Comments on Product Characteristics for Antidumping Questionnaires

The Department requests comments from interested parties regarding the appropriate physical characteristics of rebar to be reported in response to the Department's AD questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant factors and costs of production accurately as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) General product characteristics and (2) product-comparison criteria. We note that it is not always appropriate to use all product characteristics as product-comparison criteria. We base product-comparison criteria on meaningful commercial differences among products. In other words, while there may be some physical product characteristics utilized by manufacturers to describe steel concrete reinforcing bar, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, the Department attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, we must receive comments on product characteristics by October 15, 2013. Rebuttal comments must be received by October 25, 2013. All comments and submissions to the Department must be filed electronically using IA ACCESS, as referenced above.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the industry.

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,[9] they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[10]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioners do not offer a definition of domestic like product distinct from the scope of the investigations. Based on our analysis of the information submitted on the record, we have determined that rebar, as defined in the scope of the investigations, constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product.[11]

In determining whether Petitioners have standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the ''Scope of Investigations'' section above. To establish industry support, Petitioners provided their production of the domestic like product in 2012, and compared this to the estimated total production of the domestic like product for the entire domestic industry.[12] Petitioners estimated total 2012 production of the domestic like product using their knowledge of the industry and data from the ITC.[13] We have relied upon data Petitioners provided for purposes of measuring industry support.[14]

Based on information provided in the Petitions, supplemental submission, and other information readily available to the Department, we determine that Petitioners have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.[15] Based on information provided in the Petitions, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions. Accordingly, the Department determines that the Petitions were filed on behalf of the

[9] *See* section 771(10) of the Act.

[10] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[11] *See* Antidumping Duty Investigation Initiation Checklist: Steel Concrete Reinforcing Bar from Mexico (''Mexico AD Initiation Checklist''), at Attachment II, Analysis of Industry Support for the Petitions Covering Steel Concrete Reinforcing Bar from Mexico and the Republic of Turkey (''Attachment II''), and Antidumping Duty Investigation Initiation Checklist: Steel Concrete Reinforcing Bar from the Republic of Turkey (''Turkey AD Initiation Checklist''), at Attachment II. These checklists are dated concurrently with this notice and on file electronically via IA ACCESS. Access to documents filed via IA ACCESS is also available in the Central Records Unit (''CRU''), Room 7046 of the main Department of Commerce building.

[12] *See* Volume I of the Petitions, at Exhibit I–3, and General Issues Supplement, at 2–3 and Exhibits I–Supp–1 through I–Supp–7.

[13] *Id.*

[14] *See* Mexico AD Initiation Checklist and Turkey AD Initiation Checklist, at Attachment II.

[15] *Id.*

domestic industry within the meaning of section 732(b)(1) of the Act.[16]

The Department finds that Petitioners filed the Petitions on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C), (E), and (F) of the Act and they have demonstrated sufficient industry support with respect to the antidumping duty investigations that they are requesting the Department initiate.[17]

Allegations and Evidence of Material Injury and Causation

Petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (''NV''). In addition, Petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[18]

Petitioners contend that the industry's injured condition is illustrated by reduced market share; underselling and price depression or suppression; lost sales and revenues; hindered production efforts, shipments, and capacity utilization; and decline in financial performance.[19] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.[20]

Allegations of Sales at Less Than Fair Value

The following is a description of the allegations of sales at less-than-fair-value upon which the Department based its decision to initiate an investigation of imports of rebar from Mexico and Turkey. The sources of data for the deductions and adjustments relating to U.S. price and NV are discussed in greater detail in the Mexico AD Initiation Checklist and the Turkey AD Initiation Checklist.

Export Price

Mexico

Petitioners calculated export prices (''EP'') based on sales-specific information that is contemporaneous with the POI.[21] To derive the ex-factory prices, Petitioners made deductions to U.S. price for foreign inland freight charges, Mexican brokerage and handling, international freight and insurance, and U.S. inland freight expenses, where such expenses were incurred by the seller.

Turkey

Petitioners calculated EP based on sales-specific information that is contemporaneous with the POI.[22] The data serving as the basis for EP are based on transactions which represent an ex-factory export price. To be conservative, Petitioners made no adjustments for movement expenses, customs duties, brokerage and handling, or port expenses in estimating the ex-factory EP.

Normal Value

Mexico

Petitioners provided home market prices for rebar in Mexico. Petitioners calculated home market prices based on sales information that is contemporaneous with the POI.[23] To derive the ex-factory price, Petitioners made deductions from the delivered prices for inland freight charges and brokerage and handling.

Turkey

Petitioners calculated home market prices based on price quotes for rebar produced by Habaş Sinai ve Tibbi Gazlar Istihsal Endüstrisi A.S. (''Habas'') and Icdas Celik Enerji Tersane ve Ulasim San AS (''ICDAS''),[24] and sold or offered for sale to customers in Turkey during the POI. To calculate the ex-factory normal value (''NV''), Petitioners deducted from the delivered prices inland freight charges and value-added tax, where applicable.

Turkey

Sales-Below-Cost Allegation

Petitioners provided information demonstrating reasonable grounds to believe or suspect that sales of rebar in the Turkish market were made at prices below the fully-absorbed cost of production (''COP''), within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation. The Statement of Administrative Action (''SAA'') accompanying the Uruguay Round Agreements Act, states that an allegation of sales below COP need not be specific to individual exporters or producers.[25] The SAA states that ''Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation.'' [26] Further, the SAA provides that section 773(b)(2)(A) of the Act retains the requirement that the Department have ''reasonable grounds to believe or suspect'' that below-cost sales have occurred before initiating such an investigation. Reasonable grounds exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices.[27]

Cost of Production

Pursuant to section 773(b)(3) of the Act, COP consists of the cost of manufacturing (''COM''); selling, general and administrative (''SG&A'') expenses; financial expenses; and packing expenses. Petitioners calculated COM (except factory overhead) and packing expenses based on the input factors of production from a U.S. producer of rebar adjusted for known differences between the Turkish and U.S. industries during the prospective POI. The input factors of production were valued using publicly-available data on costs specific to Turkey.

To determine factory overhead, SG&A, and financial expense rates, Petitioners relied on the fiscal year (''FY'') ended December 31, 2012 audited financial statements of a Turkish producer of comparable merchandise. We revised Petitioners' overhead expense rate because it appears Petitioners may have double counted energy costs by including them

[16] *Id.*

[17] *Id.*

[18] *See* General Issues Supplement, at 6–7 and Exhibit I–Supp–8.

[19] *See* Volume I of the Petitions, at 16–51 and Exhibits I–6 and I–8 through I–26; *see also* General Issues Supplement, at 1, 6–7, Revised Exhibit I–12B, and Exhibits I–Supp–1 and I–Supp–8.

[20] *See* Mexico AD Initiation Checklist and Turkey AD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Petitions Covering Steel Concrete Reinforcing Bar from Mexico and the Republic of Turkey.

[21] The source of the sales-specific details is considered business proprietary information. *See* Mexico AD Checklist for additional details.

[22] The source of the sales-specific details is considered business proprietary information. *See* Turkey AD Checklist for additional details.

[23] The source of the sales-specific details is considered business proprietary information. *See* Mexico AD Checklist for additional details.

[24] Petitioners claim Habas and ICDAS represent two of the largest Turkish manufacturers and exporters of rebar to the United States during the POI. *See* Volume III of the Petitions, at 3 and Exhibit III–2.

[25] *See* SAA, H.R. Doc. No. 103–316 at 833 (1994).

[26] *Id.*

[27] *Id.*

as a part of the overhead rate calculated from the Turkish producer's financial statements and also including energy costs as a distinct line item in the calculation of the COP and constructed value (''CV''). To be conservative and avoid the possibility of double counting energy costs, we recalculated the overhead rate from the Turkish producer's financial statements.[28]

Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the most comparable product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Normal Value Based on Constructed Value

Because they alleged sales below cost, pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, Petitioners calculated NV based on CV. Petitioners calculated CV using the same average COM, SG&A, financial expense, and packing figures used to compute the COP. Petitioners relied on the same FY ended December 31, 2012 audited financial statements used as the basis for the factory overhead, SG&A, and financial expense rates to calculate the profit rate.[29]

Fair Value Comparisons

Based on the data provided by Petitioners, there is reason to believe that imports of rebar in Mexico and Turkey are being, or are likely to be, sold in the United States at less than fair value. Based on comparisons of EP to home market prices for Mexico and EP to CV for Turkey, in accordance with section 773(a)(4) of the Act, the estimated dumping margins for rebar from Mexico and Turkey range from 48.82–66.70 percent,[30] and 35.01–36.99 percent,[31] respectively.

Initiation of Antidumping Investigations

Based upon the examination of the Petitions on rebar from Mexico and Turkey, we find that the Petitions meet the requirements of section 732 of the Act. Therefore, we are initiating AD investigations to determine whether imports of concrete reinforcing bar from Mexico and Turkey are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Respondent Selection

Following standard practice in AD investigations involving market economy countries, in the event the Department determines that the number of known exporters or producers for this investigation is large, the Department may select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports of rebar from Mexico or Turkey under all *Harmonized Tariff Schedule of the United States* subheadings identified in Scope of the Investigation.[32] We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties with access to information protected by APO within five days of publication of this **Federal Register** notice.

The Petitions identified 10 producers and/or exporters of rebar in Mexico,[33] and 41 producers and/or exporters of rebar in Turkey.[34]

We intend to make our decision regarding respondent selection within 20 days of publication of this notice. The Department invites comments regarding the CBP data and respondent selection within seven days of publication of this **Federal Register** notice for Mexico and Turkey.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the Petitions have been provided to the Governments of Mexico and Turkey via IA ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petitions to each exporter named in the Petitions, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine no later than October 21, 2013, whether there is a reasonable indication that imports of rebar from Mexico and Turkey are materially injuring, or threatening material injury to, a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.[35]

Submission of Factual Information

On April 10, 2013, the Department published *Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule,* 78 FR 21246 (April 10, 2013), which modified two regulations related to AD and countervailing duty (''CVD'') proceedings: the definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301). The final rule identifies five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). The final rule requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The final rule also modified 19 CFR 351.301 so that, rather than providing general time limits, there are specific time limits based on the type of factual information being submitted. These modifications are effective for all proceeding segments initiated on or after May 10, 2013, and thus are applicable to these investigations. Please review the *Final Rule,* available at *http://ia.ita.doc.gov/frn/2013/1304frn/2013–08227.txt* prior

[28] *See* Turkey AD Initiation Checklist at Attachment V.

[29] *See* Turkey AD Initiation Checklist at Attachment V.

[30] *See* Mexico AD Supplement at Exhibit II-Supp-7; *see* also Mexico AD Initiation Checklist.

[31] *See* Turkey AD Initiation Checklist.

[32] *See* Appendix I of this notice for a listing of the HTSUS subheadings in the Scope of the Investigation.

[33] *See* Volume I of the Petitions, at Exhibit I–5A.

[34] *Id.,* at Exhibit I–5B.

[35] On September 20, 2013, the Department modified its regulation concerning the extension of time limits for submissions in antidumping (AD) and countervailing duty (CVD) proceedings. *See Extension of Time Limits,* 78 FR 57790 (September 20, 2013). The modification clarifies that parties may request an extension of time limits before any time limit established under Part 351 expires. This modification also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which the Department will grant untimely-filed requests for the extension of time limits.

to submitting factual information in these investigations.

Notification to Interested Parties

Interested parties must submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in these investigations should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[36] Parties are hereby reminded that the Department issued a final rule with respect to certification requirements, effective August 16, 2013. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives. All segments of any antidumping duty or countervailing duty proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided at the end of the *Final Rule.*[37] The Department intends to reject factual submissions if the submitting party does not comply with the applicable revised certification requirements.

This notice is issued and published pursuant to section 777(i) of the Act and 19 CFR 351.203(c).

Dated: September 24, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I

Scope of the Investigations

The merchandise subject to these investigations is steel concrete reinforcing bar imported in either straight length or coil form (''rebar'') regardless of metallurgy, length, diameter, or grade. The subject merchandise is classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') primarily under item numbers 7213.10.0000, 7214.20.0000, and 7228.30.8010. The subject merchandise may also enter under other HTSUS numbers including 7215.90.1000, 7215.90.5000, 7221.00.0015, 7221.00.0030, 7221.00.0045, 7222.11.0001, 7222.11.0057, 7222.11.0059, 7222.30.0001, 7227.20.0080, 7227.90.6085, 7228.20.1000, and 7228.60.6000. Specifically excluded are plain rounds (*i.e.,* non-deformed or smooth rebar). HTSUS numbers are provided for convenience and customs purposes; however, the written description of the scope remains dispositive.

[FR Doc. 2013–23983 Filed 10–1–13; 8:45 am]

BILLING CODE 3510–DS–P

[36] *See* section 782(b) of the Act.

[37] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (''*Final Rule*''); *see* also the frequently asked questions regarding the *Final Rule,* available at the following: *http://ia.ita.doc.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–819]

Steel Concrete Reinforcing Bar From Turkey: Initiation of Countervailing Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* October 2, 2013.

FOR FURTHER INFORMATION CONTACT: Robert Copyak at (202) 482–2209, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION

The Petition

On September 4, 2013, the Department of Commerce (''the Department'') received a countervailing duty (''CVD'') petition [1] concerning imports of steel concrete reinforcing bar (''rebar'') from the Republic of Turkey (''Turkey''), filed in proper form on behalf of the Rebar Trade Action Coalition (''RTAC'') and its individual members (collectively, ''Petitioners'').[2] The CVD petition was accompanied by two antidumping duty (''AD'') petitions.[3] Petitioners are domestic producers of rebar. On September 10–11, 2013, the Department requested additional information and clarification of certain areas of the Petitions.[4] Petitioners filed responses to these requests on September 13, 2013.[5]

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (''the Act''), Petitioners allege that manufacturers, producers, or exporters of rebar from Turkey received countervailable subsidies within the meaning of sections 701 and 771(5) of the Act, and that such imports materially injure, or threaten material injury to, the domestic industry producing rebar in the United States pursuant to section 701 of the Act.

The Department finds that Petitioners filed the Petition on behalf of the domestic industry because Petitioners are interested parties as defined in section 771(9)(C), (E) and (F) of the Act. The Department also finds that the Petitioners have demonstrated sufficient industry support with respect to the initiation of the investigation Petitioners are requesting. *See* ''Determination of Industry Support for the Petition'' below.

Period of Investigation

The period of the investigation is January 1, 2012, through December 31, 2012.

Scope of Investigation

The product covered by this CVD investigation is steel concrete reinforcing bar from Turkey. For a full

[1] *See* Petition for the Imposition of Countervailing Duties on Imports of Steel Concrete Reinforcing Bar from the Republic of Turkey, dated September 4, 2013.

[2] Petitioners are RTAC and its individual members: Byer Steel Group, Inc., Schnitzer Steel Industries d/b/a Cascade Steel Rolling Mills, Inc., Commercial Metals Company, Gerdau Ameristeel U.S. Inc., and Nucor Steel Corporation.

[3] *See* Petitions for the Imposition of Antidumping Duties on Imports of Steel Concrete Reinforcing Bar from the Republic of Turkey and Mexico and Countervailing Duties on Imports of Steel Concrete Reinforcing Bar from the Republic of Turkey, dated September 4, 2013 (''the Petitions'').

[4] *See* letters from the Department titled, ''Petitions for the Imposition of Antidumping Duties on Imports of Steel Concrete Reinforcing Bar from Mexico and the Republic of Turkey and Countervailing Duties on Imports of Steel Concrete Reinforcing Bar from the Republic of Turkey: Supplemental Questions,'' (A–201–844, A–489–818, and C–489–819), dated September 10, 2013; ''Petition for the Imposition of Antidumping Duties on Imports of Steel Concrete Reinforcing Bar from Mexico: Supplemental Questions, (A–201–844), dated September 10, 2013; ''Petition for the Imposition of Antidumping Duties on Imports of Steel Concrete Reinforcing Bar from the Republic of Turkey: Supplemental Questions, (A–489–818), dated September 10, 2013; ''Petition for the Imposition of Countervailing Duties on Imports of Steel Concrete Reinforcing Bar from the Republic of Turkey: Supplemental Questions, (C–489–819), dated September 10, 2013; and ''Petition for the Imposition of Countervailing Duties on Imports of Steel Concrete Reinforcing Bar from the Republic of Turkey: Additional Supplemental Questions, (C–489–819), dated September 11, 2013; *see also* letter from the Department titled, ''Petitions for the Imposition of Antidumping Duties on Imports of Steel Concrete Reinforcing Bar from Mexico and the Republic of Turkey and Countervailing Duties on Imports of Steel Concrete Reinforcing Bar from the Republic of Turkey: Request for Extension.''

[5] *See* Steel Concrete Reinforcing Bar from Mexico: Supplement to the Petition for the Imposition of Antidumping Duties, dated September 13, 2013 (''Mexico AD Supplement''); *see also* ''Steel Concrete Reinforcing Bar from Turkey: Supplement to the Petition for the Imposition of Antidumping Duties,'' dated September 13, 2013 (''Turkey AD Supplement''); *see also* ''Steel Concrete Reinforcing Bar from Mexico and the Republic of Turkey: Supplement to the Petition for the Imposition of Antidumping and Countervailing Duties'' dated September 13, 2013 (''General Issues Supplement'').

description of the scope of these investigations, *see* the ''Scope of Investigation'' in Appendix of this notice.[6] Petitioners note that, in addition to the Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings included in the scope, it is possible that rebar previously entered under HTSUS numbers 7222.30.0011 and 7222.11.0056; however, these HTSUS numbers are no longer in effect.

Comments on Scope of Investigation

During our review of the Petition, we discussed the scope with Petitioners to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations,[7] we are setting aside a period for interested parties to raise issues regarding product coverage.

All comments must be filed on the records of the Mexico and the Turkey AD investigations and the Turkey CVD investigation by 5:00 p.m. EST on October 15, 2013. All comments and submissions to the Department must be filed electronically using Import Administration's Antidumping Countervailing Duty Centralized Electronic Service System (''IA ACCESS'').[8] An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by the time and date noted above. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, and stamped with the date and time of receipt by the deadline noted above.

The period of scope comments is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determinations.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of and the Government of the Republic of Turkey (''GOT'') for consultations with respect to the Petition.[9] Consultations were held with the GOT on September 20, 2013.[10] All memoranda pertaining to the consultations are on file electronically via IA ACCESS.[11]

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the industry.

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,[12] they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[13]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioners do not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that rebar, as defined in the scope of the investigation, constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product.[14]

In determining whether Petitioners have standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of Investigation'' section above. To establish industry support, Petitioners provided their production of the domestic like product in 2012, and compared this to the estimated total production of the domestic like product for the entire domestic industry.[15] Petitioners estimated total 2012 production of the domestic like product using their using their knowledge of the industry and data from the ITC.[16] We have relied upon data Petitioners

[6] *See* Memorandum to the File titled, ''Petitions for the Imposition of Antidumping Duties on Imports of Steel Concrete Reinforcing Bar from Mexico and the Republic of Turkey and Countervailing Duties on Imports of Steel Concrete Reinforcing Bar from the Republic of Turkey: Scope Clarification,'' dated September 18, 2013.

[7] *See Preamble; Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[8] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011) for details of the Department's electronic filing requirements, which went into effect on August 5, 2011. Information on help using IA ACCESS can be found at *https://iaaccess.trade.gov/help.aspx* and a handbook can be found at *https://iaaccess.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

[9] *See* letter titled ''Invitation for Consultations to Discuss the Countervailing Duty Petition,'' dated September 5, 2013.

[10] *See* ex-parte memorandum titled ''Consultations with Turkish Government Officials,'' dated September 20, 2013.

[11] *See supra* note 8 for information pertaining to IA ACCESS.

[12] *See* section 771(10) of the Act.

[13] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[14] *See* Countervailing Duty Investigation Initiation Checklist: Steel Concrete Reinforcing Bar from the Republic of Turkey (''Turkey CVD Initiation Checklist''), at Attachment II. The checklist is dated concurrently with this notice and on file electronically via IA ACCESS. Access to documents filed via IA ACCESS is also available in the Central Records Unit, Room 7046 of the main Department of Commerce building.

[15] *See* Volume I of the Petitions, 3–4 and Exhibit I–3.

[16] *Id.*

provided for purposes of measuring industry support.[17]

Based on information provided in the Petition, supplemental submission, and other information readily available to the Department, we determine that Petitioners have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[18] Based on information provided in the Petition, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.[19]

The Department finds that Petitioners filed the Petition on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C), (E), and (F) of the Act and they have demonstrated sufficient industry support with respect to the CVD investigation that they are requesting the Department initiate.[20]

Injury Test

Because Turkey is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from Turkey materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

Petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise benefiting from countervailable subsidies. In addition, Petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[21]

Petitioners contend that the industry's injured condition is illustrated by reduced market share; underselling and price depression or suppression; lost sales and revenues; hindered production efforts, shipments, and capacity utilization; and decline in financial performance.[22] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.[23]

Initiation of Countervailing Duty Investigation

Section 702(b)(1) of the Act requires the Department to initiate a CVD investigation whenever an interested party files a CVD petition on behalf of an industry that: (1) Alleges the elements necessary for an imposition of a duty under section 701(a) of the Act; and (2) is accompanied by information reasonably available to the petitioner supporting the allegations. In the Petition, Petitioners allege that producers and exporters of rebar in Turkey benefited from countervailable subsidies bestowed by the GOT. The Department has examined the Petition and finds that it complies with the requirements of section 702(b)(1) of the Act. Therefore, in accordance with section 702(b)(1) of the Act, we are initiating a CVD investigation to determine whether manufacturers, producers, or exporters of rebar from Turkey receive countervailable subsidies.

Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation of 32 alleged programs. For one of these programs, however, we find that there is sufficient evidence to initiate only on part of the allegation. For a full discussion of the basis for our decision to initiate or not initiate on each program, *see* Turkey CVD Initiation Checklist.

A public version of the initiation checklist for this investigation is available on IA ACCESS and at *http://ia.ita.doc.gov/ia-highlights-and-news.html*.

Respondent Selection

The Petition identified 41 producers and/or exporters of steel concrete reinforcing bar in Turkey.[24] For this investigation, the Department expects to select respondents for individual examination based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports of subject merchandise during the period of investigation under all *Harmonized Tariff Schedule of the United States* (HTSUS) subheadings identified in the Scope of the Investigation.[25] We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties with access to information protected by APO shortly after the announcement of this case initiation. Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Department's Web site at *http://ia.ita.doc.gov/apo.*

The Department invites comments regarding the CBP data and respondent selection within seven calendar days of publication of this **Federal Register** notice. Comments must be filed in accordance with the filing requirements stated above. We intend to make our decision regarding respondent selection within 20 days of publication of this notice.

Distribution of Copies of the Petitions

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), copies of the public version of the Petition have been provided to the representatives of the GOT via IA ACCESS. Because of the particularly large number of producers/exporters identified in the Petition, the Department considers the service of the public version of the Petition to the foreign producers/exporters satisfied by the delivery of the public version of the Petition to the GOT, consistent with 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine no later than October 21, 2013, whether there is a reasonable indication that imports of allegedly subsidized rebar

[17] *See* Mexico AD Initiation Checklist and Turkey AD Initiation Checklist, at Attachment II.

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *See* General Issues Supplement, at 6–7 and Exhibit I-Supp-8.

[22] *See* Volume I of the Petitions, at 16–51 and Exhibits I–6 and I–8 through I–26; *see also* General Issues Supplement, at 1, 6–7, Revised Exhibit I–12B, and Exhibits I-Supp-1 and I-Supp-8.

[23] *See* Turkey CVD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Petitions Covering Steel Concrete Reinforcing Bar from Mexico and the Republic of Turkey.

[24] *Id.,* at Exhibit I–5B.

[25] *See* Appendix I of this notice for a listing of the HTSUS subheadings in the Scope of the Investigation.

from Turkey are materially injuring, or threatening material injury to, a U.S. industry.[26] A negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.[27]

Submission of Factual Information

On April 10, 2013, the Department published *Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule,* 78 FR 21246 (April 10, 2013), which modified two regulations related to AD and CVD proceedings: The definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301). The final rule identifies five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). The final rule requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The final rule also modified 19 CFR 351.301 so that, rather than providing general time limits, there are specific time limits based on the type of factual information being submitted. These modifications are effective for all proceeding segments initiated on or after May 10, 2013, and thus are applicable to this investigation. Please review the final rule, available at *http://ia.ita.doc.gov/frn/2013/1304frn/2013-08227.txt,* prior to submitting factual information in this investigation.

Notification to Interested Parties

Interested parties must submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[28] Parties are hereby reminded that revised certification requirements are in effect for company/government officials, as well as their representatives, in all segments of any AD or CVD proceedings initiated on or after March 14, 2011.[29] The formats for the revised certifications are provided at the end of the *Interim Final Rule.* Foreign governments and their officials may continue to submit certifications in either the format that was in use prior to the effective date of the *Interim Final Rule,* or in the format provided in the *Interim Final Rule.*[30] The Department intends to reject factual information submissions if the submitting party does not comply with the revised certification requirements.

This notice is issued and published pursuant to section 777(i) of the Act and 19 CFR 351.203(c).

Dated: September 24, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I

Scope of the Investigation

The merchandise subject to this investigation is steel concrete reinforcing bar imported in either straight length or coil form (''rebar'') regardless of metallurgy, length, diameter, or grade. The subject merchandise is classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') primarily under item numbers 7213.10.0000, 7214.20.0000, and 7228.30.8010. The subject merchandise may also enter under other HTSUS numbers including 7215.90.1000, 7215.90.5000, 7221.00.0015, 7221.00.0030, 7221.00.0045, 7222.11.0001, 7222.11.0057, 7222.11.0059, 7222.30.0001, 7227.20.0080, 7227.90.6085, 7228.20.1000, and 7228.60.6000. Specifically excluded are plain rounds (*i.e.,* non-deformed or smooth rebar). HTSUS numbers are provided for convenience and customs purposes; however, the written description of the scope remains dispositive.

[FR Doc. 2013–23987 Filed 10–1–13; 8:45 am]

BILLING CODE 3510–DS–P

[26] *See* section 703(a) of the Act.

[27] On September 20, 2013, the Department modified its regulation concerning the extension of time limits for submissions in antidumping (AD) and countervailing duty (CVD) proceedings. *See Extension of Time Limits,* 78 FR 57790 (September 20, 2013). The modification clarifies that parties may request an extension of time limits before any time limit established under Part 351 expires. This modification also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which the Department will grant untimely-filed requests for the extension of time limits.

[28] *See* section 782(b) of the Act.

[29] *See Certification of Factual Information for Import Administration during Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (*Interim Final Rule*), amending 19 CFR 351.303(g)(1) and (2).

[30] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Supplemental Interim Final Rule,* 76 FR 54697 (September 2, 2011).

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with August anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

DATES: Effective October 2, 2013.

FOR FURTHER INFORMATION CONTACT: Brenda E. Waters, Office of AD/CVD Operations, Customs Liaison Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various antidumping and countervailing duty orders and findings with August anniversary dates.

All deadlines for the submission of various types of information, certifications, or comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting time.

Notice of No Sales

If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (''POR''), it must notify the

Department within 60 days of publication of this notice in the **Federal Register.** All submissions must be filed electronically at *http://iaaccess.trade.gov* in accordance with 19 CFR 351.303. *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011). Such submissions are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended (''Act''). Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy must be served on every party on the Department's service list.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the POR. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within seven days of publication of this initiation notice and to make our decision regarding respondent selection within 21 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the applicable review.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department has found that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance has prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

Separate Rates

In proceedings involving non-market economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994). In accordance with the separate rates criteria, the Department assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate rate eligibility, the Department requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on the Department's Web site at *http://www.trade.gov/ia* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to the Department no later than 60 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [1] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently

[1] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently completed segment of the proceeding in which they participated.

made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name [2], should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Status Application will be available on the Department's Web site at *http://www.trade.gov/ia* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Status Application, refer to the instructions contained in the application. Separate Rate Status Applications are due to the Department no later than 60 calendar days of publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Status Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than August 31, 2014.

	Period to be reviewed
Antidumping Duty Proceedings	
Germany:	
Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe, A–428–820	8/1/12–7/31/13
Benteler Stahl/Rohr GmbH.	
ESW Roehrenwerke GmbH.	
Vallourec & Mannesmann Tubes-V & M Deutschland GmbH.	
voestalpine AG.	
voestalpine Tubulars GmbH & Co. KG.	
voestalpine Rotec GmbH & Co. KG.	
Japan:	
Brass Sheet and Strip, A–588–704	8/1/12–7/31/13
Dowa Metals & Mining Co., Ltd.	
Fujisawa Co., Ltd.	
Furukawa Electric Co., Ltd.	
Harada Metal Industry.	
Hitachi Alloy, Ltd.	
Hitachi Cable, Ltd.	
JX Nippon Mining & Metals Corp.	
Kicho Shindosho Co., Ltd.	
Kitz Metal Works Corp.	
Kobe Steel, Ltd.	
Mitsubishi Electric Metecs Co., Ltd.	
Mitsubishi Materials Corp.	
Mitsubishi Shindoh Co., Ltd.	
Mitsui Mining & Smelting Co., Ltd. (Mitsui Kinzoku).	
Mitsui Sumitomo Metal Mining Brass & Copper Co., Ltd.	
NGK Insulators (NGK Metals).	
Ohki Brass & Copper Co., Ltd.	
Sambo Copper Alloy Co., Ltd.	
Sugino Metal Industry Co., Ltd.	
Sumitomo Metal Mining Brass & Copper Co., Ltd.	
Uji Copper & Alloy Co., Ltd.	
YKK Corporation.	
Mexico:	
Light-Walled Rectangular Pipe and Tube, A–201–836	8/1/12–7/31/13
Maquilacero S.A. de C.V.	
Regiomontana de Perfiles y Tubos S.A. de C.V.	
Republic of Korea:	
Large Power Transformers, A–580–867	2/16/12–7/31/13
Hyosung Corporation.	
Hyundai Heavy Industries Co., Ltd.	
ILJIN.	
ILJIN Electric Co., Ltd.	
LSIS Co., Ltd.	
Socialist Republic of Vietnam:	
Certain Frozen Fish Fillets,[3] A–552–801	8/1/12–7/31/13
An Giang Argriculture and Foods Import-Export Joint Stock Company (also known as AFIEX).	
An Giang Fisheries Import and Export Joint Stock Company (also known as Agifish or AnGiang Fisheries Import and Export).	
An Phu Seafood Corporation (also known as ASeafood).	
Anvifish Co., Ltd.	
Anvifish Joint Stock Company (also known as Anvifish JSC).	
Asia Commerce Fisheries Joint Stock Company (also known as Acomfish JSC).	

[2] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

	Period to be reviewed
Bien Dong Seafood Co., Ltd.	
Binh An Seafood Joint Stock Co.	
Cadovimex II Seafood Import-Export and Processing Joint Stock Company (also know as Cadovimex II).	
Cantho Import-Export Joint Stock Company (CASEAMEX).	
CUU Long Fish Joint Stock Company (also known as CL-Fish).	
Dai Thanh Seafoods Company Limited (DATHACO).	
East Sea Seafoods Limited Liability Company (ESS).	
Fatifish Company Limited (FATFISH).	
GODACO Seafood Joint Stock Company.	
Golden Quality Seafood Corporation.	
Hiep Thanh Seafood Joint Stock Company.	
Hoa Phat Seafood Import-Export Processing J.S.C. (HOPAFISH).	
Hoang Long Seafood Processing Co., Ltd. (Hoang Long).	
Hung Vuong Seafood Joint Stock Company.	
International Development & Investment Corporation (also known as IDI).	
Nam Viet Corporation (NAVICO).	
Ngoc Ha Co. Ltd. Food Processing and Trading.	
NTSF Seafoods Joint Stock Company (also known as NTSF).	
QVD Food Company, Ltd. & QVD Dong Thap Food Co., Ltd.	
SaigonMekong Fishery Co., Ltd. (SAMEFICO).	
Southern Fisheries Industries Company, Ltd. (also known as South Vina).	
Thien Ma Seafood Company, Ltd. (also known as THIMACO).	
Thuan An Production Trading & Services Co., Ltd. (TAFISHCO).	
Thuan Hung Co., Ltd. (also known as THIMACO).	
To Chau Joint Stock Company (TOCHAU).	
Vinh Hoan Corporation.	
Vinh Quang Fisheries Corporation.	
Thailand:	
Polyethylene Retail Carrier Bags, A–549–821	8/1/12–7/31/13
Beyond Packaging Co., Ltd.	
Dpac Inter Corporation Co., Ltd.	
Elite Poly and Packaging Co., Ltd.	
Poly World Co., Ltd.	
Triple B Pack Company Limited.	
Two Path Plaspack Co., Ltd.	
The People's Republic of China:	
Certain Steel Nails,[4] A–570–909	8/1/12–7/31/13
ABF Freight System, Inc.	
Agritech Products Ltd.	
Aihua Holding Group Co., Ltd.	
Aironware (Shanghai) Co. Ltd.	
Anping County Anning Wire Mesh Co.	
Anping Fuhua Wire Mesh Making Co.	
APM Global Logistics O/B Hasbro Toy.	
Beijing Daruixing Global Trading Co., Ltd.	
Beijing Daruixing Nail Products Co., Ltd.	
Beijing Hong Sheng Metal Products Co., Ltd.	
Beijing Hongsheng Metal Products Co., Ltd.	
Beijing Jinheuang Co., Ltd.	
Beijing Kang Jie Kong Cargo Agent.	
Beijing KJK Intl Cargo Agent Co., Ltd.	
Beijing Long Time Rich Tech Develop.	
Beijing Tri-Metal Co., Ltd.	
Beijing Yonghongsheng Metal Products Co., Ltd.	
Besco Machinery Industry (Zhejiang) Co., Ltd.	
Brighten International, Inc.	
Cana (Tianjin) Hardware Ind., Co., Ltd.	
Cana (Tianjin) Hardware Industrial Co., Ltd.	
Century Shenzhen Xiamen Branch.	
Certified Products International, Inc.	
Changzhou MC I/E Co., Ltd.	
Changzhou Quyuan Machinery Co., Ltd.	
Changzhou Refine Flag & Crafts Co., Ltd.	
Chao Jinqiao Welding Material Co., Ltd.	
Chaohu Bridge Nail Industry Co., Ltd.	
Chaohu Jinqiao Welding Material Co.	
Chewink Corp.	
Chiieh Yung Metal Ind. Corp.	
Chiieh Yung Metal Industrial Corp.	
China Container Line (Shanghai) Ltd.	
China Silk Trading & Logistics Co., Ltd.	
China Staple Enterprise (Tianjin) Co., Ltd.	
Chongqing Hybest Nailery Co., Ltd.	

	Period to be reviewed
Chongqing Hybest Tools Group Co., Ltd.	
Cintee Steel Products Co., Ltd.	
Cyber Express Corporation.	
CYM (Nanjing) Nail Manufacture Co., Ltd.	
CYM (Nanjing) Ningquan Nail Manufacture Co., Ltd.	
Dagang Zhitong Metal Products Co., Ltd.	
Damco Shenzhen.	
Daxing Niantan Industrial.	
Delix International Co., Ltd.	
Dezhou Hualude Hardware Products Co., Ltd.	
Dingzhou Derunda Material and Trade Co., Ltd.	
Dingzhou Ruili Nail Production Co., Ltd.	
Dong'e Fugiang Metal Products Co., Ltd.	
Dongguan Five Stone Machinery Products Trading Co., Ltd.	
ECO System Co., Ltd.	
ECO System Corporation.	
Elite International Logistics Co.	
Elite Master International Ltd.	
England Rich Group (China) Ltd.	
Entech Manufacturing (Shenzhen) Ltd.	
Expeditors China Tianjin Branch.	
Faithful Engineering Products Co. Ltd.	
Fedex International Freight Forward Agency Services (Shanghai) Co., Ltd.	
Feiyin Co., Ltd.	
Fension International Trade Co., Ltd.	
Foreign Economic Relations & Trade.	
Fujiansmartness Imp. & Exp. Co., Ltd.	
Fuzhou Builddirect Ltd.	
Goal Well Stone Co., Ltd.	
Gold Union Group Ltd.	
Goldever International Logistics Co.	
Goldmax United Ltd.	
Grace News Inc.	
Guangdong Foreign Trade Import & Export Corporation.	
Guangzhou Qiwei Imports and Exports Co., Ltd.	
Guoxin Group Wang Shun I/E Co., Ltd.	
GWP Industries (Tianjin) Co., Ltd.	
Haierc Industry Co., Ltd.	
Haixing Hongda Hardware Production Co., Ltd.	
Haixing Linhai Hardware Products Factory.	
Haiyan Fefine Import and Export Co.	
Handuk Industrial Co., Ltd.	
Hangzhou Kelong Electrical Appliance & Tools Co. Ltd.	
Hangzhou New Line Co., Ltd.	
Hangzhou Zhongding Imp. & Exp. Co., Ltd.	
Hebei Cangzhou New Century Foreign Trade Co., Ltd.	
Hebei Development Metals Co., Ltd.	
Hebei Jinsidun (JSD) Co., Ltd.	
Hebei Machinery Import and Export Co., Ltd.	
Hebei Minmetals Co., Ltd.	
Hebei My Foreign Trade Co., Ltd.	
Hebei Super Star Pneumatic Nails Co., Ltd.	
Henan Pengu Hardware Manufacturing Co., Ltd.	
Hengshui Mingyao Hardware & Mesh Products Co., Ltd.	
Heretops (Hong Kong) International Ltd.	
Heretops Import & Export Co., Ltd.	
Hilti (China) Limited.	
HK Villatao Sourcing Co., Ltd.	
Hong Kong Hailiang Metal Trading Ltd.	
Hong Kong Yu Xi Co., Ltd.	
Huadu Jin Chuan Manufactory Co Ltd.	
Huanghua Honly Industry Corp.	
Huanghua Huarong Hardware Products Co., Ltd.	
Huanghua Jinhai Hardware Products Co., Ltd.	
Huanghua Jinhai Metal Products Co., Ltd.	
Huanghua Shenghua Hardware Manufactory Factory.	
Huanghua Xinda Nail Production Co., Ltd.	
Huanghua Xionghua Hardware Products Co., Ltd.	
Huanghua Yufutai Hardware Products Co., Ltd.	
Hubei Boshilong Technology Co., Ltd.	
Huiyuan Int'l Commerce Exhibition Co., Ltd.	
Jiashan Superpower Tools Co., Ltd.	
Jiaxing Yaoliang Import & Export Co., Ltd.	

	Period to be reviewed
Jinhua Kaixin Imp & Exp Ltd.	
Jining Huarong Hardware Products Co., Ltd.	
JISCO Corporation.	
Joto Enterprise Co., Ltd.	
Karuis Custom Metal Parts Mfg. Ltd.	
Kasy Logistics (Tianjin) Co., Ltd.	
K.E. Kingstone.	
Koram Panagene Co., Ltd.	
Kuehne & Nagel Ltd.	
Kum Kang Trading Co., Ltd.	
Kyung Dong Corp.	
Le Group Industries Corp. Ltd.	
Leang Wey Int. Business Co., Ltd.	
Liang's Industrial Corp.	
Lijiang Liantai Trading Co., Ltd.	
Linhai Chicheng Arts & Crafts Co., Ltd.	
Lins Corp.	
Linyi Flying Arrow Imp & Exp. Co., Ltd.	
Maanshan Cintee Steel Products Co., Ltd.	
Maanshan Leader Metal Products Co., Ltd.	
Maanshan Longer Nail Product Co., Ltd.	
Manufacutersinchina (HK) Company Ltd.	
Marsh Trading Ltd.	
Master International Co., Ltd.	
Mingguang Abundant Hardware Products Co., Ltd.	
Nanjing Dayu Pneumatic Gun Nails Co., Ltd.	
Nanjing Yuechang Hardware Co., Ltd.	
Nanjing Yuechang Hardware Co., Ltd.	
Nantong Corporation for Internation.	
Ningbo Bolun Electric Co., Ltd.	
Ningbo Dollar King Industrial Co., Ltd.	
Ningbo Endless Energy Electronic Co., Ltd.	
Ningbo Fension International Trade Center.	
Ningbo Fortune Garden Tools and Equipment Inc.	
Ningbo Haixin Railroad Material Co.	
Ningbo Huamao Imp & Exp. Co., Ltd.	
Ningbo Hyderon Hardware Co., Ltd.	
Ningbo JF Tools Industrial Co., Ltd.	
Ningbo KCN Electric Co., Ltd.	
Ningbo Meizhi Tools Co., Ltd.	
Ningbo Ordam Import & Export Co., Ltd.	
OEC Logistics (Qingdao) Co., Ltd.	
Omega Products International.	
OOCL Logistics O B of Winston Marketing Group.	
Orisun Electronics HK Co., Ltd.	
Pacole International Ltd.	
Pakwell Co., Ltd.	
Panagene Inc.	
Pavilion Investmen Ltd.	
Perfect Seller Co., Ltd.	
Prominence Cargo Service, Inc.	
PT Enterprise Inc.	
Qianshan Huafeng Trading Co., Ltd.	
Qidong Liang Chyuan Metal Industry Co., Ltd.	
Qingdao Bestworld Industry Trading.	
Qingdao D&L Group Ltd.	
Qingdao D & L Supply Group Co., Ltd.	
Qingdao Denarius Manufacture Co. Limited.	
Qingdao Golden Sunshine ELE–EAQ Co., Ltd.	
Qingdao International Fastening Systems Inc.	
Qingdao Jisco Co., Ltd.	
Qingdao Koram Steel Co., Ltd.	
Qingdao Lutai Industrial Products Manufacturing Co., Ltd.	
Qingdao Meijia Metal Products Co.	
Qingdao Rohuida International Trading Co.	
Qingdao Sino-Sun International Trading Company Limited.	
Qingdao Super United Metals & Wood Prods. Co., Ltd.	
Qingdao Tiger Hardware Co., Ltd.	
Qingfu Metal Craft Manufacturing Ltd.	
Qinghai Wutong (Group) Industry Co.	
Qingyuan County Hongyi Hardware Products Factory.	
Qingyun Hongyi Hardware Factory.	
Qinhuangdao Kaizheng Industry and Trade Co.	

	Period to be reviewed
Q-Yield Outdoor Great Ltd.	
Region International Co., Ltd.	
Richard Hung Ent. Co.. Ltd.	
River Display Ltd.	
Rizhao Changxing Nail-Making Co., Ltd.	
Rizhao Handuk Fasteners Co., Ltd.	
Rizhao Qingdong Electronic Appliance Co.	
Romp (Tianjin) Hardware Co., Ltd.	
Saikelong Electric Appliances (Suzhou) Co.	
Se Jung (China) Shipping Co., Ltd.	
SDC International Aust. Pty., Ltd.	
SDC International Australia Pty., Ltd.	
Senco Products, Inc.	
Senco-Xingya Metal Products (Taicang) Co., Ltd.	
Shandex Co., Ltd.	
Shandex Industrial Inc.	
Shandong Dinglong Import & Export Co., Ltd.	
Shandong Liaocheng Minghua Metal Products Co., Ltd.	
Shandong Minmetals Co., Ltd.	
Shandong Oriental Cherry Hardware Group Co., Ltd.	
Shandong Oriental Cherry Hardware Import & Export Co., Ltd.	
Shandong Oriental Cherry Hardware Import and Export Co., Ltd.	
Shanghai Chengkai Hardware Product. Co., Ltd.	
Shanghai Colour Nail Co., Ltd.	
Shanghai Curvet Hardware Products Co., Ltd.	
Shanghai Ding Ying Printing & Dyeing CLO.	
Shanghai GBR Group International Co.	
Shanghai Holiday Import & Export Co., Ltd.	
Shanghai Jade Shuttle Hardware Tools Co., Ltd.	
Shanghai Jian Jie International TRA.	
Shanghai March Import & Export Company Ltd.	
Shanghai Mizhu Imp & Exp Corporation.	
Shanghai Nanhui Jinjun Hardware Factory.	
Shanghai Pioneer Speakers Co., Ltd.	
Shanghai Pudong Int'l Transportation Booking Dep't.	
Shanghai Seti Enterprise International Co., Ltd.	
Shanghai Shengxiang Hardware Co.	
Shanghai Suyu Railway Fastener Co.	
Shanghai Tengyu Hardware Products Co., Ltd.	
Shanghai Tengyu Hardware Tools Co., Ltd.	
Shanghai Tymex International Trade Co., Ltd.	
Shanghai Yueda Nails Industry Co., Ltd.	
Shanxi Hairui Trade Co., Ltd.	
Shanxi Hairui Trade Co., Ltd.	
Shanxi Pioneer Hardware Industrial Co., Ltd.	
Shanxi Tianli Enterprise Co., Ltd.	
Shanxi Tianli Industries Co., Ltd.	
Shanxi Yuci Broad Wire Products Co., Ltd.	
Shanxi Yuci Wire Material Factory.	
Shaoguang International Trade Co.	
Shaoxing Chengye Metal Producting Co., Ltd.	
Shenyang Yulin International.	
Shenzhen Changxinghongye Imp.	
Shenzhen Erisson Technology Co., Ltd.	
Shenzhen Meiyuda Trade Co., Ltd.	
Shenzhen Pacific-Net Logistics Inc.	
Shenzhen Shangqi Imports-Exports TR.	
Shijiazhuang Anao Imp & Export Co., Ltd.	
Shijiazhuang Fangyu Import & Export Corp.	
Shijiazhuang Fitex Trading Co., Ltd.	
Shijiazhuang Shuangjian Tools Co., Ltd.	
Shitong Int'l Holding Limited.	
Shouguang Meiqing Nail Industry Co., Ltd.	
Sinochem Tianjin Imp & Exp Shenzhen Corp.	
Sirius Global Logistics Co., Ltd.	
S-Mart (Tianjin) Technology Development Co., Ltd.	
Sunfield Enterprise Corporation.	
Sunlife Enterprises (Yangjiang) Ltd.	
Suntec Industries Co., Ltd.	
Sunworld International Logistics.	
Superior International Australia Pty Ltd.	
Suzhou Guoxin Group Wangshun I/E Co. Imp. Exp. Co., Ltd.	
Suzhou Xingya Nail Co., Ltd.	

	Period to be reviewed
Suzhou Yaotian Metal Products Co., Ltd. The Stanley Works (Langfang) Fastening Systems Co., Ltd. Stanley Black & Decker, Inc. Stanley Fastening Systems LP. Shandex Industrial. Telex Hong Kong Industry Co., Ltd. The Everest Corp. Thermwell Products. Tian Jin Sundy Co., Ltd. (a/k/a/ Tianjin Sunny Co., Ltd.) Tianjin Baisheng Metal Product Co., Ltd. Tianjin Bosai Hardware Tools Co., Ltd. Tianjin Chengyi International Trading Co., Ltd. Tianjin Chentai International Trading Co., Ltd. Tianjin City Dagang Area Jinding Metal Products Factory. Tianjin City Daman Port Area Jinding Metal Products Factory. Tianjin City Jinchi Metal Products Co., Ltd. Tianjin Dagang Dongfu Metallic Products Co., Ltd. Tianjin Dagang Hewang Nail Factory. Tianjin Dagang Hewang Nails Manufacture Plant. Tianjin Dagang Huasheng Nailery Co., Ltd. Tianjin Dagang Jingang Nail Factory. Tianjin Dagang Jingang Nails Manufacture Plant. Tianjin Dagang Linda Metallic Products Co., Ltd. Tianjin Dagang Longhua Metal Products Plant. Tianjin Dagang Shenda Metal Products Co., Ltd. Tianjin Dagang Yate Nail Co., Ltd. Tianjin Dery Import and Export Co., Ltd. Tianjin Everwin Metal Products Co., Ltd. Tianjin Foreign Trade (Group) Textile & Garment Co., Ltd. Tianjin Hewang Nail Making Factory. Tianjin Huachang Metal Products Co., Ltd. Tianjin Huapeng Metal Company. Tianjin Huasheng Nails Production Co., Ltd. Tianjin Jetcom Manufacturing Co., Ltd. Tianjin Jieli Hengyuan Metallic Products Co., Ltd. Tianjin Jietong Hardware Products Co., Ltd. Tianjin Jietong Metal Products Co., Ltd. Tianjin Jin Gang Metal Products Co., Ltd. Tianjin Jinchi Metal Products Co., Ltd. Tianjin Jinghai County Hongli Industry & Business Co., Ltd. Tianjin Jinghai County Hongli Industry and Business Co., Ltd. Tianjin Jinjin Pharmaceutical Factory Co., Ltd. Tianjin Jishili Hardware Co., Ltd. Tianjin JLHY Metal Products Co., Ltd. Tianjin Jurun Metal Products Co., Ltd. Tianjin Kunxin Hardware Co., Ltd. Tianjin Kunxin Metal Products Co., Ltd. Tianjin Lianda Group Co., Ltd. Tianjin Linda Metal Company. Tianjin Longxing (Group) Huanyu Imp. & Exp. Co., Ltd. Tianjin Master Fastener Co., Ltd. (a/k/a Master Fastener Co., Ltd.) Tianjin Mei Jia Hua Trade Co., Ltd. Tianjin Metals and Minerals. Tianjin Port Free Trade Zone Xiangtong Intl. Industry & Trade Corp. Tianjin Products & Energy Resources Dev. Co., Ltd. Tianjin Qichuan Metal Co., Ltd. Tianjin Ruiji Metal Products Co., Ltd. Tianjin Senbohengtong International. Tianjin Senmiao Import and Export Co., Ltd. Tianjin Shenyuan Steel Producting Group Co., Ltd. Tianjin Shishun Metal Product Co., Ltd. Tianjin Shishun Metallic Products Co., Ltd. Tianjin Tailai Import Export. Tianjin Universal Machinery Imp. & Exp. Corp. Ltd. Tianjin Universal Machinery Imp & Exp Corporation. Tianjin Xiantong Fucheng Gun Nail Manufacture Co., Ltd. Tianjin Xiantong Juxiang Metal MFG Co., Ltd. Tianjin Xiantong Material & Trade Co., Ltd. Tianjin Xinyuansheng Metal Products Co., Ltd. Tianjin Yihao Metallic Products Co., Ltd. Tianjin Yongchang Metal Product Co., Ltd. Tianjin Yongxu Metal Products Co., Ltd. Tianjin Yongye Furniture.	

	Period to be reviewed
Tianjin Yongyi Standard Parts Production Co., Ltd.	
Tianjin Zhong Jian Wanli Stone Co., Ltd.	
Tianjin Zhonglian Metals Ware Co., Ltd.	
Tianjin Zhongsheng Garment Co., Ltd.	
Tianwoo Logistics Developing Co., Ltd.	
Topocean Consolidation Service (CHA) Ltd.	
Traser Mexicana, S.A. De C.V.	
Treasure Way International Dev. Ltd.	
True Value Company (HK) Ltd.	
Unicatch Industrial Co., Ltd.	
Unigain Trading Co., Ltd.	
Union Enterprise (Kunshan) Co., Ltd. a.k.a. Union Enterprise Co., Ltd.	
Weifang Xiaotian Machine Co., Ltd.	
Wenzhou KLF Medical Plastics Co., Ltd.	
Wenzhou Ouxin Foreign Trade Co., Ltd.	
Wenzhou Yuwei Foreign Trade Co., Ltd.	
Winsmart International Shipping Ltd. O/B Zhaoqing Harvest Nails Co., Ltd.	
Wintime Import & Export Corporation Limited of Zhongshan.	
Worldwide Logistics Co., Ltd. (Tianjin Branch).	
Wuhan Xinxin Native Produce & Animal By-Products Mfg. Co., Ltd.	
Wuhu Sheng Zhi Industrial Co., Ltd.	
Wuhu Shijie Hardware Co., Ltd.	
Wuhu Xin Lan De Industrial Co., Ltd.	
Wuqiao County Huifeng Hardware Products Factory.	
Wuqiao County Xinchuang Hardware Products Factory.	
Wuqiao Huifeng Hardware Production Co., Ltd.	
Wuxi Baolin Nail Enterprises.	
Wuxi Baolin Nail-Making Machinery Co., Ltd.	
Wuxi Chengye Metal Products Co., Ltd.	
Wuxi Colour Nail Co., Ltd.	
Wuxi Qiangye Metalwork Production Co., Ltd.	
Wuxi Jinde Assets Management Co., Ltd.	
Wuxi Moresky Developing Co., Ltd.	
Xiamen New Kunlun Trade Co., Ltd.	
Xi'an Metals & Minerals Import and Export Co., Ltd.	
Xi'an Steel.	
XL Metal Works Co., Ltd.	
XM International, Inc.	
Xuzhou CIP International Group Co., Ltd.	
Yeswin Corporation.	
Yitian Nanjing Hardware Co., Ltd.	
Yiwu Dongshun Toys Manufacture.	
Yiwu Excellent Import & Export Co., Ltd.	
Yiwu Jiehang Import & Export Co., Ltd.	
Yiwu Qiaoli Import & Export Co., Ltd.	
Yiwu Richway Imp & Exp Co., Ltd.	
Yiwu Zhongai Toys Co., Ltd.	
Yongcheng Foreign Trade Corp.	
Yu Chi Hardware Co., Ltd.	
Yue Sang Plastic Factory.	
Yuhuan Yazheng Importing.	
Zhangjiagang Lianfeng Metals Products Co., Ltd.	
Zhangjiagang Longxiang Packing Materials Co.	
Zhaoqing Harvest Nails Co., Ltd.	
Zhejiang Gem-Chun Hardware Accessory Co., Ltd.	
Zhejiang Hungyan Xingzhou Industria.	
Zhejiang Jinhua Nail Factory.	
Zhejiang Minmetals Sanhe Imp & Exp Co.	
Zhejiang Qifeng Hardware Make Co., Ltd.	
Zhejiang Taizhou Eagle Machinery Co.	
Zhejiang Yiwu Huishun Import/Export Co., Ltd.	
Zhongshan Junlong Nail Manufactures Co., Ltd.	
ZJG Lianfeng Metals Product Ltd.	
Laminated Woven Sacks,[5] A–570–916	8/1/12–7/31/13
Cangnan Color Make the Bag.	
Han Shing Corporation Limited.	
Jiangsu Hotsun Plastics.	
Ningbo Yong Feng Packaging Co., Ltd.	
Polywell Industrial Co.	
Shandong Qilu Plastic Fabric Group, Ltd.	
Shandong Shouguang Jianyuanchun Co.	
Shangong Youlian Subian Co., Ltd.	
Zibo Aifudi Plastic Packaging Co., Ltd.	

	Period to be reviewed
Polyethylene Retail Carrier Bags,[6] A–570–886 ..... Dongguan Nozawa Plastics Products Co., Ltd. and United Power Packaging, Ltd. (collectively Nozawa).	8/1/12–7/31/13
Countervailing Duty Proceedings	
None.	
Suspension Agreements	
None.	

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia* v. *United States,* 291 F.3d 806 (Fed Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period, of the order, if such a gap period is applicable to the POR.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that the meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Revised Factual Information Requirements

On April 10, 2013, the Department published *Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule,* 78 FR 21246 (April 10, 2013), which modified two regulations related to antidumping and countervailing duty proceedings: the definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301). The final rule identifies five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). The final rule requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The final rule also modified 19 CFR 351.301 so that, rather than providing general time limits, there are specific time limits based on the type of factual information being submitted. These modifications are effective for all segments initiated on or after May 10, 2013. Please review the final rule, available at *http://ia.ita.doc.gov/frn/2013/1304frn/2013-08227.txt,* prior to submitting factual information in this segment.

Any party submitting factual information in an antidumping duty or countervailing duty proceeding must certify to the accuracy and completeness of that information. *See* section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives. Ongoing segments of any antidumping duty or countervailing duty proceedings initiated on or after March 14, 2011 should use the formats for the revised certifications provided at the end of the *Interim Final Rule. See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (''*Interim Final Rule''*), amending 19 CFR 351.303(g)(1) and (2); *Certification of Factual Information to Import Administration during Antidumping and Countervailing Duty Proceedings: Supplemental Interim Final Rule,* 76 FR 54697 (September 2, 2011). All segments of any antidumping duty or countervailing duty proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided at the end of the *Final Rule. See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (''*Final Rule''*); *see also* the frequently asked questions regarding the *Final Rule,* available at *http://ia.ita.doc.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.* The Department intends to reject factual submissions in any proceeding segments if the submitting party does not comply with applicable revised certification requirements.

These initiations and this notice are in accordance with section 751(a) of the

[3] If one of the above-named companies does not qualify for a separate rate, all other exporters of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[4] If one of the above-named companies does not qualify for a separate rate, all other exporters of Certain Steel Nails from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[5] If one of the above-named companies does not qualify for a separate rate, all other exporters of Laminated Woven Sacks the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[6] If one of the above-named companies does not qualify for a separate rate, all other exporters of Polyethylene Retail Carrier Bags from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

Act (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: September 24, 2013 .

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2013–23782 Filed 10–1–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Wooden Bedroom Furniture From the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

DATES: Effective October 2, 2013.

FOR FURTHER INFORMATION CONTACT: Jeffrey Pedersen or Patrick O'Connor, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–2769 or (202) 482–0989, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 4, 2005, the Department of Commerce (Department) published in the **Federal Register** the antidumping duty order on wooden bedroom furniture from the People's Republic of China (PRC).[1] On January 3, 2013, the Department published a notice of opportunity to request an administrative review of the wooden bedroom furniture order.[2]

The Department received multiple timely requests for an administrative review of the wooden bedroom furniture order and on February 28, 2013, in accordance with section 751(a) of Tariff Act of 1930, as amended (the Act), published in the **Federal Register** a notice of the initiation of an administrative review of that order.[3] The administrative review was initiated with respect to 200 companies or groups of companies, and covers the period from January 1, 2012, through December 31, 2012. While there are a number of companies which remain under review, certain parties have timely withdrawn all review requests for a number of other companies, as discussed below.

Rescission of Review, in Part

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the date of publication of the notice of initiation of the requested review. All requesting parties withdrew their respective requests for an administrative review of the entities listed in Appendix I, within 90 days of the date of publication of the *Initiation Notice.* The entities listed in Appendix I had a separate rate granted in the most recently completed segment of this proceeding in which they were under review. Accordingly, the Department is rescinding this review, in part, with respect to these entities, in accordance with 19 CFR 351.213(d)(1).[4]

Companies That Have Not Demonstrated Eligibility for a Separate Rate

In addition to the companies noted above, all review requests were timely withdrawn for other companies that are currently under review that either do not have a separate rate because they have never been reviewed or did not demonstrate eligibility for a separate rate in the most recently completed segment of this proceeding in which they were under review. Therefore, these companies will continue to be subject to the PRC-wide entity rate. While the requests for review of those companies were withdrawn by all parties, those withdrawn companies are part of the PRC-wide entity which could come under review in this segment of the proceeding. If the PRC-wide entity comes under review we will make a determination with respect to the PRC-wide entity at the final results. A complete list of these entities without separate rates is contained in Appendix II.

Assessment

For the entities in Appendix I for which the Department has rescinded this review and which had a separate rate granted in the most recently completed segment of this proceeding in which they were under review, the Department intends to issue appropriate assessment instructions directly to U.S. Customs and Border Protection 15 days after the publication of this notice in the **Federal Register**. For these entities, antidumping duties shall be assessed on period of review entries at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i).

For the entities in Appendix II, which are part of the PRC-wide entity during the instant review period (*i.e.,* have not established their eligibility for a separate rate), the Department will issue assessment instructions 15 days after publication of the final results of this review.

Notification to Importers

This notice serves as a final reminder to importers whose entries will be liquidated as a result of this rescission notice, 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 assumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Orders (APOs)

This notice also serves as a reminder to parties subject to APOs of their responsibility concerning the return or destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: September 25, 2013.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix I

The following companies, which were named in our *Initiation Notice,* had a separate rate granted in the most recently completed segment of this proceeding in which they were under review. Subsequently, interested parties timely

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture From the People's Republic of China,* 70 FR 329 (January 4, 2005).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 78 FR 288 (January 3, 2013).

[3] *See Wooden Bedroom Furniture From the People's Republic of China: Initiation of Administrative Review,* 78 FR 13626 (February 28, 2013) (*Initiation Notice*).

[4] *See* Appendix I.

withdrew all requests for review of these companies.

Therefore, pursuant to 19 CFR 351.213(d)(1), we are rescinding this administrative review with respect to these companies:

- Art Heritage International, Ltd., Super Art Furniture Co., Ltd., Artwork Metal & Plastic Co., Ltd., Jibson Industries Ltd., Always Loyal International
- Baigou Crafts Factory of Fengkai [5]
- Changshu HTC Import & Export Co., Ltd.
- Cheng Meng Furniture (PTE) Ltd., Cheng Meng Decoration & Furniture (Suzhou) Co., Ltd.
- Dalian Huafeng Furniture Group Co., Ltd.
- Decca Furniture Ltd.
- Dongguan Hung Sheng Artware Products Co., Ltd., Coronal Enterprise Co., Ltd.
- Dongguan Kingstone Furniture Co., Ltd., Kingstone Furniture Co., Ltd.
- Dongguan Sunrise Furniture Co., Ltd., Taicang Sunrise Wood Industry Co., Ltd., Taicang Fairmount Designs Furniture Co., Ltd., Meizhou Sunrise Furniture Co., Ltd.
- Dorbest Ltd., Rui Feng Woodwork Co., Ltd. Aka Rui Feng Woodwork (Dongguan) Co., Ltd., Rui Feng Lumber Development Co., Ltd. Aka Rui Feng Lumber Development (Shenzhen) Co., Ltd.,
- Fine Furniture (Shanghai) Ltd.
- Guangzhou Maria Yee Furnishings Ltd., Pyla HK, Ltd., Maria Yee, Inc.
- Hang Hai Woodcraft's Art Factory
- Jiangmen Kinwai Furniture Decoration Co., Ltd.
- Jiangmen Kinwai International Furniture Co., Ltd.
- Jiangsu Xiangsheng Bedtime Furniture Co., Ltd.
- Jiangsu Yuexing Furniture Group Co., Ltd.
- Jiedong Lehouse Furniture Co., Ltd.
- Kunshan Summit Furniture Co., Ltd.
- Nanhai Jiantai Woodwork Co., Ltd., Fortune Glory Industrial Ltd. (H.K. Ltd.)
- Nathan International Ltd., Nathan Rattan Factory
- Passwell Corporation, Pleasant Wave Ltd.
- Perfect Line Furniture Co., Ltd.
- Prime Wood International Co., Ltd, Prime Best International Co., Ltd., Prime Best Factory, Liang Huang (Jiaxing) Enterprise Co., Ltd.
- Putian Jinggong Furniture Co., Ltd.
- Qingdao Liangmu Co., Ltd.
- Restonic (Dongguan) Furniture Ltd., Restonic Far East (Samoa) Ltd.
- Rizhao Sanmu Woodworking Co., Ltd.
- Shanghai Jian Pu Export & Import Co., Ltd.
- Shenzhen Forest Furniture Co., Ltd.
- Shenzhen Jiafa High Grade Furniture Co., Ltd., Golden Lion International Trading Ltd.
- Shenzhen New Fudu Furniture Co., Ltd.
- Shenzhen Wonderful Furniture Co., Ltd.
- Shing Mark Enterprise Co., Ltd., Carven Industries Limited (BVI), Carven Industries Limited (Hk), Dongguan Zhenxin Furniture Co., Ltd., Dongguan Yongpeng Furniture Co., Ltd.
- Starwood Industries Ltd.
- Sunforce Furniture (Hui-Yang) Co., Ltd., Sun Fung Wooden Factory, Sun Fung Co., Shin Feng Furniture Co., Ltd., Stupendous International Co., Ltd.
- Superwood Co., Ltd., Lianjiang Zongyu Art Products Co., Ltd.
- Techniwood Industries Ltd., Ningbo Furniture Industries Limited, Ningbo Hengrun Furniture Co., Ltd.
- Tradewinds Furniture Ltd., Fortune Glory Industrial Ltd. (H. K. Ltd.)
- U-Rich Furniture (Zhangzhou) Co., Ltd., U-Rich Furniture Ltd.
- Wanvog Furniture (Kunshan) Co., Ltd.
- Woodworth Wooden Industries (Dong Guan) Co., Ltd.
- Xiamen Yongquan Sci-Tech Development Co., Ltd.
- Yihua Timber Industry Co., Ltd., Guangdong Yihua Timber Industry Co., Ltd.
- Zhang Zhou Sanlong Wood Product Co., Ltd.
- Zhangjiagang Daye Hotel Furniture Co., Ltd.
- Zhangzhou Guohui Industrial & Trade Co., Ltd.
- Zhongshan Fookyik Furniture Co., Ltd.
- Zhongshan Golden King Furniture Industrial Co., Ltd.
- Zhoushan For-Strong Wood Co., Ltd.

Appendix II

The following companies, which were named in our *Initiation Notice,* either do not have a separate rate because they have never been reviewed or were not granted a separate rate in the most recently completed segment of this proceeding in which they were under review. Therefore, these companies will continue to be subject to the PRC-wide entity rate. Although interested parties timely withdrew all requests for review of these companies, the companies are part of the PRC-wide entity which could come under review in this segment of the proceeding. If the PRC-wide entity comes under review, we will make a determination with respect to the PRC-wide entity at the final results.

- Alexandre International Corp., Southern Art Development Ltd., Alexandre Furniture (Shenzhen) Co., Ltd., Southern Art Furniture Factory [6]
- Best King International Ltd.
- Billy Wood Industrial (Dong Guan) Co., Ltd., Great Union Industrial (Dongguan) Co., Ltd., Time Faith Ltd.[7]
- BNBM Co., Ltd
- Brother Furniture Manufacture Co., Ltd.
- C.F. Kent Co., Inc.
- C.F. Kent Hospitality, Inc.
- Classic Furniture Global Co., Ltd.
- Creation Industries Co., Ltd.
- Der Cheng Furniture Co., Ltd.
- Der Cheng Wooden Works of Factory
- Dong Guan Golden Fortune Houseware Co., Ltd.
- Dongguan Bon Ten Furniture Co., Ltd.
- Dongguan Chunsan Wood Products Co,Ltd.
- Dongguan Creation Furniture Co., Ltd.,
- Dongguan Da Zhong Woodwork Co., Ltd.
- Dongguan Grand Style Furniture Co., Ltd.
- Dongguan Haoshun Furniture Ltd.
- Dongguan Hero Way Woodwork Co., Ltd.
- Dongguan Hua Ban Furniture Co., Ltd.
- Dongguan Huansheng Furniture Co., Ltd.[8]
- Dongguan Mu Si Furniture Co., Ltd.
- Dongguan New Technology Import & Export Co., Ltd.
- Dongguan Sunpower Enterprise Co., Ltd.
- Dongying Huanghekou Furniture Industry Co., Ltd.[9]
- Dream Rooms Furniture (Shanghai) Co., Ltd.
- Ever Spring Furniture Company Ltd.
- Fairmont Designs
- Forward Win Enterprises Co., Ltd.,
- Foshan Guanqiu Furniture Co., Ltd.
- Furnmart Ltd.
- Green River Wood (Dongguan) Ltd.
- Guangdong Sunwin Green Furniture Industry Group Co., Ltd.
- Guangming Group Wumahe Furniture Co., Ltd.
- Hainan Jong Bao Lumber Co., Ltd.[10]
- Hero Way Enterprises Ltd.
- Hong Kong Da Zhi Furniture Co., Ltd.
- Hong Kong Jingbi Group.
- Huasen Furniture Co., Ltd.
- Hung Fai Wood Products Factory, Ltd.
- Hwang Ho International Holdings Limited
- Inni Furniture
- Jiangsu Weifu Group Fullhouse Furniture Mfg. Corp.
- Jibbon Enterprise Co., Ltd.[11]
- Kai Chan (Hong Kong) Enterprise Ltd.
- Kai Chan Furniture Co., Ltd.
- King Rich International, Ltd.
- King's Way Furniture Industries Co., Ltd.
- Kingsyear Ltd.
- Kuan Lin Furniture (Dong Guan) Co., Ltd.
- Kuan Lin Furniture Co., Ltd.
- Kuan Lin Furniture Factory
- Kunshan Lee Wood Product Co., Ltd.
- Leefu Wood (Dongguan) Co., Ltd.,
- Link Silver Ltd. (V.I.B.)

[5] While the Department stated in the *Initiation Notice* that this company did not have a separate rate, in the most recently completed segment of this proceeding, which was completed after publication of the *Initiation Notice,* the Department determined that the company was entitled to a separate rate. *See Wooden Bedroom Furniture From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011,* 78 FR 35249 (June 12, 2013) (''*2011 WBF Final*'').

[6] While the Department stated in the *Initiation Notice* that this company had a separate rate, on June 12, 2013, the Department determined that this company was not eligible for a separate rate. *See 2011 WBF Final.*

[7] While the Department stated in the *Initiation Notice* that this company had a separate rate, on June 12, 2013, the Department determined that this company was not eligible for a separate rate. *See 2011 WBF Final.*

[8] While the Department stated in the *Initiation Notice* that this company had a separate rate, on June 12, 2013, the Department determined that this company was not eligible for a separate rate. *See 2011 WBF Final.*

[9] While the Department stated in the *Initiation Notice* that this company had a separate rate, on June 12, 2013, the Department determined that this company was not eligible for a separate rate. *See 2011 WBF Final.*

[10] While the Department stated in the *Initiation Notice* that this company had a separate rate, on August 27, 2012, the Department determined that this company was not eligible for a separate rate. *See Wooden Bedroom Furniture From the People's Republic of China: Final Results and Final Rescission in Part,* 77 FR 51754 (August 27, 2012)(*2010 WBF Final).*

[11] While the Department stated in the *Initiation Notice* that this company had a separate rate, on August 27, 2012, the Department determined that this company was not eligible for a separate rate. *See 2010 WBF Final.*

- Locke Furniture Factory
- Meikangchi (Nantong) Furniture Co., Ltd.
- Nantong Dongfang Orient Furniture Co., Ltd.
- Nantong Yangzi Furniture Co., Ltd.
- Nantong Yushi Furniture Co., Ltd.
- Passwell Wood Corporation
- S.Y.C. Family Enterprise Co., Ltd.
- Samso Industries Ltd.
- Shanghai Aosen Furniture Co.,Ltd
- Shanghai Fangjia Industry Co., Ltd.
- Shanghai Hospitality Product Mfg., Co., Ltd.
- Shanghai Maoji Imp And Exp Co., Ltd.[12]
- Shanghai Sunrise Furniture Co., Ltd.
- Sheng Jing Wood Products (Beijing) Co., Ltd., Telstar Enterprises Ltd.[13]
- Shenzhen Xiande Furniture Factory
- Starwood Furniture Manufacturing Co., Ltd.
- Taiwan Kai Chan Co., Ltd.
- Tarzan Furniture Industries Ltd.,
- Tianjin Master Home Furniture Company
- Tradewinds International Enterprise Ltd.
- Trendex Industries Ltd.
- Wan Bao Chen Group Hong Kong Co., Ltd.
- Well Earth International Ltd.
- Winny Overseas, Ltd.
- Winny Universal Ltd.
- Xilinmen Group Co . Ltd.
- Xingli Arts & Crafts Factory of Yangchun
- Yichun Guangming Furniture Co., Ltd.
- Yongxin Industrial (Holdings) Limited
- Zhanjiang Sunwin Arts & Crafts Co., Ltd.
- Zhong Shan Fullwin Furniture Co., Ltd.
- Zhongshan Gainwell Furniture Co., Ltd.
- Zhongshan Winny Furniture Ltd.

[FR Doc. 2013–24113 Filed 10–1–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–823; A–834–807; A–307–820]

Silicomanganese From India, Kazakhstan, and Venezuela: Continuation of Antidumping Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (the ''Department'') and the International Trade Commission (the ''ITC'') that revocation of the antidumping duty orders on silicomanganese from India, Kazakhstan, and Venezuela would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing a notice of continuation of the antidumping duty order.

DATES: *Effective Date:* October 2, 2013.

FOR FURTHER INFORMATION CONTACT: Sean Carey, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–3964.

SUPPLEMENTARY INFORMATION:

Background

On October 1, 2012, the Department initiated a sunset review of the antidumping duty orders on silicomanganese from India, Kazakhstan, and Venezuela, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the ''Act'').[1] As a result of its review, the Department determined that revocation of the antidumping duty orders on silicomanganese from India, Kazakhstan, and Venezuela would likely lead to a continuation or recurrence of dumping and, therefore, notified the ITC of the magnitude of the margins likely to prevail should the order be revoked.[2] On September 24, 2013, the ITC published its determination, pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on silicomanganese from India, Kazakhstan, and Venezuela would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[3]

Scope of the Orders

For purposes of these orders, the products covered are all forms, sizes and compositions of silicomanganese, except low-carbon silicomanganese, including silicomanganese briquettes, fines and slag. Silicomanganese is a ferroalloy composed principally of manganese, silicon and iron, and normally contains much smaller proportions of minor elements, such as carbon, phosphorous and sulfur. Silicomanganese is sometimes referred to as ferrosilicon manganese. Silicomanganese is used primarily in steel production as a source of both silicon and manganese. Silicomanganese generally contains by weight not less than 4 percent iron, more than 30 percent manganese, more than 8 percent silicon and not more than 3 percent phosphorous. Silicomanganese is properly classifiable under subheading 7202.30.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Some silicomanganese may also be classified under HTSUS subheading 7202.99.5040.

The low-carbon silicomanganese excluded from this scope is a ferroalloy with the following chemical specifications: Minimum 55 percent manganese, minimum 27 percent silicon, minimum 4 percent iron, maximum 0.10 percent phosphorus, maximum 0.10 percent carbon and maximum 0.05 percent sulfur. Low-carbon silicomanganese is used in the manufacture of stainless steel and special carbon steel grades, such as motor lamination grade steel, requiring a very low carbon content. It is sometimes referred to as ferromanganese-silicon. Low-carbon silicomanganese is classifiable under HTSUS subheading 7202.99.5040.

This scope covers all silicomanganese, regardless of its tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope remains dispositive.

Continuation of the Order

As a result of the determinations by the Department and the ITC that revocation of the antidumping duty orders would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping orders on silicomanganese from India, Kazakhstan, and Venezuela. U.S. Customs and Border Protection will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the order will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of the order not later than 30 days prior to the fifth anniversary of the effective date of continuation.

This five-year (''sunset'') review and this notice are in accordance with

[12] While the Department stated in the *Initiation Notice* that this company had a separate rate, on June 12, 2013, the Department determined that this company was not eligible for a separate rate. *See 2011 WBF Final.*

[13] While the Department stated in the *Initiation Notice* that this company had a separate rate, on June 12, 2013, the Department determined that this company was not eligible for a separate rate. *See 2011 WBF Final.*

[1] *See Initiation of Five-Year (''Sunset'') Review,* 77 FR 59897 (October 1, 2012).

[2] *See Silicomanganese From India, Kazakhstan, and Venezuela: Final Results of the Expedited Second Sunset Reviews of the Antidumping Duty Orders,* 78 FR 9034 (February 7, 2013).

[3] *See Silicomanganese From India, Kazakhstan, and Venezuela: Determination,* 78 FR 58556 (September 24, 2013); *see also Silicomanganese From India, Kazakhstan, and Venezuela:* Investigation No. 731–TA–1929–931, USITC Publication 4424 (September 2013).

section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: September 25, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2013–23979 Filed 10–1–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Brenda E. Waters, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4735.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (''the Act''), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (''the Department'') conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 21 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department has found that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that, with regard to reviews requested on the basis of anniversary months on or after October 2013, the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance has prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

The Department is providing this notice on its Web site, as well as in its ''Opportunity to Request Administrative Review'' notices, so that interested parties will be aware of the manner in which the Department intends to exercise its discretion in the future.

Opportunity TO Request A Review: Not later than the last day of October 2013,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in October for the following periods:

	Period of review
Antidumping duty proceedings	
AUSTRALIA: Electrolytic Manganese Dioxide A–602–806	10/1/12–9/30/13

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

	Period of review
BRAZIL: Carbon and Certain Alloy Steel Wire Rod A–351–832	10/1/12–9/30/13
INDONESIA: Carbon and Certain Alloy Steel Wire Rod A–560–815	10/1/12–9/30/13
ITALY: Pressure Sensitive Plastic Tape A–475–059	10/1/12–9/30/13
MEXICO: Carbon and Certain Alloy Steel Wire Rod	10/1/12–9/30/13 A–201–830
MOLDOVA: Carbon and Certain Alloy Steel Wire Rod A–841–805	10/1/12–9/30/13
REPUBLIC OF KOREA: Polyvinyl Alcohol A–580–850	10/1/12–9/30/13
THE PEOPLE'S REPUBLIC OF CHINA:	
Barium Carbonate A–570–880	10/1/12–9/30/13
Barium Chloride A–570–007	10/1/12–9/30/13
Electrolytic Manganese Dioxide A–570–919	10/1/12–9/30/13
Helical Spring Lock Washers A–570–822	10/1/12–9/30/13
Polyvinyl Alcohol A–570–879	10/1/12–9/30/13
Steel Wire Garment Hangers A–570–918	10/1/12–9/30/13
TRINIDAD AND TOBAGO: Carbon and Certain Alloy Steel Wire Rod A–247–804	10/1/12–9/30/13
UKRAINE: Carbon and Certain Alloy Steel Wire Rod A–823–812	10/1/12–9/30/13
Countervailing Duty Proceedings	
BRAZIL: Carbon and Certain Alloy Steel Wire Rod C–351–833	1/1/12–12/31/12
IRAN: Roasted In Shell Pistachios C–507–601	1/1/12–12/31/12
Suspension Agreements	
MEXICO: Lemon Juice[2] A–201–835	9/1/12–9/20/12
RUSSIA: Uranium A–821–802	10/1/12–9/30/13

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters.[3] If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Please note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011) the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. *See also* the Enforcement and Compliance Web site at *http://trade.gov/ia.*

All requests must be filed electronically in Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS'') on the IA ACCESS Web site at *http://iaaccess.trade.gov. See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011). Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of October 2013. If the Department does not receive, by the last day of October 2013, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period of the order, if such a gap period is applicable to the period of review.

This notice is not required by statute but is published as a service to the international trading community.

[2] In the notice of opportunity to request administrative reviews that published on September 3, 2013 (78 FR 54235) the Department listed the period of review for case Lemon Juice from Mexico incorrectly. The correct period of review for this case is listed above.

[3] If the review request involves a non-market economy and the parties subject to the review request do not qualify for separate rates, all other exporters of subject merchandise from the non-market economy country who do not have a separate rate will be covered by the review as part of the single entity of which the named firms are a part.

Dated: September 20, 2013.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2013–23955 Filed 10–1–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–911]

Circular Welded Carbon Quality Steel Pipe From the People's Republic of China: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: Effective October 2, 2013.

SUMMARY: The Department of Commerce (Department) finds that revocation of the countervailing duty (CVD) order on circular welded carbon quality steel pipe (circular welded pipe) from the People's Republic of China (PRC) would be likely to lead to continuation or recurrence of net countervailable subsidies.

FOR FURTHER INFORMATION CONTACT: Jerrold Freeman or Nancy Decker, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–0180 or (202) 482–0196, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 3, 2013, the Department initiated the first sunset review of the *CVD order*[1] on circular welded pipe from the PRC pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2]

Between June 12, and June 18, 2013, the Department received notices of intent to participate from Allied Tube and Conduit, EXLTUBE, JMC Steel Group, Maruichi American Corporation, TMK IPSCO, United States Steel Corporation, and Western Tube & Conduit Corporation) (collectively, domestic interested parties), within the deadline specified in 19 CFR 351.218(d)(1)(i). On July 2, 2013, the Department received an adequate substantive response from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).

The Department did not receive any submissions from other interested parties. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2), the Department is conducting an expedited (120-day) sunset review of the *CVD order.*

Scope of the Order

This order covers certain welded carbon quality steel pipes and tubes. A full description of the scope of the order is contained in the Issues and Decision Memorandum,[3] which is hereby adopted by this notice.

The Issues and Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/.* The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Analysis of Comments Received

All issues raised in this review are addressed in the Issues and Decision Memorandum. The issues include the likelihood of continuation or recurrence of a countervailable subsidy and the net countervailable subsidy likely to prevail if the order was revoked.

Final Results of Review

Pursuant to sections 752(b)(1) and (3) of the Act, we determine that revocation of the CVD order on circular welded pipe from the PRC would be likely to lead to continuation or recurrence of countervailable subsidies at the following net countervailable subsidy rates:

Manufacturers/producers/exporters	Net countervailable subsidy (percent)
Weifang East Steel Pipe Co., Ltd (Weifang East)	29.83
Zhejiang Kingland Pipeline and Technologies Co., Ltd., and affiliated companies (Zhejiang Kingland)	48.18
Tianjin Shuangjie Steel Pipe Co., Ltd.; Tianjin Shuangjie Steel Pipe Group Co., Ltd.; Tianjin Wa Song Imp. & Exp. Co., Ltd.; and Tianjin Shuanglian Galvanizing Products Co., Ltd. (Tianjin Shuangjie)	620.08
All Others	39.01

[1] *See Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order,* 73 FR 42545 (July 22, 2008) (*CVD order*).

[2] *See Initiation of Five-Year (''Sunset'') Review,* 78 FR 33063 (June 3, 2013).

[3] *See* Issues and Decision Memorandum for the Final Results of the Expedited Sunset Review of the Countervailing Duty Order on Circular Welded Carbon Quality Steel Pipe from the People's Republic of China'' from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, dated concurrently with this notice (Issues and Decision Memorandum).

We are issuing and publishing the final results and notice in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act.

Dated: September 25, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2013–24129 Filed 10–1–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–833]

Carbon and Certain Alloy Steel Wire Rod From Brazil: Final Results of the Expedited Second Sunset Review of the Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: Effective October 2, 2013.

SUMMARY: The Department of Commerce (Department) finds that revocation of the countervailing duty (CVD) order on carbon and certain alloy steel wire rod (wire rod) from Brazil would be likely to lead to continuation or recurrence of countervailable subsidies.

FOR FURTHER INFORMATION CONTACT: Austin Redington or Nancy Decker, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–1664 or (202) 482–0196, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 3, 2013, the Department initiated the second sunset review of the CVD order [1] on wire rod from Brazil pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2]

On June 18, 2013, the Department received a notice of intent to participate from the following domestic parties: ArcelorMittal USA LLC, Schnitzer Steel Industries, Inc., DBA Cascade Steel Rolling Mills, Inc., Evraz Rocky Mountain Steel, Gerdau Ameristeel US Inc., Keystone Consolidated Industries, Inc., and Nucor Corporation (collectively, domestic interested parties), within the deadline specified in 19 CFR 351.218(d)(1)(i). On July 2, 2013, the Department received an adequate substantive response from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).

The Department did not receive any submissions from other interested parties. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(B)–(C), the Department is conducting an expedited (120-day) sunset review of the CVD order on wire rod from Brazil.

Scope of the Order

This order covers certain carbon and alloy steel wire rods. A full description of the scope of the order is contained in the Issues and Decision Memorandum,[3] which is hereby adopted by this notice.

The Issues and Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/*. The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Analysis of Comments Received

All issues raised in this review are addressed in the Issues and Decision Memorandum. The issues include the likelihood of continuation or recurrence of a countervailable subsidy and the net countervailable subsidy likely to prevail if the order was revoked.

Final Results of Review

Pursuant to sections 752(b)(1) and (3) of the Act, we determine that revocation of the CVD order on wire rod from Brazil would be likely to lead to continuation or recurrence of countervailable subsidies at the following net countervailable subsidy rates:

Manufacturers/producers/exporters	Net countervailable subsidy (percent)
Companhia Siderurgica Belgo-Mineira (Belgo Mineira)	6.74
Gerdau S.A	2.31
All Others	4.53

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the final results and notice in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act.

Dated: September 25, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2013–24126 Filed 10–1–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC901

Endangered and Threatened Species; Notice of Intent To Prepare a Recovery Plan for Main Hawaiian Islands Insular False Killer Whale Distinct Population Segment

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

ACTION: Notice of intent to prepare a recovery plan; request for information.

SUMMARY: The National Marine Fisheries Service (NMFS) is announcing its intent to prepare a recovery plan for the Main Hawaiian Islands insular false killer whale (*Pseudorca crassidens*) distinct population segment (MHI Insular FKW) and requests information from the public. NMFS is required by section 4(f) of the Endangered Species Act of 1973 (ESA), as amended, to develop and implement recovery plans for the conservation and survival of federally listed species unless the

[1] *See Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire Rod from Brazil,* 67 FR 55805 (August 30, 2002).

[2] *See Initiation of Five-Year* (''*Sunset*'') *Review,* 78 FR 33063 (June 3, 2013).

[3] ''Issues and Decision Memorandum for the Final Results of the Expedited Sunset Review of the Countervailing Duty Order on Carbon and Certain Alloy Steel Wire Rod from Brazil'' from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, dated October 1, 2013 (Issues and Decision Memorandum).

Secretary finds that such a plan will not promote the conservation of the species.

DATES: To allow adequate time to conduct a review of information submitted, all information must be received no later than November 1, 2013.

ADDRESSES: Information may be submitted by any one of the following methods:

- *Via email: NMFS.PIR.FKWRecoveryPlan@noaa.gov* (No files larger than 5MB can be accepted).
- *Mail or Hand-Delivery:* National Marine Fisheries Service Pacific Islands Regional Office, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814. ATTN: Irene Kelly.
- *Via fax:* (808) 973–2941. Please include the following on the cover page of the fax ''ATTN: Irene Kelly.''

FOR FURTHER INFORMATION CONTACT: Irene Kelly, NMFS Pacific Islands Regional Office, (808) 944–2239.

SUPPLEMENTARY INFORMATION: NMFS is charged with the recovery of the MHI Insular FKW, listed as endangered under the Endangered species Act of 1973 (ESA). Recovery means improvement in the status of listed species to the point at which the protections of the ESA are no longer necessary. The ESA specifies that recovery plans must include: (1) A description of management actions necessary to achieve the plan's goals for the conservation and survival of the species; (2) objective, measurable criteria which, when met, would result in the species being removed from the list; and (3) estimates of the time and costs required to achieve the plan's goal and the intermediate steps towards that goal. Section 4(f) of the ESA requires that public notice and an opportunity for public review and comment be provided during recovery plan development. We are soliciting relevant information related to the MHI insular FKW and their habitat, including:

1. Criteria for removing MHI insular FKW from the list of threatened and endangered species;
2. Human activities that contribute to the ESA listing factors (section 4(a)(1)(A)–(E)):

(A) 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.

3. Physical, biological or chemical features of the environment that limit the recovery of MHI insular FKW;
4. Strategies and/or actions to recover MHI insular FKW;
5. Estimates of the time and cost to implement recovery actions;
6. Critical knowledge gaps and/or uncertainties that need to be resolved to better inform recovery efforts; and
7. Research, monitoring, and evaluation needs to address knowledge gaps and uncertainties, or to assess the species' status, limiting factors, and threats relative to recovery goals.

Upon completion, the proposed Recovery Plan will be available for public review and comment through the publication of a **Federal Register** Notice.

Status Review Documents

NMFS developed a status review (NOAA Technical Memorandum NMFS–PIFSC–22) and an addendum to the status review (NOAA Internal Report NMFS–PIFSC–IR–12–038) for the MHI Insular FKW to help inform the recovery plan. Additional information that may help inform the recovery plan is the False Killer Whale Take Reduction Plan and the final rule to implement the Plan (77 FR 71260). The Plan and the final rule were developed to address the incidental mortality and serious injury of false killer whales in Hawaii's commercial longline fisheries. All of these above listed documents and information may be accessed at *http://www.fpir.noaa.gov/PRD/prd_false_killer_whale.html.*

Authority: 16 U.S.C. 1531 *et seq.*

Dated: September 27, 2013.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–24049 Filed 10–1–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Science Advisory Board Meeting

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of open meeting.

SUMMARY: The NOAA Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on strategies for research, education, and application of science to operations and information services. NOAA SAB activities and advice provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

Time and Date: The meeting will be held Tuesday, November 19, 2013 from 10:00 a.m. to 5:30 p.m. and Wednesday, November 20, 2013 from 8:30 a.m. to 2:30 p.m. These times and the agenda topics described below are subject to change. Please refer to the Web page *http://www.sab.noaa.gov/Meetings/meetings.html* for the most up-to-date meeting agenda.

Place: The meeting will be held in the Washington, DC area; please check the SAB Web site *http://www.sab.noaa.gov/Meetings/meetings.html* for meeting location and directions.

Status: The meeting will be open to public participation with a 15 minute public comment period on November 19 at 5:15 p.m. (check Web site to confirm time). The NOAA SAB expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of five (5) minutes. Individuals or groups planning to make a verbal presentation should contact the NOAA SAB Executive Director by November 12, 2013 to schedule their presentation. Written comments should be received in the NOAA SAB Executive Director's Office by November 12, 2013 to provide sufficient time for NOAA SAB review. Written comments received by the NOAA SAB Executive Director after November 12, 2013 will be distributed to the NOAA SAB, but may not be reviewed prior to the meeting date. Seating at the meeting will be available on a first-come, first-served basis.

Special Accommodations: These meetings are physically accessible to people with disabilities. Requests for special accommodations may be directed no later than 12 p.m. on November 12, 2013, to Dr. Cynthia Decker, SAB Executive Director, SSMC3, Room 11230, 1315 East-West Hwy., Silver Spring, MD 20910.

Matters To Be Considered: The meeting may include the following topics: (1) Review Report on the Cooperative Institute for Research in the Atmosphere (CIRA); (2) Recommendations and Proposed New

Members from the Data Archive and Access Requirements Working Group; 3) Recommendations from the from the Ecosystem Sciences and Management Working Group; (4) Discussion of Environmental Information Services Working Group and Climate Working Group comments on NOAA Response to Climate Partnership Task Force Report; (5) NOAA Response to the SAB Satellite Task Force Report; (6) NOAA Response to the Review of the Ocean Exploration Program; (7) SAB Strategic Planning: NOAA Presentation and Discussion; (8) Discussion of SAB Working Groups-Overall Funding and Tasking in a Budget-Constrained Environment; (9) NOAA Update; (10) Update on NOAA Cooperative Institutes; (11) Ocean Exploration Forum Highlights; and (12) Updates from NOAA SAB Working Groups.

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia Decker, Executive Director, Science Advisory Board, NOAA, Rm. 11230, 1315 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–734–1156, Fax: 301–713–1459. Email: *Cynthia.Decker@noaa.gov;* or visit the NOAA SAB Web site at *http://www.sab.noaa.gov.*

Dated: September 26, 2013.

Jason Donaldson,

Chief Financial Officer/Chief Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2013–24085 Filed 10–1–13; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC268

Marine Mammals; File Nos. 16239 and 17312

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

ACTION: Notice; issuance of permits.

SUMMARY: Notice is hereby given that permits have been issued to Dan Engelhaupt, Ph.D., HDR EOC, 5700 Lake Wright Drive, Norfolk, VA 23502–1859, and Scripps Institution of Oceanography [Responsible Party: John Hildebrand, Ph.D.], University of California, 8635 Discovery Way, La Jolla, CA 92093 to conduct research on marine mammals in the Atlantic and Pacific Oceans.

ADDRESSES: The permits and related documents are available for review upon written request or by appointment in the following offices: See **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: For File No. 16239: Kristy Beard or Carrie Hubard and for File No. 17312: Amy Hapeman or Carrie Hubard, (301)427–8401.

SUPPLEMENTARY INFORMATION: On October 5, 2012 and April 19, 2013 notices were published in the **Federal Register** (77 FR 60966 and 78 FR 23538) for No. 16239 and No. 17312, respectively, that requests for permits to conduct research on marine mammals had been submitted by the above-named applicants. The requested permits have been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (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 parts 222–226).

Permit No. 16239 authorizes all species of cetaceans and pinnipeds to be harassed during vessel and aerial survey activities, including behavioral observations and photo-identification. Cetacean species may also be harassed during underwater photography and collection of sloughed skin and fecal samples. Surveys may be conducted year-round in all U.S. and international waters in the Pacific Ocean (including Alaska, Washington, Oregon, California, Hawaii, Guam, Marianas Islands, and other U.S. territories) and Atlantic Ocean (including the Gulf of Mexico, western North Atlantic, Caribbean Sea, and Sargasso Seas). The permit is valid for five years from the date of issuance.

Permit No. 17312 authorizes research on 35 cetacean species and stocks during vessel surveys in the Pacific Ocean and Gulf of Mexico to understand cetaceans' use of sound, their sensitivity to anthropogenic sound, and impacts of the Deepwater Horizon oil spill. Researchers may: (1) Photograph cetaceans for identification to determine abundance, movements and population structure; (2) collect biopsies and fecal samples to determine taxonomy, sex, relatedness and stock structure of cetaceans; and (3) suction-cup tag, track, and collect passive acoustic recordings to study cetacean diving behavior, calling behavior, feeding, and movements. The permit is valid for five years from the date of issuance.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

As required by the ESA, issuance of the permits was based on a finding that such permits: (1) Were applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA.

Documents may be reviewed in the following locations:

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;

Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018;

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808)944–2200; fax (808)973–2941;

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978)281–9328; fax (978) 281–9394; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727)824–5312; fax (727)824–5309.

Dated: September 27, 2013.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–24072 Filed 10–1–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC833

Taking of Marine Mammals Incidental to Specified Activities; Construction of the East Span of the San Francisco-Oakland Bay Bridge

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

ACTION: Notice; proposed incidental harassment authorization; request for comments and information.

SUMMARY: NMFS has received a request from the California Department of Transportation (CALTRANS) for an incidental take authorization to take small numbers of California sea lions, Pacific harbor seals, harbor porpoises, and gray whales, by harassment, incidental to construction activities associated with the East Span of the San Francisco-Oakland Bay Bridge (SF–OBB) in California. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization to CALTRANS to incidentally take, by harassment, small numbers of marine mammals for a period of 1 year.

DATES: Comments and information must be received no later than November 1, 2013.

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing email comments is *itp.guan@noaa.gov.* NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 10-megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

The application used in this document may be obtained by visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.* Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. can apply for a one-year authorization to incidentally take small numbers of marine mammals by harassment, provided that there is no potential for serious injury or mortality to result from the activity. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Summary of Request

On April 15, 2013, CALTRANS submitted a request to NOAA requesting an IHA for the possible harassment of small numbers of California sea lions (*Zalophus californianus*), Pacific harbor seals (*Phoca vitulina richardsii*), harbor porpoises (*Phocoena phocoena*), and gray whales (*Eschrichtius robustus*) incidental to construction associated with a replacement bridge for the East Span of the SF–OBB, in San Francisco Bay (SFB, or Bay), California. The proposed construction activities would last for approximately three years, starting 2013.

Description of the Specified Activity

An IHA was previously issued to CALTRANS for this activity on January 8, 2013 (78 FR 2371; January 11, 2013), based on activities described on CALTRANS' IHA application dated April 23, 2012. The current IHA expires on January 7, 2014. Since the construction activity would last for approximately additional two years after the expiration of the current IHA, CALTRANS requests to renew its IHA. In its IHA renewal request, CALTRANS also states that there has been no change in the scope of work for the SF–OBB Project from what was outlined in its April 23, 2012, IHA application project description, the **Federal Register** notice for the proposed IHA (77 FR 50473; August 21, 2012), and the **Federal Register** notice for the issuance of that IHA (78 FR 2371; January 11, 2013). Refer to these documents for a detailed description of CALTRANS' SF–OBB construction activities.

Since the issuance of the IHA, there has been no in-water pile driving or dismantling activity.

Description of Marine Mammals in the Area of the Specified Activity

General information on the marine mammal species found in California waters can be found in Caretta *et al.* (2013), which is available at the following URL: *http://www.nmfs.noaa.gov/pr/sars/pdf/po2012.pdf.* Refer to that document for information on these species.

The marine mammals most likely to be found in the SF–OBB area are the California sea lion, Pacific harbor seal, and harbor porpoise. From December through May gray whales may also be present in the SF–OBB area. Information on California sea lion, harbor seal, and gray whale was provided in the November 14, 2003 (68 FR 64595), **Federal Register** notice; information on harbor porpoise was provided in the January 26, 2006 (71 FR 4352), **Federal Register** notice.

Potential Effects on Marine Mammals and Their Habitat

CALTRANS and NMFS have determined that open-water pile driving and pile removal, as well as dredging and dismantling of concrete foundation of existing bridge by saw cutting, flame cutting, mechanical splitting, drilling, pulverizing and/or hydro-cutting, as outlined in the project description, have the potential to result in behavioral harassment of California sea lions, Pacific harbor seals, harbor porpoises, and gray whales that may be swimming, foraging, or resting in the project vicinity while pile driving is being conducted. Pile driving and removal could potentially harass those few pinnipeds that are in the water close to

the project site, whether their heads are above or below the surface.

Marine mammals exposed to high intensity sound repeatedly or for prolonged periods can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Kastak *et al.* 1999; Schlundt *et al.* 2000; Finneran *et al.* 2002; 2005). TS can be permanent (PTS), in which case the loss of hearing sensitivity is unrecoverable, or temporary (TTS), in which case the animal's hearing threshold will recover over time (Southall *et al.* 2007). Since marine mammals depend on acoustic cues for vital biological functions, such as orientation, communication, finding prey, and avoiding predators, marine mammals that incur PTS or TTS may have reduced fitness in survival and reproduction, either permanently or temporarily. Repeated noise exposure that leads to TTS could cause PTS.

Measured source levels from impact pile driving can be as high as 214 dB re 1 µPa @1 1 m. Although no marine mammals have been shown to experience TTS or PTS as a result of being exposed to pile driving activities, experiments on a bottlenose dolphin (*Tursiops truncates*) and beluga whale (*Delphinapterus leucas*) showed that exposure to a single watergun pulse at a received level of 207 kPa (or 30 psi) peak-to-peak (p-p), which is equivalent to 228 dB (p-p) re 1 µPa, resulted in a 7 and 6 dB TTS in the beluga whale at 0.4 and 30 kHz, respectively. Thresholds returned to within 2 dB of the pre-exposure level within 4 minutes of the exposure (Finneran *et al.* 2002). No TTS was observed in the bottlenose dolphin. Although the source level of pile driving from one hammer strike is expected to be much lower than the single watergun pulse cited here, animals exposed for a prolonged period to repeated hammer strikes could receive more noise exposure in terms of sound exposure level (SEL) than from the single watergun pulse (estimated at 188 dB re 1 μPa^2-s) in the aforementioned experiment (Finneran *et al.* 2002).

Noises from dismantling of marine foundations by mechanical means include, but are not limited to, saw cutting, mechanical splitting, drilling and pulverizing. Saw cutting and drilling constitute non-pulse noise, whereas mechanical splitting and pulverizing constitute impulse noise. Although the characteristics of these noises are not well studied, noises from saw cutting and drilling are expected to be similar to vibratory pile driving, and noises from mechanical splitting and pulverizing are expected to be similar to impact pile driving, but at lower intensity, due to the similar mechanisms in sound generating but at a lower power outputs. CALTRANS states that drilling and saw cutting are anticipated to produce underwater sound pressure levels (SPLs) in excess of 120 dB RMS, but are not anticipated to exceed the 180 dB re 1 µPa (RMS). The mechanical splitting and pulverizing of concrete with equipment such as a hammer hoe has the potential to generate high sound pressure levels in excess of 190 dB re 1 µPa (RMS) at 1 m.

However, in order for marine mammals to experience TTS or PTS, the animals have to be close enough to be exposed to high intensity noise levels for prolonged period of time. Based on the best scientific information available, the expected received sound levels are far below the threshold that could cause TTS or the onset of PTS.

In addition, chronic exposure to excessive, though not high-intensity, noise could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions. Masking can interfere with detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Therefore, under certain circumstances, marine mammals whose acoustical sensors or environment are being severely masked could also be impaired from maximizing their performance fitness in survival and reproduction.

Masking occurs at the frequency band which the animals utilize. Therefore, since noise generated from in-water pile driving during the SF–OBB construction activities is mostly concentrated at low frequency ranges, it may have less effect on high frequency echolocation sounds by harbor porpoises. However, lower frequency noises are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey noise. It may also affect communication signals when they occur near the noise band and thus reduce the communication space of animals (e.g., Clark *et al.* 2009) and cause increased stress levels (e.g., Foote *et al.* 2004; Holt *et al.* 2009).

Unlike TS, masking can potentially impact the species at population, community, or even ecosystem levels, as well as individual levels. Masking affects both senders and receivers of the signals and could have long-term chronic effects on marine mammal species and populations. Recent science suggests that low frequency ambient sound levels have increased by as much as 20 dB (more than 3 times in terms of SPL) in the world's ocean from pre-industrial periods, and most of these increases are from distant shipping (Hildebrand 2009). All anthropogenic noise sources, such as those from vessels traffic, pile driving, dredging, and dismantling existing bridge by mechanic means, contribute to the elevated ambient noise levels, thus intensifying potential for masking.

Nevertheless, the sum of noise from the proposed SF–OBB construction activities is confined in an area of inland waters (San Francisco Bay) that is bounded by landmass, therefore, the noise generated is not expected to contribute to increased ocean ambient noise. Due to shallow water depth near the Oakland shore, dredging activities are mainly used to create a barge access channel to dismantle the existing bridge. Therefore, underwater sound propagation from dredging is expected to be poor due to the extremely shallowness of the area to be dredged.

Finally, exposure of marine mammals to certain sounds could lead to behavioral disturbance (Richardson *et al.* 1995), such as: Changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities, changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping), avoidance of areas where noise sources are located, and/or flight responses (e.g., pinnipeds flushing into water from haulouts or rookeries).

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography) and is also difficult to predict (Southall *et al.* 2007), especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be expected to be biologically significant if the change affects growth, survival, or reproduction. Some of these significant behavioral modifications include:

- Drastic change in diving/surfacing patterns (such as those thought to be causing beaked whale stranding due to exposure to military mid-frequency tactical sonar);
- Habitat abandonment due to loss of desirable acoustic environment; and
- Cessation of feeding or social interaction.

The proposed project area is not believed to be a prime habitat for marine mammals, nor is it considered an area frequented by marine mammals.

Therefore, behavioral disturbances that could result from anthropogenic noise associated with SF–OBB construction activities are expected to affect only a limited number of marine mammals on an infrequent basis.

Currently NMFS uses 160 dB re 1 μPa (RMS) at received level for impulse noises (such as impact pile driving, mechanic splitting and pulverizing) as the onset of marine mammal behavioral harassment, and 120 dB re 1 μPa (RMS) for non-impulse noises (vibratory pile driving, saw cutting, drilling, and dredging).

As far as airborne noise is concerned, based on airborne noise levels measured and on-site monitoring conducted during 2004 under a previous IHA, noise levels from the East Span project did not result in the harassment of harbor seals hauled out on Yerba Buena Island (YBI). Also, noise levels from the East Span project are not expected to result in harassment of the sea lions hauled out at Pier 39 as airborne and waterborne sound pressure levels (SPLs) would attenuate to levels below where harassment would be expected by the time they reach that haul-out site, 5.7 km (3.5 miles) from the project site. Therefore, no pinniped hauled out would be affected as a result of the proposed pile-driving. A detailed description of the acoustic measurements is provided in the 2004 CALTRANS marine mammal and acoustic monitoring report for the same activity (CALTRANS 2005).

Short-term impacts to habitat may include minimal disturbance of the sediment where individual bridge piers are constructed. Long-term impacts to marine mammal habitat will be limited to the footprint of the piles and the obstruction they will create following installation. However, this impact is not considered significant as the marine mammals can easily swim around the piles of the new bridge, as they currently swim around the existing bridge piers.

Proposed Mitigation Measures

In order to issue an incidental take authorization under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

For the proposed CALTRANS SF–OBB construction activities, CALTRANS worked with NMFS and proposed the following mitigation measures to minimize the potential impacts to marine mammals in the project vicinity. The primary purpose of these mitigation measures is to detect marine mammals within or about to enter designated exclusion zones corresponding to NMFS current injury thresholds and to initiate immediate shutdown or power down of the piling hammer, making it very unlikely potential injury or TTS to marine mammals would occur, and to reduce Level B behavioral of marine mammals would be reduced to the lowest level practicable.

Use of Noise Attenuation Devices

To reduce impact on marine mammals, CALTRANS shall use a marine pile driving energy attenuator (i.e., air bubble curtain system), or other equally effective sound attenuation method (e.g., dewatered cofferdam) for all impact pile driving, with the exception of pile proofing.

Establishment of Exclusion and Level B Harassment Zones

Before the commencement of in-water construction activities, which include impact pile driving, vibratory pile driving, and mechanical dismantling of existing bridge, CALTRANS shall establish exclusion zones where received underwater sound pressure levels (SPLs) are higher than 180 dB (rms) and 190 dB (rms) re 1 μPa for cetaceans and pinnipeds, respectively, and Level B behavioral harassment zones where received underwater sound pressure levels (SPLs) are higher than 160 dB (rms) and 120 dB (rms) re 1 μPa for impulse noise sources (impact pile driving) and non-impulses noise sources (vibratory pile driving and mechanic dismantling), respectively. Before the sizes of actual zones are determined based on hydroacoustic measurements, CALTRANS shall establish these zones based on prior measurements conducted during SF–OBB constructions, as described in Table 1 of this document.

TABLE 1—TEMPORARY EXCLUSION AND LEVEL B HARASSMENT ZONES FOR VARIOUS PILE DRIVING AND DISMANTLING ACTIVITIES

Pile driving/dismantling activities	Pile size (m)	Distance to 120 dB re 1 μPa (rms) (m)	Distance to 160 dB re 1 μPa (rms) (m)	Distance to 180 dB re 1 μPa (rms) (m)	Distance to 190 dB re 1 μPa (rms) (m)
Vibratory Driving	24	2,000	NA	NA	NA
	36	2,000	NA	NA	NA
	Sheet pile	2,000	NA	NA	NA
Attenuated Impact Driving	24	NA	1,000	235	95
	36	NA	1,000	235	95
Unattenuated Proofing	24	NA	1,000	235	95
	36	NA	1,000	235	95
Unattenuated Impact Driving	H-pile	NA	1,000	235	95
Dismantling		2,000	NA	100	100

Once the underwater acoustic measurements are conducted during initial test pile driving, CALTRANS shall adjust the size of the exclusion zones and Level B behavioral harassment zones, and monitor these zones accordingly.

NMFS-approved protected species observers (PSOs) shall conduct initial survey of the exclusion zones to ensure that no marine mammals are seen within the zones before impact pile driving of a pile segment begins. If marine mammals are found within the exclusion zone, impact pile driving of the segment would be delayed until they move out of the area. If a marine mammal is seen above water and then dives below, the contractor would wait 15 minutes for pinnipeds and harbor porpoise and 30 minutes for gray whales. If no marine mammals are seen by the observer in that time it can be assumed that the animal has moved beyond the exclusion zone. This 15-minute criterion is based on scientific evidence that harbor seals in San

Francisco Bay dive for a mean time of 0.50 minutes to 3.33 minutes (Harvey and Torok, 1994), and the mean diving duration for harbor porpoises ranges from 44 to 103 seconds (Westgate *et al.,* 1995).

Once the pile driving of a segment begins it cannot be stopped until that segment has reached its predetermined depth due to the nature of the sediments underlying the Bay. If pile driving stops and then resumes, it would potentially have to occur for a longer time and at increased energy levels. In sum, this would simply amplify impacts to marine mammals, as they would endure potentially higher SPLs for longer periods of time. Pile segment lengths and wall thickness have been specially designed so that when work is stopped between segments (but not during a single segment), the pile tip is never resting in highly resistant sediment layers. Therefore, because of this operational situation, if seals, sea lions, or harbor porpoises enter the safety zone after pile driving of a segment has begun, pile driving will continue and marine mammal observers will monitor and record marine mammal numbers and behavior. However, if pile driving of a segment ceases for 30 minutes or more and a marine mammal is sighted within the designated exclusion zone prior to commencement of pile driving, the observer(s) must notify the Resident Engineer (or other authorized individual) immediately and follow the mitigation requirements as outlined previously in this document.

Soft Start

Although marine mammals will be protected from Level A harassment (i.e., injury) through marine mammal observers monitoring a 190-dB exclusion zone for pinnipeds and 180-dB exclusion zone for cetaceans, mitigation may not be 100 percent effective at all times in locating marine mammals. Therefore, in order to provide additional protection to marine mammals near the project area by allowing marine mammals to vacate the area prior to receiving a potential injury, CALTRANS and its contractor will also ''soft start'' the hammer prior to operating at full capacity. This should expose fewer animals to loud sounds both underwater and above water. This would also ensure that, although not expected, any pinnipeds and cetaceans that are missed during the initial exclusion zone monitoring will not be injured.

Power Down and Shut-Down

As mentioned previously, although power down and shut-down measures will not be required for pile driving and removal activities, these measures are required for mechanical dismantling of the existing bridge. The contractor perform mechanical dismantling work will stop in-water noise generating machinery when marine mammals are sighted within the designated exclusion zones.

Proposed Monitoring and Reporting Measures

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

Visual Monitoring

Besides using monitoring for implementing power down and shut-down measures for mechanical bridge dismantling, marine mammal monitoring will also be conducted to assess potential impacts from CALTRANS construction activities. CALTRANS will implement onsite marine mammal monitoring for 100% of all unattenuated impact pile driving of H-piles for 180- and 190-dB re 1 µPa exclusion zones and 160-dB re 1 µPa Level B harassment zone, attenuated impact pile driving (except pile proofing) and mechanical dismantling for 180- and 190-dB re 1 µPa exclusion zones. CALTRANS will also monitor 20% of the attenuated impact pile driving for the 160-dB re 1 µPa Level B harassment zone, and 20% of vibratory pile driving and mechanic dismantling for the 120-dB re 1 µPa Level B harassment zone.

Monitoring of the pinniped and cetacean exclusion zones shall be conducted by a minimum of three qualified NMFS-approved PSOs. Observations will be made using high-quality binoculars (e.g., Zeiss, 10 x 42 power). PSOs will be equipped with radios or cell phones for maintaining contact with other observers and CALTRANS engineers, and range finders to determine distance to marine mammals, boats, buoys, and construction equipment.

Data on all observations will be recorded and will include the following information:

(1) Location of sighting;
(2) species;
(3) number of individuals;
(4) number of calves present;
(5) duration of sighting;
(6) behavior of marine animals sighted;
(7) direction of travel;
(8) when in relation to construction activities did the sighting occur (e.g., before, ''soft-start'', during, or after the pile driving or removal).

The reactions of marine mammals will be recorded based on the following classifications that are consistent with the Richmond Bridge Harbor Seal survey methodology (for information on the Richmond Bridge authorization, see 68 FR 66076, November 25, 2003): (1) No response, (2) head alert (looks toward the source of disturbance), (3) approach water (but not leave), and (4) flush (leaves haul-out site). The number of marine mammals under each disturbance reaction will be recorded, as well as the time when seals re-haul after a flush.

Hydroacoustic Monitoring

The purpose of the underwater sound monitoring during dismantling of concrete foundations via mechanical means is to establish the exclusion zones of 180 dB re 1 µPa (rms) for cetaceans and 190 dB re 1 µPa (rms) for pinnipeds. Monitoring will occur during the initial use of concrete dismantling equipment with the potential to generate sound pressure levels in excess of 180 dB re 1 µPa (rms). Monitoring will likely be conducted from construction barges and/or boats. Measurements will be taken at various distances as needed to determine the distance to the 180 and 190 dB re 1 µPa (rms) contours.

The purpose of underwater sound monitoring during impact pile driving will be to verify sound level estimates and confirm that sound levels do not equal or exceed 180 dB re 1 µPa (rms).

Reporting

CALTRANS will notify NMFS prior to the initiation of the pile driving and dismantling activities for the removal of the existing east span. NMFS will be informed of the initial sound pressure level measurements for both pile driving and foundation dismantling activities, including the final exclusion zone and Level B harassment zone radii established for impact and vibratory pile driving and marine foundation dismantling activities.

Monitoring reports will be posted on the SFOBB Project's biological mitigation Web site (*www.biomitigation.org*) on a weekly

basis if in-water construction activities are conducted. Marine mammal monitoring reports will include species and numbers of marine mammals observed, time and location of observation and behavior of the animal. In addition, the reports will include an estimate of the number and species of marine mammals that may have been harassed as a result of activities.

In addition, CALTRANS will provide NMFS with a draft final report within 90 days after the expiration of the IHA. This report should detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed due to pile driving. If no comments are received from NMFS within 30 days, the draft final report will constitute the final report. If comments are received, a final report must be submitted within 30 days after receipt of comments.

In addition, NMFS would require CALTRANS to notify NMFS' Office of Protected Resources and NMFS' Stranding Network within 48 hours of sighting an injured or dead marine mammal in the vicinity of the construction site. CALTRANS shall provide NMFS with the species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available).

In the event that an injured or dead marine mammal is found by CALTRANS that is not in the vicinity of the SF–OBB construction site, CALTRANS would report the same information as listed above as soon as operationally feasible to NMFS.

Marine Mammal Monitoring Report From Previous IHA

Prior marine mammal monitoring during CALTRANS' pile driving activities and weekly marine mammal observation memorandums (CALTRANS 2007; 2010) indicate that only a small number of harbor seals (a total of 16 individuals since 2006) and 1 California sea lion (a total of 1 individual in 2009) were observed within zones of influence (ZOIs) that could result in behavioral harassment. However, the reports state that none of the animals were observed as been startled by the exposure, which could be an indication that these animals were habituated to human activities in San Francisco Bay. In addition, no harbor porpoise or gray whales were observed during pile driving activities associated to CALTRANS' SF–OBB construction work.

Estimated Take by Incidental Harassment

Marine mammal take estimates are based on marine mammal monitoring reports and marine mammal observations made during pile driving activities associated with the SF–OBB construction work authorized under prior IHAs. For pile driving activities conducted in 2006, 5 harbor seals and no other marine mammals were detected within the isopleths of 160 dB (rms) re 1 μPa during impact pile driving where air bubble curtains were deployed for mitigation measures (radius of ZOI at 500 m) (CALTRANS 2007). For pile driving activities conducted in the 2008 and 2009 seasons, CALTRANS monitored a much larger ZOI of 120 dB (rms) re 1 μPa as a result of vibratory pile driving. A total of 11 harbor seals and 1 California sea lion were observed entering the 120 dB (rms) re 1 μPa ZOI (CALTRANS). However, despite the ZOI being monitored extended to 1,900 m for the 120 dB isopleths, CALTRANS did not specify which pile driving activities conducted in 2008 and 2009 used an impact hammer and which ones used a vibratory hammer. Therefore, at least some of these animals were not exposed to received level above 160 dB (rms) re μPa, and thus should not be considered as ''taken'' under the MMPA. No harbor porpoise or gray whales were observed during pile driving activities associated to CALTRANS' SF–OBB construction work (CALTRANS 2007; 2010).

Based on these results, and accounting for a certain level of uncertainty regarding the next phase of construction, NMFS concludes that at maximum 50 harbor seals, 10 California sea lions, 10 harbor porpoises, and 5 gray whales could be exposed to noise levels that could cause Level B harassment as a result of the CALTRAN' SF–OBB construction activities (Table 2). These numbers represent 0.17%, 0.00%, 0.03%, and 0.11% of the California stock harbor seal, the U.S. stock California sea lion, the Eastern North Pacific stock gray whale, and the San Francisco-Russian River stock harbor porpoise, respectively (Table 2).

TABLE 2—ESTIMATES OF THE POSSIBLE MAXIMUM NUMBERS OF MARINE MAMMALS TAKEN BY LEVEL B HARASSMENT AS A RESULT OF THE PROPOSED CALTRANS' SF–OBB CONSTRUCTION ACTIVITIES

Species	Stocks	Level B takes	Percent population
Harbor seal	California	50	0.17
California sea lion	U.S.	10	0.00
Gray whale	Eastern North Pacific	5	0.03
Harbor porpoise	San Francisco-Russian River	10	0.11

Negligible Impact and Small Numbers Analyses and Preliminary Determinations

As a preliminary matter, we typically include our negligible impact and small numbers analyses and determinations under the same section heading of our **Federal Register** Notices. Despite co-locating these terms, we acknowledge that negligible impact and small numbers are distinct standards under the MMPA and treat them as such. The analysis presented below does not conflate the two standards; instead, each has been considered independently and we have applied the relevant factors to inform our negligible impact and small numbers determinations.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In making a negligible impact determination, NMFS considers a variety of factors, including but not limited to: (1) The number of anticipated mortalities; (2) the number and nature of anticipated injuries; (3) the number, nature, intensity, and duration of Level B harassment; and (4) the context in which the takes occur.

The CALTRANS' specified activities have been described based on best estimates of the planned SF–OBB construction project within the proposed project area. Some of the noises that would be generated as a result of the proposed bridge construction and dismantling project,

such as impact pile driving, are high intensity. However, the in-water pile driving for the piles would use small hammers and/or vibratory pile driving methods, coupled with noise attenuation mechanism such as air bubble curtains for impact pile driving, therefore the resulting exclusion zones for potential TS are expected to be extremely small (<35 m) from the hammer. In addition, the source levels from vibratory pile driving are expected to be below the TS onset threshold. Therefore, NMFS does not expect that any animals would receive Level A (including injury) harassment or Level B harassment in the form of TTS from being exposed to in-water pile driving associated with SF–OBB construction project.

Based on marine mammal monitoring reports under previous IHAs, only 16 harbor seals and 1 California sea lion were observed within the 120 dB (in 2008 and 2009) or 160 dB (in 2006) ZOIs during in-water pile driving since 2006. NMFS estimates that up to 50 harbor seals, 10 California sea lions, 10 harbor porpoises, and 5 gray whales could be exposed to received levels above 120 dB (rms) during vibratory pile driving or 160 dB (rms) during impact pile driving for the next season of construction activities due to the large numbers of piles to be driven and the extended zones of influence from vibratory pile driving. These are relatively small numbers, representing 0.17% of the California stock of harbor seal population (estimated at 30,196; Carretta *et al.* 2013), 0.00% of the U.S. stock of California sea lion population (estimated at 296,750; Carretta *et al.* 2013), 0.11% of the San Francisco-Russian River stock of harbor porpoise population (estimated at 9,189; Carretta *et al.* 2013), and 0.03% of the Eastern North Pacific stock of gray whale population (estimated at 19,126; Allen and Angliss 2013).

Animals exposed to construction noise associated with the SF–OBB construction work would be limited to Level B behavioral harassment only, i.e., the exposure of received levels for impulse noise between 160 and 180 dB (rms) re 1 μPa (from impact pile driving) and for non-impulse noise between 120 and 180 dB (rms) re 1 μPa (from vibratory pile driving). In addition, the potential behavioral responses from exposed animals are expected to be localized and short in duration.

These low intensity, localized, and short-term noise exposures (i.e., 160 dB re 1 μPa (rms) from impulse sources and 120 dB re 1 μPa (rms) from non-impulse sources), are expected to cause brief startle reactions or short-term behavioral modification by the animals. These brief reactions and behavioral changes are expected to disappear when the exposures cease. The maximum estimated 160 dB isopleths from impact pile driving is 500 m from the pile, and the estimated 120 dB maximum isopleths from vibratory pile driving is approximately 2,000 m from the pile. There is no pinniped haul-out area in the vicinity of the pile driving sites. There is no critical habitat or other biologically important area for marine mammals in the vicinity of the proposed SF–OBB construction area. Therefore, these levels of received underwater construction noise from the proposed SF–OBB construction project are not expected to affect marine mammal annual rates of recruitment or survival.

For the reasons discussed in this document, NMFS has preliminarily determined that the impact of in-water pile driving associated with construction of the SF–OBB would result, at worst, in the Level B harassment of small numbers of California sea lions, Pacific harbor seals, harbor porpoises, and potentially gray whales that inhabit or visit SFB in general and the vicinity of the SF–OBB in particular. While behavioral modifications, including temporarily vacating the area around the construction site, may be made by these species to avoid the resultant visual and acoustic disturbance, the availability of alternate areas within SFB and haul-out sites (including pupping sites) and feeding areas within the Bay has led NMFS to preliminarily determine that this action will have a negligible impact on California sea lion, Pacific harbor seal, harbor porpoise, and gray whale species or stocks along the California coast.

In addition, no take by Level A harassment (injury) or death is anticipated and harassment takes should be at the lowest level practicable due to incorporation of the proposed mitigation measures mentioned previously in this document.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Proposed Incidental Harassment Authorization

This section contains a draft of the IHA itself. The wording contained in this section is proposed for inclusion in the IHA (if issued).

(1) This Authorization is valid from January 8, 2014, through January 7, 2015.

(2) This Authorization is valid only for activities involving the construction and dismantling of the East Span of SF–OBB, California.

(3) Species Impacted and Level of Takes.

(a) The species authorized for takings by incidental harassment are the California sea lion (*Zalophus californianus*), Pacific harbor seal (*Phoca vitulina richardsi*), harbor porpoise (*Phocoena phocoena*), and gray whale (*Eschrichtius robustus*).

(b) The taking of any marine mammal in a manner prohibited under this Authorization must be reported within 24 hours of the taking to the Director, Southwest Regional Office, National Marine Fisheries Service, Telephone (562) 980–4000 and the Director, Office of Protected Resources, National Marine Fisheries Service, Telephone (301) 427–8400.

(4) The holder of this Authorization is required to cooperate with the National Marine Fisheries Service and any other Federal, state or local agencies monitoring the impacts of the activity on marine mammals. The holder must notify Monica DeAngelis of the Southwest Regional Office (phone: (562) 980–3232) at least 24 hours prior to starting activities.

(5) Prohibitions.

(a) The taking, by incidental harassment only, is limited to the species listed under condition 3(a) above and by the numbers listed in Table 2. The taking by Level A harassment, injury, serious injury, or death of these species or the taking by harassment, injury, serious injury, or death of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this Authorization.

(6) Mitigation Requirements.

(a) Use of Noise Attenuation Devices.

Pile driving energy attenuator (such as air bubble curtain system or dewatered cofferdam) shall be used for all impact pile driving of pipe piles, with the exception of pile proofing and H-piles.

(b) Establishment and Monitoring of Exclusion and Level B Harassment Zones.

(i) For all in-water pile driving and mechanical dismantling activities, CALTRANS shall establish exclusion zones where received underwater sound pressure levels (SPLs) are higher than 180 dB (rms) and 190 dB (rms) re 1 μPa for cetaceans and pinnipeds, respectively, and Level B harassment zones where received underwater sound pressure levels (SPLs) are higher than 160 dB (rms) and 120 dB (rms) re 1 μPa for impulse noise sources (impact pile driving) and non-impulses noise sources

(vibratory pile driving and mechanic dismantling), respectively.

(ii) The sizes of the initial exclusion and Level B harassment zones for different types of activities are provided in Table 1 above. Once hydroacoustic measurements of pile driving and mechanical dismantling activities have been conducted, CALTRANS shall revised the sizes of the zones based on actual measurements.

(iii) NMFS-approved protected species observers (PSOs) shall conduct initial survey of the safety zone to ensure that no marine mammals are seen within the zones before impact pile driving and mechanical dismantling of bridge foundation. If marine mammals are found within the exclusion zones, impact pile driving and/or mechanical dismantling activity of the segment shall be delayed until they move out of the area. If a marine mammal is seen above water and then dives below, the contractor would wait 15 minutes for pinnipeds and harbor porpoise and 30 minutes for gray whale. If no marine mammals are seen by the observer in that time it would be assumed that the animal has moved beyond the exclusion zone.

(iv) If the time between pile-segment driving is less than 30 minutes, a new 30-minute survey is unnecessary provided marine mammal monitors continue observations during the interruption. If pile driving ceases for 30 minutes or more and a marine mammal is sighted within the designated safety zone(s) prior to the commencement of pile-driving, the observer(s) must notify the Resident Engineer (or other authorized individual) immediately (see condition 5(e)).

(c) Soft Start.

CALTRANS and its contractor shall implement soft start, i.e., starting the pile driving hammer at the lowest power setting and gradually ramp up to full power, prior to operating pile driving hammers at full capacity for both impact and vibratory pile driving.

(d) Power Down and Shut-down.

(i) For mechanical dismantling of bridge foundation, construction activities that generate underwater noise must be powered down or shutdown if a marine mammal is observed within the established 180 dB or 190 dB re 1 μPa exclusion zones for cetaceans or pinnipeds, respectively.

(ii) For pile driving activities, if a marine mammal is sighted within the exclusion zone after pile-driving has begun, CALTRANS must have a qualified marine mammal observer record the species, numbers and behaviors of the animal(s) and report to Monica DeAngelis at the Southwest Regional Office, National Marine Fisheries Service, (phone: (562) 980–3232) within 24 hours of the incident.

(7) Monitoring Requirements.

(a) General.

(1) The holder of this Authorization must designate a minimum of three biologically-trained, on-site protected species observers (PSOs), approved in advance by the National Marine Fisheries Service's Southwest Regional Office, to monitor the area for marine mammals before, during, and after pile driving activities; and before, during, and after mechanical dismantling of marine foundations.

(2) The National Marine Fisheries Service must be informed immediately of any changes or deletions to any portions of the monitoring plan in accordance with condition 7(a) of this Authorization.

(b) Visual Monitoring.

(i) CALTRANS shall implement onsite marine mammal monitoring for 100% of all unattenuated impact pile driving of H-piles for 180- and 190-dB re 1 μPa exclusion zones and 160-dB re 1 μPa Level B harassment zone, attenuated impact pile driving of pipe piles (except pile proofing) and mechanical dismantling for 180- and 190-dB re 1 μPa exclusion zones.

(ii) CALTRANS shall also monitor 20% of the attenuated impact pile driving for the 160-dB re 1 μPa Level B harassment zone, and 20% of vibratory pile driving and mechanic dismantling for the 120 dB re 1 μPa Level B harassment zone.

(iii) Marine mammal monitoring shall begin at least 30 minutes prior to the start of the activities, through the entire construction activities, and continue to 30 minutes after the construction activities.

(iv) Observations shall be made using high-quality binoculars (e.g., Zeiss, 10 × 42 power). PSOs shall be equipped with radios or cell phones for maintaining contact with other observers and CALTRANS engineers, and range finders to determine distance to marine mammals, boats, buoys, and construction equipment.

(v) Data on all observations would be recorded and shall include the following information:

- Location of sighting;
- species;
- number of individuals;
- number of calves present;
- duration of sighting;
- behavior of marine animals sighted;
- direction of travel;
- when in relation to construction activities did the sighting occur (e.g., before, ''soft-start'', during, or after the pile driving or removal); and
- other human activities in the area.

(c) Hydroacoustic Measurements.

At the beginning of pile driving and mechanical dismantling of bridge foundation, CALTRANS shall conduct hydroacoustic measurements to verify the exclusion and Level B harassment zones.

(7) Reporting Requirements.

(a) CALTRANS shall notify NMFS of the initial sound pressure level measurements for both pile driving and foundation dismantling activities, including the final exclusion zone and Level B harassment zone radii established for impact and vibratory pile driving and marine foundation dismantling activities, within 72 hours after completion of the measurements.

(b) Monitoring reports shall be posted on the SFOBB Project's biological mitigation Web site (*www.biomitigation.org*) on a weekly basis if in-water construction activities are conducted. Marine mammal monitoring reports shall include species and numbers of marine mammals observed, time and location of observation and behavior of the animal. In addition, the reports shall include an estimate of the number and species of marine mammals that may have been harassed as a result of activities.

(c) CALTRANS shall provide NMFS with a draft final report within 90 days after the expiration of the IHA. This report shall detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed due to pile driving and mechanical dismantling of bridge foundations. If no comments are received from NMFS within 30 days, the draft final report would be considered the final report. If comments are received, a final report must be submitted within 30 days after receipt of comments.

(8) Notification of Injured or Dead Marine Mammals.

(a) In the unanticipated event that CALTRANS' construction activities clearly cause the take of a marine mammal in a manner prohibited by this Authorization, such as an injury (Level A harassment), serious injury or mortality (e.g., ship-strike, gear interaction, and/or entanglement), CALTRANS shall immediately cease construction operations and immediately report the incident to the Supervisor of Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *Shane.Guan@noaa.gov* and NMFS Southwest Regional Stranding

Coordinators (*Sarah.Wilkin@noaa.gov*). The report must include the following information:

(i) Time, date, and location (latitude/longitude) of the incident;

(ii) type of activity involved;

(iii) description of the incident;

(iv) status of all sound source use in the 24 hours preceding the incident;

(v) water depth;

(vi) environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);

(vii) description of marine mammal observations in the 24 hours preceding preceding the incident;

(viii) species identification or description of the animal(s) involved;

(ix) the fate of the animal(s); and

(x) photographs or video footage of the animal (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with CALTRANS to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. CALTRANS may not resume their activities until notified by NMFS via letter, email, or telephone.

(b) In the event that CALTRANS discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as described in the next paragraph), CALTRANS will immediately report the incident to the Supervisor of the Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Shane.Guan@noaa.gov* and NMFS Southwest Regional Stranding Coordinators (*Sarah.Wilkin@noaa.gov*). The report must include the same information identified in Condition 8(a) above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with CALTRANS to determine whether modifications in the activities are appropriate.

(c) In the event that CALTRANS discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in Condition 3 of this Authorization (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), CALTRANS shall report the incident to the Supervisor of the Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Shane.Guan@noaa.gov* and NMFS Southwest Regional Stranding Coordinators (*Sarah.Wilkin@noaa.gov*), within 24 hours of the discovery. CALTRANS shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS. CALTRANS can continue its operations under such a case.

(9) A copy of this Authorization must be in the possession of all contractors and marine mammal monitors operating under the authority of this Incidental Harassment Authorization.

National Environmental Policy Act (NEPA)

NMFS prepared an Environmental Assessment (EA) for the take of marine mammals incidental to construction of the East Span of the SF–OBB and made a Finding of No Significant Impact (FONSI) on November 4, 2003. Due to the modification of part of the construction project and the mitigation measures, NMFS reviewed additional information from CALTRANS regarding empirical measurements of pile driving noises for the smaller temporary piles without an air bubble curtain system and the use of vibratory pile driving. NMFS prepared a Supplemental Environmental Assessment (SEA) and analyzed the potential impacts to marine mammals that would result from the modification of the action. A Finding of No Significant Impact (FONSI) was signed on August 5, 2009. A copy of the SEA and FONSI is available upon request (see **ADDRESSES**).

Endangered Species Act (ESA)

NMFS has determined that issuance of the IHA will have no effect on listed marine mammals, as none are known to occur in the action area.

Proposed Authorization

NMFS proposes to issue an IHA to CALTRANS for the potential harassment of small numbers of harbor seals, California sea lions, harbor porpoises, and gray whales incidental to construction of a replacement bridge for the East Span of the San Francisco-Oakland Bay Bridge in California, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of only small numbers of harbor seals, California sea lions, harbor porpoises, and possibly gray whales and will have no more than a negligible impact on these marine mammal stocks.

Dated: September 26, 2013.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–24079 Filed 10–1–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Commerce Spectrum Management Advisory Committee, Call for Applications

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice and call for applications to serve on advisory committee.

SUMMARY: The National Telecommunications and Information Administration (NTIA) is seeking applications from persons interested in serving on the Department of Commerce Spectrum Management Advisory Committee (CSMAC or committee) for a two-year term. The CSMAC provides advice to the Assistant Secretary of Commerce for Communications and Information on a broad range of issues regarding spectrum management and policy.

DATES: Applications must be postmarked or electronically transmitted on or before November 15, 2013.

ADDRESSES: Persons may submit applications, with the information specified below, to Bruce M. Washington, Designated Federal Officer, by email to *bwashington@ntia.doc.gov* or by U.S. mail or commercial delivery service to Office of Spectrum Management, National Telecommunications and Information Administration, 1401 Constitution Avenue NW., Room 4099, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Bruce M. Washington at (202) 482–6415 or *bwashington@ntia.doc.gov.*

SUPPLEMENTARY INFORMATION: The Commerce Spectrum Management Advisory Committee has been established and chartered by the Department of Commerce under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, and pursuant to Section 105(b) of the National Telecommunications and Information Administration Organization Act, as amended, 47 U.S.C. 904(b). The

Department of Commerce re-chartered the CSMAC on March 5, 2013, for a two-year period. The CSMAC advises the Assistant Secretary of Commerce for Communications and Information on a broad range of issues regarding spectrum policy. In particular, the current charter provides that the committee will provide advice and recommendations on needed reforms to domestic spectrum policies and management in order to: License radio frequencies in a way that maximizes their public benefit; keep wireless networks as open to innovation as possible; and make wireless services available to all Americans. The CSMAC functions solely as an advisory body in compliance with FACA. Additional information about the CSMAC and its activities may be found at *http://www.ntia.doc.gov/category/csmac.*

Under the committee's charter, it will have no fewer than five (5) members and no more than thirty (30) members. The Secretary of Commerce will appoint members of the committee who serve at the pleasure and discretion of the Secretary. Members will be appointed for up to a two-year term and may be reappointed for additional terms. On behalf of the Secretary, NTIA hereby seeks applicants for two-year terms that will commence in May 2014 and continue until May 2016, subject to extension of such terms, reappointment, and the renewal of the committee's charter, unless earlier terminated or renewed by proper authority.

No member of the committee shall be a registered lobbyist under the Lobbying Disclosure Act of 1995, as amended, 2 U.S.C. § 1601 *et seq. See* Office of Management and Budget, *Final Guidance on Appointments of Lobbyists to Federal Boards and Commissions,* Notice of Final Guidance, 76 FR 61756 (Oct. 5, 2011). All members of the committee are Special Government Employees (SGEs) and shall be subject to the ethical standards applicable to SGEs. Members may not receive compensation or reimbursement for travel or for *per diem* expenses.

The committee's membership will be fairly balanced in terms of the points of view represented by members and the functions to be performed. Accordingly, its membership will reflect a balanced cross-section of interests in spectrum management and policy, including non-federal spectrum users; state, regional, and local sectors; technology developers and manufacturers; academia; civil society; and service providers with customers in both domestic and international markets. A description of factors that will be considered to determine each applicant's expertise is contained in the committee's Membership Balance Plan (*available at http://www.ntia.doc.gov/other-publication/2013/csmac-membership-balance-plan).*

In particular, NTIA seeks applicants with strong technical and engineering knowledge and experience, familiarity with commercial or private wireless technologies and associated businesses, or expertise with specific applications of wireless technologies. The Secretary may consider factors including, but not limited to, educational background, past work or academic accomplishments, and the industry sector in which a member is currently or was previously employed. All appointments will be made without discrimination on the basis of age, ethnicity, gender, sexual orientation, disability, or cultural, religious, or socioeconomic status.

Interested qualified persons may submit applications, with the information specified below, to Bruce M. Washington, Designated Federal Officer, by email to *bwashington@ntia.doc.gov* or by U.S. mail or commercial delivery service to Office of Spectrum Management, National Telecommunications and Information Administration, 1401 Constitution Avenue NW., Room 4099, Washington, DC 20230.

Each application must include the applicant's full name, address, telephone number, and email address, along with a summary of the applicant's qualifications that identifies, with specificity, how his or her education, training, experience, or other factors would support the CSMAC's work and how his or her participation would help achieve the balance factors described above. Each application must also include a detailed resume or *curriculum vitae.*

Dated: September 27, 2013.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2013–24087 Filed 10–1–13; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Native American Tribal Insignia Database

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on this continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before December 2, 2013.

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

- *Email: InformationCollection@uspto.gov.* Include ''0651–0048 comment'' in the subject line of the message.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.
- *Federal Rulemaking Portal: http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Catherine Cain, Attorney Advisor, Office of Trademark Legal Policy, Office of the Commissioner for Trademarks, United States Patent and Trademark Office, P.O. Box 1451, Alexandria, VA 22313–1451; by telephone at 571–272–8946; or by email to *Catherine.Cain@uspto.gov.* Additional information about this collection is also available at *http://www.reginfo.gov* under ''Information Collection Review.''

SUPPLEMENTARY INFORMATION:

I. Abstract

The Trademark Law Treaty Implementation Act of 1998 (Pub. L. 105–330, § 302, 112 Stat. 3071) required the United States Patent and Trademark Office (USPTO) to study issues surrounding the protection of the official insignia of federally and state-recognized Native American tribes under trademark law. The USPTO conducted the study and presented a report to the House and Senate Judiciary Committees on November 30, 1999. One of the recommendations made in the report was that the USPTO create and maintain an accurate and comprehensive database containing the official insignia of all federally and state-recognized Native American tribes. In accordance with this recommendation, the Senate Committee on Appropriations directed the USPTO to create this database.

The USPTO database of official tribal insignias provides evidence of what a federally or state-recognized Native American tribe considers to be its official insignia. The database thereby

assists trademark examining attorneys in their examination of applications for trademark registration by serving as a reference for determining the registrability of a mark that may falsely suggest a connection to the official insignia of a Native American tribe. The database is also available to the public on the USPTO Web site at *http://www.uspto.gov*.

Tribes are not required to request that their official insignia be included in the database. The entry of an official insignia into the database does not confer any rights to the tribe that submitted the insignia, and entry is not the legal equivalent of registering the insignia as a trademark under 15 U.S.C. 1051 *et seq.* The inclusion of an official tribal insignia in the database does not create any legal presumption of validity or priority, does not carry any of the benefits of federal trademark registration, and is not a determination as to whether a particular insignia would be refused registration as a trademark pursuant to 15 U.S.C. 1051 *et seq.*

Requests from federally recognized tribes to enter an official insignia into the database must be submitted in writing and include: (1) A depiction of the insignia, including the name of the tribe and the address for correspondence; (2) a copy of the tribal resolution adopting the insignia in question as the official insignia of the tribe; and (3) a statement, signed by an official with authority to bind the tribe, confirming that the insignia included with the request is identical to the official insignia adopted by the tribal resolution.

Requests from state-recognized tribes must also be in writing and include each of the three items described above that are submitted by federally recognized tribes. Additionally, requests from state-recognized tribes must include either: (a) A document issued by a state official that evidences the state's determination that the entity is a Native American tribe; or (b) a citation to a state statute designating the entity as a Native American tribe.

The USPTO enters insignia that have been properly submitted by federally or state-recognized Native American tribes into the database and does not investigate whether the insignia is actually the official insignia of the tribe making the request.

This collection includes the information needed by the USPTO to enter an official insignia for a federally or state-recognized Native American tribe into a database of such insignia. No forms are associated with this collection.

II. Method of Collection

By mail, facsimile, or hand delivery to the USPTO.

III. Data

OMB Number: 0651–0048.

Form Number(s): None.

Type of Review: Extension of a currently approved collection.

Affected Public: Tribal governments.

Estimated Number of Respondents: 3 responses per year.

Estimated Time per Response: The USPTO estimates that a federally or state-recognized Native American tribe will require an average of 45 minutes (0.75 hours) to complete a request to record an official insignia, including time to prepare the appropriate documents and submit the completed request to the USPTO.

Estimated Total Annual Respondent Burden Hours: 3 hours.

Estimated Total Annual Respondent Cost Burden: $228. The USPTO expects that the information in this collection will be prepared by both paraprofessionals and administrative staff. The estimated rate of $76 per hour used in this submission is an average of the paraprofessional rate of $122 per hour and the administrative rate of $30 per hour. Therefore, the USPTO estimates that the respondent cost burden for this collection will be approximately $228 per year.

Item	Estimated time for response (minutes)	Estimated annual responses	Estimated annual burden hours
Request to Record an Official Insignia of a Federally Recognized Tribe	45	2	2
Request to Record an Official Insignia of a State-Recognized Tribe	45	1	1
Totals		3	3

Estimated Total Annual Non-Hour Respondent Cost Burden: $3. There are no capital start-up, maintenance, or recordkeeping costs associated with this information collection. There are also no filing fees for submitting a tribal insignia for recording. However, this collection does have annual (non-hour) cost burden in the form of postage costs.

Customers may incur postage costs when submitting the information in this collection to the USPTO by mail. The USPTO estimates that the average first-class postage cost for a submission mailed through the U.S. Postal Service will be $1.12 (based on a large 9″ by 12″ envelope weighing 2 ounces) and that up to 3 submissions will be mailed to the USPTO per year. Therefore, the total annual (non-hour) respondent cost burden for this collection is estimated to be approximately $3 per year.

IV. Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

The USPTO is soliciting public comments to: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Dated: September 27, 2013.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2013–24054 Filed 10–1–13; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0099]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by November 1, 2013.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Boren Scholarship and Fellowship Survey; OMB Control Number 0704–TBD.

Type of Request: New.

Number of Respondents: 1,800.

Responses per Respondent: 1.

Annual Responses: 1800.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 450.

Needs and Uses: Boren scholarships and fellowships provide funding for students to study abroad to improve their cultural and language skills in areas critical to national security. In exchange for financial assistance, students are required to work for the federal government for at least one year after completing the program. The information collection requirement is necessary to identify where former Boren scholarship and fellowship awardees work now and how their careers have developed since completing the program.

Affected Public: Individuals and Households.

Frequency: Once.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD Information Management Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: September 27, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–24044 Filed 10–1–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Threat Reduction Advisory Committee; Notice of Federal Advisory Committee Meeting

AGENCY: Office of the Under Secretary of Defense (Acquisition, Technology and Logistics), DoD.

ACTION: Federal Advisory Committee meeting notice.

SUMMARY: The Department of Defense announces the following Federal advisory committee meeting of the Threat Reduction Advisory Committee (''the Committee'').

DATES: Tuesday, October 22, from 8:30 a.m. to 5 p.m. and Wednesday, October 23, 2013, from 9 a.m. to 4:30 p.m.

ADDRESSES: Commander's Conference Room, USNORTHCOM, Colorado Springs, CO.

FOR FURTHER INFORMATION CONTACT: Mr. William Hostyn, DoD, Defense Threat Reduction Agency/J2/5/8R–ACP, 8725 John J. Kingman Road, MS 6201, Fort Belvoir, VA 22060–6201. Email: *william.hostyn@dtra.mil.* Phone: (703) 767–4453. Fax: (703) 767–4206.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (FACA) (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150. The Committee will obtain, review and evaluate classified information related to the Committee's mission to advise on technology security, Combating Weapons of Mass Destruction (C–WMD), counter terrorism and counter proliferation.

Agenda: Beginning at 8:30 a.m., October 22, and through the end of the meeting on October 23, the committee will receive classified C–WMD briefings on WMD-Elimination, National Defense Strategy, and Nuclear Strategic Stability from the Department of Defense. The committee will also hold classified discussions on USNORTHCOM C–WMD concerns, the Cooperative Threat Reduction program, National Guard Bureau State Partnership program, Defense Support to Civil Authorities, and C–WMD Strategic Indicators and Warnings.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, and 41 CFR 102–3.155, the Department of Defense has determined that the meeting shall be closed to the public. The Under Secretary of Defense for Acquisition, Technology and Logistics, in consultation with the DoD FACA Attorney, has determined in writing that the public interest requires all sessions of this meeting be closed to the public because the discussions will be concerned with classified information and matters covered by 5 U.S.C. 552b(c)(1). Such classified matters are inextricably intertwined with the unclassified material and cannot reasonably be segregated into separate discussions without disclosing secret material.

Committee's Designated Federal Officer or Point of Contact: Mr. William Hostyn, DoD, Defense Threat Reduction Agency/J2/5/8R–ACP, 8725 John J. Kingman Road, MS 6201, Fort Belvoir, VA 22060–6201. Email: *william.hostyn@dtra.mil.* Phone: (703) 767–4453. Fax: (703) 767–4206.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of FACA, the public or interested organizations may submit written statements to the membership of the Committee at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Committee's Designated Federal Officer. The Designated Federal Officer's contact information is listed in this notice or it can be obtained from the General Services Administration's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

Written statements that do not pertain to a scheduled meeting of the Committee may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting, then

these statements must be submitted no later than five business days prior to the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all committee members.

Dated: September 27, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–24055 Filed 10–1–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board Fall Plenary Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (U.S.C. 552b, as amended) and 41 Code of the Federal Regulations (CFR 102–3. 140 through 160, the Department of the Army announces the following committee meeting:

Name of Committee: Army Science Board (ASB) Fall Plenary Session.

Date: Wednesday, October 16, 2013.

Time: 1530—Until completion (UTC).

Location: Hyatt Regency Crystal City, 2799 Jefferson Davis Hwy., Arlington, VA 22202.

Purpose of Meeting: The purpose of the meeting is for Army Science Board members to review and deliberate on the FY14 Army Science Board study reports.

Agenda: The board will convene to present the results of the Fiscal Year 2013 study titled, ''Creating an Innovation Culture in the Army.'' The ASB board members will cast a vote to accept the results of this study and record that vote for record according to the Army Science Board bylaws, Article VII, Section 2.

Committee's Designated Federal Officer or Point of Contact: COL William McLagan, *william.m.mclagan.mil@mail.mil* and 703–545–8651.

SUPPLEMENTARY INFORMATION: Filing Written Statement: Pursuant to 41 CFR 102–3.140d, the Committee is not obligated to allow the public to speak; however, interested persons may submit a written statement for consideration by the Subcommittees. Individuals submitting a written statement must submit their statement to the Designated Federal Officer (DFO) at the address listed (see **FOR FURTHER INFORMATION CONTACT**). Written statements not received at least 10 calendar days prior to the meeting, may not be provided to or considered by the subcommittees until its next meeting.

The DFO will review all timely submissions with the subcommittee Chairs and ensure they are provided to the specific subcommittee members before the meeting. After reviewing written comments, the subcommittee Chairs and the DFO may choose to invite the submitter of the comments to orally present their issue during a future open meeting.

The DFO, in consultation with the subcommittee Chairs, may allot a specific amount of time for the members of the public to present their issues for review and discussion.

FOR FURTHER INFORMATION CONTACT: Army Science Board Designated Federal Official, 2530 Crystal Drive, Suite 7098. Arlington, VA 22202.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2013–23956 Filed 10–1–13; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2013–ICCD–0128]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Integrated Postsecondary Education Data System (IPEDS) 2013–2016

AGENCY: Institute of Education Sciences/National Center for Education Statistics (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before November 1, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0128 or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E103,Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For questions related to collection activities or burden, please call Katrina Ingalls, 703–620–3655 or electronically mail *ICDocketMgr@ed.gov*. Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Integrated Postsecondary Education Data System (IPEDS) 2013–2016.

OMB Control Number: 1850–0582.

Type of Review: Revision of an existing collection of information.

Respondents/Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 71,867.

Total Estimated Number of Annual Burden Hours: 933,777.

Abstract: The Integrated Postsecondary Education Data System (IPEDS) is a web-based data collection system designed to collect basic data from all postsecondary institutions in the United States and the other jurisdictions. IPEDS enables the National Center for Education Statistics (NCES) to report on key dimensions of

postsecondary education such as enrollments, degrees and other awards earned, tuition and fees, average net price, student financial aid, graduation rates, revenues and expenditures, faculty salaries, and staff employed. The IPEDS web-based data collection system was implemented in 2000–01, and it collects basic data from approximately 7,500 postsecondary institutions in the United States and the other jurisdictions that are eligible to participate in Title IV Federal financial aid programs. All Title IV institutions are required to respond to IPEDS (Section 490 of the Higher Education Amendments of 1992 (Pub. L. 102–325)). IPEDS allows other (non-title IV) institutions to participate on a voluntary basis. About 200 elect to respond. IPEDS data are available to the public through the College Navigator and IPEDS Data Center Web sites. NCES seeks authorization to continue its IPEDS data collection. Current authorization expires 6/30/2014 (OMB No. 1850–0582). Clearance is also sought for the 2014–15 and 2015–16 data collections in order to provide institutions advanced notice of changes to the current data collection. Because the already approved 2013–14 IPEDS data collection has not yet taken place, we are carrying over the documentation and estimated burden associated with the 2013–14 data collection. The 30-day public comment period for this collection concluded on September 9, 2013. In response to the public comments, two revisions have been made to the proposed IPEDS 2013–2016 collection: (1) The item ''Serial Titles'' was deleted from the Academic Libraries component because it had been deleted from the 2012 Academic Libraries Survey between the Technical Review Panel meeting and the submission of the clearance package, and (2) a cohort status report at 6 years was added for all institutions to the Outcome Measures component to accommodate the measurement of awards in a timeframe that will align with proposed policy changes related to federal student loan limits and to provide a second point in time measure to assist students and their parents in the college selection process. Award information will now be reported at both the 6 year and 8 year timeframe, 8 years after the cohort enters the institution. As a result of these changes, NCES is opening another 30-day public comment period.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–24041 Filed 10–1–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2013–ICCD–0129]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Title V Developing Hispanic-Serving Institutions Application—1894–0001

AGENCY: Office of Postsecondary Education (OPE) Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a reinstatement of a previously approved information collection.

DATES: Interested persons are invited to submit comments on or before November 1, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0129 or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E103, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For questions related to collection activities or burden, please call Kate Mullan, 202–401–0563 or electronically mail *ICDocketMgr@ed.gov*. Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Title V Developing Hispanic-Serving Institutions Application—1894–0001.

OMB Control Number: 1840–0745.

Type of Review: A reinstatement of a previously approved information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 100.

Total Estimated Number of Annual Burden Hours: 5,500.

Abstract: Collection of the information is necessary so that the Secretary of Education can carry out the Hispanic-Serving Institutions program under Title V, Part A of the Higher Education Act of 1965, as amended. The information will be used in the evaluation process to determine whether proposed activities are consistent with legislated activities and to determine the dollar share of the Congressional appropriation to be awarded to successful applicants.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–24036 Filed 10–1–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Hydrogen and Fuel Cell Technical Advisory Committee (HTAC)

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

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Hydrogen and Fuel Cell Technical Advisory Committee (HTAC). The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires notice of the meeting be announced in the **Federal Register**.

DATES: Tuesday, October 29, 2013, 8:30 a.m.–5:00 p.m. Wednesday, October 30, 2013, 8:00 a.m.–11:15 a.m.

ADDRESSES: National Renewable Energy Laboratory (NREL); Research Support Facility; San Juan Conference Rooms X344A, X344B, X344C; 15013 Denver West Parkway; Golden, Colorado 80401–3305.

FOR FURTHER INFORMATION CONTACT: Email: *HTAC@nrel.gov* or at the mailing address: Joseph Stanford, Designated Federal Officer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, 1000 Independence Avenue, Washington, DC 20585.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The Hydrogen and Fuel Cell Technical Advisory Committee (HTAC) was established under section 807 of the Energy Policy Act of 2005 (EPACT), Pub. L. No. 109–58; 119 Stat. 849.

Purpose of the Meeting: To provide advice, information, and recommendations to the Secretary of Energy on the program authorized by Title VIII of EPACT.

Tentative Agenda: (updates will be posted on the Web at: *http://hydrogen.energy.gov/advisory_htac.html*).

- HTAC Business (including public comment period)
- DOE Leadership Updates
- Program and Budget Updates
- Overview of Activities at the National Renewable Energy Laboratory, including hydrogen and fuel cell related activities
- Colorado Government Speaker
- Work on Grid Integration by DOE's Office of Energy Efficiency and Renewable Energy
- Overview of the H_2USA Partnership
- HTAC Subcommittee Updates
- Hydrogen Production (including industry perspectives, techno-economic analysis, and longer-term production technologies)
- Open Discussion Period

Public Participation: The meeting is open to the public. Individuals who would like to attend and/or to make oral statements during the public comment period must register no later than 5:00 p.m. on Wednesday, October 23, 2013, by email at *HTAC@nrel.gov.* Foreign nationals must register no later than 5:00 p.m. on Monday, October 14, 2013. Foreign nationals will be required to fill out a questionnaire in order to have access to the meeting site and will be notified within 5–10 business days regarding their access to the meeting. An early confirmation of attendance will help to facilitate access to the building more quickly. Entry to the building will be restricted to those who have confirmed their attendance in advance. Please provide your name, organization, citizenship, and contact information. Anyone attending the meeting will be required to present government-issued identification. Those wishing to make a public comment are required to register. The public comment period will take place between 8:30 a.m. and 9:00 a.m. on October 29, 2013. Time allotted per speaker will depend on the number who wish to speak but will not exceed five minutes. Those not able to attend the meeting or have insufficient time to address the committee are invited to send a written statement to *HTAC@nrel.gov.*

Minutes: The minutes of the meeting will be available for public review at *http://hydrogen.energy.gov/advisory_htac.html.*

Issued in Washington, DC, on September 26, 2013.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2013–24089 Filed 10–1–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Coal Council Meeting

AGENCY: Department of Energy

ACTION: Notice of open meeting

SUMMARY: This notice announces a meeting of the National Coal Council (NCC). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of meetings be announced in the **Federal Register**.

DATES: Friday, November 1, 2013 9:00 a.m. to 12:00 p.m.

ADDRESSES: Washington Court Hotel, 525 New Jersey Avenue NW., Washington, DC 20001–1527.

FOR FURTHER INFORMATION CONTACT: Dr. Robert J. Wright, U.S. Department of Energy, 4G–036/Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0001; Telephone: 202–586–0429.

SUPPLEMENTARY INFORMATION:

Purpose of the Council: The National Coal Council provides advice and recommendations to the Secretary of Energy on general policy matters relating to coal and the coal industry

Purpose of Meeting: The November 2013 meeting of the National Coal Council.

Agenda:

- Opening Remarks by NCC Chair John Eaves
- Robert Bryce, Senior Fellow, The Manhattan Institute: ''Global Energy Trends: How Electric Demand is Driving Coal''
- Thomas Alley, Vice President Generation, EPRI: ''The Power System of the Future: Flexible Supply & Generation''
- National Coal Council Business Reports: Janet Gellici, Executive Vice President & COO, National Coal Council
- Adjourn

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Council, you may do so either before or after the meeting. If you would like to make oral statements regarding any item on the agenda, you should contact Dr. Robert J. Wright, 202–586–0429 or *robert.wright@hq.doe.gov* (email). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include oral statements on the scheduled agenda. The Chairperson of the Council will lead the meeting in a manner that facilitates the orderly conduct of business. Oral statements are limited to 10 minutes per organization and per person.

Minutes: A link to the transcript of the meeting will be posted on the NCC Web site at: *http://www.nationalcoalcouncil.org/.*

Issued at Washington, DC, on September 26, 2013.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2013–24091 Filed 10–1–13; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2012–0917; FRL–9393–1]

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this document announces that EPA is planning to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB). The ICR, titled: ''Safer Detergent Stewardship Initiative (SDSI) Program'' and identified by EPA ICR No. 2261.03 and OMB Control No. 2070–0171, represents the renewal of an existing ICR that is scheduled to expire on May 31, 2014. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection that is summarized in this document. The ICR and accompanying material are available in the docket for public review and comment.

DATES: Comments must be received on or before December 2, 2013.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2012–0917, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave. NW., Washington, DC. ATTN: Docket ID Number EPA–HQ–OPPT–2012–0917. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2012–0917. EPA's policy is that all comments received will be included in the docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Clive Davies, Economics, Exposure, and Technology Division (7404M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–3821; fax number: (202) 564–8893; email address: *davies.clive@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What information is EPA particularly interested in?

Pursuant to PRA section 3506(c)(2)(A) (44 U.S.C. 3506(c)(2)(A)), EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. What information collection activity or ICR does this action apply to?

Title: Safer Detergent Stewardship Initiative (SDSI) Program.

ICR number: 2261.03.

OMB control number: 2070–0171.

ICR status: This ICR is currently scheduled to expire on May 31, 2014. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in

the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The Safer Detergent Stewardship Initiative (SDSI) is a voluntary program, administered by EPA to offer resources, and recognition to businesses involved in the transition to safer surfactants. Surfactants are a major ingredient in cleaning products such as detergents, cleaners, airplane deicers and fire-fighting foams. Safer surfactants are those that break down quickly to non-polluting compounds. Under SDSI, businesses that have fully transitioned to safer surfactants, or (for non-profits, academic institutions, etc.) can document outstanding efforts to encourage the use of safer surfactants, are granted Champion status. At this level, the participant is invited to the SDSI Awards ceremony, listed on the EPA SDSI Web site as a Champion, and may use a special logo in their literature to help explain their participation in the program. Businesses that commit to a full and timely transition to safer surfactants, or (for non-profits, academic institutions, etc.) can document outstanding efforts to encourage the use of safer surfactants, are granted Partner status. This category provides recognition of significant accomplishments towards the use of safer surfactants. Partners will be listed on the EPA SDSI Web site and may be granted recognition as a Champion in the future if appropriate. This information collection addresses reporting activities that support the administration of the SDSI program.

Responses to this collection of information are voluntary. Respondents may claim all or part of a response confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 10 hours per response. Burden is defined in 5 CFR 1320.3(b).

The ICR, which is available in the docket along with other related materials, provides a detailed explanation of the collection activities and the burden estimate that is only briefly summarized here:

Respondents/Affected Entities: Entities potentially affected by this ICR are establishments or organizations engaged in formulating, producing, purchasing, or distributing surfactants or products containing surfactants.

Estimated total number of potential respondents: 14.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 140 hours.

Estimated total annual costs: $8,232. This includes an estimated burden cost of $8,232 and an estimated cost of $0 for capital investment or maintenance and operational costs.

III. Are there changes in the estimates from the last approval?

There is no change in the number of hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB.

IV. What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** document, pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: August 28, 2013.

James Jones,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2013–23938 Filed 10–1–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9900–43–OEI; EPA–HQ–OEI–2012–0483]

Amendment of the Federal Docket Management System (EPA/GOV–2)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974 (5 USC 552a), the Environmental Protection Agency (EPA) is giving notice that it is amending the Federal Docket Management System (FDMS) system of records to add information collected in a Freedom of Information Act (FOIA) system. The FOIA system, ''FOIAonline'', is a software application on the FDMS system infrastructure. The FOIAonline system is used by participating agencies to electronically receive, process, track and store requests from the public for federal records; post responsive records to a Web site; collect data for annual reporting requirements to the Department of Justice, and manage internal FOIA administration activities. In addition to the current FDMS functionalities, the FOIA system allows the public to submit and track FOIA requests and appeals; access requests and responsive records online, and obtain the status of requests filed with participating agencies.

DATES: Persons wishing to comment on this system of records notice must do so by November 12, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OEI–2012–0483 by one of the following methods:

- *www.regulations.gov*: Follow the online instructions for submitting comments.
- *Email: oei.docket@epa.gov.*
- *Fax:* 202–566–1752.
- *Mail:* OEI Docket, Environmental Protection Agency, Mail code: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.
- *Hand Delivery:* OEI Docket, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OEI–2012–0483. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information for which disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov*. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and

included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment, and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available (e.g., confidential or other information for which disclosure is restricted by statute). Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the OEI Docket, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: eRulemaking Program Management Office, (202) 566–1385, U.S. EPA, Office of Environmental Information, M/C 2282T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

General Information

EPA is amending the Federal Docket Management System (FDMS) (System number: EPA–GOV–2) to add records collected in a Freedom of Information Act (FOIA) system. The system of record notice for FDMS was published in the **Federal Register** on March 24, 2005. The FDMS regulatory system contains **Federal Register** notices, materials supporting regulatory actions such as scientific and economic analyses, and public comments. The repository also contains dockets that are non-rulemaking. The system is used by 39 federal agencies that conduct rulemaking activities. Each agency is responsible for managing its own docket and rulemaking documents. An agency may share documents with other agencies or persons in addition to making them available to the public on the regulations.gov Web site. Each agency has sole responsibility for documents submitted in support of its rulemakings. These documents will be processed by the responsible agencies.

Some agencies require individuals to provide personally identifiable information when submitting a comment (e.g., name and contact information) that the agency can use if it experiences a problem receiving the comment or requires additional information to process the comment. A comment that meets all requirements of the recipient agency will be posted on the regualtions.gov Web site for public viewing. All the contents of posted comments will be searchable. Each agency manages, accesses, and controls the information in the regulatory system that is submitted to it and maintains the sole ability to disclose the information it receives.

The FOIA system, FOIAonline, is used by participating agencies to administratively control and process requests for records in compliance with FOIA and to automate agency FOIA administration activities. FOIAonline provides a secure, login access Web site for agencies to receive and store requests; assign and process requests; post responses online; produce agencies' annual reports to the Department of Justice and manage FOIA requests electronically. The system allows the public to submit and track requests; search and download requests and responsive records; correspond with processing staff and file appeals as registered users. Each participating agency manages, accesses, and controls requests submitted to it through FOIAonline, including responding to requests for information in the possession of the agency and making information available in the system's repository of released records.

The name of a FOIA requester will be publicly available and searchable by the public based on an Agency's policies. With the exception of a requester's name, any other personally identifiable information provided by a requester during the process of completing the online request form or creating an online account (e.g., home addresses, email address and contact information) will not be posted to the Web site, nor will it be searchable by the public. Personally identifiable information determined to be publicly releasable and contained in documents released to the public under FOIA (e.g., the names and official contact information of government employees or the names of agency correspondents) will be publicly available and searchable by the public if posted by a participating agency based on their internal policies.

Dated: July 11, 2013.

Renee P. Wynn,

Acting Assistant Administrator, and Acting Chief Information Officer.

EPA–GOVT–2

SYSTEM NAME:

Federal Docket Management System (FDMS).

SYSTEM LOCATION:

U.S. EPA, Research Triangle Park, NC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual commenting on a federal agency's rulemaking activities or submitting supporting materials and individuals requesting access to records pursuant to the Freedom of Information Act, 5 U.S.C. 552 (FOIA) or appealing initial denials of their requests.

CATEGORIES OF RECORDS IN THE SYSTEM:

Agency rulemaking materials including, but not limited to, **Federal Register** publications, supporting rulemaking documentation, scientific and financial studies and public comments. Records also include the requests filed for agency records pursuant to FOIA, including individuals' names, mailing addresses, email addresses, phone numbers, user names and passwords for registered users, FOIA tracking numbers, dates requests are submitted and received, related appeals and agency responses. Records also include communications with requesters, internal FOIA administration documents (e.g., billing invoices) and responsive records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 206(d) of the E-Government Act of 2002 (Pub. L. 107–347, 44 U.S.C. Ch 36); Freedom of Information Act, 5 U.S.C. 552; Privacy Act of 1974, 5 U.S.C. 552a; Clinger-Cohen Act of 1986, 40 U.S.C. 11318; and 5 U.S.C. 301.

PURPOSE(S):

To provide the public a central online location to search, view, download and comment on Federal rulemaking documents and a single location to submit and track FOIA requests and appeals filed with participating agencies, along with providing the agencies electronic FOIA processing and administrative capabilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine uses A, B, C, D, E, F, G, H, K, and L apply to this system.

Records may also be disclosed to another Federal agency (a) with an interest in an agency record in connection with a referral of a Freedom of Information Act (FOIA) request to that agency for its views or decision on disclosure or (b) in order to obtain advice and recommendations concerning matters on which the agency has specialized experience or particular competence that may be useful to agencies in making required determinations under FOIA.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

FDMS security protocols meet all required security standards issued by the National Institute of Science and Technology (NIST). Records in FDMS are maintained in a secure, password protected electronic system that utilizes security hardware and software to include multiple firewalls, active intruder detection, and role-based access controls. Additional safeguards will vary by agency.

RETRIEVABILITY:

The system has the ability to retrieve records by numerous data elements and key word searches, including name, agency, dates, subject, docket type, docket sub-type, agency docket ID, docket title, docket category, document type, CFR Part, date received and **Federal Register** publication date, FOIA tracking number and other information retrievable with full-text searching capability.

ACCESSING:

The public may access regulatory records in the system at www.regulations.gov and FOIA records at *https://foiaonline.regulations.gov.*

SAFEGUARDS:

FDMS security protocols meet multiple NIST security standards from authentication to certification and accreditation. Records in the system are maintained in a secure, password protected electronic system that utilizes security hardware and software to include multiple firewalls, active intruder detection, and role-based access controls. Additional safeguards vary by agency for the regulatory records. Security controls are commensurate with those required for an information system rated moderate for confidentiality, integrity and availability as prescribed by NIST.

RETENTION AND DISPOSAL:

Each Federal agency handles its records in accordance with its records schedule as approved by the National Archives and Records Administration (NARA). FOIA records are covered under NARA General Record Schedule 14—Information Services Records unless a participating agency's records are managed under other record schedules approved by NARA.

SYSTEM MANAGER(S) ADDRESS AND CONTACT INFORMATION:

eRulemaking PMO, Office of Information Collection, Collection, Office of Environmental Information, U.S. EPA, M/C 2282V, 1200 Pennsylvania Ave NW., Washington, DC 20460.

NOTIFICATION PROCEDURE:

Any individual who wants to know whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record, should contact the agency conducting the rulemaking activity or to the agency that provided the FOIA response, as appropriate.

RECORD ACCESS PROCEDURE:

Individuals seeking access to their own personal information in this system of records is required to provide adequate identification (e.g., driver's license, military identification card, employee badge or identification card and, if necessary, proof of authority). Additional identity verification procedures may be required as warranted. Requests must meet the requirements of EPA regulations at 40 CFR part 16.

CONTESTING RECORDS PROCEDURES:

Requests for correction or amendment must identify the record to be changed and the corrective action sought. Requests must be submitted to the agency contact indicated on the initial document for which the related contested record was submitted.

RECORD SOURCE CATEGORIES:

Records deriving for individuals commenting on Federal rulemaking activities and filing FOIA requests and appeals.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 2013–24120 Filed 10–1–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0879; FRL–9400–8]

Exposure Modeling Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: An Exposure Modeling Public Meeting (EMPM) will be held for 1 day on October 8, 2013. This Notice announces the location and time for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on October 8, 2013, from 9 a.m. to 4 p.m. Requests to participate in the meeting must be received on or before October 15, 2013.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at the Environmental Protection Agency, Office of Pesticide Programs (OPP), One Potomac Yard (North Building), Fourth Floor Conference Center (N–4830), 2777 S. Crystal Dr., Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Jim Carleton, Environmental Fate and Effects Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 347–0335; fax number: (703) 347–8011; email address: *carleton.jim@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are required to conduct testing of chemical substances under the Toxic Substances Control Act (TSCA), the Federal Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Agriculture, Forestry, Fishing and Hunting (NAICS code 11).

- Utilities (NAICS code 22).
- Professional, Scientific and Technical (NAICS code 54).

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2009–0879, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. Background

On a biannual interval, an Exposure Modeling Public Meeting will be held for presentation and discussion of current issues related to modeling pesticide fate, transport, and exposure for risk assessment in a regulatory context. Meeting dates and abstract requests are announced through the ''empmlist'' forum on the LYRIS list server at *https://lists.epa.gov/read/all_forums.*

III. How can I request to participate in this meeting?

You may submit a request to participate in this meeting to the person listed under **FOR FURTHER INFORMATION CONTACT**. Do not submit any information in your request that is considered Confidential Business Information. Requests to participate in the meeting, identified by docket ID number EPA–HQ–OPP–2009–0879, must be received on or before October 15, 2013.

IV. Tentative Topics for the Meeting

1. Estimating the magnitude of pesticide effects on avian reproductive success: Markov Chain nest productivity model (MCnest).
2. Testing the Surface Water Calculator.
3. Development of a conceptual model for estimating aquatic exposure from the use of pesticides on rice using the Pesticide Flooded Application Model.
4. Evaluation of North American Free Trade Agreement (NAFTA) kinetics guidance.
5. Comparison of multiple spray drift deposition data sets.
6. Guidance on modeling offsite deposition of pesticides via spray drift.
7. Use of the Organization for Economic Co-operation and Development, European-North American Soil Geographic Information for Pesticide Studies Tool (OECD-ENASGIPS) in U.S. settings.
8. A better sorption model for predicting pesticide behavior.
9. The significance of time-dependent sorption on leaching potential: A comparison of measured field results and modeled estimates.
10. Evaluation of Pesticide Root Zone Model—Ground Water (PRZM–GW) using long-term ground water monitoring data.
11. Comparing ground water models—why are there differences?
12. Modeling pesticide fate and transport through flowing water bodies for endangered species assessment in the California Central Valley.
13. Spatial Aquatic Model (SAM) pilot project update.

List of Subjects

Environmental protection, Endangered species assessment, Exposure modeling, Groundwater, Kinetics, Leaching, Pesticide exposure assessment, Pesticide monitoring, Sorption model, Spray drift, Surface water calculator.

Dated: September 17, 2013.

Jim Cowles,

Acting Director, Environmental Fate and Effects Division, Office of Pesticide Programs.

[FR Doc. 2013–24123 Filed 10–1–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2013–0106; FRL–9401–2]

Pesticide Experimental Use Permits; Notice of Receipt of Applications; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of applications requesting experimental use permits (EUPs). The Agency has determined that the permits may be of regional and national significance. Therefore, because of the potential significance, and pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and is seeking comments on these applications.

DATES: Comments must be received on or before November 1, 2013.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the EUP File Symbol of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Lois Rossi, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. What Should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked

will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

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

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide(s) discussed in this document, compared to the general population.

II. What action is the Agency taking?

Under section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136c, EPA can allow manufacturers to field test pesticides under development. Manufacturers are required to obtain an EUP before testing new pesticides or new uses of pesticides if they conduct experimental field tests on 10 acres or more of land or one acre or more of water. A copy of the applications and any information submitted is available for public review in the docket established for these EUP applications. Following the review of the application and any comments and data received in response to this solicitation, EPA will decide whether to issue or deny the EUP request, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

Therefore, pursuant to 40 CFR 172.11(a), the Agency has determined that the following EUP applications may be of regional and national significance, and therefore is seeking public comment on the following EUP applications:

1. *524–EUP–RNA.* (EPA–HQ–OPP–2013–0012). *Submitter:* Monsanto Company, 800 N. Lindbergh Blvd., St. Louis, MO 63167. *Pesticide chemical:* MON 102100. *Type of chemical:* Nematicide. *Summary of request:* Large scale seed treatment trials on corn, soybean, and cotton. 12.94 pounds (lb.) of active ingredient (a.i.) per year on corn seed, 19.10 lb. of a.i per year on soybeans seed, and 7.46 lb. of a.i. per year on cotton seed will be used in 208 locations of 20 ft. x 1,000 ft. plots. Period of treatment is from February 1, 2014, to December 31, 2016. Treated seed must be dyed to impart an unnatural color to prevent use for food, feed, or oil purposes. This is a crop-destruct EUP.

2. *72500–EUP–E.* (EPA–HQ–OPP–2013–0546). *Submitter:* Scimetrics Ltd. Corp., P.O. Box 1045, Wellington, CO 80549. *Pesticide chemical:* Warfarin. *Type of chemical:* Rodenticide. *Summary of request:* Authorization requested to use 0.005% warfarin bait blocks at one or more test sites in large, fenced areas in Texas. 0.63 lb of warfarin in 12,600 lb of formulated bait. Bait to be applied on 25 lb to 100 lb amounts in dispensers said to allow feral hogs to access bait while limiting access by nontarget species. Area covered by treatments not to exceed 2,471 acres (10 km^3). Baiting period is projected to last 3 weeks, with dispensers being replenished ''as needed.'' Proposed period of treatment is from July 1, 2014, to August 31, 2014.

List of Subjects

Environmental protection, Experimental use permits.

Dated: September 23, 2013.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2013–23947 Filed 10–1–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS13–22]

Appraisal Subcommittee Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of meeting.

SUMMARY: In accordance with Section 1104(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in open session for its regular meeting:

DATES: October 9, 2013.

ADDRESSES: 400 7th Street SW., Washington, DC 20024.

SUPPLEMENTARY INFORMATION:

Location: OCC—400 7th Street SW., Washington, DC 20024
Date: October 9, 2013
Time: 10:30 a.m.
Status: Open

Matters To Be Considered

Summary Agenda

September 11, 2013 minutes—Open Session

(No substantive discussion of the above items is anticipated. These matters will be resolved with a single vote unless a member of the ASC requests that an item be moved to the discussion agenda.)

Discussion Agenda

Appraisal Foundation May, June and July 2013 Grant Reimbursement Requests
Phase 2 Appraisal Complaint Hotline Recommendations
Mississippi and South Carolina Compliance Reviews

How To Attend and Observe an ASC Meeting

Email your name, organization and contact information to *meetings@asc.gov.*

You may also send a written request via U.S. Mail, fax or commercial carrier to the Executive Director of the ASC, 1401 H Street NW., Ste 760, Washington, DC 20005. The fax number is 202–289–4101. Your request must be received no later than 4:30 p.m., ET, on the Monday prior to the meeting. Attendees must have a valid government-issued photo ID and must agree to submit to reasonable security measures. The meeting space is intended to accommodate public attendees. However, if the space will not

accommodate all requests, the ASC may refuse attendance on that reasonable basis. The use of any video or audio tape recording device, photographing device, or any other electronic or mechanical device designed for similar purposes is prohibited at ASC meetings.

Dated: September 26, 2013.

James R. Park,

Executive Director.

[FR Doc. 2013–23985 Filed 10–1–13; 8:45 am]

BILLING CODE 6700–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS13–23]

Appraisal Subcommittee Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of meeting.

SUMMARY: In accordance with Section 1104(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in closed session:

DATES: October 9, 2013.

ADDRESSES: 400 7th Street SW., Washington, DC 20024.

SUPPLEMENTARY INFORMATION:

Location: OCC—400 7th Street SW., Washington, DC 20024
Date: October 9, 2013
Time: Immediately following the ASC open session
Status: Closed

Matters To Be Considered

September 11, 2013 minutes—Closed Session
Preliminary discussion of State Compliance Reviews

Dated: September 26, 2013.

James R. Park,

Executive Director.

[FR Doc. 2013–23986 Filed 10–1–13; 8:45 am]

BILLING CODE 6700–01–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 October 16, 2013.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Glory Burns, Fort Collins, Colorado, Robin Isham, Templeton, California, Andrea Voss, Chadron, Nebraska, Julie Jennings, Lone Tree, Colorado, and R. Will Isham,* Gordon, Nebraska, individually and as trustees of the E. Joy Isham Irrevocable Trust, and the RWI Marital Deduction Testamentary Trust, both of Gordon, Nebraska, all as members of the Isham Family Group, to retain voting shares of Isham Management Company, and thereby indirectly retain voting shares of The First National Bank of Gordon, both in Gordon, Nebraska.

Board of Governors of the Federal Reserve System, September 26, 2013.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2013–23936 Filed 10–1–13; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

Nitin Aggarwal, Ph.D., Medical College of Wisconsin and University of Wisconsin-Madison: Based on the reports of the investigations conducted by the Medical College of Wisconsin (MCW) and the University of Wisconsin-Madison (UW) and additional analysis conducted by the ORI in its oversight review, ORI found that Dr. Nitin Aggarwal, former Graduate Student, MCW, and former Assistant Scientist, UW, engaged in research misconduct in research supported by National Heart, Lung, and Blood Institute (NHLBI), National Institutes of Health (NIH), grants R01 HL37981, R01 HL54075, and R01 HL57414.

ORI found that that the Respondent engaged in research misconduct by falsifying and/or fabricating PHS-supported data in six (6) figures that were included in the following two (2) publications, one (1) grant application to the American Heart Association (AHA), one (1) grant application to NIH, and the Respondent's Ph.D. thesis:

- Aggarwal, N.T., Pfister, S.L., & Campbell, W.B. ''Hypercholesterolemia Enhances 15-Lipoxygenase Mediated Vasorelaxation and Acetylcholine-Induced Hypotension.'' *Arteriosclerosis, Thrombosis, and Vascular Biology* 28:2209–2215, 2008 (hereafter the ''*ATVB* paper'').
- Aggarwal, N.T., Pfister, S.L., Gauthier, K.M., Chawengsub, Y., Baker, J.E., & Campbell, W.B. ''Chronic hypoxia enhances 15-lipoxygenase-mediated vasorelaxation in rabbit arteries.'' *American Journal of Physiology—Heart Circulation Physiology* 296:H678–H688, 2008 (hereafter the ''*AJP* paper'').
- Aggarwal, N.T., Principal Investigator (P.I.), National Scientist Development grant application to the American Heart Association No. 11SDG7650072, ''Sulfonylurea rReceptor-2 splice variant and mitochondrial mechanisms for cardioprotection and arrhythmia'' (hereafter the ''AHA grant application'').
- K99 HL113518–01, ''Mitochondrial ATP-sensitive K-channels and pharmacological approaches for cardioprotection,'' Aggarwal, Nitin, Ph.D., P.I.
- Aggarwal, N.T. ''Endothelial 15-lipoxygenase regulates vasorelaxation and blood pressure in rabbits in normal and pathological condictions.'' A Dissertation Submitted to the Faculty of the Graduate School of Biomedical Science of the Medical College of Wisconsin in Partial Fulfillment of the Requirements for the Degree of Doctor of Philosophy, Milwaukee, Wisconsin, 2008 (hereafter the ''thesis'').

Specifically, ORI found that Respondent engaged in research misconduct by falsifying Western blot loading control data by inverting, duplicating, and cropping source blot films and/or using films from unrelated experiments to construct five (5) false Western blot figures. In the absence of valid blot images, Respondent falsified and/or fabricated the corresponding quantitative data for summary bar graphs and the data statistics in related text. Respondent admitted to falsely reporting the number of mice reported for an experiment reported in Figure 4

in grant application HL113518–01 to support the hypothesis of the research. The falsified and/or fabricated data are:

- False ß-actin data and statistics in Figures 1A and 1B in the *AJP* paper and Figures 41A and 41B in the thesis (p. 131) that purport to represent a time-course of 15–LO–1 protein expression in rabbit aortic endothelial cells (RAECs) following hypoxia.
- false ß-actin and 15–LO–1 data and statistics in Figures 2A and 2B in the *AJP* paper and Figures 45A and 45B in the thesis (p. 135) that purport to represent 15–LO–1 expression in aortic rings of normoxic and hypoxic rabbits.
- false ß-actin data and statistics in Figures 3A and 3B in the *AJP* paper and Figures 46A and 46B in the Respondent's Ph.D. thesis (p. 137) that purport to represent 15–LO–1 expression in different arteries after hypoxia.
- false ß-actin data and statistics in Figures 1A and 1B in the *ATVB* paper and Figures 26A and 26B in the thesis (p. 105) that purport to demonstrate changes in 15–LO–1 expression in different arteries of cholesterol-animals; the false ß-actin data in Figure 1A, *ATVB* was the same image as that used for Figure 1A, *AJP* but flipped vertically.
- false GAPDH data and statistics in Figure 7 in the AHA grant application that purport to represent SUR2A–55 expression in murine heart following left ventricular hypertrophy (LVH).
- false reporting in Figure 4A of grant application HL113518–01 for the number of mice used for the physiological data for ATP-induced potassium influx in murine mitochondria as three to four, when only a single mouse was studied.

Dr. Aggarwal has entered into a Voluntary Settlement Agreement and has voluntarily agreed for a period of three (3) years, beginning on September 17, 2013:

(1) To have his research supervised; Respondent agreed that prior to the submission of an application for U.S. Public Health Service (PHS) support for a research project on which his participation is proposed and prior to his participation in any capacity on PHS-supported research, Respondent shall ensure that a plan for supervision of his duties is submitted to ORI for approval; the supervision plan must be designed to ensure the scientific integrity of his research contribution; he agreed that he shall not participate in any PHS-supported research until such a supervision plan is submitted to and approved by ORI; Respondent agreed to maintain responsibility for compliance with the agreed upon supervision plan;

(2) that any institution employing him shall submit in conjunction with each application for PHS funds, or report, manuscript, or abstract involving PHS-supported research in which Respondent is involved, a certification to ORI that the data provided by Respondent are based on actual experiments or are otherwise legitimately derived, and that the data, procedures, and methodology are accurately reported in the application, report, manuscript, or abstract; and

(3) to exclude himself voluntarily from serving in any advisory capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

FOR FURTHER INFORMATION CONTACT: Director, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8200.

David E. Wright,

Director, Office of Research Integrity.

[FR Doc. 2013–23971 Filed 10–1–13; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[CDC–2013–0015; NIOSH–237–A]

National Institute for Occupational Safety and Health Personal Protective Technology Program and National Personal Protective Technology Laboratory Conformity Assessment; Extension of Comment Period

AGENCY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice and extension of comment period.

SUMMARY: On August 14, 2013, the Director of the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) published a notice in the **Federal Register** [78 FR 49524] announcing a public meeting. This meeting was held on September 17, 2013 to provide (1) a summary of the work conducted by the NIOSH Personal Protective Technology (PPT) Conformity Assessment Working Group (PCAWG), (2) provide an overview of model Conformity Assessment programs, and (3) solicit input to define a national framework for PPE conformity assessment.

NIOSH's National Personal Protective Technology Laboratory (NPPTL) is addressing recommendations of the Institute of Medicine (IOM) and the National Research Council based on a review of NPPTL's program activities. The IOM report identified gaps and inconsistencies in the certification and other conformity assessment processes for non-respiratory PPT. Conformity assessment is defined as the ''demonstration that specified requirements relating to a product, process, system, person or body are fulfilled.'' Conformity assessment processes for PPT products are focused on product effectiveness and include the following primary components: Certification (ISO/IEC 17065), Inspection (ISO/IEC 17020), Testing (ISO/IEC 17025), Accreditation (ISO/IEC 17011), Surveillance (ISO/IEC 17011, ISO/IEC 17065), Supplier's Declaration of Conformity (ISO/IEC 17050), Registration (ISO/IEC 17021) and Quality management systems (ISO/9001).

Written comments were to be received by September 30, 2013. NIOSH is extending the public comment period to December 2, 2013.

You may submit comments by either of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226.

All information received in response to this notice and meeting must include the agency name and docket number (CDC–2013–0015; NIOSH–237–A). All relevant comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. All information will be available for public examination and copying at the NIOSH Docket Office, 4676 Columbia Parkway, Room 109, Cincinnati, OH 45226. All electronic comments should be formatted in Microsoft Word.

To view the notice and related materials, visit *http://www.regulations.gov* and enter CDC–2013–0015 in the search field and click ''Search.''

FOR FURTHER INFORMATION CONTACT: Richard Metzler, General Engineer, NIOSH at *NPPTLEvents@cdc.gov,* telephone (412) 386–6686, fax (412) 386–6617.

Dated: September 25, 2013.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2013–23982 Filed 10–1–13; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Assistant Secretary for Preparedness and Response; Notification of a Sole Source Cooperative Agreement Award

AGENCY: Department of Health and Human Services (HHS), Assistant Secretary for Preparedness and Response (ASPR), Office of Emergency Management (OEM).

ACTION: Notification of a sole source Cooperative Agreement Award.

Statutory Authority: Public Health Service Act, Section 301.

Estimated Amount of Award: $200,000 to $ 750,000 (contingent on the availability of funding).

Project Period: September 30, 2013 to March 31, 2015.

Summary and Project Overview

The Office of Emergency Management (OEM) within the Office of the Assistant Secretary for Preparedness and Response (ASPR) is responsible for developing operational plans to ensure the preparedness of the Office, the Department, the Federal Government and the public to respond to and recover from domestic and international public health and medical threats and emergencies. OEM is also responsible for ensuring that ASPR has the systems, logistical support, and procedures necessary to coordinate the Department's operational response to acts of terrorism and other public health and medical threats and emergencies. OEM is responsible for leading Emergency Support Function #8 (ESF #8), Public Health and Medical Services, under the National Response Framework and the Health and Social Services (H&SS) Recovery Support Function (RSF) under the National Disaster Recovery Framework (NDRF), released in September 2011.

In the field of disaster and emergency management, post-disaster recovery has played an important, although often lower profile role. When it is addressed, it frequently references the restoration of previously extant physical or economic systems within a community, with a focus on ''bricks and mortar'' infrastructure reconstitution (e.g. roads, bridges, housing stock, commercial structures, etc) and/or business and commercial recovery.[i] Oftentimes absent from consideration is the critical importance of health, and the public health, medical and social services and underlying determinants of health that are key to supporting overall recovery.[ii]

Anecdotal evidence from recent disasters and other scientific evidence [iii] [iv] [v] suggest that there is not a broad understanding of the recovery activities that most significantly impact the health of individuals of populations. This grant will support the development and distribution of a set of evidence-based recommendations that inform recovery efforts in affected communities and the work of both emergency managers and health professionals. The recommendations will be informed by input from stakeholders and subject matters experts.

Pursuant to the National Health Security Strategy (NHSS) objective 8.3 and, specifically, sub-objective 8.3.1, this grant will generally seek ''to continuously improve recovery efforts, [through] data elements assess[ing] recovery progress, quality, and outcomes.'' [vi] This grant also supports HHS Strategic Plan Objective 3F: Protect Americans' health and safety during emergencies, and foster resilience in response to emergencies.

Justification

The Institute of Medicine (IOM) is a nonprofit organization and is part of the National Academy of Sciences. IOM undertakes studies that may be specific mandates from Congress or requested by federal agencies and independent organizations.

The IOM has an established Forum on Medical and Public Health Preparedness for Catastrophic Events. The Forum held a panel on Long-term Recovery of the Healthcare Service Delivery Infrastructure in February 2012 during the 2012 Public Health Preparedness Summit in Anaheim, CA. The Forum's purpose is to foster dialogue among stakeholders, identify opportunities for public/private collaboration, and identify and address issues relevant to public health and medical preparedness.

The IOM is part of the National Academies, which also has an established Disasters Roundtable. The Disasters Roundtable holds workshops three times per year on topics often relevant to recovery partners. The IOM is uniquely positioned to be able to not only identify relevant partners and stakeholders but also garner their participation in the proposed activities because of their existing structures and established reputation.

Additional Information: The agency program contact is Esmeralda Pereira, *esmeralda.pereira@hhs.gov,* 202–205–0065.

Dated: September 27, 2013.

Nicole Lurie,

Assistant Secretary for Preparedness and Response.

[i] Abramson, D., Stehling-Ariza, T., Soo Park, Y., Walsh, L., Culp, D. 2010. Measuring Individual Disaster Recovery: A Socioecological Framework. *Disaster Medicine and Public Health Preparedness* 4(S1): S46–S54.

[ii] Burkle, F. M. 2011. The Limits to Our Capacity: Reflections on Resiliency, Community Engagement, and Recovery in 21st Century Crises. *Disaster Medicine and Public Health Preparedness* 5(S2): S176–S181.

[iii] Masten, A.S., and Obradovic, J. 2007. Disaster preparation and recovery: lessons from research on resilience in human development. *Ecology and Society* 13(1): 9. [online] URL: *http://www.ecologyandsociety.org/vol13/iss1/art9/.*

[iv] Wallace, D., and R. Wallace. 2007. Urban Systems during Disasters: Factors in Resilience. *Ecology and Society* 13(1): 18. [online] URL: *http://www.ecologyandsociety.org/vol13/iss1/art18/*.

[v] Abramson, D., Soo Park, Y., Stehling-Ariza, T., Redlener, I. 2010. Children as Bellwethers of Recovery: Dysfunctional Systems and the Effects of Parents, Households, and Neighborhoods on Serious Emotional Disturbance in Children After Hurricane Katrina. *Disaster Medicine and Public Health Preparedness* 4(S1): S17–27.

[vi] NHSS.

[FR Doc. 2013–24096 Filed 9–30–13; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Occupational Safety and Health Training Project Grants (T03), PAR–10–288, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 8 a.m.—5 p.m., November 6, 2013 (Closed).

Place: Centers for Disease Control and Prevention, Roybal Campus, Building 19–GCC, 1600 Clifton Road, Atlanta, Georgia 30333, Telephone: (404) 639–6000.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Occupational Safety and Health Training Project Grants (T03) PAR–10–288.''

For Further Information Contact: Joan F. Karr, Ph.D., Scientific Review Officer, CDC/NIOSH 1600 Clifton Road, Mailstop E–74, Atlanta, Georgia 30333, Telephone: (404) 498–2506.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2013–24064 Filed 10–1–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director (ACD), Centers for Disease Control and Prevention (CDC)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned committee:

Time and Date: 8:30 a.m.–3:00 p.m. (EDT), October 24, 2013.

Place: CDC, Building 21, Rooms 1204 A/B, 1600 Clifton Road NE., Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space and phone lines available. The meeting room accommodates approximately 50 people. The public is welcome to participate during the public comment period, tentatively scheduled from 2:45 p.m. to 2:50 p.m. This meeting is also available by teleconference. Please dial (877) 930–8819 and enter code 1579739.

Web links:

Windows Connection-2: *http://wm.onlinevideoservice.com/CDC2*

Flash Connection-4 (For Safari and Google Chrome Users): *http://www.onlinevideoservice.com/clients/CDC/?mount=CDC4*

If you are unable to connect using the link, copy and paste the link into your web browser. Captions are only available on the Windows Media links (Connections 2). Viewer's report is given the next day.

Number for Technical Support: (404) 639–3737

The deadline for notification of attendance is October 17, 2013. To register for this meeting, please send an email to *ACDirector@cdc.gov.*

Purpose: The committee will provide advice to the CDC Director on strategic and other broad issues facing CDC.

Matters To Be Discussed: The Advisory Committee to the Director will receive updates from the State, Tribal, Local and Territorial Subcommittee; the Health Disparities Subcommittee, the Global Workgroup, and the Public Health—Health Care Collaboration Workgroup; as well as an update from the CDC Director.

Agenda items are subject to change as priorities dictate. Contact Person For More Information: Carmen Villar, MSW, Designated Federal Officer, Advisory Committee to the Director, CDC, 1600 Clifton Road NE., M/S D–14, Atlanta, Georgia 30333, Telephone: (404) 639–7000, Email: *GHickman@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention .

[FR Doc. 2013–24060 Filed 10–1–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director (ACD), Centers for Disease Control and Prevention (CDC)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned committee:

Time and Date

8:30 a.m.–3:00 p.m. (EDT), October 24, 2013

Place: CDC, Building 21, Rooms 1204 A/B, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space and phone lines available. The meeting room accommodates approximately 50 people. The public is welcome to participate during the public comment period, tentatively scheduled from 2:45 p.m. to 2:50 p.m. This meeting is also available by teleconference. Please dial (877) 930–8819 and enter code 1579739.

Web Links

Windows Connection–2: *http://wm.onlinevideoservice.com/CDC2*.

Flash Connection–4 (For Safari and Google Chrome Users): *http://www.onlinevideoservice.com/clients/CDC/?mount=CDC4*.

If you are unable to connect using the link, copy and paste the link into your Web browser. Captions are only available on the Windows Media links (Connections 2). Viewer's report is given the next day.

Number for Technical Support: (404) 639–3737.

The deadline for notification of attendance is October 17, 2013. To register for this meeting, please send an email to *ACDirector@cdc.gov.*

Purpose: The committee will provide advice to the CDC Director on strategic and other broad issues facing CDC.

Matters To Be Discussed: The Advisory Committee to the Director will receive updates from the State, Tribal, Local and Territorial Subcommittee; the Health Disparities Subcommittee, the Global Workgroup, and the Public Health—Health Care Collaboration Workgroup; as well as an update from the CDC Director.

Agenda items are subject to change as priorities dictate.

For Further Information Contact: Carmen Villar, MSW, Designated Federal Officer, Advisory Committee to the Director, CDC, 1600 Clifton Road NE., M/S D–14, Atlanta, Georgia 30333, Telephone: (404) 639–7000, Email: *GHickman@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2013–24069 Filed 10–1–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Occupational Safety and Health Training Project Grants (T03), PAR–10–288, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 8 a.m.–5 p.m., November 6, 2013 (Closed).

Place: Centers for Disease Control and Prevention, Roybal Campus, Building 19–GCC, 1600 Clifton Road, Atlanta, Georgia 30333, Telephone: (404) 639–6000.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Occupational Safety and Health Training Project Grants (T03) PAR–10–288.''

FOR FURTHER INFORMATION CONTACT: Joan F. Karr, Ph.D., Scientific Review Officer, CDC/NIOSH 1600 Clifton Road, Mailstop E–74, Atlanta, Georgia 30333, Telephone: (404) 498–2506.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2013–24065 Filed 10–1–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices (ACIP)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announce the following meeting of the aforementioned committee:

Times and Dates:
8:00 a.m.–5:45 p.m., October 23, 2013.
8:00 a.m.–1:00 p.m., October 24, 2013.

Place: CDC, Tom Harkin Global Communications Center, 1600 Clifton Road NE., Building 19, Kent ''Oz'' Nelson Auditorium, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available. Meeting is webcast live via the World Wide Web; for instructions and more information on ACIP please visit the ACIP Web site: *http://www.cdc.gov/vaccines/acip/index.html*.

Purpose: The committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents. In addition, under 42 U.S.C. 1396s, the committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding the appropriate periodicity, dosage, and contraindications applicable to the vaccines. Further, under provisions of the Affordable Care Act, at section 2713 of the Public Health Service Act, immunization recommendations of the ACIP that have been adopted by the Director of the Centers for Disease Control and Prevention must be covered by applicable health plans.

Matters To Be Discussed: The agenda will include discussions on: child/adolescent immunization schedule, adult immunization schedule, meningococcal vaccines, pneumococcal conjugate vaccine, herpes zoster vaccine, tetanus, diphtheria and acellular pertussis vaccine, yellow fever vaccine, global immunization update, human papillomavirus vaccines, general recommendations on immunizations, and influenza. Recommendation votes are scheduled for child/adolescent immunization schedule, adult immunization schedule, and meningococcal vaccines. Time will be available for public comment.

Agenda items are subject to change as priorities dictate.

Contact Person For More Information: Felicia Betancourt, National Center for Immunization and Respiratory Diseases, CDC, 1600 Clifton Road NE., MS–A27, Atlanta, Georgia 30333, telephone 404/639–8836; Email *ACIP@CDC.GOV*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2013–24068 Filed 10–1–13; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices (ACIP)

In accordance with section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announce the following meeting of the aforementioned committee:

Times and Dates: 8 a.m.–5:45 p.m., October 23, 2013; 8 a.m.–1 p.m., October 24, 2013.

Place: CDC, Tom Harkin Global Communications Center, 1600 Clifton Road NE., Building 19, Kent ''Oz'' Nelson Auditorium, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available. Meeting is Webcast live via the World Wide Web; for instructions and more information on ACIP please visit the ACIP Web site: *http://www.cdc.gov/vaccines/acip/index.html. Purpose:* The committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents. In addition, under 42 U.S.C. 1396s, the committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding the appropriate periodicity, dosage, and contraindications applicable to the vaccines. Further, under provisions of the Affordable Care Act, at section 2713 of the Public Health Service Act, immunization recommendations of the ACIP that have been adopted by the Director of the Centers for Disease Control and Prevention must be covered by applicable health plans.

Matters To Be Discussed: The agenda will include discussions on: child/adolescent immunization schedule, adult immunization schedule, meningococcal vaccines, pneumococcal conjugate vaccine, herpes zoster vaccine, tetanus, diphtheria and acellular pertussis vaccine, yellow fever vaccine, global immunization update, human papillomavirus vaccines, general recommendations on immunizations, and influenza. Recommendation votes are scheduled for child/adolescent immunization schedule, adult immunization schedule, and meningococcal vaccines. Time will be available for public comment. Agenda items are subject to change as priorities dictate.

For Further Information Contact: Felicia Betancourt, National Center for Immunization and Respiratory Diseases, CDC, 1600 Clifton Road NE., MS–A27, Atlanta, Georgia 30333, telephone 404/639–8836; Email *ACIP@CDC.GOV*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2013–24061 Filed 10–1–13; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Health Promotion and Disease Prevention Research Centers, Funding Opportunity Announcement (FOA) DP14–001, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Times and Dates

8 a.m.–6:30 p.m., November 18, 2013 (Closed)
8 a.m.–6:30 p.m., November 19, 2013 (Closed)
8 a.m.–6:30 p.m., November 20, 2013 (Closed)
8 a.m.–6:30 p.m., November 21, 2013 (Closed)

Place: Centers for Disease Control and Prevention, 1600 Clifton Road NE., Global Communications Center, Auditorium B, Atlanta, Georgia 30333.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of ''Health Promotion and Disease Prevention Research Centers, FOA DP14–001''.

For Further Information Contact: M. Chris Langub, Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway NE., Mailstop F–80, Atlanta, Georgia 30341, Telephone: (770) 488–3585, Email: *EEO6@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2013–24067 Filed 10–1–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Health Promotion and Disease Prevention Research Centers, Funding Opportunity Announcement (FOA) DP14–001, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Times And Dates

8 a.m.–6:30 p.m., November 18, 2013 (Closed); 8 a.m.–6:30 p.m., November 19, 2013 (Closed); 8 a.m.–6:30 p.m., November 20, 2013 (Closed); 8 a.m.–6:30 p.m., November 21, 2013 (Closed).

Place: Centers for Disease Control and Prevention, 1600 Clifton Road NE., Global Communications Center, Auditorium B, Atlanta, Georgia 30333.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of ''Health Promotion and Disease Prevention Research Centers, FOA DP14–001''.

For Further Information Contact: M. Chris Langub, Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway NE., Mailstop F–80, Atlanta, Georgia 30341, Telephone: (770) 488–3585, Email: *EEO6@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2013–24062 Filed 10–1–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns National Center for Construction Safety and Health Research and Translation (U60, Request for Application (RFA) OH13–001, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 8 a.m.–5 p.m., November 19, 2013 (Closed); 8 a.m.–5 p.m., November 20, 2013 (Closed); 8 a.m.–12 p.m., November 21, 2013 (Closed).

Place: Embassy Suites Alexandria Hotel, 1900 Diagonal Road, Alexandria, Virginia 22314, Telephone: (703)842–7030.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''National Center for Construction Safety and Health Research and Translation (U60), RFA OH13–001.''

For Further Information Contact: George Bockosh, M.S., Scientific Review Officer, CDC/NIOSH, 626 Cochrans Mill Road, Mailstop P–05, Pittsburgh, Pennsylvania 15236, Telephone: (412)

386–6465 and Joan Karr, Ph.D., Scientific Review Officer, CDC/NIOSH, 1600 Clifton Road, Mailstop E–74, Atlanta, Georgia 30333, Telephone: (404) 498–2506.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention.

[FR Doc. 2013–24063 Filed 10–1–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns National Center for Construction Safety and Health Research and Translation (U60, Request for Application (RFA) OH13–001, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 8 a.m.–5 p.m., November 19, 2013 (Closed); 8 a.m.–5 p.m., November 20, 2013 (Closed); 8 a.m.–12 p.m., November 21, 2013 (Closed).

Place: Embassy Suites Alexandria Hotel, 1900 Diagonal Road, Alexandria, Virginia 22314, Telephone: (703) 842–7030.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''National Center for Construction Safety and Health Research and Translation (U60), RFA OH13–001.''

For Further Information Contact: George Bockosh, M.S., Scientific Review Officer, CDC/NIOSH, 626 Cochrans Mill Road, Mailstop P–05, Pittsburgh, Pennsylvania 15236, Telephone: (412) 386–6465 and Joan Karr, Ph.D., Scientific Review Officer, CDC/NIOSH, 1600 Clifton Road, Mailstop E–74, Atlanta, Georgia 30333, Telephone: (404) 498–2506.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2013–24066 Filed 10–1–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: ACF Program Instruction: Children's Justice Act.

OMB No.: 0970–0425.

Description: The Program Instruction, prepared in response to the enactment of the Childrens Justice Act (CJA), Title II of Public Law 111–320, Child Abuse Prevention and Treatment Act Reauthorization of 2010, provides direction to the States and Territories to accomplish the purposes of assisting States in developing, establishing and operating programs designed to improve: (1) The assessment and investigation of suspected child abuse and neglect cases, including cases of suspected child sexual abuse and exploitation, in a manner that limits additional trauma to the child and the child's family; (2) the assessment and investigation of cases of suspected child abuse-related fatalities and suspected child neglect-related fatalities; (3) the investigation and prosecution of cases of child abuse and neglect, including child sexual abuse and exploitation; and (4) the assessment and investigation of cases involving children with disabilities or serious health-related problems who are suspected victims of child abuse or neglect. This Program Instruction contains information collection requirements that are found in Public Law 111–320 at Sections 107(b) and 107(d), and pursuant to receiving a grant award. The information being collected is required by statute to be submitted pursuant to receiving a grant award. The information submitted will be used by the agency to ensure compliance with the statute; to monitor, evaluate and measure grantee achievements in addressing the investigation and prosecution of child abuse and neglect; and to report to Congress.

Respondents: State Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Application & Annual Report	52	1	60	3,120

Estimated Total Annual Burden Hours: 3,120.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@*

acf.hhs.gov. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2013–24076 Filed 10–1–13; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Statement of Organization, Functions, and Delegations of Authority

AGENCY: Office of Child Support Enforcement, Administration for Children and Families, HHS.

ACTION: Notice.

SUMMARY: Statement of organization, functions, and delegations of authority.

The Administration for Children and Families (ACF) has reorganized the Office of Child Support Enforcement (OCSE). This reorganization realigns the functions of the Office of Child Support Enforcement. It eliminates the Office of Automation and Program Operations and moves the functions to the Division of Federal Systems. It also eliminates the Division of Special Staffs and moves the functions to the Division of Program Innovation and the Division of Regional Operations. Additionally, it creates the Division of Regional Operations. There are several Division name changes that are as follows: The Division of Management Services to the Division of Business and Resource Management; the Division of Consumer Services to the Division of Customer Communications; the Division of Planning, Research and Evaluation to the Division of Performance and Statistical Analysis; the Division of Policy to the Division of Policy and Training; and the Division of State, Tribal and Local Assistance to the Division of Program Innovation.

FOR FURTHER INFORMATION CONTACT: Vicki Turetsky, Commissioner, Office of Child Support Enforcement, 901 D Street SW., Washington, DC 20447, (202) 401–9369.

This notice amends Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (HHS), Administration for Children and Families (ACF), as follows: Chapter KF, Office of Child Support Enforcement (OCSE), as last amended in 71 FR 59117–59123, October 6, 2006.

I. Under Chapter KF, Office of Child Support Enforcement, delete KF in its entirety and replace with the following:

KF.00 MISSION. The Office of Child Support Enforcement (OCSE) advises the Secretary, through the Assistant Secretary for Children and Families/Director of the Office of Child Support Enforcement, on matters pertaining to the child support and access and visitation programs. OCSE provides direction, guidance and oversight to state and tribal child support, the Central Authority for international child support cases, and State Access and Visitation Programs for activities authorized and directed by title IV–D of the Social Security Act and other pertinent legislation. OCSE's core mission is dedicated to establishing paternity and obtaining child support in order to encourage responsible parenting, family self-sufficiency and child well-being and to recognize the essential role of both parents in supporting their children. The national child support program assures that assistance in obtaining support, including financial and medical, is available to children, through locating parents, establishing paternity, establishing and modifying support obligations, and monitoring and enforcing those obligations. The specific responsibilities of this Office are to: Develop, recommend and issue policies, procedures and interpretations for state and tribal programs for locating non-custodial parents, establishing paternity, and obtaining child support; develop procedures for review and approval or disapproval of state and tribal plan material; conduct audits of state child support programs; assist states and tribes in establishing adequate reporting procedures and maintaining records for the operation of their child support programs and of amounts collected and disbursed under the child support program and the costs incurred in collecting such amounts; operate the United States and Tribes Central Authority for International Child Support; and monitor the access/visitation and fatherhood programs; provide technical assistance and training to the states and tribes to help them develop effective procedures and systems for services provided by the child support program, including automation, outreach, referral, case management, and family-centered service delivery strategies in partnership with employers, courts, and responsible fatherhood, workforce, and other programs to increase the long-term reliability of support payments available to children. OCSE also operates competitive grant programs for child support in collaboration with several other components within the Administration for Children and Families. It also operates the Federal Parent Locator Service (FPLS); certifies to the Secretary of the Treasury amounts of child support obligations that require collection in appropriate instances; transmits to the Secretary of State certifications of arrearages for passport denial; submits reports to Congress, as requested, on activities undertaken relative to the child support program; approves advanced data processing planning documents; and reviews, assesses and inspects planning, design and operation of state and tribal management information systems. FPLS also assists other federal, state and tribal agencies not involved in child support to fulfill their respective missions, save taxpayer dollars, and improve service to the public.

KF.10 ORGANIZATION. The Office of Child Support Enforcement is headed by the Director. The office is organized as follows:

Office of the Director/Deputy Director/Commissioner (KFA)
Office of Audit (KFAA)
Office of the Deputy Commissioner (KFB)
Division of Business and Resource Management (KFB2)
Division of Customer Communications (KFB3)
Division of Performance and Statistical Analysis (KFB4)
Division of Policy and Training (KFB5)
Division of Program Innovation (KFB7)
Division of Regional Operations (KFB8)
Child Support Services Regional Program Units (KFB8DI–X)
Division of Federal Systems (KFB9)
Division of State and Tribal Systems (KFB10)

KF.20 FUNCTIONS. Office of the Director and Deputy Director/Commissioner (KFA): The Director is also the Assistant Secretary for Children

and Families and is directly responsible to the Secretary for carrying out OCSE's mission. The Deputy Director/Commissioner has day-to-day operational responsibility for OCSE. The Deputy Director/Commissioner assists the Director in carrying out responsibilities of the Office and provides direction and leadership to the Office of the Deputy Commissioner and the Office of Audit.

The Deputy Director/Commissioner provides leadership and direction to OCSE and is responsible for developing regulations, guidance and standards for state/tribes to follow in locating absent parents; establishing paternity and support obligations; maintaining relationships with Department officials, other federal departments, state and tribal and local officials, and private organizations and individuals interested in the child support program; coordinating and planning child support program activities to maximize program effectiveness; program outreach as well as access/visitation programs and advocacy interests and approving all instructions, policies and publications. The Deputy Director/Commissioner is also responsible for the operations and maintenance of the Federal Parent Locator Service (FPLS); management and financial analysis and strategy development; internal OCSE operations; and compliance with federal laws and policies. The Deputy Director/Commissioner is responsible for collaborating with the Office of Legislative Affairs and Budget and the Government Accountability Office on studies related to the child support program. In addition, the Deputy Director/Commissioner maintains OCSE's Continuity of Operations Plan (COOP).

Office of Audit (KFAA): The Office of Audit develops, plans, schedules and conducts periodic audits of child support programs in accordance with audit standards promulgated by the Comptroller General. The office is headed by an Office Director and reports directly to the Commissioner. The Office conducts audits, at least once every three years (or more frequently if it is determined that a state has unreliable data or fails to meet the performance standards), to determine the reliability of state financial and statistical data reporting systems used in calculating the performance indicators used as the basis for the payment of performance-based financial incentives to the state. These audits include testing of the data produced by the system to ensure that it is valid, complete and reliable. The audits also include a review of the state's physical security and access controls.

The Office will also conduct financial audits to determine whether federal and other funds made available to carry out the child support program are being appropriately expended, and properly and fully accounted for. These audits will also examine collections and disbursements of support payments for proper processing and accounting. In addition, the Office will also conduct other audits and examinations of program operations as may be necessary or requested by program officials for the purpose of improving the efficiency, effectiveness and economy of state, tribal and local child support activities. The Office develops consolidated reports for the Commissioner, based on findings; provides specifications for the development of audit regulations and requirements for audits of state programs; and coordinates and maintains effective liaison with the HHS Inspector General's Office and with the Government Accountability Office.

Office of the Deputy Commissioner (KFB): The Deputy Commissioner reports to the Deputy Director/Commissioner and assists the Commissioner in carrying out the responsibilities of OCSE. The Deputy Commissioner provides day-to-day supervision and oversight to the Division of Federal Systems, Division of State and Tribal Systems, Division of Business and Resource Management, Division of Customer Communications, Division of Performance and Statistical Analysis, Division of Policy and Training, Division of Program Innovation, and Division of Regional Operations. The Deputy Commissioner provides coordination within OCSE's business strategy driven IT strategic plan.

Division of Business and Resource Management (KFB2): The Division of Business and Resource Management (BRM) is responsible for the overall management and operation of OCSE administrative services. The Division is headed by a Division Director who reports directly to the Deputy Commissioner. BRM leads all efforts related to the OCSE operating budget, personnel, contracts and acquisition, and space management. BRM is supported by three branches: The *Budget and Financial Reporting* branch manages, coordinates, and participates in the formulation and execution of the discretionary budgets for OCSE-operated programs and for federal administration of the child support program. The *Workforce Development* branch (1) develops, implements and manages all activities related to succession planning and staff development efforts; (2) coordinates all personnel activities, including staffing, employee and labor relations, performance management, and employee recognition; (3) manages and provides technical assistance on time and attendance and travel management systems; (4) manages OCSE-controlled space and facilities; (5) plans for, acquires, distributes, and controls office supplies; and (6) provides messenger services, maintains equipment inventory, and provides for health and safety.

The *Acquisition and Program Support* branch manages and coordinates procurement planning and provides technical assistance regarding all contract and iProcurement activities; and manages special projects for OCSE. Division of Customer Communications (KFB3): The Division of Customer Communications (DCC) provides leadership and direction for key communications for the national child support program to inform, engage and empower OCSE customers, partners, other stakeholders and the general public. The Division is headed by a Division Director who directly reports to the Deputy Commissioner and is supported by two branches. The *Customer Service* branch responds to individual customer requests for information about the program in general and on specific child support cases; and promotes ''promising'' child support practices through outreach campaigns and e-publication of the monthly Child Support Report. The *Program Communications* branch provides advice on strategies and approaches to improve public understanding of and access to OCSE programs and policies; develops and publishes informational materials on the OCSE Web site; and engages with our stakeholders through social media. With these information channels, the Division serves as a focal point for intergovernmental and customer relations and consultation, then advises the Deputy Director/Commissioner through the Deputy Commissioner of the impact of the child support program upon OCSE customers and stakeholders. Division of Performance and Statistical Analysis (KFB4): The Division of Performance and Statistical Analysis (DPSA) provides guidance, analysis, technical assistance and oversight to state and tribal child support programs regarding performance measurement; statistical, policy and program analysis; synthesis and dissemination of data sets to inform the program; and application of emerging technologies, such as

business intelligence and data analytics to improve and enhance the effectiveness of programs and service delivery. The Division is headed by a Division Director who reports directly to the Deputy Commissioner and is supported by the *Performance Management and Analysis* branch; and the *Data Collection and Reporting* branch. The Division is also responsible for collection, compilation, analysis, and dissemination of state and tribal data to Congress and the general public. The Division provides statistical and budgeting support in coordination with other divisions. The Division is responsible for promoting public access and understanding of data; managing academic/research projects; and providing support for researchers. The office will also provide technical assistance to states in developing their self-assessment capabilities and implementing the annual reporting requirements contained in the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996.

Division of Policy and Training (KFB5): The Division of Policy and Training (DPT) proposes and implements national policy for the child support program and provides policy guidance and interpretations to states and tribes in developing and operating their programs according to federal law. The Division is headed by a Division Director who directly reports to the Deputy Commissioner and is supported by the *Policy* branch and the *Training* branch. The *Policy* branch develops legislative proposals and regulations to implement new legislation, court decisions, or directives from higher authority and provides comments on pending legislative proposals. It develops new state plan preprint requirements and procedures for review and approval of state plans by the Division of Regional Operations and prepares the justification for state plan disapproval actions. The Division coordinates with the Office of General Counsel on pending departmental appeals and collaborates with ACF on audit resolution. It also implements Central Authority activities for international support enforcement. The *Training* branch provides national direction and leadership for OCSE training activities to increase child support program effectiveness at federal, state, and tribal levels; coordinates all training activities; and provides logistical support for training events, meetings, and conferences.

Division of Program Innovation (KFB7): The Division of Program Innovation (DPI) develops, evaluates, and refines new strategies to improve child support program effectiveness; disseminates information about promising and evidence-based practices; and coordinates preparation of the OCSE strategic plan. The Division is headed by a Division Director who reports directly to the Deputy Commissioner. The *Grants and Evaluation Branch,* manages research and demonstration projects, including Section 1115 grants and waivers and Special Improvement Project grants, and promotes program evaluation at the state and local levels. The *Strategic Initiatives and Partnerships Branch* implements special projects of regional or national significance, pilots new child support approaches, conducts strategic outreach, and builds collaborations with federal, state, tribal, local, and community agencies to efficiently improve child support services. The Division is responsible for consulting with states and tribes to periodically update the national strategic plan. The Division also administers the Access and Visitation Grant Program. Division of Regional Operations (KFB8): The Division of Regional Operations provides direct oversight of all child support Regional Program Unit operations including ensuring customer-focused partnerships to child support programs and services and implementation of child support regional operations, polices, budgets, and program compliance of all 10 regions. This includes oversight of Regional Program Units providing technical assistance and support to state child support agencies. The Division is headed by a Director, who reports directly to the Deputy Commissioner. The Division of Regional Operations provides management and oversight of the Regions through coordinating activities between Central Office Divisions and the Regional Program Units. The Division provides information to improve public understanding of and access to OCSE programs and policies. The Division is responsible for providing oversight on all Regional representation at conferences and meetings both within the child support community and other collaborative programs and partners. The Division is also responsible for the management, receipt, review and analysis of public inquiries and the preparation of formal (both written and electronic) responses to external inquiries for child support program information and assistance in obtaining child support services.

Child Support Enforcement Regional Program Units (KFB8DI–X): Each OCSE Regional Program Unit is headed by the OCSE Regional Program Manager who reports to the Director of the Division of Regional Operations. The OCSE Regional Program Manager, through subordinate regional staff, in collaboration with program components, is responsible for: (1) Providing program and technical administration of the *ACF entitlement* and discretionary programs related to OCSE; (2) collaborating with the *ACF* central office, states, tribes, and other external programs and grantees on all significant program and policy matters; (3) providing technical assistance and training to entities responsible for administering OCSE programs to resolve identified problems; (4) ensuring that appropriate procedures and practices are adopted; (5) working with appropriate state, tribal and local offices to develop and implement family centered and supported practices; and (6) monitoring the programs to ensure their efficiency and effectiveness, and ensuring that these entities conform to federal laws, regulations, policies, and procedures governing the programs.

Division of Federal Systems (KFB9): The Division of Federal Systems (DFS) is responsible for the design, development, deployment, maintenance, and implementation of the Federal Parent Locator Service (FPLS). The Division is headed by a Division Director who directly reports to the Deputy Commissioner. FPLS is made up of a group of data sharing, collection and program systems, such as the federal tax offset program that helps OCSE support the core mission of the child support program and help prevent improper payments in state and federal benefit programs through NDNH data matching. DFS provides states with data to help them locate parents, establish fair and equitable child support obligations, process income withholding and payments, collect and enforce past due child support, and communicate effectively and efficiently. Additionally, DFS provides outreach, technical support, and training to child support agencies, employers, insurers, financial institutions, and other private and government partners to ensure that the FPLS systems are used to their maximum benefit.

Division of State and Tribal Systems (KFB10): The Division of State and Tribal Systems (DSTS) reviews, analyzes, and approves/disapproves State and Tribal requests for Federal Financial Participation for automated systems development and operations activities which support the child support program. The Division is headed by a Division Director who directly reports to the Deputy

Commissioner. The Division is supported by two branches: The *Technical Services* branch and the *Systems Management* branch. The Division provides assistance to states/tribes in developing or modifying automation plans to conform to federal requirements. It monitors approved state and tribal systems development activities; certifies state and tribal-wide automated systems; conducts periodic reviews to assure state and tribal compliance with regulatory requirements applicable to automated systems supported by Federal Financial Participation. It provides guidance to states and tribes on functional requirements for these automated information systems, and works with federal, state, local, and tribal health and human services agencies to foster and promote interoperability and collaboration across the automated systems that support their programs. It promotes interstate and tribal transfer of existing automated systems and provides assistance and guidance to improve ACF's programs through the use of automated systems and technology.

II. Continuation of Policy. Except as inconsistent with this reorganization, all statements of policy and interpretations with respect to organizational components affected by this notice within ACF, heretofore issued and in effect on this date of this reorganization are continued in full force and effect.

III. Delegation of Authority. All delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegations, provided they are consistent with this reorganization.

IV. Funds, Personnel, and Equipment. Transfer of organizations and functions affected by this reorganization shall be accompanied in each instance by direct and support funds, positions, personnel, records, equipment, supplies, and other resources.

This reorganization will be effective upon date of signature.

Dated: September 26, 2013.

George H. Sheldon,

Acting Assistant Secretary for Children and Families.

[FR Doc. 2013–24107 Filed 10–1–13; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0545]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Infant Formula Requirements

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 November 1, 2013.

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 0910–0256 and title ''Infant Formula Requirements.'' 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, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *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.

Infant Formula Requirements—21 CFR Parts 106 and 107 (OMB Control Number 0910–0256)—Extension

Statutory requirements for infant formula under the Federal Food, Drug, and Cosmetic Act (the FD&C Act) are intended to protect the health of infants and include a number of reporting and recordkeeping requirements. Among other things, section 412 of the FD&C Act (21 U.S.C. 350a) requires manufacturers of infant formula to establish and adhere to quality control procedures, notify us when a batch of infant formula that has left the manufacturers' control may be adulterated or misbranded, and keep records of distribution. We have issued regulations to implement the FD&C Act's requirements for infant formula in parts 106 and 107 (21 CFR parts 106 and 107). We also regulate the labeling of infant formula under the authority of section 403 of the FD&C Act (21 U.S.C. 343). Under our labeling regulations for infant formula in part 107, the label of an infant formula must include nutrient information and directions for use. The purpose of these labeling requirements is to ensure that consumers have the information they need to prepare and use infant formula appropriately.

In a notice of proposed rulemaking published in the **Federal Register** of July 9, 1996 (61 FR 36154), we proposed changes in our infant formula regulations, including some of those listed in tables 1, 2, and 3 of this document. The document included revised burden estimates for the proposed changes and solicited public comment. In the **Federal Register** of April 28, 2003 (68 FR 22341) (the 2003 reopening), FDA reopened the comment period for the proposed rule. Interested persons were originally given until June 27, 2003, to comment on these issues and the 1996 proposal. However, in response to a request, the comment period was extended to August 26, 2003 (68 FR 38247, June 27, 2003). FDA again reopened the comment period on August 1, 2006 (71 FR 43392) (the 2006 reopening) for 45 days to accept comment on a limited set of issues. In a notice of proposed rulemaking published in the **Federal Register** of April 16, 2013 (78 FR 22442), we proposed to amend our regulations on nutrient specifications and labeling for infant formula to add the mineral selenium to the list of required nutrients and to establish minimum and maximum levels of selenium in infant formula. The document also included revised burden estimates for the proposed changes and solicited public comment. In the interim, FDA is seeking an extension of OMB approval for the current regulations so that we can continue to collect information while the proposals are pending. Accordingly, in the **Federal Register** of May 16, 2013 (78 FR 28854), FDA published a 60-day notice requesting public comment on the proposed extension of this collection of information. No comments were received.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Federal Food, Drug, and Cosmetic Act or 21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Section 412(d) of the FD&C Act	5	13	65	10	650
21 CFR 106.120(b)	1	1	1	4	4
21 CFR 107.50(b)(3) and (b)(4)	3	2	6	4	24
21 CFR 107.50(e)(2)	1	1	1	4	4
Total					682

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR Section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
106.100	5	10	50	400	20,000
107.50(c)(3)	3	10	30	300	9,000
Total					29,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 3—ESTIMATED ANNUAL THIRD PARTY DISCLOSURE BURDEN [1]

21 CFR Section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
21 CFR 107.10(a) and 107.20	5	13	65	8	520

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

In compiling these estimates, we consulted our records of the number of infant formula submissions received in the past. All infant formula submissions may be provided to us in electronic format. The hours per response reporting estimates are based on our experience with similar programs and information received from industry.

We estimate that we will receive 13 reports from 5 manufacturers annually under section 412(d) of the FD&C Act, for a total annual response of 65 reports. Each report is estimated to take 10 hours per response for a total of 650 hours. We also estimate that we will receive one notification under § 106.120(b). The notification is expected to take four hours per response, for a total of four hours.

For exempt infant formula, we estimate that we will receive 2 reports from 3 manufacturers annually under §§ 107.50(b)(3) and (b)(4), for a total annual response of 6 reports. Each report is estimated to take 4 hours per response for a total of 24 hours. We also estimate that we will receive one notification annually under § 107.50(e)(2) and that the notification will take 4 hours to prepare.

We estimate that 5 firms will expend approximately 20,000 hours per year to fully satisfy the recordkeeping requirements in § 106.100 and that 3 firms will expend approximately 9,000 hours per year to fully satisfy the recordkeeping requirements in § 107.50(c)(3).

We estimate compliance with our labeling requirements in §§ 107.10(a) and 107.20 requires 520 hours annually by 5 manufacturers.

Dated: September 26, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–24046 Filed 10–1–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0001]

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Vaccines and Related Biological Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 13, 2013, between approximately 12:30 p.m. and 3:45 p.m.

Location: Rockwall II, Conference Room 1033, 5515 Security Lane, Rockville, MD 20852. The public is welcome to attend the meeting at the specified location where a speakerphone will be provided. Public participation in the meeting is limited to the use of the speakerphone in the conference room.

Contact Person for More Information: Donald W. Jehn or Denise Royster, Food and Drug Administration, 1401 Rockville Pike (HFM–71), Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting

cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: On November 13, 2013, the committee will meet in open session to hear an overview of the research programs in the Laboratory of Retroviruses and Laboratory of Immunoregulation, Division of Viral Products, Office of Vaccines Research and Review, Center for Biologics Evaluation and Review, FDA.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: On November 13, 2013, from 12:30 p.m. to approximately 3:10 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before November 6, 2013. Oral presentations from the public will be scheduled between approximately 2:10 p.m. and approximately 3:10 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 29, 2013. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 30, 2013.

Closed Committee Deliberations: On November 13, 2013, between approximately 3:10 p.m. and approximately 3:45 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The committee will discuss the report of the intramural research programs and make recommendations regarding personnel staffing decisions.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Donald W. Jehn or Denise Royster at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 26, 2013.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2013–24025 Filed 10–1–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Notice Request: Application Process for Clinical Research Training and Medical Education at the Clinical Center and Its Impact on Course and Training Program Enrollment and Effectiveness

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 application information collection, the Clinical Center (CC), 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: Robert M. Lembo, MD, Deputy Director, Office of Clinical Research Training and Medical Education, NIH Clinical Center, 10 Center Drive, MSC 1158, Bethesda, MD 20892–1352, or call non-toll-free number (301)–594–4193, or Email your request, including your address to: *lembor@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: Application Process for Clinical Research Training and Medical Education at the Clinical Center and its Impact on Course and Training Program Enrollment and Effectiveness, 0925–NEW, Clinical Center, National Institutes of Health (CC), National Institutes of Health (NIH).

Need and Use of Information Collection: The primary objective of the application process is to allow OCRTME to evaluate applicants' qualifications to determine applicants' eligibility for courses and training programs managed by the office. Applicants must provide the required information requested in the respective applications to be considered a candidate for participation. Information submitted by candidates for training programs is reviewed initially by OCRTME administrative staff to establish eligibility for participation. Eligible candidates are then referred to the designated training program director or training program selection committee for review and decisions regarding

acceptance for participation. A secondary objective of the application process is to track enrollment in courses and training programs over time.

OMB approval is requested for 3 years. There are capital, operating, and/or maintenance costs of $98,022. The total estimated annualized burden hours are 2,210.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of applicants	Estimated number of applicants	Estimated number of applications per applicant	Maximum burden hours per application	Estimated total annual burden hours requested
Doctoral Level	6,488	1	20/60	2,163
Students	82	1	20/60	27
Other	59	1	20/60	20

Dated: September 25, 2013.

Laura Lee,

Project Clearance Liaison, Clinical Center, National Institutes of Health.

[FR Doc. 2013–24074 Filed 10–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-day Comment Request; Quantification of Behavioral and Physiological Effects of Drugs Using a Mobile Scalable Device

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute on Drug Abuse (NIDA), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 29, 2013, Vol.78, No.61, pages 19273–19274, and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institute on Drug Abuse (NIDA), the National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: NIH Desk Officer.

DATES: *Comments Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: 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. Steve Gust, National Institute on Drug Abuse, 6001 Executive Blvd., Bethesda, MD 20892, or call non-toll-free number (301) 443–6480 or Email your request, including your address to: *sgust@nida.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Proposed Collection: Quantification of Behavioral and Physiological Effects of Drugs Using a Mobile Scalable Device, 0925-New, National Institute on Drug Abuse (NIDA), National Institutes of Health (NIH).

Need and Use of Information Collection: This study will examine the effectiveness of a mobile scalable device to detect the impairing effects of different drugs. The primary purpose of the data collected is to determine eligibility in a driving simulation study and to verify the effectiveness of the experimental manipulations. The findings will provide valuable information concerning the utility and effectiveness of mobile, smartphone/tablet-based neurocognitive assessment that can provide a multifactorial evaluation of cognitive functioning associated with impaired driving.

OMB approval is requested for 18 months. There are no costs to respondents other than their time. The total estimated annualized burden hours are 859.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Per annual hour burden
Phone Screening	Adults	100	1	10/60	17
Consent Process, In-Person Screening Adderall	Adults	.....	.....	45/60	75
Consent Process, In-Person Screening Xanax	Adults	100	.....	45/60	75
Consent Process, In-Person Screening Cannabis	Adults	.....	.....	45/60	75
Driving Survey	Adults	.....	1	15/60	18
Realism Survey	Adults	.....	1	3/60	4
Sleep and Intake Questionnaire	Adults	.....	2	3/60	7
Stanford Sleepiness Scale	Adults	72	6	1/60	7
Wellness Survey	Adults	.....	2	2/60	5
Dosing/Driving/Waiting	Adults	.....	2	4	576

Dated: September 25, 2013.

Glenda J. Conroy,

Executive Officer (OM Director), NIDA, NIH.

[FR Doc. 2013–23972 Filed 10–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Cancer Institute Board of Scientific Advisors.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Board of Scientific Advisors.

Date: November 7, 2013.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: Director's Report: Ongoing and New Business; Reports of Program Review Group(s); and Budget Presentations, Reports of Special Initiatives; RFA and RFP Concept Reviews; and Scientific Presentations.

Place: National Institutes of Health, Building 31, C-Wing, 6th Floor, Conf. Rm. 10, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Paulette S. Gray, Ph.D., Executive Secretary, Division of Extramural Activities, National Cancer Institute—Shady Grove, National Institutes of Health, 9609 Medical Center Drive, 7th Floor, Rm. 7W444, Bethesda, MD 20892, 240–276–6340, *grayp@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/bsa/bsa.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 26, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–23961 Filed 10–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Expressions of Interest (EOI) for Chemical Defense Demonstration Projects

AGENCY: Office of Health Affairs, DHS.

ACTION: Notice of Expression of Interest.

SUMMARY: The Chemical Defense Program (CDP), under the Department of Homeland Security Office of Health Affairs (OHA), is seeking Expressions of Interest (EOI) from state, local, tribal, and territorial (SLTT) government agencies to participate in a chemical defense demonstration project relative to a specific venue (e.g., indoor sports stadium, outdoor port facility, convention center). These projects will assist communities in enhancing their preparedness to respond effectively and quickly to a catastrophic chemical event. Using the DHS Form 10088 (9/12) posted on *https://www.dhs.gov/publication/eoi-form-cdp-demonstration-project,* interested SLTT governmental agencies must submit the completed and signed form to the DHS OHA CDP.

DATES: Submit the completed and signed DHS Form 10088 (9/12), either electronically or in hard copy, no later than 45 days from the date of the **Federal Register** Notice.

ADDRESSES: Submissions of DHS Form 10088 (9/12) shall go to the following:

Hardcopy signed original document to Captain Joselito Ignacio Deputy Program Director, Chemical Defense Program Department of Homeland Security/Office of Health Affairs, 245 Murray Lane SW., Mail Stop: 0315 Washington, DC 20528; or Electronically to *Joselito.Ignacio@hq.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: CAPTAIN JOSELITO IGNACIO, 202–254–5738 OR *joselito.ignacio@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION: The demonstration projects are based on appropriations found in Public Law 112–74 (Consolidated Appropriations Act, 2012) and Public Law 133–6 (''The Consolidated and Further Continuing Appropriations Act, 2013''), which call for the Chemical Defense Program of DHS OHA to conduct a competitive selection of locations and venues to participate in chemical detection demonstration projects. The DHS OHA CDP will initiate, fund and manage the demonstration projects, but in close coordination with the selected SLTT government agencies and venue operators. The demonstration project will result in, among other things: (a) A review of current community preparedness capabilities as well as gaps protecting from and responding to a catastrophic chemical incident; (b) community and venue-specific risk assessments, based on likely scenarios, to provide information on chemical threats; (c) technology alignment to include review of existing or intended detect-to-warn or detect-to-treat capabilities in communities; (d) optimizing the communities' response system through decision analysis and the development of a concept of operations plan that defines common mission, roles, responsibilities and key actions necessary for responding to these events; and (e) exercise evaluation using the Homeland Security Exercise and Evaluation Program (HSEEP) process. Through successful completion of these demonstration projects, the selected communities will have enhanced preparedness of their emergency management, first responder, and first receiver groups with the knowledge, skills and tools to act swiftly and competently in protecting lives and restoring peace of mind in response to a catastrophic chemical incident.

As stated, DHS will conduct a competitive selection. A DHS selection panel, led by the DHS OHA CDP, will carefully review the completed and signed DHS Form 10088 (9/12) and rate each submission using weighted criteria on the basis of (a) chemical threat risk (which the DHS Chemical Terrorism Risk Assessments and SLTT government agencies' input will inform); (b) community interest to host a demonstration project; and (c) reasons given for desiring a demonstration project hosted in this community and specific venue. Numerically sequenced from high to low values, top tiered communities are then selected to have these projects conducted in their locations. All communities will receive notification of the selection results. Once selected, DHS OHA CDP will enter

into a Memorandum of Agreement with the selected SLTT government agencies to clarify roles and responsibilities.

Selected SLTT government agencies must work cooperatively with DHS OHA CDP with all phases of the demonstration project. Expected activities include (a) participation in all planning meetings on site or via teleconference; (b) establish formal relationships with selected venues' owners and operators in order for DHS OHA CDP or its designated performers to have access to all outdoor and indoor spaces; (c) review and provide technical input on any developed guidance documents and plans by DHS OHA CDP or its performers within assigned deadlines and (e) serve as a community conduit with key stakeholders within the selected cities in order to gain input in the demonstration projects (e.g. emergency medical services, fire/hazmat, hospitals, public health). There are no funds given to the selected SLTT government agencies or venues as part of these demonstration projects, including funds for purchase of equipment.

Authority: Pub. L. 112–74, Pub. L. 133–6.

Dated: September 25, 2013.

Mark A. Kirk,

Director, Chemical Defense Program.

[FR Doc. 2013–23984 Filed 10–1–13; 8:45 am]

BILLING CODE 9110–9K–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2013–0063]

Privacy Act of 1974; Department of Homeland Security/ALL–036 Board for Correction of Military Records System of Records

AGENCY: Department of Homeland Security, Privacy Office.

ACTION: Notice of Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to update, reissue, and combine two legacy system of records notices titled, ''Department of Transportation/Office of the Secretary of Transportation—004 Board for Correction of Military Records (BCMR) System of Records'' and ''Department of Transportation/Office of the Secretary of Transportation—059 Files of the Board for Correction of Military Records, BCMR, for the Coast Guard System of Records.'' This updated system of records allows the Department of Homeland Security to collect and maintain records submitted by individuals who have filed applications for relief before the Board for Correction of Military Records (BCMR), records used by the Chair, the BCMR staff, the Board, and, in some cases, the General Counsel in determining whether to grant relief to applicants, and the final decisions or documentation of other actions taken in individual BCMR cases. Additionally, this notice includes non-substantive changes to simplify the formatting and text of the previously published notices. This newly updated system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before November 1, 2013. This updated system will be effective November 1, 2013.

ADDRESSES: You may submit comments, identified by docket number DHS–2013–0063 by one of the following methods:

- Federal e-Rulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Fax: 202–343–4010.
- Mail: Jonathan R. Cantor, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, please visit *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general and privacy questions, please contact: Jonathan R. Cantor, (202) 343–1717, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) proposes to update, combine, and reissue the following legacy record systems: Department of Transportation (DOT)/Office of the Secretary of Transportation (OST) 004 Board for Correction of Military Records (BCMR) System of Records, 65 FR 19551—(April 11, 2000); and DOT/OST 059—Files for the Board for Correction of Military Records System, BCMR, for the Coast Guard, 65 FR 19557 (April 11, 2000) as a new Department of Homeland Security system of records notice titled, DHS/ALL—036 Board for Correction of Military Records System of Records. This new SORN is being published by the Department of Homeland Security since the U.S. Coast Guard (USCG) was moved from the Department of Transportation to the Department of Homeland Security. Under 10 U.S.C. 1552, the Board for Correction of Military Records (BCMR) is a board of civilians within the U.S. Department of Homeland Security, Office of the General Counsel, which has authority under 10 U.S.C. 1552, to review and correct the personnel records of current and former members of the USCG and USCG Reserve. This system of records notice allows the Department to collect and maintain records submitted and created during the BMCR process.

The BCMR is a forum that allows current and former USCG military personnel or their authorized representatives to apply for correction of their military personnel records. In order to determine whether the requested correction should be made, the BCMR receives, reviews, and stores applications, arguments, and evidence submitted by applicants and their representatives as well as copies of applicants' military and, if applicable, medical records. The BCMR also receives, reviews, and stores advisory opinions and evidence submitted by the USCG for each case; copies of applicable investigations; and correspondence related to the applications. The BCMR retains copies of the decisions issued. The records in this system are used by the Chair's staff and members of the Board in determining whether to grant relief to applicants; by the General Counsel and his or her staff in deciding whether to approve, disapprove, or remand the decisions of the Board. The records are also used by the Coast Guard in preparing its advisory opinions to the Board concerning pending cases and in implementing the Board's orders.

This new system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which federal government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the

individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals when systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

Below is the description of the DHS/ALL—036 Board for Correction of Military Records System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM OF RECORDS:

Department of Homeland Security (DHS)/ALL—036.

SYSTEM NAME:

DHS/ALL—036 Board for Correction of Military Records System of Records.

SECURITY CLASSIFICATION:

Unclassified, Sensitive.

SYSTEM LOCATION:

Records are maintained at the DHS Headquarters in Washington, DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former members of the USCG and USCG Reserve who have filed applications for relief before the Board, or their representatives; civilian employees of DHS serving as the Chair; members of the BCMR; or the staff of the BCMR.

CATEGORIES OF RECORDS IN THE SYSTEM:

- Name, rank, and service number or social security number (SSN) of the applicant and the name of his/her representative, if any;
- Phone numbers, mailing, and email addresses of the applicant and his/her representative, if any;
- Application for Correction of Military Record (DD Form 149) and all written arguments and evidence submitted by or on behalf of the applicant;
- Docket number and type of application;
- Copies of documents maintained by the Coast Guard in the applicant's Personnel Data Record, such as performance evaluations, medal citations, written counseling, disciplinary records, discharge papers, and other military records relevant to the requested correction;
- Copies of the applicant's medical records, if applicable to the requested correction, from the Coast Guard and Department of Veterans Affairs;
- Copies of applicable investigations;
- Advisory opinions of the Coast Guard, including any attached documentary evidence or affidavits;
- Transcripts of any hearing held by the Board;
- Decisional documents of the Board and of the General Counsel acting under delegated authority to approve, disapprove, or remand the decision of the Board;
- Coast Guard requests for amendment or clarification of Board decisions and the Board's decisions in response to such requests;
- Copies of court decisions related to the application; and
- Correspondence between the Chair or staff and the applicant, the applicant's representative or congressional representative, or the Coast Guard concerning an application.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. § 1552.

PURPOSE(S):

The purpose of the BCMR system of records is to allow current and former USCG military personnel, or their authorized representatives, to submit applications to the BCMR for correction of their military records; to allow the Chair, members of the Board, and staff to review the records before deciding whether the requested corrections are warranted; to allow the General Counsel and his or her staff to review the records before deciding whether to approve, disapprove, or remand the Board's decisions; and to allow the Coast Guard to review the records before deciding whether to recommend that the Board grant or deny relief in each case and to implement the Board's orders. The system stores the complete record of each proceeding, including the decision issued or other final disposition made.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including U.S. Attorney Offices, or other federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee or former employee of DHS in his/her official capacity;

3. Any employee or former employee of DHS in his/her individual capacity when DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. DHS has determined that as a result of the suspected or confirmed compromise, there is a risk of identity theft or fraud, harm to economic or property interests, harm to an individual, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or

order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To the Department of Veterans Affairs (DVA) when the BCMR determines it has the need for an applicant's medical records possessed by the DVA. DHS requests medical records from DVA using an applicant's name and social security number.

I. To courts, magistrates, administrative tribunals, opposing counsel, parties, and witnesses, in the course of civil, or criminal, or administrative proceedings (including discovery, presentation of evidence, and settlement negotiations) when DHS determines that use of such records is relevant and necessary to the litigation before a court or adjudicative body and any of the following is a party to or has an interest in the litigation:

1. DHS or any component thereof;

2. Any employee of DHS in his/her official capacity;

3. Any employee of DHS in his/her individual capacity when the government has agreed to represent the employee; or

4. The United States, when DHS determines that litigation is likely to affect DHS or any of its components.

J. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, digital media.

RETRIEVABILITY:

Records may be retrieved individually by name in alphabetical sequence or by docket number.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions. Files are kept in the Office of the General Counsel.

RETENTION AND DISPOSAL:

Records are retained locally for three years, after which records are then sent to NARA and destroyed after 40 years.

SYSTEM MANAGER AND ADDRESS:

Chair, Board for Correction of Military Records, Office the General Counsel, Mail Stop #0485, 245 Murray Drive SW., Washington, DC 20518.

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Chief Privacy Officer and Chief Freedom of Information Act Officer whose contact information can be found at *http://www.dhs.gov/foia* under ''Contacts.'' If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may also submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, 245 Murray Drive SW., Building 410, STOP–0655, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address, and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov/foia* or 1–866–431–0486. In addition, you should:

- Explain why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records.

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without the above information, the Department may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Records are obtained from the individual, his or her official military personnel file, other USCG records/reports, or the United States Department of Veterans Affairs.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: September 11, 2013.

Jonathan R. Cantor,

Acting Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2013–23991 Filed 10–1–13; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2013–0833]

Towing Safety Advisory Committee; Vacancies

AGENCY: Coast Guard.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the Towing Safety Advisory Committee (TSAC). This Committee advises the Secretary of the Department of Homeland Security on matters relating

to shallow-draft inland and coastal waterway navigation and towing safety. Applicants selected for service on TSAC via this solicitation will not begin their respective terms until September 30, 2014.

DATES: Completed applications should reach the Coast Guard on or before November 18, 2013.

ADDRESSES: Send your application via one of the following methods:

Email: *William.A.Nabach@uscg.mil.*

Fax: (202) 372–8379.

Mail: Commandant (CG–OES–2) ATTN: Towing Safety Advisory Committee, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr Ave. SE., Washington, DC 20593–7509.

Be advised that all regular mail to Coast Guard Headquarters is first sent to an offsite screening facility. Delivery of your application may be delayed.

FOR FURTHER INFORMATION CONTACT: Commander Rob Smith, Designated Federal Officer (DFO) of the Towing Safety Advisory Committee (TSAC); telephone (202) 372–1410; fax (202) 372–8379; or email: *Robert.L.Smith@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Towing Safety Advisory Committee is a federal advisory committee under 5 U.S.C. App. (Pub. L. 92–463). It was founded under authority of the Act to establish a Towing Safety Advisory Committee in the Department of Transportation, (Pub. L. 96–380), which was most recently amended by section 621 of the Coast Guard Authorization Act of 2010, (Pub. L. 111–281). The Committee advises the Secretary of Homeland Security on matters relating to shallow-draft inland and coastal waterway navigation and towing safety.

It is expected the Committee will meet twice per year in cities with high concentrations of towing companies and also in the Washington, DC area. It may also meet for extraordinary purposes. Subcommittees of TSAC may conduct intercessional telephonic meetings, when necessary, in response to specific U.S. Coast Guard taskings.

The committee consists of 18 members:

○ Seven members representing the barge and towing industry reflecting a regional geographical balance;

○ One member representing the offshore mineral and oil supply vessel industry;

○ One member representing holders of active licensed Masters or Pilots of towing vessels with experience on the Western Rivers and the Gulf Intracoastal Waterway;

○ One member representing the holders of active licensed Masters of towing vessels in offshore service;

○ One member representing active Masters who are active ship-docking or harbor towing vessel;

○ One member representing licensed or unlicensed towing vessel engineers with formal training and experience;

○ Two members representing each of the following groups:

○ (1) Port districts, authorities or terminal operators;

○ (2) Shippers (of whom at least one shall be engaged in the shipment of oil or hazardous materials by barge); and,

○ Two members drawn from the general public.

The Coast Guard is currently considering applications for six positions that will become vacant on September 30, 2014:

- Two members representing the Barge and Towing industry reflecting a regional geographic balance;
- One member representing holders of active licensed Masters or Pilots of towing vessels with experience on the Western Rivers and the Gulf Intracoastal Waterway;
- One member representing active Masters of ship-docking or harbor towing vessels;
- One member representing Port districts, authorities or terminal operators; and,
- One member drawn from the general public.

To be eligible, applicants should have particular expertise, knowledge, and experience regarding shallow-draft inland and coastal waterway navigation and towing safety.

Registered lobbyists are not eligible to serve on federal advisory committees. Registered lobbyists are lobbyists required to comply with provisions contained in the Lobbying Disclosure Act of 1995 (Pub. L. 104–65, as amended by Title II of Pub. L. 110–81).

Each member serves for a term of up to 3 years. Members may be considered to serve consecutive terms. All members serve without compensation from the Federal Government; however, upon request, members may receive travel reimbursement and per diem.

In an effort to maintain a geographic balance of membership, we are encouraging representatives from tug and barge companies operating on the Western Rivers to apply for representation on the Committee.

The Department of Homeland Security (DHS) does not discriminate in employment on the basis of race, color, religion, sex, national origin, political affiliation, sexual orientation, gender identity, marital status, disability and genetic information, age, membership in an employee organization, or other non-merit factor. DHS strives to achieve a widely diverse candidate pool for all of its recruitment actions.

If you are selected as a non-representative member, or as a member drawn from the general public, you will be appointed and serve as a special Government employee (SGE) as defined in section 202(a) of Title 18, United States Code. As a candidate for appointment as a SGE, applicants are required to complete a Confidential Financial Disclosure Report (OGE Form 450). DHS may not release the reports or the information in them to the public except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a). Applicants can obtain this form by going to the Web site of the Office of Government Ethics (*www.oge.gov*), or by contacting the individual listed in ''For Further Information Contact'' Applications which are not accompanied by a completed OGE Form 450 will not be considered.

If you are interested in applying to become a member of the Committee, send a cover letter and resume to Lieutenant Commander William Nabach, ADFO of TSAC by email, fax, or mail according to the instructions in the **ADDRESSES** section by the deadline in the **DATES** section of this notice. Indicate the specific position you request to be considered for and specify your area of expertise, knowledge, and experience that qualifies you to serve on TSAC. Note that during the vetting process applicants may be asked to provide date of birth and social security number. All email submittals will receive email receipt confirmation.

To visit our online docket, go to *http://www.regulations.gov.* Enter the docket number for this notice (USCG–2013–0833) in the Search box, and click ''Search''. Please do not post your resume or OGE–450 Form on this site.

Dated: September 26, 2013.

J.G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2013–23996 Filed 10–1–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

Outer Continental Shelf (OCS), Alaska OCS Region, Chukchi Sea Planning Area, Proposed Oil and Gas Lease Sale 237 (Lease Sale 237) MMAA104000

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Correction; Call for Information and Nominations.

SUMMARY: This Notice is a correction of the notice published as docket number 2013–23670. The only correction is the addition of the map entitled ''Chukchi Sea Planning Area for Information and Nominations Lease Sale 237''. This Call for Information and Nominations (''Call'') is the initial step in the prelease process for Lease Sale 237 in the Chukchi Sea Planning Area, scheduled to be held in 2016, as included in the Proposed Final OCS Oil and Gas Leasing Program 2012–2017 (''Five Year Program''). The purpose of this Call is to obtain nominations and information on oil and gas leasing, exploration, and development that might result from an OCS oil and gas lease sale for the Chukchi Sea Planning Area. The lease sale area addressed in this Call (''Program Area'') is located offshore Alaska in the Chukchi Sea Planning Area. As identified in the Five Year Program, the Program Area is a sub-area of the larger Chukchi Sea Planning Area.

DATES: All responses to the Call must be received no later than November 18, 2013.

FOR FURTHER INFORMATION CONTACT: Michael S. Rolland, Chief, Leasing Section, BOEM, Alaska OCS Region, 3801 Centerpoint Drive, Suite 500, Anchorage, Alaska 99503–5823, or at (907) 334–5271.

SUPPLEMENTARY INFORMATION: The Five Year Program states: While BOEM has determined that it is appropriate to continue areawide leasing in the GOM * * * BOEM will not be conducting areawide leasing in the Arctic, consistent with rigorous internal analysis as well as a number of outside recommendations to develop alternative leasing approaches for Arctic areas. Rather, potential sales are deliberately set late in the five year program schedule to allow for further analysis and information-gathering. These would be geographically targeted in scope, in order to achieve an appropriate balance between making resources available while limiting conflicts with environmentally sensitive areas and subsistence use by making certain determinations from the outset about which blocks within the planning areas are most suitable for leasing. *See,* Proposed Final Outer Continental Shelf Oil and Gas Leasing Program 2012–2017, page 94.

In light of the targeted leasing strategy for the Arctic in the current Five Year Program, this Call differs in two ways from Calls issued in the Gulf of Mexico and in earlier Calls issued in the Alaska OCS Region under previous Five Year Programs: (1) Because the leasing will not be areawide, BOEM is requesting more specific nominations within the Program Area (as defined below), including specific support of those nominations in terms of geological and geophysical data, and (2) this Call is not accompanied by a Notice of Intent to Prepare an Environmental Impact Statement (NOI). After BOEM identifies the area for the proposed lease sale based upon the information and nominations received from this Call, BOEM will initiate the formal National Environmental Policy Act (NEPA) process through publication of an NOI. By proceeding in this order, BOEM will be able to use the information obtained through this Call in developing the proposed action and possible alternatives to be identified and scoped in the NOI.

In addition to seeking area nominations, this Call is requesting information concerning geological conditions, including bottom hazards; archaeological sites on the seabed or nearshore; multiple uses of the Program Area, including navigation, recreation, and fisheries; and other socioeconomic, biological, and environmental information, including but not limited to, information regarding oil and gas resource potential, sensitive habitats, subsistence use, unique conditions, and important other uses of the Program Area. This Call and targeted leasing strategy also embraces the principles of an Integrated Arctic Management (IAM) approach as defined by the Interagency Working Group on Coordination of Domestic Energy Development and Permitting in Alaska in its Report to the President: Managing for the Future in a Rapidly Changing Arctic dated March 2013. The IAM approach was also adopted as a key component of the President's National Strategy for the Arctic Region, dated May 2013.

Call for Information and Nominations

1. Authority

This Call is published pursuant to the Outer Continental Shelf Lands Act (OCSLA), as amended (43 U.S.C. 1331–1356), and the regulations issued thereunder (30 CFR part 556).

2. Purpose of This Call

The purpose of this Call is to gather information to determine the Area Identification under 30 CFR 556.26 for Lease Sale 237 in the Program Area. BOEM seeks information and nominations on oil and gas leasing, exploration, development, and production in the Program Area from all interested parties. This early planning and consultation step is important to ensure that all interests and concerns are communicated to the U.S. Department of the Interior for consideration in future decisions in the leasing process pursuant to OCSLA and the regulations at 30 CFR part 556.

3. Description of Program Area

The Program Area is located offshore Alaska in the Chukchi Sea Planning Area. The Chukchi Sea Planning Area extends from the 3-nautical mile (4.8-kilometer) limit of State of Alaska waters, northward from approximately latitude 68°30′ N to latitude 75° N, and from longitude 156° W (roughly north of the village of Barrow) on the east to the United States-Russia Provisional Maritime Boundary on the west at longitude 168°58′ 37″ W. As identified in the Five Year Program, the Program Area is a sub-area of the larger Chukchi Sea Planning Area. As depicted on the page-size map accompanying this Call, the southern boundary of the Program Area generally begins about 25 nautical miles offshore along the coastline, except near Barrow, where it begins approximately 50 nautical miles offshore. The northern boundary of the Program Area is approximately 300 nautical miles from shore. Water depths vary from approximately 65 feet (20 meters) to more than 13,100 feet (4,000 meters) in the Program Area. This Program Area consists of approximately 10,128 whole and partial blocks (about 55.16 million acres, or 22.32 million hectares). A larger scale Call map showing the boundaries and blocks of the Program Area is available without charge on the BOEM Web site at *http://www.boem.gov/leasesale237.* Copies of Official Protraction Diagrams also are available without charge on the Web site at *http://www.boem.gov/Oil-and-Gas-Energy-Program/Mapping-and-Data/Alaska.aspx.*

4. Nominations on This Call

Written nominations must be received no later than November 18, 2013. In their letters of nomination, interested parties should describe explicitly their interest by ranking the areas nominated according to priority using five interest classifications: (1) Critical interest, (2)

high interest, (3) general interest, (4) low interest, or (5) no interest. The area(s) nominated must be described accurately and shown on the large-scale Call map available at *http://www.boem.gov/leasesale237.* An interested party nominating areas for inclusion in the sale must provide a detailed explanation of the basis for classifying each nominated area as (1) through (5), including a summary of the relevant geologic, geophysical, and economic information. Interested parties are encouraged to be as specific as possible in prioritizing blocks and supporting nominations of specific blocks in the Program Area with detailed data and/or information. Interested parties should be prepared to discuss their range of interest classifications and anticipated activity regarding the nominated area(s). Interested parties are requested to provide the telephone number and name of the individual to contact. BOEM's Alaska OCS Region office will contact this individual to set up a mutually agreeable meeting date and time to review more fully the interested parties level of interest where an area is classified as critical interest or high interest, and possibly as general interest. Submittals should indicate ''Nominations to Call for Chukchi Sea Lease Sale 237.''

To avoid inadvertent release of proprietary information, interested parties should mark all documents and every page containing such information with ''Confidential—Contains Proprietary Information.'' To the extent a document contains a mix of proprietary and nonproprietary information, interested parties should mark clearly which portion of the document is proprietary and which is not. The OCSLA states that the ''Secretary shall maintain the confidentiality of all privileged or proprietary data or information for such period of time as is provided for in this subchapter, established by regulation, or agreed to by the parties'' (43 U.S.C. 1344(g)). BOEM considers each interested parties written nominations of specific blocks to be proprietary, and it will not release such information to the public.

5. Exclusion Areas and Other Comments

BOEM is seeking recommendations either to exclude specific blocks or areas from oil and gas leasing, or to be leased under special conditions due to conflicting values, uses or environmental concerns (hereinafter referred to as ''proposed exclusion areas''). Interested parties should indicate proposed exclusion areas on the large-scale Call map available at *http://www.boem.gov/leasesale237.* Interested parties also may use the interactive map tool for the Arctic at *http://www.boem.gov/Oil-and-Gas-Energy-Program/Leasing/Five-Year-Program/Lease-Sale-Schedule/Interactive-Maps.aspx.* Interested parties are encouraged to be as specific as possible in explaining why the area should be excluded or leased under special conditions, provide supporting information, and be prepared to discuss the proposed exclusion areas with BOEM. Interested parties are requested to provide the telephone number and name of the individual to contact. BOEM's Alaska OCS Region office may contact this individual to set up a mutually agreeable meeting date and time to review more fully the proposed exclusion areas.

BOEM also is seeking comments and information from all interested parties regarding areas that should receive more detailed consideration and analysis; geological conditions, including bottom hazards; archaeological sites on the seabed or nearshore; other uses of the Program Area, including navigation and subsistence; and other socioeconomic, biological, or environmental information. BOEM previously had received comments on the Program Area as part of the Five Year Program process. Those comments included information on the importance of Hanna Shoal and Herald Shoal. While already excluded from the Program Area, comments were also received on the Pt. Barrow area, Kaseguluk Lagoon, Peard Bay, the nearshore lead system, and the bowhead whale migration area. While BOEM will consider information submitted previously on the Five Year Program, BOEM also encourages interested parties who submitted comments on the Five Year Program to refine their earlier comments and provide greater detail or new information, where appropriate, concerning the importance of these areas or associated activities.

6. Submissions of Nominations, Requests for Exclusion Areas, and Other Comments

Interested parties who are requesting area(s) for inclusion in the sale should send their recommendations, along with an explanation of the basis of their interest priority, including a summary of the relevant geologic, geophysical, and economic information supporting their nomination, to: Chief, Leasing Section, BOEM, Alaska OCS Region, 3801 Centerpoint Drive, Suite 500, Anchorage, Alaska 99503–5823.

Requests for proposed exclusion areas or general proposed inclusion areas (absent a formal nomination) and all other comments to this Call, including general information from interested parties, Federal agencies, state and local governments, tribes, and other interested parties, will be accepted only through *http://www.regulations.gov,* using docket designation BOEM–2013–0015. All comments received via this Web site, including names and addresses of the commenter, are public and will be posted for public review. BOEM will not consider anonymous comments. BOEM will make available all nonproprietary submissions in their entirety on *http://www.regulations.gov.*

7. Tracking Table and Interactive Map

In the Five Year Program, BOEM established a mitigation/program tracking table (hereinafter referred to as the ''Table''), which is designed to track the history and treatment of suggestions for inclusion or exclusion of acreage, temporal deferrals, and/or mitigation from the Five Year Program stage through the lease sale stage to the plan stage. This Table will allow commenters to see how and where their concerns are considered, while ensuring that a reasonable concern not suitable for consideration during one stage will be considered at an appropriate subsequent stage. The Table may be viewed at *http://www.boem.gov/Oil-and-Gas-Energy-Program/Leasing/Five-Year-Program/Lease-Sale-Schedule/Tracking-Table.aspx.* Appropriate suggestions collected during the comment period on this Call will be added to the Table and tracked throughout the process.

Additionally, BOEM has created an interactive map through the Multipurpose Marine Cadastre (MMC) Web site for Alaska at *http://www.boem.gov/Oil-and-Gas-Energy-Program/Leasing/Five-Year-Program/Lease-Sale-Schedule/Interactive-Maps.aspx.* The MMC is an integrated marine information system that provides a more comprehensive look at geospatial data and ongoing activities and studies occurring in the area being considered. If interested parties believe that a data layer should be added for consideration, they should provide this information by following the commenting instructions above. Questions about the interactive map may be addressed to Donna Dixon, Chief, Leasing Division, at (703) 787–1215.

8. Use of Information From This Call

BOEM is undertaking a strategy of targeted leasing, whereby the BOEM Director will use the information provided in response to this Call to make an Area Identification decision.

BOEM will consider nominations, proposed exclusion areas, and areas proposed to receive special consideration and analysis, in light of resource estimates, information regarding exploratory drilling, environmental reviews, and other relevant information. Using this information, BOEM plans to target leasing by proactively determining which specific portions of the Program Area offer greater resource potential, while minimizing potential conflicts with environmental subsistence considerations.

Information submitted in response to this Call will be used to:

- Determine the Area Identification under 30 CFR 556.26(a) and (b);
- Develop potential lease terms and conditions;
- Identify potential use conflicts and potential mitigation measures; and
- Assist in planning the NEPA scoping process.

9. Existing Information

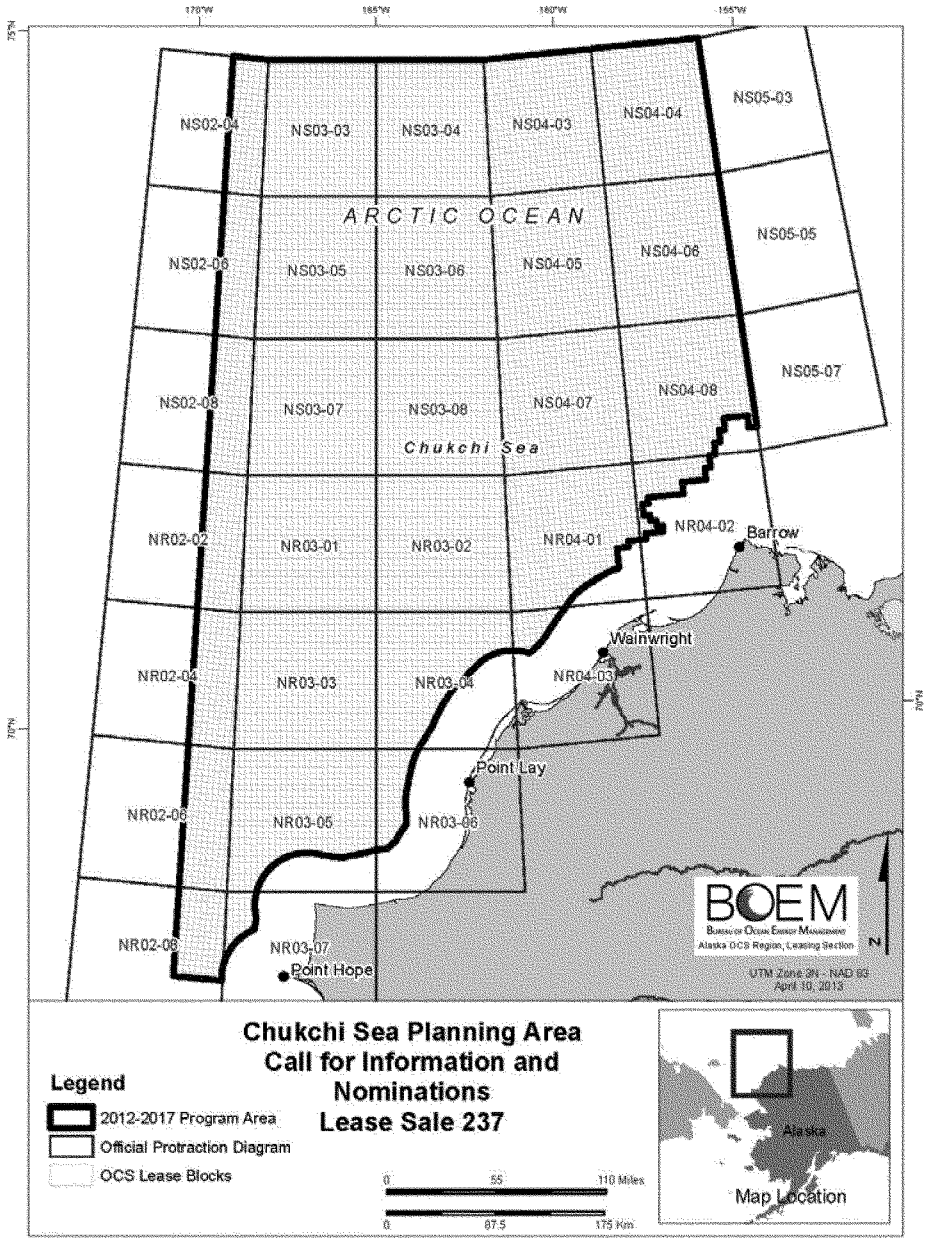
An extensive Environmental Studies Program, including environmental, social, and economic studies in the Chukchi Sea Planning Area, has been underway in the Alaska OCS Region since 1976. The emphasis has been on environmental characterization of biologically sensitive habitats, marine mammals, physical oceanography, ocean-circulation modeling, subsistence uses, and ecological and sociocultural effects of oil and gas activities. Information on the BOEM Environmental Studies Program, completed studies, and a program status report for continuing studies in this area is available on the BOEM Web site at *http://www.boem.gov/akstudies,* or it may be obtained from the Chief, Environmental Sciences Management Section, Alaska OCS Region, by telephone request at (907) 334–5200.

NEPA analyses were prepared for previous OCS lease sales held in the Chukchi Sea Planning Area. Previous NEPA analyses for Chukchi Sea lease sales and other actions are available at *http://www.boem.gov/About-BOEM/BOEM-Regions/Alaska-Region/Environment/Environmental-Analysis/Environmental-Impact-Statements-and-Major-Environmental-Assessments.aspx.* Currently, there are 460 active OCS oil and gas leases in the Chukchi Sea Planning Area, encompassing an area of approximately 2.7 million acres (1.0 million hectares). Information on the leases and other lease-related activities is available at *http://www.boem.gov/About-BOEM/BOEM-Regions/Alaska-Region/Leasing-and-Plans/Index.aspx.*

Dated: September 26, 2013.

Tommy P. Beaudreau,

Director, Bureau of Ocean Energy Management.



[FR Doc. 2013–24053 Filed 9–27–13; 4:15 pm]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX066A000 67F 134S180110; S2D2S SS08011000 SX066A00 33F 13XS501520]

Notice of Proposed Information Collection; Request for Comments for 1029–0049

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for 30 CFR 822—Special Permanent Program Performance Standards—Operations in Alluvial Valley Floors, has been forwarded to the Office of Management and Budget (OMB) for review and reauthorization. The information collection package was previously approved and assigned control number 1029–0049. This notice describes the nature of the information collection activity and the expected burdens.

DATES: OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, public comments should be submitted to OMB by November 1, 2013, in order to be assured of consideration.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of the Interior Desk Officer, by telefax at (202) 395–5806, or via email to *OIRA_submission@omb.eop.gov*. Also, please send a copy of your comments to Adrienne L. Alsop, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave NW., Room 203–SIB, Washington, DC 20240, or electronically to *aalsop@osmre.gov*.

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request, contact Adrienne Alsop at (202) 208–2818 or electronically to *aalsop@osmre.gov*. You may also review the information collection request online at *http://www.reginfo.gov*. Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8 (d)]. OSM has submitted a request to OMB to renew its approval for the collection of information for part 822—Special Permanent Program Performance Standards—Operations in Alluvial Valley Floors. OSM is requesting a 3-year term of approval for this information collection.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for part 822 is 1029–0049 and is referenced in § 822.10.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on this collection of information was published on June 11, 2013 (78 FR 35049). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection:

Title: 30 CFR 822—Special Permanent Program Performance Standards—Operations in Alluvial Valley Floors.

OMB Control Number: 1029–0049.

Summary: Sections 510(b)(5) and 515(b)(10)(F) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) protect alluvial valley floors from the adverse effects of surface coal mining operations west of the 100th meridian. Part 822 requires the permittee to install, maintain, and operate a monitoring system in order to provide specific protection for alluvial valley floors. This information is necessary to determine whether the unique hydrologic conditions of alluvial valley floors are protected according to the Act.

Bureau Form Number: None.

Frequency of Collection: Annually.

Description of Respondents: 25 coal mining operators who operate on alluvial valley floors and the State regulatory authorities.

Total Annual Responses: 50.

Total Annual Burden Hours: 2,750.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the address listed above. Please refer to OMB control number 1029–0049 in all correspondence.

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: September 23, 2013.

Andrew F. DeVito,

Chief, Division of Regulatory Support.

[FR Doc. 2013–24099 Filed 10–1–13; 8:45 am]

BILLING CODE 4310–05–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Handheld Magnifiers and Products Containing Same,* DN 2984; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at EDIS, [1], and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at USITC. [2] The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at EDIS. [3] Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Freedom Scientific, Inc. on September 26, 2013. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain handheld magnifiers and products containing same. The complaint names as respondents Aumed Group Corp. of China and Aumed Inc. of San Carlos, CA. The complainant requests that the Commission issue a limited exclusion order, and cease and desist orders.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov.*

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 2984'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *Electronic Filing Procedures* [4]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[5]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: September 26, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–23967 Filed 10–1–13; 8:45 am]

BILLING CODE 7020–02–P

[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.*

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–919 (Second Review)]

Certain Welded Large Diameter Line Pipe From Japan

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines,[2] pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty order on certain welded large diameter line pipe from Japan would likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on October 1, 2012 (77 FR 59973) and determined on January 4, 2013 that it would conduct a full review (78 FR 3916, January 7, 2013). Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on February 25, 2013 (78 FR 12784). The hearing was held in Washington, DC, on August 1, 2013, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission completed and filed its determination in this review on September 26, 2013. The views of the Commission are contained in USITC Publication 4427 (September 2013), entitled *Certain Welded Large Diameter Line Pipe from Japan: Investigation No. 731–TA–919 (Second Review).*

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Daniel R. Pearson dissenting.

By order of the Commission.

Issued: September 26, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–23989 Filed 10–1–13; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Employer Children's Health Insurance Program Notice

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Employer Children's Health Insurance Program Notice,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

DATES: Submit comments on or before November 1, 2013.

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=201308-1210-002* (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 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–EBSA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Information Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210, email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free

number) or by email at *DOL_PRA_PUBLIC@dol.gov*.

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: Employee Retirement Income Security Act (ERISA) section 701(f)(3)(B)(i)(I), Public Health Service Act section 2701(f)(3)(B)(i)(I), and Internal Revenue Code section 9801(f)(3)(B)(i)(I) require an employer maintaining a group health plan in a State that provides medical assistance under a State Medicaid plan under Social Security Act (SSA) title XIX or child health assistance under a State child health plan under SSA title XXI in the form of premium assistance for the purchase of coverage under a group health plan to make certain disclosures. Specifically, the employer is required to notify each employee of potential opportunities currently available in the State in which the employee resides for premium assistance under Medicaid and Children's Health Insurance Program (CHIP) for health coverage of the employee or the employee's dependents. ERISA section 701(f)(3)(B)(i)(II) requires the DOL to provide employers with model language for the CHIP notice. The model includes information on how an employee may contact the State in which the employee resides for additional information regarding potential opportunities for premium assistance, including how to apply for such assistance.

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 1210–0137.

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 September 30, 2013. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. It should also be noted 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 May 22, 2013 (78 FR 30333).

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 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210–0137. 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–EBSA.

Title of Collection: Employer Children's Health Insurance Program Notice.

OMB Control Number: 1210–0137.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 6,037,000.

Total Estimated Number of Responses: 176,570,000.

Total Estimated Annual Burden Hours: 912,000.

Total Estimated Annual Other Costs Burden: $21,895,000.

Dated: September 24, 2013.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2013–23945 Filed 10–1–13; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0007]

Regulation on Definition and Requirements for a Nationally Recognized Testing Laboratory; Revision 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 comments.

SUMMARY: OSHA requests comments concerning its proposed revision and extension of the information collection requirements specified by its Regulation at 29 CFR 1910.7, ''definition and requirements for a nationally recognized testing laboratory'' (The Regulation). The Regulation specifies procedures that organizations must follow to apply for, and to maintain, OSHA's recognition to test and certify equipment, products, or material for safe use in the workplace.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before December 2, 2013.

ADDRESSES: Submit comments by any of the following methods:

Electronically: Submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

Facsimile: If submissions, including attachments, are not longer than 10 pages, commenters may fax them to the OSHA Docket Office at (202) 693–1648.

Regular or express mail, hand delivery, or messenger (courier) service: Submit a copy of comments and any attachments to the OSHA Docket Office, Docket No. OSHA–2010–0007, Technical Data Center, Room N–2625, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–2350 (TDY number: (877) 889–5627). Note that security procedures may result in significant delays in receiving comments and other written materials by regular mail. Contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express delivery, hand delivery, or messenger service. The hours of operation for the OSHA Docket Office are 8:15 a.m.–4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and the OSHA docket number for the Information Collection Request (ICR) (OSHA Docket No. 2010–0007). OSHA will place all submissions, including any personal information provided, in the public docket without revision, and these submissions will be available online at *http://www.regulations.gov*.

Docket: To read or download submissions or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

FOR FURTHER INFORMATION CONTACT: Theda Kenney (*kenney.theda@dol.gov*) or Todd Owen (*owen.todd@dol.gov*), Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3609, 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 burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on continuing information collection requirements in accordance 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 from 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 OSHA to 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).

A number of standards issued by OSHA contain requirements that specify employers use only equipment, products, or material tested or approved by a nationally recognized testing laboratory (NRTL). These requirements ensure that employers use safe and efficacious equipment, products, or materials in complying with the standards. Accordingly, OSHA promulgated the regulation 29 CFR 1910.7, ''definition and requirements for a nationally recognized testing laboratory'' (the Regulation). The Regulation specifies procedures that organizations must follow to apply for, and to maintain, OSHA's recognition to test and certify equipment, products, or material for this purpose.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

1. Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions including whether is useful;

2. 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;

3. The quality, utility, and clarity of the information collected; and

4. Ways to minimize the burden on organizations who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA proposes to revise and extend the Office of Management and Budget's (OMB) approval of the collection of information requirements specified by the Regulation on the Definition and Requirements of a Nationally Recognized Testing Laboratory. In addition to extending its current approval by OMB, the Agency proposes to include optional standardized forms to facilitate and simplify the information collection process as part of its information collection process. The optional forms correspond to the application, expansion, and renewal processes defined in the NRTL Program. Where practicable, the forms will provide for automations such as drop down lists to increase ease of use and reduce the information collection burden. The Agency expects the use of the optional standardized forms to marginally reduce the burden hours associated with these information collection requirements. The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend and revise the approval of these information collection requirements.

Type of Review: Revision of a currently approved collection.

Title: Definition and Requirements of a Nationally Recognized Testing Laboratory (29 CFR 1910.7).

OMB Control Number: 1218–0147.

Affected Public: Business or other for-profit.

Number of Respondents: 68.

Frequency of Recordkeeping: On occasion.

Total Responses: 68.

Average Time per Response: 160 hours for an organization to prepare initial recognition applications to 16 hours for an annual site visit.

Estimated Total Burden Hours: 1,458.

Estimated Cost (Operation and Maintain): $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 in the Federal eRulemaking Portal at *http://www.regulations.gov* under Docket Number OSHA–2010–0007; (2) by facsimile (fax); or (3) by hard copy. For further information on submitting comments by facsimile or in hard copy, please see the section of this notice entitled **ADDRESSES** above. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2010–0007). 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 date 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 through 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 through 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, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to Section 8(g)(2) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 657(g)(2)), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7. Signed at Washington, DC, on September 26, 2013.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2013–23946 Filed 10–1–13; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2012–0015]

Kiewit Power Constructors Co. et al. (Avalotis Corp., Bowen Engineering Corporation, Commonwealth Dynamics, Inc., Gibraltar Chimney International, LLC, Hamon Custodis, Inc., Hoffmann, Inc., International Chimney Corporation, Karrena International Chimney, Matrix SME, Inc., NAES Power Contractors, Pullman Power, LLC, R and P Industrial Chimney Co., Inc., T. E. Ibberson Company, TIC—The Industrial Company); Grant of a Permanent Variance

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of grant of a permanent variance.

SUMMARY: This notice announces the grant of a permanent variance to Avalotis Corp., Bowen Engineering Corporation, Commonwealth Dynamics, Inc., Gibraltar Chimney International, LLC, Hamon Custodis, Inc., Hoffmann, Inc., International Chimney Corporation, Karrena International Chimney, Kiewit Power Constructors Co., Matrix SME, Inc., NAES Power Contractors, Pullman Power, LLC, R and P Industrial Chimney Co., Inc., T. E. Ibberson Company, TIC—The Industrial Company (''the employers''). From 1973 to the present, the Occupational Safety and Health Administration (OSHA or the Agency) granted permanent variances to a number of chimney-construction companies from the provisions of the OSHA standards that regulate boatswain's chairs and hoist towers, specifically paragraph (o)(3) of 29 CFR 1926.452 and paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552. These variances use temporary personnel hoist systems to transport workers to and from worksites in a personnel cage while constructing chimneys of various configurations using jump-form construction techniques and procedures. The Agency received applications from 15 employers for a variance addressing chimney and chimney-related construction that, like the previous variances, propose to use temporary personnel hoist systems to transport workers to and from worksites in a personnel cage. These variance applications, however, included conditions that address construction of chimneys and chimney-related structures using temporary hoist systems and procedures in association with two different methods of construction (i.e., jump-form and slip-form construction), regardless of the structures' configurations (i.e., tapered or straight-barreled of any diameter). OSHA consolidated these variance applications into a single application and published the application and request for comments in the **Federal Register** on March 21, 2013 (78 FR 17432).

After considering the record as a whole, OSHA finds that these alternative conditions protect workers at least as well as the requirements specified by 29 CFR 1926.452(o)(3) and 29 CFR 1926.552(c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16). This permanent variance applies in Federal OSHA enforcement jurisdictions and in those states and territories with OSHA-approved State-Plans covering private-sector employers that have identical standards and agree to the terms of the variance.

DATES: The permanent variance is effective on October 2, 2013.

FOR FURTHER INFORMATION CONTACT:

General information and press inquiries. For general information and press inquiries about this notice, contact 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.

Technical information. For technical information about this notice, contact Stefan Weisz, Office of Technical Programs and Coordination Activities, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3655, Washington, DC 20210; telephone: (202) 693–2110; fax: (202) 693–1644.

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.*

SUPPLEMENTARY INFORMATION:

I. Background

Fifteen companies (or applicants) submitted applications for a permanent variance under Section 6(d) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655) and 29 CFR 1905.11 (''Variances and other relief under section 6(d)'') (see Document ID Nos. OSHA–2012–0015–0002 to –0019 [1]). The applicants construct, renovate, repair, maintain, inspect, and demolish tall chimneys and similar structures made of concrete, brick, and steel. This work, which occurs throughout the United States, requires the applicants to transport employees and construction tools and materials to and from elevated worksites located inside and outside these structures. The following list provides specific information about each applicant, including the company name and location:

Avalotis Corp; 400 Jones Street, Verona, PA 15147

Bowen Engineering Corporation (merged with Mid-Atlantic Boiler & Chimney, Inc., (formerly Alberici Mid-Atlantic, LLC)), 8802 N. Meridian St.Indianapolis, IN 46260

Commonwealth Dynamics, Inc., 95 Court Street, Portsmouth, NH 03801,

Gibraltar Chimney International, LLC, 92 Cooper Ave. Tonawanda, NY 14150

[1] In Docket No. OSHA–2012–0015 for this variance application.

Hamon Custodis, Inc. (formerly Custodis Construction Co., Inc., then Custodis Cuttrell, Inc.), 58 East Main Street, Somerville, NJ 08876
Hoffmann, Inc., 6001 49th Street South, Muscatine, IA 52761
International Chimney Corporation, 55 South Long Street, Williamsville, NY 14221
Karrena International Chimney, 57 South Long Street, Williamsville, NY 14221
Kiewit Power Constructors Co., 9401 Renner Blvd., Lenexa, KS 66219
Matrix SME, Inc. (formerly Matrix Service Industrial Contractors, Inc.), 1510 Chester Pike, Suite 500, Eddystone, PA 19022
NAES Power Contractors (formerly American Boiler and Chimney Company), 167 Anderson Rd., Cranberry Township, PA 16066
Pullman Power, LLC (formerly M. W. Kellogg Co., then Pullman Power Products Corporation), 6501 E. Commerce Avenue, Suite 200, Kansas City, MO 64120
R and P Industrial Chimney Co., Inc., 244 Industrial Parkway, Nicholasville, KY 40356
T. E. Ibberson Company, 828 5th St. South, Hopkins, MN 55343
TIC—The Industrial Company, 9780 Mt. Pyramid Ct., Suite 100, Englewood, CO 80112

The applicants seek a permanent variance from paragraphs (o)(3) of 29 CFR 1926.452, which regulates the tackle used to rig a boatswain's chair, as well as (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552 that regulate hoist towers. These paragraphs specify the following requirements:

- (o)(3)—Requirements for the tackle used to rig a boatswain's chair;
- (c)(1)—Construction requirements for hoist towers outside a structure;
- (c)(2)—Construction requirements for hoist towers inside a structure;
- (c)(3)—Anchoring a hoist tower to a structure;
- (c)(4)—Hoistway doors or gates;
- (c)(8)—Electrically interlocking entrance doors or gates to the hoistway and cars;
- (c)(13)—Emergency stop switch located in the car;
- (c)(14)(i)—Using a minimum of two wire ropes for drum hoisting; and
- (c)(16)—Material and component requirements for construction of personnel hoists.

The applicants contend that the permanent variance would provide their employees with a place of employment that is at least as safe and healthful as they would receive under the existing provisions.

The places of employment affected by this variance application are the present and future projects where the applicants construct chimneys and chimney-related structures using jump-form and slip-form construction [2] techniques and procedures, regardless of structural configuration when such construction involves the use of temporary personnel hoist systems. These projects would be in states under federal authority, as well as State-Plan states that have safety and health plans approved by OSHA under Section 18 of the Occupational Safety and Health (OSH) Act (29 U.S.C. 667) and 29 CFR part 1952 (''Approved State Plans for Enforcement of State Standards''), and that have plans covering private-sector employers and standards identical to the standards that are the subject of this variance, and that agree to the terms of the variance.

The permanent variance permits the employers to operate temporary hoist systems to raise and lower workers to and from elevated worksites on chimneys, chimney linings, stacks, silos, and chimney-related structures such as towers and similar structures constructed using jump-form and slip-form construction techniques and procedures regardless of structural configuration of the structure (such as tapered or straight barreled of any diameter). This variance also provides consistent conditions across the employers named in this application. OSHA published the employers' variance applications and request for comments in the **Federal Register** on March 21, 2013 (78 FR 17432).

II. Multi-State Variance

The applicants state that they perform chimney and other related construction work in a number of states and territories that operate OSHA-approved safety and health programs under Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*). State Plans and territories have primary enforcement responsibility over the work performed in those states and territories. 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 granted by the Agency becomes effective in State-Plans and territories as an authoritative interpretation of the applicants' compliance obligation when: (1) The relevant standards are the same as the Federal OSHA standards from which the applicants are seeking the permanent variance; and (2) the State-Plan or territory does not object to the terms of the variance application.

OSHA received one comment on the variance application from the state of Michigan (see Document ID No. OSHA–2012–0015–0022). OSHA continues to assume that, absent additional comments received to the contrary, the state's position regarding grant of this permanent variance is the same as its position regarding grant of prior variances involving chimney construction.

As noted above and in section IV of this notice (''Comments on Proposed Variance Application''), OSHA received just one comment on the variance application published in the **Federal Register** (78 FR 17432) from any state State-Plan or territory. However, several State Plans and territories commented on earlier variance applications published in the **Federal Register** involving the same standards and submitted by other employers engaged in chimney construction and repair; OSHA is relying on these previous comments to determine the position of these State Plans and territories on the variance applications submitted by the present employers. The remaining paragraphs in this section provide a summary of the positions taken by the State Plans and territories on the proposed alternative conditions.

Twenty-seven states and territories have OSHA-approved safety and health programs.[3] In this regard, 17 State Plans and 1 territory have standards identical to the Federal OSHA standards: Alaska, Arizona, Hawaii, Indiana, Iowa, Kentucky, Maryland, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Vermont, Virginia, and Wyoming. However, Hawaii and Iowa previously declined to accept the terms of variances for chimney-related construction work granted previously by Federal OSHA. Kentucky stated that its statutory law requires affected employers to apply to the state for a state variance. South Carolina noted that, for the South Carolina Commissioner of Labor to accept a Federal OSHA grant of a variance,

[2] Throughout this notice, OSHA uses the terms ''jump-form construction'' and ''slip-form construction'' instead of ''jump-form formwork construction'' and ''slip-form formwork construction,'' respectively.

[3] Four State-Plan states (Connecticut, Illinois, New Jersey, and New York) and one territory (Virgin Islands) limit their occupational safety and health authority to public-sector employers only. State-Plan states and territories that exercise their occupational safety and health authority over 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.

employers must file the grant at the Commissioner's office in Columbia, South Carolina. Employers must comply with any special variance procedures required by these states prior to initiating chimney-related construction work addressing the conditions specified by this variance. The permanent Federal OSHA variance will be effective in the following thirteen State-Plan States and one Territory: Alaska, Arizona, Indiana, Maryland, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, Tennessee, Virginia, Vermont, and Wyoming.

Four states (California, Michigan, Utah, and Washington) have different requirements for chimney-related construction work than Federal OSHA standards. In its comments (Document ID No. OSHA–2012–0015–0022), Michigan noted that its standards are not identical to the OSHA standards, and those employers electing to use a variance in that state must comply with several provisions in the Michigan standards not addressed in the OSHA standards. Additionally, Michigan stated that employers who operate under the OSHA variance in Michigan also must obtain a Michigan Occupational Safety and Health Administration variance (see Michigan Rules 1065(a)(1), 1065(a)(2), and 1072(a)(15)).

In comments on earlier variance applications, Utah also imposed specific additional requirements in the past when Federal OSHA granted similar variances for chimney-related construction work.[4] California and Washington declined to accept the terms of variances for chimney-related construction work granted by Federal OSHA in the past.[5] Employers, therefore, must apply separately to these states for a variance from construction work on structures covered by this variance.

The remaining State Plans and territories with OSHA-approved state plans (Connecticut, Illinois, New Jersey, New York, and the 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).

[4] See 68 FR 52961 (Oak Park Chimney Corp. and American Boiler & Chimney Co.)

[5] See 70 FR 72659 (International Chimney Corporation, Karrena International, LLC, and Matrix Service Industrial Contractors, Inc.), 71 FR 10557 (Commonwealth Dynamics, Inc., Mid-Atlantic Boiler & Chimney, Inc., and R and P Industrial Chimney Co., Inc.), and 75 FR 22424 (Avalotis Corp.).

III. Supplementary Information

A. Previous Chimney-Construction Variances

From 1973 to the present, the Agency granted permanent variances to a number of chimney-construction companies from the provisions of the OSHA standards that regulate boatswains' chairs, personnel platforms, and hoist towers, specifically, paragraph (o)(3) of 29 CFR 1926.452 and paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552.[6] The National Stack and Chimney Safety and Health Advisory Committee reports [7] that four of its member companies (i.e., Pullman Power, Hamon Custodis, International Chimney Corp, and Commonwealth Constructors) using temporary personnel hoist systems in accordance with the conditions of the present permanent variances for chimney-related construction work had no recordable injuries or fatalities (as reported on the OSHA 300 Forms [8]) over the past seven years.

OSHA generally based the alternative conditions in the variances granted by this notice on the alternative conditions included in previous variances. However, several of the previous variances (for example, 38 FR 8545 granted April 3, 1973, and 71 FR 10557 granted March 1, 2006) included conditions that did not limit the use of the variance to the construction of tapered chimneys, and did not specify any methods of construction. Conditions included in recently granted chimney-construction variances limited the scope of the variance to the construction of tapered chimneys using jump-form construction techniques and procedures. For example, this limitation applied to the Avalotis Corp. variance (75 FR 22424; April 28, 2010) used for comparison purposes in this variance.

The alternative conditions specified in the permanent variance granted by this notice apply to chimney-related construction, including work on chimneys, chimney linings, stacks, silos, towers, and similar structures, built using jump-form and slip-form construction methods of construction, regardless of the structural configuration, and that involve the use of temporary personnel hoist systems.

[6] See 38 FR 8545 (April 3, 1973), 44 FR 51352 (August 31, 1979), 50 FR 20145 (May 14, 1985), 50 FR 40627 (October 4, 1985), 52 FR 22552 (June 12, 1987), 68 FR 52961 (September 8, 2003), 70 FR 72659 (December 6, 2005), 71 FR 10557 (March 1, 2006), 72 FR 6002 (February 8, 2007), 74 FR 34789 (July 17, 2009), 74 FR 41742 (August 18, 2009), and 75 FR 22424 (April 28, 2010)).

[7] Private communication from Mr. John Huchko, Secretary of the National Stack and Chimney Safety and Health Advisory Committee, January 2, 2013.

[8] See 29 CFR part 1904, Recording and Reporting Occupational Injuries and Illnesses.

B. Kiewit Variance Application

On February 8, 2007, OSHA published a variance application submitted by Kiewit Power Constructors Co. (Kiewit; see 72 FR 6002). This publication included an interim order that permitted Kiewit to use a rope-guided hoist system to transport employees to elevated worksites when it complies with the conditions specified in the variance application. One of the conditions specified in the publication limited the application and interim order to tapered chimneys, which was the basis for previous variances granted by OSHA to other chimney-construction companies (see subsection A (Background) of this section for a discussion of previously granted chimney variances). Kiewit notified OSHA on February 23, 2007, that it required a permanent variance to perform work on small-diameter, straight-barreled chimneys built using conventional jump-form construction techniques and procedures and straight-barreled chimneys of any diameter built using slip-form construction techniques and procedures, as well as tapered chimneys constructed using jump-form construction techniques and procedures. Kiewit submitted a revised variance application addressing the conditions included in previously granted chimney-construction variances to OSHA on March 1, 2007 (superseded by Kiewit's variance application of November 16, 2012; see Exhibit No. OSHA–2012–0015–0011).

According to its March 1, 2007, variance application, Kiewit was seeking a variance from the provisions of OSHA standards that regulate boatswain's chairs and hoist towers for the construction of small-diameter, straight-barreled chimneys constructed using jump-form construction techniques and procedures, and chimneys of any diameter constructed using slip-form construction techniques and procedures. Regarding small-diameter, straight-barreled chimneys constructed using jump-form construction techniques and procedures, Kiewit contended that the extreme height and limited space inside these chimneys make it infeasible to attach a hoist tower to the interior walls of the chimneys during construction. In some cases, it also is infeasible to use a personnel cage in such small-diameter, straight-barreled chimneys. Under these conditions, Kiewit proposed to adopt alternative measures of complying with

the relevant boatswain's-chair and personnel-platform requirements.

With respect to straight-barreled chimneys constructed using slip-form construction techniques and procedures, Kiewit asserted that the unique techniques and procedures involved in slip-form construction make it difficult and unsafe to attach a hoist tower to both the interior and exterior walls of a chimney during construction. Slip-form construction is an alternative to using jump-form construction techniques and procedures to shape concrete structures, including chimney walls. When using slip-form techniques and procedures to construct chimney walls, Kiewit pours concrete into forms attached to a platform that moves slowly up either climbing rods imbedded in the previously poured concrete wall or a mast secured to the interior floor of the structure. Kiewit's employees operate the platform, pour the fresh concrete, inspect the formed concrete, and perform other tasks both inside and outside the chimney from a work deck on the platform, as well as from scaffolds hung from the platform. As a result of this progressive construction process, the concrete wall immediately below the platform for a distance of 20 to 30 feet is insufficiently cured to safely attach a hoist tower to the wall. Consequently, during slip-form construction, it is unsafe to attach a hoist tower either inside or outside the chimney wall for the purpose of transporting employees to elevated worksites, at least for the last 20 to 30 feet of elevation.

Kiewit proposed to use a rope-guided hoist system to raise and lower personnel-transport devices [9] when constructing chimneys using jump-form construction techniques and procedures. This system would consist of a hoist engine, located and controlled outside the chimney, to power the rope-guided hoist system. The system also would consist of a wire rope that: spools off the hoist drum into the interior of the chimney; passes to a footblock that redirects the rope from the horizontal to the vertical plane; goes from the footblock through the overhead sheaves above the elevated platform at the cathead; and finally drops to the bottom landing of the chimney where it connects to the personnel or material transport.[10] The cathead, which is a superstructure at the top of a derrick, supports the overhead sheaves. The overhead sheaves (and the vertical span of the hoist system) move upward with the derrick as chimney construction progresses. Two guide ropes, suspended from the cathead, eliminate swaying and rotation of the load (including a cage). If the hoist rope breaks, safety clamps activate and grip the guide ropes to prevent the load from falling. Kiewit would use a headache ball, located on the hoist rope directly above the load, to counterbalance the rope's weight between the cathead sheaves and the footblock.

Kiewit proposed to implement additional conditions to improve employee safety, including:

- Attaching the wire rope to the personnel cage using a keyed-screwpin shackle or positive-locking link;
- Adding limit switches to the hoist system to prevent overtravel by the personnel-transport or material-transport devices;
- Providing the safety factors and other precautions required for personnel hoists as specified by the pertinent provisions of 29 CFR 1926.552(c), including canopies and shields to protect employees located in a personnel cage from material that may fall during hoisting and other overhead activities;
- Providing falling-object protection for personnel platforms as specified by 29 CFR 1926.451(h)(1);
- Conducting tests and inspections of the hoist system as required by 29 CFR 1926.20(b)(2) and 1926.552(c)(15);
- Establishing an accident-prevention program that conforms to 29 CFR 1926.20(b)(3);
- Ensuring that employees who use a personnel platform or boatswain's chair wear full-body harnesses and lanyards, and that they attach the lanyards to independent lifelines during the entire period of vertical transit; and
- Securing the lifelines (used with a personnel platform or boatswain's chair) to the rigging at the top of the chimney and to a weight at the bottom of the chimney to provide maximum stability to the lifelines.

Paragraph (c) of 29 CFR 1926.552 specifies the requirements for enclosed hoist systems used to transport personnel from one elevation to another. This paragraph ensures that employers transport employees safely to and from elevated work platforms by mechanical means during the construction, alteration, repair, maintenance, or demolition of structures such as chimneys. However, this paragraph does not provide specific safety requirements for hoisting personnel to and from elevated work platforms and scaffolds used in straight-barreled chimneys constructed using jump-form or slip-form construction techniques and procedures, which require frequent relocation of, and adjustment to, work platforms and scaffolds. Kiewit contended in its variance application that the great height and limited space of small-diameter, straight-barreled chimneys built using jump-form construction techniques and procedures make it infeasible to attach a hoist tower to the interior walls of these chimneys during construction. With respect to chimneys constructed using slip-form techniques and procedures, Kiewit asserted that, because of the progressive process involved in constructing these chimneys, the concrete wall immediately below the work platform for a distance of 20 to 30 feet is insufficiently cured to safely attach a hoist tower. Consequently, Kiewit cannot attach a hoist tower securely to either the inside or outside of the chimney wall for the purpose of transporting employees to the work platform, at least for the last 20 to 30 feet of elevation.

Paragraph (c)(1) of 29 CFR 1926.552 requires employers to enclose hoist towers on the side or sides used for entrance to, and exit from, the chimney; these enclosures must extend the full height of the hoist tower. Paragraph (c)(2) specifies that employers must enclose all four sides of a hoist tower. This enclosure also must extend the full height of the tower. Again, Kiewit argued that these paragraphs are inapplicable because constructing hoist towers inside small-diameter, straight-barreled chimneys is infeasible, while attaching hoist towers to either the inside or outside walls of chimneys constructed using slip-form techniques and procedures is impossible, at least for the last 20 or 30 feet of elevation.

As an alternative to complying with the hoist-tower requirements of 29 CFR 1926.552(c)(1) and (c)(2), Kiewit proposed to use the rope-guided hoist system described previously in this preamble to transport its employees to and from elevated work platforms and scaffolds. Use of this hoist system would eliminate the need for Kiewit to comply with other provisions of 29 CFR 1926.552(c) that specify requirements for hoist towers. Therefore, Kiewit requested a permanent variance from these other provisions, as follows:

- (c)(3)—Anchoring the hoist tower to a structure;
- (c)(4)—Hoistway doors or gates;

[9] Throughout this document, ''rope'' refers only to wire rope.

[10] While Kiewit proposed to use temporary personnel hoist systems solely to transport employees with the tools and materials necessary to do their work (i.e., Kiewit would not use these systems to transport only materials or tools in the absence of employees), it would attach a hopper or concrete bucket to the empty cage to raise or lower material to the worksite.

• (c)(8)—Electrically interlocking entrance doors or gates that prevent hoist movement when the doors or gates are open;

• (c)(13)—Emergency stop switch located in the car;

• (c)(14)(i)—Using a minimum of two wire ropes for drum-type hoisting; and

• (c)(16)—Construction specifications for personnel hoists, including materials, assembly, structural integrity, and safety devices.

C. The Current Variance Application

The conditions in the current variance differ from the conditions included in the most recent permanent variance granted by OSHA for chimney construction, which was to Avalotis Corp. (75 FR 22424). The following table provides a brief summary of the differences between the conditions in the Avalotis variance and the conditions described in the current variance.

Conditions in the Avalotis variance	Conditions in the current variance application	Differences in conditions
1. Scope of the Permanent Variance	1. Scope	Broadens the scope to include work on chimneys and chimney-related structures built using jump-form and slip-form construction techniques and procedures, regardless of structural configuration; does not limit the scope to tapered chimneys, built using jump-form construction techniques and procedures, which was the limitation imposed by the Avalotis variance.
2. Replacing a Personnel Cage With a Personnel Platform or a Boatswain's Chair.	2. Application	New condition; addresses the application of the variance, and specifies a number of best practices and other requirements employers must meet for the variance to apply. Also provides the option of replacing a personnel cage with a personnel platform or a boatswain's chair for the construction of tapered chimneys only.
3. Definitions	3. Definitions	New condition; defines 29 key terms, usually technical terms, used in the variance to standardize and clarify the meaning of these terms.
4. Qualified Competent Person	4. Qualified Person and Competent Person.	Corrects the inadvertent use of the combined term ''qualified competent person'' used in the Avalotis variance and distinguishes between the terms ''qualified person'' and ''competent person.''
5. Hoist Machine	5. Hoist Machine	Updates the requirements for the design and use of hoist machines based on guidance provided by ANSI A10.22–2007.
6. Methods of Operation	6. Methods of Operation	Expands and clarifies the training requirements for both the operators of the hoist machine and the employees who ride in the cage. The condition adopts several provisions of ANSI A10.22–2007.
7. Hoist Rope	7. Hoist Rope	Revises the safety factor used for the hoist rope and updates the requirements for rope lay based on guidance provided by ANSI A10.22–2007.
8. Footblock	8. Footblock	Revises the safety factor for rated workloads and updates the requirements for the design and use of footblocks based on guidance provided by ANSI A10.22–2007.
9. Cathead and Sheave	9. Cathead and Sheaves	Revises the requirements for the design and use of catheads and sheaves based on guidance provided by ANSI A10.22–2007.
10. Guide Ropes	10. Guide Ropes	Revises the requirements for the design and use of guide ropes based on guidance provided by ANSI A10.22–2007.
11. Personnel Cage	11. Personnel Cage	Revises the requirements for the design and use of personnel cages based on guidance provided by ANSI A10.22–2007.
12. Safety Clamps	12. Safety Clamps	Minor revisions and clarification of terms.
13. Overhead Protection	13. Overhead Protection	Contains a new requirement, in performance-based language, providing overhead protection for workers accessing the bottom landing.
14. Emergency-Escape Device	14. Emergency-Escape Device	Minor revisions and clarification of terms.
15. Personnel Platforms	15. Personnel Platforms and Boatswain's Chairs.	Contains new provisions for the use of a personnel platform or a boatswain's chair by requiring compliance with the applicable portions of 29 CFR 1926.1431 and 1926.452(o)(3).
16. Protecting Workers From Fall and Shearing Hazards.	16. Protecting Workers from Fall and Shearing Hazards.	Minor revisions.
17. Exclusion Zone	17. Exclusion Zone	Specifies new requirements for establishing an exclusion zone.
18. Inspections, Tests, and Accident Prevention.	18. Inspections, Tests, and Accident Prevention.	Expands and describe the inspection, test, and accident-prevention requirements.
19. Welding	19. Welding	Adds definition for ''qualified'' welder.

Conditions in the Avalotis variance	Conditions in the current variance application	Differences in conditions
20. OSHA Notification	20. OSHA Notification	Revises the requirements for, and description of, employers' duty to notify OSHA of events and conditions associated with their hoisting operations.

The remainder of this section provides additional detail about the conditions in this permanent variance and distinguishes, as appropriate, between these conditions and the conditions in the Avalotis variance.[11]

1. Condition 1: Scope

Several important revisions occur in the first condition covering the scope of the variance. Condition 1(a) of the variance broadens the scope of the former variance to include work on chimneys and chimney-related structures constructed using jump-form and slip-form construction techniques and procedures regardless of a structure's configuration when the work involves using temporary personnel hoist systems. The permanent variance, therefore, does not limit the scope to structural configurations (such as small or large diameter, and tapered or straight-barreled, chimneys), which was the limitation imposed on the former variance, nor does it limit the scope to chimneys. OSHA believes that experience with the alternative conditions as specified in previous variances demonstrates that these conditions are safe. Therefore, employers can apply the conditions specified in the variance safely to structures that have a configuration similar to that of chimneys (i.e., ''chimney-related structures''), including silos, towers, and other circular structures, because the hazards associated with these structures (e.g., falls, impacts, falling objects) are the same as the hazards associated with chimneys. It is not the name of the structure, nor its diameter and structural configuration (i.e., straight-barreled or tapered), that determines whether it is within the scope of the variance; rather, it is the use of jump-form and slip-form construction techniques and procedures and the use of temporary personnel hoist systems.

Further, Condition 1(a) clarifies that the permanent variance applies to ''construction,'' which includes construction, renovation, repair, maintenance, inspection, and demolition of chimney-related structures. The variance does not apply to work that falls under OSHA's general industry standards at 29 CFR part 1910. The variance applies only to work that falls under OSHA's construction standards at 29 CFR part 1926. Various letters of interpretation and directives establish the factors that determine whether maintenance work falls under general industry or construction standards. Generally, work that replaces a structure or component with an identical structure or component is under the general industry standards, while construction standards cover work that improves a structure or component. Additionally, scale and complexity of the work are factors. Work involving repair, removal, or replacement of large structures (e.g., when replacing a steel beam in a building), or work involving complex steps, tools, or equipment (e.g., when replacing a section of limestone cladding on a building), is construction work. See OSHA's November 18, 2003, letter of interpretation to Raymond V. Knobbs (available at *http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=24789* for more information about how to determine if general industry or construction standards cover specific work. Some simple maintenance work on chimney-related structures may fall under general industry standards and, thus, be outside the scope of this variance.

Subparagraphs (1)(a)(i) and (1)(a)(ii) of Condition 1 expand on former Conditions 1(b)(i) and 1(b)(ii) by clarifying what material employers can hoist. These subparagraphs make clear that the ''temporary hoist systems'' may not transport construction materials concurrently with personnel. Condition 2(c) under ''Application'' further clarifies this hoisting requirement.

The permanent variance modifies former Condition 1(c), which addressed personnel platforms and boatswain's chairs, by introducing new Condition 2(g). The variance application did not include requirements for personnel platforms and boatswain's chairs because employers have alternate equipment (reflecting advances in technology) available to accomplish tasks that previously required personnel platforms or boatswain's chairs raised and lowered by a hoist system. However, Condition 2(g) provides the option of replacing a personnel cage with a personnel platform or a boatswain's chair when the employer can demonstrate that available space makes it infeasible to use a personnel cage for transporting employees. OSHA would still enforce the provisions in §§ 1926.452(o) and .1431(s), and other applicable standards, when employers use personnel platforms and boatswain's chairs on chimneys that have space available to accommodate the use of a personnel cage.

Condition 2(d) leaves intact the remainder of former Condition 1(c). Except for the requirements specified for hoist towers by 29 CFR 1926.552(c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16), the current and former conditions require employers to comply fully with the applicable provisions of 29 CFR parts 1910 and 1926.

Additionally, OSHA modified the Scope section further in response to comments provided by the National Stack and Chimney Safety and Health Advisory Committee (NSCSHAC). (See Section IV of this notice (''Comments on Proposed Variance Application'') for a discussion of the modifications included in the variance.)

2. Condition 2: Application

Condition 2 addresses the application of the permanent variance, and specifies a number of best practices and other requirements employers must meet for the variance to apply. For example, Condition 2(a) states a general applicability requirement:

> The employer must use a hoist system equipped with a dedicated personnel-transport device (i.e., a personnel cage) as specified by this variance to raise or lower its workers and/or other construction-related tools, equipment, and supplies between the bottom landing of a chimney-related structure and an elevated work location while performing construction inside and outside the structure.

Condition 2(b) ensures the proper design and operation of the hoist system, while Condition 2(c) regulates the transportation of materials and proper use of material-transport devices so as to ensure employee safety.

As noted above in the discussion of Condition 1, Condition 2(d) leaves intact the remainder of former

[11] The discussion below will refer to the Avalotis variance and its conditions using the terms ''former'' and ''formerly.''

Condition 1(c), which states that the variance conditions cover only specific requirements for hoist towers, and that employers must comply with all other applicable requirements of 29 CFR parts 1910 and 1926. If an employer is not complying with a condition specified by the variance, the Agency will implement the citation policy described in OSHA's Field Operations Manual (Directive Number: CPL 02–00–150), Chapter 3, Inspection Procedures (Section I: Variances). The citation policy states:

> 1. *No Citation Issued.* An employer granted a variance will not be subject to citation if the observed condition is in compliance with an existing variance issued to that employer.
>
> 2. *Citations.* In the event that an employer is not in compliance with the requirement(s) of the issued variance, a violation of the applicable standard shall be cited with a reference in the citation to the variance provision that has not been met.

Regarding the second provision of this policy (i.e., ''Citations''), if OSHA finds that an employer is not complying with a variance condition, and the variance condition is not based directly on one of the hoist-tower standards from which OSHA granted the variance (e.g., the condition is based on a consensus standard or best-work practice not specified by an OSHA standard), OSHA will cite the non-compliance as a violation only of the variance provision. Under no circumstances will OSHA cite non-compliance with a variance condition as a violation of both an applicable standard and the variance condition.

Condition 2(e), not found in the former variance, allows the employer flexibility in the event compliance with a variance condition is infeasible.[12] In such a case, the employer may use an alternative means of compliance that provides equivalent or improved protection to workers. The employer must demonstrate that compliance with the variance conditions is infeasible and that the alternative means of compliance is as equivalent to the protection afforded by the variance condition.

Condition 2(f), the final provision under ''Application,'' ensures that workers can understand the required communications. This condition requires that employers communicate with workers in a language the workers understand; communications includes any training and signs required by the variance. OSHA considers this condition, not found in the former variance, important to employee safety and health in that it is critical that employees understand the hazards associated with personnel hoisting operations, and the means the employer is using to protect them from these hazards.

The permanent variance modified Condition 2 of the former variance, entitled ''2. Replacing a Personnel Cage with a Personnel Platform or a Boatswain's Chair.'' Accordingly, Condition 2(g) permits employers to use personnel platforms and boatswain's chairs when using jump-form and slip-form construction techniques and procedures (regardless of the structure's configuration) to construct chimneys and chimney-related structures, but only under specific, limited conditions. Employers may use personnel platforms and boatswain's chairs only when they demonstrate that it is infeasible to use personnel cages because of space limitations. Under these circumstances, employers must use personnel platforms unless space limitations necessitate use of boatswain's chairs. When replacing a personnel cage with a personnel platform or boatswain's chair, employers must follow the requirements of 29 CFR 1926.1431(b) through .1431(s), and 1926.452 (o)(3), respectively.

Additionally, OSHA modified the Application section further in response to comments provided by NSCSHAC. (See Section IV of this notice (''Comments on Proposed Variance Application'') for a discussion of the modifications included in the variance.)

3. Condition 3: Definitions

Condition 3 defines 29 key terms, usually technical terms, used in the permanent variance to standardize and clarify the meaning of these terms. This condition was not part of the former variance, but OSHA believes that defining these terms will enhance employer and employee understanding of, and subsequent compliance with, the variance conditions, thereby ensuring that employees receive the requisite level of protection afforded to them by the variance.

4. Condition 4: Qualified Person and Competent Person

Condition 4 addresses the requirements of a qualified person and a competent person. In the former variance, OSHA inadvertently combined these terms into ''qualified competent person.'' The terms ''qualified person'' and ''competent person'' have separate definitions in OSHA's construction standards, and this condition uses these terms consistent with their meaning in the construction standards. Although an employee or contract worker can be both a qualified person and competent person, they usually are not. Indeed, § 1926.32(f) defines ''competent person'' as ''one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.'' In contrast, § 1926.32(m) defines ''qualified person'' as ''one who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated his ability to solve or resolve problems relating to the subject matter, the work, or the project.'' The provisions of Condition 4 distinguish the two terms. Unlike former Condition 3(a)(i), this condition allows for the use of more than one competent and/or qualified person to perform the various tasks. This condition would enable employers to distribute the workload evenly among available personnel and not rely on having available a single individual with expertise in the various tasks.

Condition 4(a)(ii) emphasizes that, operationally, a competent person (not a ''qualified competent person'' as in former Condition 3(a)(ii)) must be present. Condition 4(b) requires that a qualified person (not a ''qualified competent person'' as in former Condition 3(b)) must design and maintain the cathead. Finally, Condition 4(c) specifies that the employer must train the competent and qualified persons in the applicable variance provisions. This condition, which is not in the former variance, will ensure that competent persons and qualified persons assigned responsibilities under the variance have the knowledge necessary to perform their tasks effectively under the conditions specified by the variance.

5. Condition 5: Hoist Machine

Condition 5 (formerly Condition 4) addresses the requirements of a hoist machine. Condition 5(a)(i) removes the distinction of ''a portable personnel hoist'' and, instead, designates the hoist machine as a hoist system. Moreover, Condition 5(a)(ii) adds language to ensure the proper use and maintenance of the hoist machine.

Conditions 5(b) through 5(e), which address raising or lowering a transport, power source, constant-pressure control switch, and line-speed indicator remain as before, with the exception of the former Condition 4(d)(ii) (Constant-pressure control switch), which is

[12] See OSHA's Field Operations Manuel (FOM) Chapter VIII.E, available at *http://www.osha.gov/OshDoc/Directive_pdf/CPL_02-00-150.pdf.*

substantively addressed in Condition 5(s), Overhead Protection. Note: Employers should consider adopting as a best practice ANSI's A10.22–2007 (at 4.2(2)), which specifies that employers are not to use chains, as well as belts, as drive components between the power source and the winding drum.

Condition 5(f), Overspeed, is a new condition adapted from ANSI A10.22. It will alert the hoist operator in the event the personnel cage travels at excess speed, thereby preventing speed-related accidents and associated worker injury. The text of Condition 5(g), Braking systems, remains the same as the text of former Condition 4(f). Note that ANSI A10.22–2007 (at Section 4.6) provides additional guidelines for braking systems that employers should consider following.

Condition 5(h), Slack-rope protection (formerly Condition 4(g), Slack-rope switch), differs somewhat from the former condition by requiring hoist design features that will prevent a slack-rope condition. The condition will limit stress on the rope caused by snaps, thereby preventing premature rope failure.

Condition 5(i), Frame, formerly Condition 4(h), varies slightly from the former condition by ensuring that the frame of the hoist machine meets design specifications, thereby improving hoist machine safety. Condition 5(j), Stability, formerly Condition 4(i), also is a slight redraft of the former condition. The condition requires employers to secure hoist machines in accordance with design specifications, which will ensure the stability of the hoist machine during operation.

Condition 5(k), Location, formerly Condition 4(j), is a slight variation of the former condition in that it adds the term ''winding'' for clarification. The footnote in the condition defining the term ''fleet angle'' duplicates a footnote in the former condition.

Condition 5(l), Drum and flange diameter, formerly Condition 4(k), remains the same as the former condition, while Condition 5(m), Spooling of the rope, formerly Condition 4(l), differs somewhat from the former condition by allowing employers to store the rope on the drum closer than two inches from the flange when the hoist machine is not in use. The two-inch gap is necessary when the hoist is in operation to prevent the rope from leaving the drum, causing hoisting accidents. However, employers may store the rope closer than two inches from the flange when transporting or storing the drum, which OSHA believes does not endanger employees.

Condition 5(n) is a new condition that requires employers to secure the rope firmly to the drum. This condition prevents inadvertent unwinding of the rope in the event an operator lowers the hoist load beyond its lowest point of travel by requiring employers to secure the hoist end of the rope mechanically to the hoist drum.

Condition 5(o), Electrical system, formerly Condition 4(m), retains the text of the former condition, which reduces the risk of electric shock. Condition 5(p), Grounding, is a new condition adopted from ANSI A10.22. The condition also will reduce the risk of electric shock.

Condition 5(q), Limit switches, formerly Condition 4(n), revised the former condition by differentiating personnel hoisting from material hoisting.

A new condition, Condition 5(r), ensures proper guarding of the hoist machine. A note added to the condition clarifies that when employers limit access to the hoist drum to only authorized personnel (usually the hoist operator), OSHA will consider the drum as guarded under this condition. This new condition will prevent inadvertent operation of the hoist machine, which could endanger employees involved in the hoisting operations.

As indicated above under the discussion of Conditions 5(b) through 5(e), Condition 5(s), Overhead protection, is an adaptation of former Condition 4(d)(ii). The condition will protect the hoist operator and the hoist machine from falling or moving objects.

6. Condition 6: Methods of Operation

Condition 6 (formerly Condition 5), addresses methods of operation. This condition expands and clarifies the training requirements for both the operators of the hoist machine and the employees who ride in the cage. The condition adopts several provisions of ANSI A10.22–2007.

Condition 6(a)(i) requires employers to ensure that hoist operators and their supervisors receive effective training in the safe operation of hoist machines, and document the training. Conditions 6(a)(ii) and 6(a)(iii) require that only trained and authorized workers operate the hoist; address the timing of the documented training for each worker who uses the cage for transportation; and specify the frequency of all required training. Conditions 6(a)(i), (ii), and (iii), based on former Conditions 5(a)(i) and 5(a)(ii), will ensure the safe use of the hoist machine and cage.

Condition 6(b) is a new condition that requires employers to use a job-hazard analyses (JHA) to provide enhanced jobsite safety by identifying safety hazards at the worksite not covered explicitly by the current conditions. OSHA publication 3071, entitled ''Job Hazard Analysis'' defines JHA as follows:

> A job hazard analysis is a technique that focuses on job tasks as a way to identify hazards before they occur. It focuses on the relationship between the worker, the task, the tools, and the work environment. Ideally, after uncontrolled hazards are identified, steps will be taken to eliminate or reduce them to an acceptable risk-level.

Condition 6(b) requires that employers conduct one or more JHAs for the operation of the temporary personnel hoist system. The condition also requires employers to review these analyses with the workers exposed to any identified hazards.

Condition 6(c), Speed limitations, formerly Condition 5(b), differs from the former condition in that it revises hoist speed requirements. To prevent overtravel accidents, Condition 6(c)(i) adds a requirement to slow the hoist speed at extremes of hoist travel, as well as an overspeed allowance from ANSI A10.22–2007. A note in this condition contains the requirement from former Condition 5(b)(iii) that specifies limits on hoist speed when hoisting material only, again to prevent accidents related to overtravel. Condition 6(c)(ii) retains the speed limitation in former Condition 5(b)(ii) of 100 feet per minute for personnel platforms and boatswain's chairs when used to transport workers. The slower speed for these devices (compared to personnel cages) is necessary because of the impact and shearing hazards present when workers are using these devices (see discussion below for Condition 16).

Condition 6(d), Communication, redrafted former Condition 5(c) to clarify the requirement for communication equipment by replacing the term ''voice-mediated intercommunication system'' with the term ''electronic voice-communication system (such as two-way radio)'' to allow employers flexibility in selecting this type of equipment. In addition, as with the former condition, the current condition requires that employers maintain at all times communication between the hoist operator and the workers located in a moving personnel cage. OSHA notes that a ''failure of communication'' requiring employers to stop hoisting as specified by Condition 6(d)(ii) includes lack of clarity in communication, as well as equipment failure. Accordingly, the condition requires clear and unambiguous communication at all times, thereby ensuring continuous employee

protection in the event of procedural or equipment failures.

7. Condition 7: Hoist Rope

Condition 7 (formerly 6), addresses the hoist rope. Although Conditions 7(a) and (c) remain the same as former Conditions 6(a) and (c), revisions to the remaining conditions focus on making the requirements consistent with other OSHA standards (e.g., 1926.552(c)(14)(iii)), and adopting updated safety requirements specified by ANSI A10.22–2007. For example, Condition 7(b), Safety factor, increases the safety factor of the rope from 8 to 8.9 times the total suspended load as opposed to a ''safe workload'' as specified by former Condition 6(b). To clarify the load calculation, the current conditions added the parenthetical phrase, ''(including the weight of the suspended rope).'' New condition 7(d), adopted from the ANSI standard, addresses rope lay; this new condition will prevent rope rotation and kinking, thereby reducing stress on the rope and ensuring smooth hoisting operations. Except for minor editorial revisions, the text of Condition 7(e), Inspection, removal, and replacement of hoist ropes, remains the same as the text of former Condition 6(d); this provision will prevent the employer from using hoist ropes that could fail during hoisting operations.

Revisions made to former Condition 6(e) by Condition 7(f), Attachments, provide alternative requirements similar to the requirements in ANSI A10.22–2007. OSHA believes these alternatives will provide safer means of positively connecting and securing the hoist rope to the personnel cage than provided by the former condition, thus preventing accidents involving connection failure.

The text of provisions (i) through (iv) of Condition 7(g), Wire-rope fastenings, remains much the same as former Condition 6(f), with only minor editorial revisions. However, Condition 7(g) includes three new provisions, 7(g)(v) through 7(g)(vii), that specify how and when to tighten and retighten clip fastenings. These new provisions should compensate for decreases in rope diameter caused by repeated application of the load and, thus, serve to maintain proper torque on the rope and improve rope integrity. Additionally, the permanent variance added two new requirements: Condition 7(h), Rotation-resistant ropes and swivels, and Condition 7(i), Rope protection. These added conditions should increase worker safety by preventing rope damage and improving rope integrity. The conditions also are consistent with provisions in ANSI A10.22–2007, which requires barricading the hoisting rope between the hoisting machine and the footblock, thereby preventing the rope from making abrasive contact with the ground and providing falling-object protection when appropriate.

Since employers are free to exceed the requirements of the conditions (with respect to worker protection), employers may use extra-extra-improved plow steel as the rope grade. Note also that ANSI A10.22–2007 (at Section 6) provides additional guidelines for hoist rope that employers should consider following.

8. Condition 8: Footblock

Condition 8 (formerly Condition 7) addresses the footblock on hoist machines. Condition 8(a)(i) revised the safety factor found in the former condition from 4 to 5 times the applied workload ;[13] to be consistent with the safety factor of the cathead (see Condition 9). Provisions (a)(iii) and (iv) of Condition 8 vary from provisions of former Condition 7(a)(iii) and 7(a)(iv) to be more performance oriented and more consistent with alternatives presented in ANSI A10.22–2007. These revisions will ensure that the moving wire rope effectively and safely accommodates turning from the horizontal to vertical axes as required by the direction of rope travel. While Conditions 8(b) and 8(c) remain the same as former Conditions 7(b) and 7(c), the variance has a new condition, 8(d), that allows a properly mounted sheave as a footblock substitute, consistent with the ANSI standard and Condition 9, Cathead and Sheave. Allowing a sheave substitute also will serve to ensure that the moving wire rope effectively and safely accommodates turning from horizontal to vertical axes as required by the direction of rope travel.

9. Condition 9: Cathead and Sheaves

Condition 9 (formerly Condition 8) addresses catheads and sheaves. Condition 9(a) revises former Condition 8(a) to allow use of aluminum for the cathead because of its light weight, provided the employer complies with the cathead design drawings. Condition 9(b) remains the same as former Condition 8(b). OSHA believes that following the design drawings, along with the requirements specified by Condition 9(e) (see below), will assure the safety of the cathead. Provisions (c) and (d) of Condition 10 remain as in former Condition 9. However, Condition 9 also contains three new paragraphs, (e) through (g), based on the ANSI A10.22–2007 standard. Condition 9(e), Design basis, requires that the design of steel catheads conform to the American Institute of Steel Construction (AISC), and that aluminum catheads follow the Aluminum Association's design manual. Both types of catheads must have a safety factor of 5 for the maximum intended working load (equivalent to the total intended suspended load) for personnel and material hoisting. This provision will ensure the structural integrity and safety of the cathead up to workloads 5 times the maximum intended working load of the cathead.

Provision (f)(i) of Condition 9, Clearance, requires adequate clearance between the bottom of cathead and the cable attachment at the top of the hoist cage to eliminate the risk of contact between the cathead and the cage if operation of the upper limit switch stops the cage. The second provision of this paragraph (subparagraph (f)(ii)) specifies that the cage must travel without obstruction along the full length of the guide ropes. Both of these provisions will improve safety by reducing stress on the guide ropes that would occur should the cage come into contact with the cathead or other obstruction. Finally, Condition 9(g), Sheave substitute, allows a properly mounted construction block as a substitute for a sheave, which serves to ensure that the moving wire rope effectively and safely accommodates turning from the horizontal to vertical axes as required by the direction of rope travel; this condition also refers to Condition 8(d), which addresses sheave substitutes.

10. Condition 10: Guide Ropes

Condition 10 (formerly Condition 9) addresses guide ropes. This condition contains several revisions made for clarification and precision. For example, Condition 10(a) added the term ''securely'' before the phrase ''two guide ropes to the cathead'' and the phrase ''or to overhead supports designed for the purpose of accepting the guide ropes'' at the end of this provision. The term ''securely'' ensures that guide ropes remain affixed to the cathead or overhead support during hoisting operations, while the added phrase addressing overhead supports acknowledges that hoist machines often use overhead supports other than catheads to secure guide ropes. Also, Condition 10(a)(ii) references 29 CFR 1926.552(c)(17)(iv) to ensure that steel wire rope is free of damage or defects at all times. In addition, Condition 10(b) added the phrase ''During the hoisting of personnel'' to clarify when the

[13] The applied workload is equivalent to the total suspended load.

requirement applies to hoisting operations, while Condition 10(c) replaced the verb ''to rig'' with the verb ''to install'' to clarify the meaning of the term. Note that ANSI A10.22–2007 (at Section 9.2) provides additional guidelines for alignment tension that employers should consider following.

11. Condition 11: Personnel Cage

Condition 11 (formerly Condition 10) addresses personnel cages. There are several revisions to the former condition. Condition 11(a) removes the requirement that the cage be made of steel, relying on the performance-based language ''capable of supporting a load that is eight (8) times its rated load capacity.'' This revision will provide employers with flexibility with regard to the materials used to construct personnel cages, while ensuring worker safety. The provision also raises the safety factor from 4 to 8 to improve worker protection; this revision is consistent with ANSI A10.22–2007.

Former Conditions 10(a)(v) and 12(a) were inconsistent regarding the thickness of the roof of the personnel cage: Former Condition 10(a)(v) required that the roof be constructed of one-eighth (1/8) inch aluminum or equivalent material, while former Condition 12(a) specified that the roof be constructed of three-sixteenth (3/16) inch steel plate or equivalent material. Condition 11(a)(v) requires that the roof of the personnel cage be constructed of three-sixteenths (3/16) inch steel plate or equivalent material, the most protective of the required thicknesses. This provision also requires that the roof slope to the outside of the personnel cage to ensure that falling objects do not remain on the cage and add to the weight of the load.

The revision to Condition 11(a)(vi) clarifies that employers cannot use rails or hard protrusions when their presence creates an impact hazard. This clarification should increase worker safety by reducing impact hazards should workers lose their balance because of cage movement.

Condition 11(b) revised the former term ''overhead weight'' to the commonly used term ''overhaul weight'' for clarification. To improve worker safety, Condition 11(e) added a design requirement that the rated load capacity of the cage be at least 250 pounds for each occupant, or the actual weight if an occupant exceeds 250 pounds. With this added design requirement increasing the safety of the personnel cages, the second provision of this condition revised the former phrase ''Hoist no more than four (4) occupants at any one time'' to ''Hoist at any one time no more than the number of occupants for which the cage is designed'' to allow flexibility in the number of employees who can occupy a cage simultaneously during use.

Condition 11(f) clarifies the worker-notification requirement of former Condition 10(f). Accordingly, the condition added a new requirement in provision 11(f)(ii) to notify workers of the number of occupants the cage can accommodate, while provision 11(f)(iii) revised the former phrase ''The reduced rated load for the specific job'' to ''Any reduction in rated load capacity (in pounds) if applicable (due to change in conditions of the specific job).'' These revisions will serve as an additional check to prevent overloading the personnel cage.

Condition 11(g), Static drop tests, updated the reference to the ANSI A10.22 standard to the latest, 2007, edition. Also, to be consistent with this new edition, Condition 11(g)(ii) limited the former test criteria (i.e., the initial test criterion included in former Condition 10(g)(ii) of 125% of the maximum rated load of the personnel cage, and subsequent drop tests at no less than 100% of its maximum rated load) to the updated test criteria; these updated criteria require employers to use the rated load of the personnel cage during testing to avoid causing unnecessary damage to the cage.

Condition 11(h) is a new provision that prevents the cage from catching on the platform at the top landing or on intermediate platforms. OSHA believes this condition will decrease stress on the hoist rope and prevent impact injuries among employees who use the cage.

12. Condition 12: Safety Clamps

Condition 12 (formerly Condition 11) addresses safety clamps, with only a few revisions to the former condition. For clarity, Condition 12(a)(ii) revised the term ''when in use'' to ''when the cage is in motion.'' Condition 12(c) added the phrase ''The employer must ensure'' to former Condition 11(c) to place the burden of proving compliance on the employer. In addition, Condition 12(c)(i) updates the ANSI reference in former Condition 11(c)(i) to ANSI standard A10.22–2007.

13. Condition 13: Overhead Protection

The requirements of paragraphs (a) and (b) of former Condition 12, Overhead Protection, specified the requirements for constructing sloped roofs for personnel cages. Condition 11, Personnel Cage, now covers these requirements under subparagraph 11(a)(v). Therefore, Condition 13 contains a new requirement, in performance-based language, providing overhead protection for workers accessing the bottom landing. OSHA believes this provision will increase the safety of employees working around the bottom landing during hoist operations.

14. Condition 14: Emergency Escape Devices

Condition 14 (formerly Condition 13) continues to address emergency escape devices with minor revisions. Condition 14(a) in this variance adds the phrase ''For workers using a personnel cage'' as a preface to the provision to clarify the requirement. In addition, the training provision, Condition 14(c), references Condition 6(a)(iii), which addresses the timing of training (e.g., before initial use, and periodically thereafter).

15. Condition 15: Personnel Platforms and Boatswain's Chairs

Condition 15 replaces and updates former Condition 14 (Personnel Platforms) by addressing the hazards and required safeguarding methods associated with the use of personnel platforms and boatswain's chairs. Accordingly, when meeting the criteria specified in Condition 2(g), employers may use personnel platforms and boatswain's chairs only when they demonstrate that it is infeasible to use personnel cages because of space limitations in a chimney or a chimney-related structure. In these situations, employers must use personnel platforms unless space limitations require the use of boatswain's chairs. When replacing a personnel cage with a personnel platform or boatswain's chair, employers must follow the applicable requirements of 29 CFR 1926.1431(b) through .1431(s) and 1926.452(o)(3), respectively.

16. Condition 16: Protecting Workers From Fall and Shearing Hazards

Condition 2(g) of this variance provides the option of replacing a personnel cage with a personnel platform or a boatswain's chair when using jump-form or slip-form construction techniques and procedures to construct chimneys and chimney-related structures, but only when the employer demonstrates that it is infeasible because of space limitations to use a personnel cage to transport workers to and from elevated worksites. Condition 16 of this variance also continues to address shearing hazards (as did former Condition 15, Protecting Workers from Fall and Shearing Hazards) because these hazards are present when workers use personnel platforms and boatswain's chairs under

the limitations specified by Condition 2(g). This condition also redrafted the fall-hazard provisions of former Condition 15 to address fall hazards associated with both the hoist areas and the cage, with references to relevant requirements of 29 CFR part 1926. OSHA believes these revisions cover fall hazards more thoroughly than the former condition, thereby increasing worker protection from these hazards.

17. Condition 17: Exclusion Zone

Condition 17 (formerly Condition 16), which covers exclusion zones, made substantial revisions to the former condition. Accordingly, the condition specifies requirements for establishing an exclusion zone; these requirements were not part of the former condition. OSHA believes that these requirements will improve worker safety by ensuring that unauthorized persons do not enter the zone, thereby reducing their risk of injury from being struck by the hoisting equipment, falling objects, and the personnel cage.

Condition 17(d) is a new provision that clarifies when workers can enter the exclusion zone during operations involving a material-transport device. This provision will reduce worker exposure to the hazards associated with these operations, including impact and crushing hazards from the hoisting equipment and material-transport device.

18. Condition 18: Inspections, Tests, and Accident Prevention

Paragraphs (a) and (b) of Condition 18 expand the inspection, test, and accident-prevention requirements of former Condition 17 by specifying that employers: (1) Conduct frequent and regular (at least weekly) inspections of the hoist system and the area around the hoist system; (2) inspect the hoist system prior to reuse following periods of idleness lasting more than one week; and (3) remove hoisting equipment from service when a competent person determines that the equipment is unsafe. These revisions will ensure that hoist systems are safe for worker use. Paragraph (c) adds a requirement that employers document tests, inspections, and corrective actions. This requirement will provide employers with information needed to schedule tests and inspections, and to determine the actions taken to correct defects in hoisting equipment prior to returning it to service.

19. Condition 19: Welding

Condition 19 (formerly Condition 18) revised paragraph (a) of the former condition by defining the term ''qualified'' to mean a welder who meets the requirements of the American Welding Society, specifically, the qualification requirements of American Welding Society (AWS) D1.1 Structural Welding Code—Steel, or AWS D1.2 Structural Welding Code—Aluminum, as applicable. Specifying the qualifications for welders will improve worker safety by providing assurance that personnel who weld components of hoist systems possess the skills necessary to perform this work, and will do so competently and in a manner that maintains the operational integrity and safety of the systems.

20. Condition 20: OSHA Notification

Condition 20 (Condition 19 in the former variance) addresses the duty of employers to notify OSHA of events and conditions associated with their hoisting operations. Paragraphs (a) and (b) of the condition made substantial revisions to paragraph (a) of the former condition, including: (1) Specifying the legal test (due diligence) that OSHA must apply to these notification requirements; (2) identifying the Office of Technical Programs and Coordination Activities (OTPCA) at national OSHA headquarters (not the nearest OSHA area office) or the appropriate State-Plan office as the offices to receive notification and the required information (i.e., the location of the operation and the date the operation will begin); (3) providing contact information (i.e., telephone and facsimile numbers, and email address) for OTPCA; and (4) requiring employers to notify OTPCA or the appropriate State-Plan office at least 15 days prior to beginning any emergency operation or short-notice project that uses the conditions specified by the variance of the location and date of the operation or project or, if such an operation will occur in less than 15 days, then as soon as possible after the employer knows when the operation will begin.

Former paragraph (b) addressed notification requirements when the employer ceases to do business or transfers the activities covered by the variance to a successor company. Paragraphs (c) and (d) of Condition 20 in this variance expand on the former requirements by: (1) Reiterating the legal test (due diligence) that OSHA will apply to these notification requirements; (2) specifying that employers notify OTPCA of any changes in the location and address of the main office for managing the activities covered by the variance; and (3) stipulating that OSHA must approve the transfer of the variance to a successor company.

OSHA believes that the revisions made to former Condition 19 by Condition 20 in this variance will expedite receipt of information by OSHA and State-Plan states regarding the initiation and location of hoisting operations covered by the variance, and will clarify that the notification requirements apply as well to emergency operations and short-term projects. Accordingly, these revisions will improve worker safety by ensuring that OSHA and State-Plan states have complete and accurate information about the chimney-construction activities covered by the variance so that these agencies can carefully monitor employer compliance with the conditions specified by the variance. While Condition 20 now clearly notifies employers of the legal test they must meet in complying with the requirements of this condition, OSHA notes that it will not issue a citation if an employer's violation of Condition 20 does not immediately affect worker safety or health; in these circumstances, OSHA may, however, issue a notice of de minimis violation.

Requiring employers to notify OTPCA of any changes in the location and address of their main offices will allow OSHA to communicate effectively with employers regarding the status of the variance. Stipulating that an employer must have OSHA's approval to transfer a variance to a successor company provides assurance that the successor company has the resources, and agrees, to comply with the conditions of the variance. OSHA believes this requirement is necessary to ensure the safety of workers involved in performing the operations covered by the variance.

IV. Comments on the Proposed Variance Application

Two public commenters submitted comments on the proposed variance application. Additionally, OSHA received comments on the proposed variance application from the state of Michigan. See Section II (''Multi-State Variance'') of this notice for a discussion of Michigan's comment.

The first public commenter was Mr. Barry A. Cole of Cole-Preferred Safety Consulting, Inc., who supported granting the permanent variance (Document ID No. OSHA–2012–0015–0003). Mr. Cole also provided comments unrelated to the published variance applications; these comments addressed OSHA's variance and enforcement process, which is beyond the scope of the variance application.

The National Stack and Chimney Safety and Health Advisory Committee

(NSCSHAC) submitted the second public comment (Document ID No. OSHA–2012–0015–0021). This comment: (1) Compared the proposed variance conditions to the conditions in the prior chimney variances; and (2) addressed the scope of the variance application. NSCSHAC also requested a hearing under 29 CFR 1905.15 if OSHA either rejected its comments or made substantive revisions to them; OSHA adopted all of NSCSHAC's comments without revision, so a hearing is unnecessary.

The remainder of this section describes the specific comments submitted by NSCSHAC, and OSHA's response to them.

Comment 1: NSCSHAC stated that the second paragraph in the Background section of the variance application contained an incorrect statement regarding the alternative conditions described in previous chimney variances, notably that the conditions applied only to tapered chimneys constructed using jump-form construction techniques and procedures. NSCSHAC requested that OSHA revise or remove the subject sentences from the Background section, and also revise or remove all other comparable sentences in the variance application.

OSHA's response: The Agency made the requested revisions.

Comment 2: NSCSHAC requested that OSHA modify the scope condition (proposed Condition 1) of the variance application such that it covers all chimney-related construction, regardless of the construction method and configuration, when such construction involves the use of temporary personnel hoisting systems. NSCSHAC provided the following rationale for its comment:

(1) The language used in the Notice is not the actual language included in the Permanent Variance Applications submitted in November 2012 (see Variance Application Attachment A; Exhibit No. OSHA–2012–0015–0018).

(2) [NSCSHAC] has demonstrated through it meetings with OSHA that the chimney hoist variance is applicable for the two different construction methods of jump-form formwork (described as ''formwork techniques'' in the Notice) and slip-form formwork construction, regardless of the structural configuration, i.e. tapered or straight barreled.

(3) Chimneys constructed by the slip-form method can also be of tapered configurations and need to be included in the variance. Slip-form formwork for tapered chimneys has the same conditions for use of the chimney hoist system as for slip-form formwork for straight barreled chimneys.

(4) Chimneys constructed by the jump-form method can be tapered and straight barrel chimneys, and of small and large diameters. The reasons for obtaining a variance for large barreled chimneys are similar to the reasons for a variance for small barreled chimneys, and include the following:

I. Per the original variance dated 4/3/73, a hoist (tower) would interfere with the design and construction of the proper scaffolding. The inside of the chimney for the jump-form formwork construction includes support sling cables for the work platform and formwork support structure at multiple locations around the perimeter of the top sections of concrete, for both large and small diameter chimneys. These cables are positioned 360 degrees around the circumference at this location, making it almost impossible to get any access on the inside of the chimney adjacent to the wall. There are also trailing scaffolds that extend down as much as 17 ft. on the outside for finishing work and adjusting the equipment. All access/egress for the jump-form formwork for small and large barrel, and tapered chimneys has always been obtained at a distance away from the walls using the chimney hoist system integrated into these types of formworks.

II. The majority of work during the construction of the jump-form formwork for small and large straight-barrel, and tapered chimneys is at the perimeter wall location, with hazards of falling concrete, tools, and equipment. This is the reason for the designated exclusion zones and overhead protection, and for locating the personnel cage away from the chimney wall.

III. Small barreled chimneys may have only one liner flue, and large barreled chimneys may have multiple liner flues. Therefore, the available room inside a large barreled chimney may be no larger than for a small barreled chimney regardless of the construction methods due to the multiple flues.

IV. When performing liner construction, access is also required to the inside of the chimney liner, which limits the usefulness of attaching a hoist tower to the interior or exterior of the chimney walls. In addition, when a hoist system is used inside of a liner the ability to erect and brace a hoist tower is infeasible due to interference with, and the usually unsuitable support provided by, the liner while being constructed.

V. The unique concrete techniques and procedures involved in jump-form formwork, similar to slip-form construction, make it also difficult and unsafe to attach a hoist tower to both the interior or exterior walls of a chimney during construction. The fresh concrete is poured into forms that are 7.5 ft. to 10.0 ft. tall on a daily basis. As a result of this progressive construction process, the concrete wall immediately below the platform for a distance of 15 ft. to 30 ft. is insufficiently cured to safely attach a hoist tower to the wall.

VI. The frequent extensions of a hoist tower to keep up with the moving work platforms involves many difficulties in erection, bracing, and guying as was discussed in the original variance in 4/3/73. Also discussed were the extra precautions to obtain substantial bracing if a hoist tower is constructed, since both the chimney and the hoist tower would be exposed to high winds. Therefore, personnel would be exposed to greater safety hazards due to weather elements, erection procedures, and working underneath the work platform and installing a hoist tower to the exterior wall, than they would be by using the personnel cage with the hoist variance. These difficulties and increased hazards involved in use of a hoist tower are applicable to both jump form and slip form methods and for both tapered and straight barreled chimneys.

Therefore, according to NSCSHAC, the scope condition (Condition 1) of the variance should include tapered chimneys constructed by slip-form construction techniques and procedures and large-barreled chimneys constructed by jump-form construction techniques and procedures; in sum, the variance should apply to all chimneys regardless of construction method or structural configuration.

OSHA's response: The Agency corrected the scope condition in the variance (Condition 1) to include both jump-form and slip-form construction methods and procedures, regardless of configuration (i.e., straight-barreled or tapered).

Comment 3: NSCSHAC stated that OSHA should delete or revise paragraph (b) of the scope condition (proposed Condition 1) in the variance application to apply only to structures other than chimneys, and provided the following rationale for this comment:

(1) This paragraph is not in the actual Permanent Variance Applications submitted in November, 2012.

(2) [NSCSHAC] has demonstrated though its meetings with OSHA and again with the explanations above, that this variance is applicable to small and large straight-barreled chimneys for both jump-form and slip form formwork and there should be no further reason to demonstrate that it is infeasible to erect a hoist tower inside or outside of the structure for these construction methods.

(3) The condition that ''only after demonstrating that it is infeasible to erect a hoist tower either inside or outside the structure'' is subjective and the application of it is unclear. Is the grantee to obtain approval from OSHA prior to use? How long will it take for OSHA to approve the use on a particular project and will this occur during the project bidding stage? Can the work be stopped by OSHA until the grantee demonstrates it is infeasible? These and other questions create undue schedule and cost concerns for the project participants.

OSHA's response: The Agency inadvertently included paragraph (b) in proposed Condition 1, and removed the paragraph from the permanent variance as requested by NSCSHAC.

Comment 4: NSCSHAC noted that the last paragraph in the Supplementary

Information Section (and similar paragraphs throughout the variance) unnecessarily limited the scope of the variance application. NSCSHAC recommended that OSHA revise this language (and similar language elsewhere in the variance application) to include both jump-form and slip-form construction techniques and procedures, and straight-barreled or tapered configurations. NSCSHAC provided the following rationale for this comment: ''NSCSHAC has explained above that the variance's scope should be broad enough to include jump-form and slip-form formwork construction, as well as accommodate different structural configurations of large or small-diameter tapered and straight barreled chimneys.''

OSHA's response: The Agency made the requested revisions.

Comment 5: NSCSHAC pointed out that the first and second introductory sentences of paragraph (g) of proposed Condition 2 (Application) are inconsistent regarding the variance application's coverage. The first sentence refers to covering construction of tapered chimneys, and small-diameter, straight-barreled chimneys and chimney-related structures, while the wording of the next (second) sentence states that the variance application would cover only the construction of tapered chimneys. Accordingly, NSCSHAC requested that OSHA revise paragraph (g) to read: ''Replacing the personnel cage with a personnel platform or a boatswain's chair.''

OSHA's response: The Agency inadvertently limited the second introductory sentence of paragraph (g) to tapered chimneys. However, because the conditions specified by the permanent variance cover both jump-form and slip-form construction techniques and procedures regardless of the configuration of the chimney or chimney-related structure (i.e., tapered or straight-barreled chimneys and chimney-related structures of any diameter) (see OSHA's response to NSCSHAC comment 2 above), the Agency removed both introductory sentences from the permanent variance.

Note: In addition to the revisions made in response to NSCSHAC's comments, OSHA made a number of minor stylistic, technical, or editorial corrections to the variance conditions to correct previous errors or to improve clarity.

V. Decision

As noted previously in this preamble, from 1973 to the present the Agency granted a number of permanent variances from the tackle requirements provided for boatswain's chairs by 29 CFR 1926.452(o)(3) and the requirements for hoist towers specified by paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552. In view of the Agency's history with the variances granted for chimney construction, OSHA determined that the alternative conditions specified by the application will protect employees at least as effectively as the requirements of paragraph (o)(3) of 29 CFR 1926.452 and paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552.

Under section 6(d) of the Occupational safety and Health Act of 1970 (29 U.S.C. 655), and based on the record discussed above, the Agency finds that when the employers comply with the conditions of the following order, the working conditions of the employers' workers will be at least as safe and healthful as if the employers complied with the working conditions by paragraph (o)(3) of 29 CFR 1926.452, and paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552. This decision is applicable in all states under Federal OSHA enforcement authority, and in the State-Plan states and territories when: (1) The relevant standards are the same as the Federal OSHA standards from which the applicants are seeking the permanent variance; and (2) the State-Plan state or territory does not object to the terms of the variance application (see Section II, Multi-State Variance, of this notice for a description of the applicability of this decision in State-Plan states and territories).

VI. Order

OSHA issues this order authorizing Kiewit Power Constructors Co. et al. (''the employers'') to comply with the following conditions instead of complying with paragraph (o)(3) of 29 CFR 1926.452, and paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552. This order applies in Federal OSHA enforcement jurisdictions, and in those states with OSHA-approved State plans that have identical standards and have agreed to the terms of the variance.

1. Scope

This permanent variance applies to chimney-related construction, including work on chimneys, chimney linings, stacks, and chimney-related structures such as silos, towers, and similar structures (hereafter referred to collectively as ''chimney-related structure'' or ''structure,'') built using jump-form and slip-form construction techniques and procedures, regardless of the structural configuration (such as tapered or straight barreled of any diameter) when such construction involves the use of temporary personnel hoist systems (hereafter referred to as ''hoist system'') for the transportation of:

(a) Personnel to and from the bottom landing of a chimney or chimney-related structure to working elevations inside or outside of the chimney or structure using a personnel cage during construction work subject to 29 CFR part 1926, including construction, renovation, repair, maintenance, inspection, and demolition; or

(b) Materials, but not concurrently with hoisting of personnel, through attachment of a hopper, material basket, concrete bucket, or other appropriate rigging to the hoist system to raise and lower all other materials inside or outside a chimney or chimney-related structure. See also Condition 2(c)(ii) below.

2. Application

(a) The employer must use a hoist system equipped with a dedicated personnel-transport device (i.e., a personnel cage) as specified by this variance to raise or lower its workers and/or other construction-related tools, equipment, and supplies between the bottom landing of a chimney or chimney-related structure and an elevated work location while performing construction inside and outside the chimney or structure.

(b) Prior to initial use of the hoist system, the employer must have all drawings containing designs and construction details showing the integration of the hoist system with the construction technique and procedures in use (such as a slip-form construction) sealed by a professional engineer registered in the United States. A professional engineer registered in the United States also must approve any modifications to these drawings.[14]

(c) When using a hoist system, the employer must:

(i) Use the personnel cages raised and lowered by the hoist system solely to transport workers with the tools and small supplies necessary to do their work (e.g., fasteners, paint, caulk);

(ii) Attach a dedicated material-transport device directly to the hoist rope solely to raise and lower all other materials and tools; and

(iii) Attach the material-transport device directly to the hoisting hook and never to the personnel cage.

[14] Any reference to ''design'' or ''designed'' in these conditions means that a professional engineer registered in the United States must approve the design.

(d) Except for the requirements specified by 29 CFR 1926.552(c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16), the employer must comply fully with all other applicable provisions of 29 CFR parts 1910 and 1926.

(e) When an employer demonstrates that it is infeasible to comply with these conditions, the employer may use other devices or methods to comply, but only when the employer clearly demonstrates that these devices and methods provide its workers with protection that is at least equivalent to the protection afforded to them by the conditions of this variance.

(f) The employer must convey any communication, written or verbal, required by this variance in a language that each worker can understand.

(g) *Replacing a personnel cage with a personnel platform or a boatswain's chair.*

The following provisions apply:

(i) *Personnel platform.* Before using a personnel platform, an employer must:

(A) Demonstrate that available space makes it infeasible to use a personnel cage for transporting employees;

(B) Limit use of a personnel platform to elevations above the last work location that the personnel cage can reach; and

(C) Use a personnel platform in accordance with requirements specified by 29 CFR 1926.1431(s), unless the employer can demonstrate that the structural arrangement of the chimney precludes such use.

(ii) *Boatswain's chair.* Before using a boatswain's chair, an employer must:

(A) Demonstrate that available space makes it infeasible to use a personnel platform for transporting employees;

(B) Limit use of a boatswain's chair to elevations above the last work location that the personnel platform can reach; and

(C) Use a boatswain's chair in accordance with block-and-tackle requirements specified by 29 CFR 1926.452(o)(3), unless the employer can demonstrate that the structural arrangement of the chimney precludes such use.

3. Definitions

The following definitions apply to this permanent variance; these definitions do not necessarily apply in other contexts.

(a) *Authorized person*—a person approved or assigned by the employer to perform a specific type of duty or duties or to be at a specific location or locations at the jobsite.[15]

(b) *Barricade*—barrier used to confine or mark off limits to access.

(c) *Base-mounted drum hoist*—a drum hoist fastened to, and supported by, a designed steel frame with mounting attachments for securing to a foundation.*

(d) *Broken rope principle*—the principle by which, if the main support rope fails, the lack of tension will cause the safety clamps attached to the personnel cage to grip the guide ropes and stop it within 18 inches (457.2mm) (maximum) of travel from the activation point.*

(e) *Cage*—an enclosed load-carrying unit or car, including its platform, frame, enclosure, and gate, in which personnel are transported.*

(f) *Cathead*—the structure directly supporting the overhead sheaves.*

(g) *Competent person*—one 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.[16]

(h) *Deadman control*—a constant pressure, hand-operated or foot-operated control designed so that, when released, it automatically returns to a neutral or deactivated position and stops movement of the hoist drum.* (Referred to in this order as ''deadman control switch.'')

(i) *Design factor*—the ratio of the failure load to the maximum designed working load. (Also referred to as ''Safety Factor'' or ''Factor of Safety.'')* (Referred to in this order as ''safety factor.'')

(j) *Exclusion zone*—a clearly designated zone around the bottom landing of the hoist system designed to restrict the zone to authorized persons only.

(k) *Footblock*—a wire-rope block mounted at or near the bottom of a structure for the purpose of changing the direction of the hoisting rope from approximately horizontal to approximately vertical.*

(l) *Hoist* (verb)—to raise, lower, or otherwise move a load in the air.

(m) *Hoist* (noun)—same as ''hoist machine.''

(n) *Hoist area*—the area (including, but not limited to, the area directly beneath the load) in which it is reasonably foreseeable that partially or completely suspended materials could fall in the event of an accident.

(o) *Hoist-way*—a clearly designated walkway or path used to provide safe access to and from personnel cages.

(p) *Hoist machine*—a mechanical device for lifting and lowering loads by winding a line onto or off a drum.

(q) *Hoist system*—a collection of mechanical devices and support equipment assembled and used in combination for lifting and lowering loads, including personnel cages.

(r) *Job hazard analysis*—an evaluation of the tasks or operations involving the use of hoist systems performed to identify potential hazards and to determine the necessary controls.

(s) *Lifeline*—an independently suspended line used for attaching the employee's safety harness lanyard, usually by means of a rope grab, as part of the fall-arrest system.*

(t) *Line run*—a condition whereby the free end of the hoistline (wire rope) may be overhauled by the deadweight of the downline portion of the hoistline on the footblock side of the cathead.*

(u) *Non-guided workman's hoist* (worker's hoist)—a hoist involving the transportation of a person in a boatswain's chair, or equivalent, not attached to fixed guide ropes.* (**Note:** While the conditions of this variance do not use this term directly, ANSI A10.22–2007, referenced under Condition 11, uses the term.)

(v) *Qualified person*—one who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated his ability to solve or resolve problems relating to the subject matter, the work, or the project.[17]

(w) *Rope*—wire rope, unless otherwise specified.*

(x) *Rotation-resistant rope*—a wire rope consisting of an inner layer of strand laid in one direction covered by a layer of strand laid in the opposite direction. This has the effect of counteracting torque by reducing the tendency of the finished rope to rotate.*

(y) *Safety clamp*—a fall-arresting device (or rope-grab) designed to grip the lifeline and prevent the person being transported in a boatswain's chair, or equivalent, from falling.*

(z) *Static drop test*—a test performed by suspending the personnel cage in a fixed position with a quick-release device or equivalent method separating the cage from the hoistline. The quick-release device is tripped allowing the cage to freefall until the safety clamps (cage) activate and stop the cage.*

[15] See 29 CFR 1926.32(d).

* ANSI/ASSE kindly permitted OSHA to use the definition of this term from Section 3 of its A10.22–2007 standard, *Safety Requirements for Rope-Guided and Non-guided Workers' Hoists.* In some cases, OSHA made slight editorial revisions to the text of the definition for clarity.

[16] See 29 CFR 1926.32(f).

[17] See 29 CFR 1926.32(m).

(aa) *Total suspended load*—the combined weight of any and all objects and persons in transport, including the weight of the suspended rope.

(bb) *Weatherproof*—constructed or protected so that exposure to the weather will not interfere with successful operations.*

4. Qualified Person and Competent Person

(a) The employer must:

(i) Provide one or more competent person(s) and/or qualified person(s), as specified in paragraphs (f) and (m) of 29 CFR 1926.32, who is/are responsible for ensuring that the installation, maintenance, and inspection of the hoist system comply with the conditions specified herein, and with the applicable requirements of 29 CFR part 1926 (''Safety and Health Regulations for Construction''); and

(ii) Ensure that a competent person(s) is/are present at ground-level to assist in an emergency whenever the hoist system is raising or lowering workers.

(b) The employer must use a qualified person to design, and a competent person to maintain, the cathead described under Condition 9 (''Cathead and Sheave'') below.

(c) The employer must train each competent person and each qualified person regarding the conditions of this variance and the requirements of 29 CFR part 1926 that are applicable to their respective roles.

5. Hoist Machine

(a) *Type of hoist.* The employer must:

(i) Designate the hoist machine as a hoist system; and

(ii) Use and maintain the hoist machine in accordance with the manufacturer's instructions. When the manufacturer's instructions are not available, the employer must ensure that a qualified person develops written instructions, and that these instructions are available on-site.

(b) *Raising or lowering a transport.* The employer must ensure that:

(i) The hoist machine includes a base-mounted drum hoist designed to control line-speed;

(ii) When lowering an empty or occupied transport, the drive components are engaged continuously (i.e., ''powered down'' or not ''freewheeling'');

(iii) The drive system is interconnected, on a continuous basis, through a torque converter, mechanical coupling, or an equivalent coupling (e.g., electronic controller, fluid clutches, and hydraulic drives);

(iv) The braking mechanism is applied automatically when the transmission is in the neutral position and a forward-reverse coupling or shifting transmission is being used; and

(v) No belts are used between the power source and the winding drum.

(c*) Power source.* The employer must power the hoist machine by an air, electric, hydraulic, or internal-combustion drive mechanism.

(d) *Constant-pressure control switch.* The employer must equip the hoist machine with a hand-operated or a foot-operated constant-pressure control switch (i.e., a ''deadman control switch'') that deactivates the engine and stops the hoist rotation immediately upon release by the hoist operator.

(e) *Line-speed indicator.* The employer must:

(i) Equip the hoist machine with a line-speed indicator maintained in working order; and

(ii) Ensure that the line-speed indicator is in clear view of the hoist operator during hoisting operations.

(f) *Overspeed.* The employer must equip the hoist machine with an audible or visual overspeed-indicator alarm that will activate before the line-speed exceeds 275 feet per minute (includes 10% overspeed allowance) when transporting personnel.

(g) *Braking systems.* The employer must equip the hoist machine with at least two (2) independent braking systems (i.e., one automatic and one manual) applied on the winding side of the clutch or couplings, with each braking system capable of stopping and holding 150 percent of the maximum rated line load.

(h) *Slack-rope protection.* The employer must equip the hoist machine with a slack-rope device to prevent rotation of the winding drum under slack-rope conditions, or a slack-rope circuit that stops or limits the hoist speed to a creep speed when there is no tension on the load line.

(i) *Frame.* The employer must ensure that the frame of the hoist machine is a self-supporting, rigid, steel structure, and that holding brackets for anchor lines and legs for anchor bolts are integral components of the frame in accordance with the applicable design drawings.

(j) *Stability.* The employer must secure hoist machines in position to prevent movement, shifting, or dislodgement in accordance with the applicable design drawings.

(k) *Location.* The employer must:

(i) Locate the hoist machine far enough from the footblock to obtain the correct fleet angle for proper winding or spooling of the cable on the drum; and

(ii) Ensure that the fleet angle remains between one-half degree (½°) and one and one-half degrees (1½°) for smooth drums, and between one-half degree (½°) and two degrees (2°) for grooved drums, with the lead sheave centered on the drum.[18]

(l) *Drum and flange diameter.* The employer must:

(i) Provide a winding drum for the hoist that is at least 30 times the nominal diameter of the rope used for hoisting; and

(ii) Ensure that the winding drum has a flange diameter that is at least one and one-half (1½) times the winding-drum diameter.

(m) *Spooling of the rope.* The employer must never spool the rope closer than two (2) inches (5.1 cm) from the outer edge of the winding-drum flange when the hoist is in operation.

(n) *Minimum rope turns on drum.* The employer must ensure that the drum has three turns of rope when the hoist load is at the lowest point of travel, and that the hoist end of the rope is mechanically secured to the hoist drum in accordance with the manufacturer's instructions.

(o) *Electrical system.* The employer must ensure that all electrical equipment is weatherproof.

(p) *Grounding.* The employer must ensure that the hoisting machine is grounded at all times in accordance with the requirements of 29 CFR 1926.404(f).

(q) *Limit switches.*

(i) When the employer uses a hoist system with a personnel cage, the employer must equip the hoist system with limit switches and related equipment that automatically prevent overtravel of the transport device at the top of the supporting structure and at the bottom of the hoist-way or lowest landing level.

(ii) When the employer uses a hoist system with a material-transport device, the employer must equip the hoist system with limit switches and related equipment that automatically prevents overtravel of material-transport devices at the top of the support structure.

(r) *Guarding.* The employer must guard effectively all exposed moving parts such as gears, projecting screws, setscrews, chains, cables, belts, chain sprockets, and reciprocating or rotating parts, that might constitute a hazard under normal operating conditions. (**Note:** OSHA considers a hoist drum

[18] This provision adopts the definition of, and specifications for, fleet angle from *Cranes and Derricks,* H. I. Shapiro, et al. (eds.); New York: McGraw-Hill; 3rd ed., 1999, page 592. Accordingly, the fleet angle is ''[t]he angle the rope leading onto a [winding] drum makes with the line perpendicular to the drum rotating axis when the lead rope is making a wrap against the flange.''

that has access limited to authorized persons as guarded.)

(s) *Overhead Protection.* The employer must provide a shelter or enclosure to protect the hoist operator, hoist machine, and associated controls from falling or moving objects.

6. *Methods of Operation*

(a) *Worker qualifications and training.* The employer must:

(i) Ensure that each personnel hoist operator and each of their supervisors have effective and documented training in the safe operation of hoist machines covered by this variance.

(ii) Ensure that only a trained and authorized person operates the hoist machine.

(iii) Provide effective and documented instruction, before initial use, to each worker who uses a personnel cage for transportation regarding the safe use of the personnel cage and its emergency systems. The employer must repeat the instruction periodically and as necessary (e.g., after making changes to the personnel cage that affect its operation).

(b) *Use of job hazard analyses (JHAs).* The employer must:

(i) Complete one or more JHAs for the operation of the hoist system; and

(ii) Review, periodically and as necessary (e.g., after making changes to the hoist machine that affect its operation), the contents of the JHA with affected personnel.

(c) *Speed limitations.* The employer must not operate the hoist at a speed in excess of:

(i) 250 feet per minute [19] or the design speed of the hoist system, whichever is lower, when using a personnel cage to transport workers, and slow the hoist appropriately at the extremes of hoist travel. (**Note:** The employer may use a line-speed that is consistent with the design limitations of the hoist system when hoisting material (i.e., using a dedicated material-transport device) on the hoist system); or

(ii) 100 feet per minute when a personnel platform or boatswain's chair is being used to transport workers.

(d) *Communication.* The employer must:

(i) Use an electronic voice-communication system (such as two-way radio) at all times for communication between the hoist operator and the workers located in a moving personnel cage, personnel platform, or boatswain's chair;

(ii) Stop hoisting if there is (a) a failure of communication, or (b) activation of a stop signal from the workers in the personnel cage, personnel platform, or boatswain's chair; resume hoisting only when a supervisor determines that it is safe to do so.

7. Hoist Rope

(a) *Grade.* The employer must use a wire rope for the hoist system (i.e., ''hoist rope'') that consists of extra-improved plow steel, an equivalent grade of non-rotating rope, or a regular lay rope with a suitable swivel mechanism.

(b) *Safety factor.* For personnel hoisting, the employer must maintain a safety factor of at least eight and nine-tenth (8.9) times the total suspended load throughout the entire length of hoist rope (including the weight of the suspended rope).

(c) *Size.* The employer must use a hoist rope that is at least one-half (½) inch in diameter.

(d) *Rope lay.* Except when using rotation-resistant rope, the employer must use preformed regular-lay rope. The direction of exterior lay (right or left) must match the drum termination and winding characteristics.

(e) *Inspection, removal, and replacement.* The employer must:

(i) Thoroughly inspect the hoist rope before the start of each job, and on completing a new set-up;

(ii) Maintain the proper diameter-to-diameter ratios between the hoist rope and the footblock and the sheave by inspecting the wire rope regularly (see Conditions 8(c) and 9(d), below); and

(iii) Remove and replace the wire rope with new wire rope when any condition specified by 29 CFR 1926.552(a)(3) occurs.

(f) *Attachments.* The employer must attach the rope to a personnel cage, personnel platform, or boatswain's chair using a positive connection such as:

(i) A screw-pin shackle with the pin secured from rotation or loosening by mousing to the shackle body;

(ii) A bolt-type shackle, nut, and cotter pin; or

(iii) A positive-locking link.

(g) *Wire-rope fastenings.* When the employer uses clip fastenings (e.g., U-bolt wire-rope clips) with wire ropes, the employer must:

(i) Use Table H–20 of 29 CFR 1926.251 to determine the number and spacing of the clips;

(ii) Use at least three (3) drop-forged clips at each fastening;

(iii) Install the clips with the ''U'' of the clips on the dead end of the rope and the live end resting in the clip saddle;

(iv) Space the clips so that the distance between them is a minimum of six (6) times the diameter of the rope.

(v) Tighten the clips evenly in accordance with the manufacturer's specification;

(vi) Following initial application of the load to the rope, retighten the clip nuts to the specified torque to compensate for any decrease in rope diameter caused by the load; and

(vii) Retighten the rope clip nuts periodically to compensate for any further decrease in rope diameter during usage.

(h) *Rotation-resistant ropes and swivels.* The employer must not use a swivel anywhere in the system when using rotation-resistant ropes unless approved by the wire-rope manufacturer.

(i) *Rope protection.* The employer must:

(i) Barricade the hoisting rope between the hoisting machine and the footblock;

(ii) Protect the hoisting rope from abrasive contact with the ground; and

(iii) When the hoisting rope is subject to falling material or debris, protect it from such hazards.

8. Footblock

(a) *Type of footblock.* Except as provided in paragraph (d) of this condition, the employer must use a footblock:

(i) Consisting of construction-type rope blocks of solid single-piece bail with a safety factor of at least five (5), or an equivalent block with roller bearings;

(ii) Designed for the applied loading, size, and type of wire rope used for hoisting;

(iii) Designed for returning the rope to the sheave groove after a slack-rope condition, or equipped with a guard that contains the wire rope within the sheave groove;

(iv) Attached to the base according to the design drawings, with the anchorage being capable of sustaining at least eight (8) times the resultant force of the horizontal and vertical loads transmitted by the hoisting rope; and

(v) Designed and installed so that it turns the moving wire rope to and from the horizontal or vertical direction as required by the direction of rope travel.

(b) *Directional change.* The employer must ensure that the angle of change in the hoist rope from the horizontal to the vertical direction at the footblock is approximately 90° (degrees).

(c) *Diameter.* The employer must ensure that the line diameter of the footblock sheave is at least 24 times the diameter of the hoist rope.

(d) *Sheave substitute.* The employer may substitute a properly mounted sheave, as specified in Condition 9

[19] When including 10% overspeed, the maximum hoist speed must not exceed 275 feet per minute.

below (''Cathead and Sheaves''), for the footblock described in this condition.

9. Cathead and Sheaves

(a) *Sheave support.* The employer must use a cathead (i.e., ''overhead support'') constructed of steel or aluminum that consists of a wide-flange beam, or two (2) channel sections securely bolted back-to-back, according to the design drawings, to prevent spreading.

(b) *Installation.* The employer must ensure that:

(i) All sheaves revolve on shafts that rotate on bearings; and

(ii) The bearings are mounted securely to maintain the proper bearing position at all times.

(c) *Rope guides.* The employer must provide each sheave with appropriate rope guides to prevent the hoist rope from leaving the sheave grooves when the rope vibrates or swings abnormally.

(d) *Diameter.* The employer must use a sheave with a line diameter that is at least 24 times the diameter of the hoist rope.

(e) *Design basis.* The employer must ensure that:

(i) The design of the cathead assembly conforms to the American Institute of Steel Construction (AISC) *Manual of Steel Construction* or the Aluminum Association's *Aluminum Design Manual,* whichever manual is appropriate to the material used; and

(ii) The cathead has a safety factor of at least five (5) for personnel and material hoisting.

(f) *Clearance.* The employer must provide:

(i) Adequate clearance so that there will be no contact between the bottom of cathead and the cable attachment at the top of the hoist cage; and

(ii) A path free of obstruction (clear travel) along the full length of the guide ropes.

(g) *Sheave substitute.* The employer may substitute construction blocks, of the type described in Condition 8(a)(i) above, for the top sheaves. (**Note:** See also Condition 8(d) above.)

10. Guide Ropes

(a) *Number and construction.* The employer must:

(i) Securely affix two (2) guide ropes to the cathead or to overhead supports designed for the purpose of accepting the guide ropes; and

(ii) Ensure that the guide ropes:

(A) Consist of steel wire rope not less than one-half (1/2) inch (1.3 cm) in diameter; and

(B) Be free of damage or defect at all times per 29 CFR 1926.552(c)(17)(iv).

(b) *Guide rope fastening and alignment tension.* During the hoisting of personnel, the employer must ensure that one end of each guide rope is fastened securely to the overhead support, and that appropriate tension is applied at the foundation end of the rope.

(c) *Height.* The employer must install the guide ropes along the entire height of hoist travel.

11. Personnel Cage

(a) *Construction.* The employer must ensure that the frame of the personnel cage is capable of supporting a load that is eight (8) times its rated load capacity. The employer also must ensure that the personnel cage has:

(i) A top and sides that are permanently enclosed (except for the entrance and exit);

(ii) A floor securely fastened in place;

(iii) Walls that consist of 14-gauge, one-half (1/2) inch expanded metal mesh, or an equivalent material;

(iv) Walls that cover the full height of the personnel cage between the floor and the overhead covering;

(v) A sloped roof constructed of at least three-sixteenth (3/16) inch steel plate, or material of equivalent strength and impact resistance, that slopes to the outside of the personnel cage;

(vi) Safe handholds (e.g., rope grips—but not rails or hard protrusions when their presence creates an impact hazard) that accommodate each occupant; and

(vii) Attachment points for workers to secure their personal fall-arrest protection systems.

(b) *Overhaul weight.* The employer must ensure that the personnel cage has an overhaul weight (e.g., a headache ball) to compensate for the weight of the hoist rope between the cathead and footblock. In addition, the employer must:

(i) Ensure that the overhaul weight is capable of preventing line run; and

(ii) Use a means to restrain the movement of the overhaul weight so that the weight does not interfere with safe personnel hoisting.

(c) *Gate.* The employer must ensure that the personnel cage has a gate that:

(i) Guards the full height of the entrance opening; and

(ii) Has a functioning mechanical latch that prevents accidental opening.

(d) *Operating procedures.* The employer must post the procedures for operating the personnel cage conspicuously at the bottom landing.

(e) *Capacity.* The employer must:

(i) Ensure that the rated load capacity of the cage is at least 250 pounds for each occupant hoisted, or actual weight if the person exceeds 250 pounds; and

(ii) Hoist at any one time no more than the number of occupants for which the cage is designed.

(f) *Worker notification.* The employer must post a sign on each personnel cage notifying workers of the following conditions:

(i) The standard rated load (in pounds), as determined by the initial static drop-test specified by Condition 11(g) (''Static drop-tests'');

(ii) The designated number of occupants for which the cage is designed; and

(iii) Any reduction in rated load capacity (in pounds) if applicable (e.g., due to a change in conditions of the specific job).

(g) *Static drop-tests.* The employer must:

(i) Conduct static drop tests of each personnel cage that comply with the static drop-test procedures provided in Section 13 (''Inspections and Tests'') of American National Standards Institute (ANSI) standard A10.22–2007 (''Safety Requirements for Rope-Guided and Non-Guided Workers' Hoists'');

(ii) Perform the initial and subsequent static drop-tests at the rated load of the personnel cage; and

(iii) Use a personnel cage for raising or lowering workers only when no damage occurred to the components of the cage as a result of the static drop-tests.

(h) *Platform guides.* The employer must provide:

(i) Adequate guards, beveled or cone-shaped attachments, or equivalent devices at the underside of the working platform or on the cage to prevent catching when the cage passes through the platform at the top landing; and

(ii) Sufficient clearance or adequate guarding to prevent catching or snagging when the cage passes through intermediate landings.

12. Safety Clamps

(a) *Fit to the guide ropes.* The employer must:

(i) Fit appropriately designed and constructed safety clamps to the guide ropes; and

(ii) Ensure that the safety clamps do not damage the guide ropes when the cage is in motion.

(b) *Attach to the personnel cage.* The employer must attach safety clamps to each personnel cage for gripping the guide ropes.

(c) *Operation.* The employer must ensure that the safety clamps attached to the personnel cage:

(i) Operate on the ''broken rope principle'';

(ii) Be capable of stopping and holding a personnel cage that is carrying 100 percent of its maximum rated load and traveling at its maximum allowable speed if the hoist rope breaks at the footblock; and

(iii) Use a pre-determined and pre-set clamping force (i.e., the ''spring compression force'') for each hoist system.

(d) *Maintenance.* The employer must keep the safety-clamp assemblies clean and functional at all times.

13. Overhead Protection

The employer must provide overhead protection for workers to access the bottom landing of the hoist system.

14. Emergency-Escape Device

(a) *Location.* For workers using a personnel cage, the employer must provide an emergency-escape device, adequate to allow each worker being hoisted to escape, in at least one of the following locations:

(i) In the personnel cage, provided that the device is long enough to reach the bottom landing from the highest possible escape point; or

(ii) At the bottom landing, provided that a means is available in the personnel cage for an occupant to raise the device to the highest possible escape point.

(b) *Operating instructions.* The employer must ensure that written instructions for operating the emergency-escape device are attached to the device.

(c) *Training.* The employer must provide effective and documented training, as specified by Condition 6(a)(iii) above, to each worker who uses a personnel cage for transportation on how to operate the emergency-escape device so as to effect a safe descent in case of an emergency.

15. Personnel Platforms and Boatswain's Chairs

The employer must:

(a) Comply with the applicable requirements specified by paragraphs (b) through (r) of 29 CFR 1926.1431, Hoisting personnel, when electing to replace the personnel cage with a personnel platform in accordance with Condition 2(g)(i);

(b) Comply with the applicable requirements specified by 29 CFR 1926.1431(s) and 1926.452(o)(3) when electing to replace the personnel platform with a boatswain's chair in accordance with Condition 2(g)(ii).

16. Protecting Workers From Fall and Shearing Hazards

The employer must:

(a) Ensure that the hoist areas meet the requirements of 29 CFR 1926.501(b)(3) for hoist areas;

(b) Protect each worker in a hoist-way area from falling six (6) feet or more to lower levels by using guardrail systems that meet the requirements of 29 CFR 1926.502(b) or personal fall-arrest systems that meet the requirements of 29 CFR 1926.502(d);

(c) Ensure that workers using personnel cages secure their fall-arrest systems to attachment points located inside the cage if the door of the personnel cage needs to be opened for emergency escape; and

(d) Provide safe access to and from personnel cages.

(e) *Shearing hazards.* The employer must:

(i) Provide workers who use personnel platforms or boatswain's chairs with instruction on the shearing hazards posed by the hoist system (e.g., work platforms, scaffolds), and the need to keep their limbs or other body parts clear of these hazards during hoisting operations;

(ii) Provide the instruction on shearing and struck-by hazards:

(A) Before a worker uses a personnel platform or boatswain's chair at the worksite; and

(B) Periodically, and as necessary, thereafter, including whenever a worker demonstrates a lack of knowledge about the hazards or how to avoid the hazards, a modification occurs to an existing shearing or struck-by hazard, or a new shearing or struck-by hazard develops at the worksite; and

(iii) Attach a readily visible warning to each personnel platform and boatswain's chair notifying workers in a language they understand of potential shearing hazards they may encounter during hoisting operations, and that uses the following (or equivalent) wording:

(A) For personnel platforms: ''Warning—To avoid serious injury, keep your hands, arms, feet, legs, and other parts of your body inside this platform while it is in motion''; and

(B) For boatswain's chairs: ''Warning—To avoid serious injury, do not extend your hands, arms, feet, legs, or other parts your body from the side or to the front of this chair while it is in motion.''

17. Exclusion Zone

The employer must:

(a) Establish a clearly designated exclusion zone around the bottom landing of the hoist system designed to restrict the zone to authorized persons only;

(b) The periphery of the exclusion zone must be:

(i) Designed to keep unauthorized persons out of the zone;

(ii) Well defined by visible boundary demarcation;

(iii) Established with entry and exit points; and

(iv) Posted with readily visible warning signs limiting access.

(c) During personnel hoisting, prohibit any worker from entering the exclusion zone except authorized persons involved in accessing a personnel cage, and then only when the device is at the bottom landing and not in operation (i.e., when the drive components of the hoist machine are disengaged and the braking mechanism is properly applied); and

(d) When hoisting material with the personnel hoist system, prohibit any worker from entering the exclusion zone except to access a material-transport device, and then only when the device is near the bottom landing for the purpose of loading, attaching, landing, or tagging the load.

18. Inspections, Tests, and Accident Prevention

(a) The employer must initiate and maintain a program of frequent and regular inspections of the hoist system and associated work areas as required by 29 CFR 1926.20(b)(2) by:

(i) Ensuring that a competent person conducts daily visual checks and weekly inspections of the hoist system, and an inspection before reuse of the system following periods of idleness exceeding one week;

(ii) Ensuring that the competent person conducts tests and inspections of the hoist system in accordance with 29 CFR 1926.552(c)(15); and

(iii) Ensuring that a competent person conducts weekly inspections of the work areas associated with the use of the hoist system.

(b) If the competent person determines that the equipment constitutes a safety hazard, the employer must remove the equipment from service and not return the equipment to service until the employer corrects the hazardous condition and has the correction approved by a qualified person.

(c) The employer must maintain at the jobsite, for the duration of the job, records of all tests and inspections of the hoist system, as well as associated corrective actions and repairs.

19. Welding

(a) The employer must ensure that only welders qualified in accordance with the requirements of the American Welding Society weld components of the hoist system. Accordingly, these welders must meet the qualification requirements of American Welding Society (AWS) D1.1 Structural Welding Code—Steel, or AWS D1.2 Structural Welding Code—Aluminum, as applicable.

(b) The employer must ensure that these welders:

(i) Are familiar with the weld grades, types, and materials specified in the design of the system; and

(ii) Perform the welding tasks in accordance with 29 CFR part 1926, subpart J (''Welding and Cutting'').

20. OSHA Notification

(a) To assist OSHA in administering the conditions of this variance, the employer must exercise due diligence in notifying the Office of Technical Programs and Coordination Activities (OTPCA) at OSHA's national headquarters, or the appropriate State-Plan Office, of:

(i) Any chimney-related construction operation using the conditions specified herein, including the location of the operation and the date the operation will commence, at least 15 calendar days prior to commencing the operation;

(ii) Any emergency operation or short-notice project using the conditions specified herein, and when 15 days are not available before start of work, as soon as possible after the employer knows when the operation will commence. This information must include the location and date of the operation;

(b) The employer can notify OTPCA at OSHA's national headquarters of pending chimney-related construction operations by:

(i) Telephone at 202 639–2110;

(ii) Facsimile at 202 693–1644; or

(iii) Email at *VarianceProgram@dol.gov*

(c) To assist OSHA in administering the conditions of this variance, the employer must exercise due diligence by informing OTPCA at OSHA's national headquarters 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 activities covered by this variance; or

(iii) Transfer the activities covered by this variance to a successor company.

(d) OSHA must approve the transfer of this variance to a successor company.

VII. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC, authorized the preparation of this notice. OSHA is issuing this notice under the authority specified by 29 U.S.C. 655, Secretary of Labor's Order No. 1–2012 (76 FR 3912; Jan. 25, 2012), and 29 CFR part 1905.

Signed at Washington, DC, on September 24, 2013.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2013–23625 Filed 10–1–13; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL SCIENCE FOUNDATION

Committee on Equal Opportunities in Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Committee on Equal Opportunities in Science and Engineering (1173).

Dates/Time: October 30, 2013, 10:00 a.m.–3:30 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1235, Arlington, VA 22230.

Note: CEOSE Advisory Committee Members will be attending virtually. If you wish to attend, in-person attendance is required. To help facilitate your entry into the building, please contact Victoria Fung (*vfung@nsf.gov*) on or prior to Oct 28, 2013.

Type of Meeting: Open.

Contact Person: Dr. Bernice T. Anderson, Senior Advisor and CEOSE Executive Secretary, Office of International and Integrative Activities, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 (703) 292–5151 (direct) (703) 292–8040 (main) Email Address: *banderso@nsf.gov.*

Minutes: Meeting minutes and other information may be obtained from the Senior Advisor at the above address or the Web site at *http://www.nsf.gov/od/iia/activities/ceose/index.jsp .*

Purpose of Meeting: To study data, programs, policies, and other information pertinent to the National Science Foundation and to provide advice and recommendations concerning broadening participation in science and engineering.

Agenda:

Wednesday, October 30, 2013

Opening Statement by the CEOSE Chair
Presentations and Discussions:

- Delivery of the 2011–2012 Biennial CEOSE Report
- Presentation of Key Points from the Meeting among the National Science Foundation Acting Director and CEOSE officers
- Update of Broadening Participation Activities by the CEOSE Executive Liaison
- Discussion with Dr. Cora B. Marrett, Acting Director and Deputy Director of the National Science Foundation
- Reports of CEOSE Liaisons to NSF Advisory Committees
- Discussion by Federal Agency Liaisons About Interagency Broadening Participation Activities
- Panel Discussion about the Significance of Financial Support for Underrepresented Groups in STEM
- Discussion on CEOSE Unfinished Business and New Business

Dated: September 26, 2013.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2013–23981 Filed 10–1–13; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Innovation Corps Advisory Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Innovation Corps (I-Corps) for Advisory Committee, #80463.

Date/Time: October 28, 2013, 3:00 p.m.–5:00 p.m. EDT.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 530, Arlington, VA 22230.

I-Corps Advisory Committee Members will be attending virtually. If you are interested in attending, in-person attendance is required. To help facilitate your entry into the building, please contact Johnetta Lee (*jlee@nsf.gov*) on or prior to October 24, 2013.

Type of Meeting: Open.

Contact Person: Rathindra DasGupta, Program Director, Innovation Corps (I-Corps), Engineering Directorate, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230; Telephone number: (703) 292–8353; email: *rdasgupt@nsf.gov.*

Purpose of Meeting: To provide updates on I-Corps Teams, Sites and Nodes; and to dissolve the advisory committee.

Agenda:

- Opening Statements by Dr. Pramod Khargonekar (Assistant Director of Engineering Directorate) and Dr. Farnam Jahanian (Assistant Director of Computer and Information Science and Engineering Directorate).
- Updates on I-Corps Teams and Sites.
- Updates on I-Corps Nodes (a designated individual from each Node will present).
- Discussion of the current I-Corps programs and future directions, and dissolution of the committee.

Dated: September 27, 2013.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2013–24026 Filed 10–1–13; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by November 1, 2013. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Division of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Adrian Dahood, ACA Permit Officer, at the above address or *ACApermits@nsf.gov* or (703) 292–7149.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2014–022

1. *Applicant:* Celia Lang, Lockheed Martin, Antarctic Support Contract, Centennial, Colorado

Activity for Which Permit Is Requested

Introduce non indigenous species into Antarctica; An ACA permit is requested for import and use of a commercially available, bacteria supplement for municipal Wastewater Treatment Plants, to be used in the wastewater treatment plant at McMurdo Station, Antarctica. Benefits include better sludge settling and dewatering, control of surface foam and filamentous growth, reduction of total sludge volume and improved plant performance even in well-operated treatment plants. This supplement is a proprietary mixture of enzymatic substrate, nutrient base and bacteria for the treatment process.

Bacteria would not be released to the marine environment. Most of the bacteria are eventually captured in the wastewater treatment plant's solids that are dewatered, compressed and retrograded to the U.S. The effluent from the wastewater treatment plant is treated with a UV sterilization system before it is discharged from the plant, killing all remaining bacteria before it reaches the sewage outfall

Location

McMurdo Station Waste Water Treatment Plant.

Dates

December 1, 2013 to December 1, 2016.

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2013–23962 Filed 10–1–13; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0222; EA–13–150]

In the Matter of Certain Licensees Authorized To Possess and Transfer Items Containing Radioactive Material Quantities of Concern; Order Imposing Additional Security Measures (Effective Immediately)

I.

The Licensee identified in Attachment A [1] to this Order holds a license issued by the U.S. Nuclear Regulatory Commission (NRC) or an Agreement State, in accordance with the Atomic Energy Act of 1954, as amended, and 10 CFR parts 30, 32, 70, and 71, or equivalent Agreement State regulations. The license authorizes the Licensee to possess and transfer items containing radioactive material quantities of concern. This Order is being issued to the Licensee identified in Attachment A to this Order who may transport radioactive material quantities of concern under the NRC's authority to protect the common defense and security, which has not been relinquished to the Agreement States. The Order requires compliance with specific additional security measures to enhance the security for transport of certain radioactive material quantities of concern.

[1] Attachment A contains sensitive information and will not be released to the public.

II.

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and near Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to Licensees in order to strengthen Licensees' capabilities and readiness to respond to a potential attack on NRC regulated activity. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of the current security measures. In addition, the Commission commenced a comprehensive review of its safeguards and security programs and requirements.

As a result of its initial consideration of current safeguards and security requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain security measures are required to be implemented by Licensees as prudent, interim measures to address the current threat environment in a consistent manner. Therefore, the Commission is imposing requirements, as set forth in Attachment B [2] of this Order, on the Licensee identified in Attachment A of this Order. These additional security measures, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the common defense and security continue to be adequately protected in the current threat environment. Attachment C of this Order contains the requirements for fingerprinting and criminal history record checks for individuals when the Licensee's reviewing official is determining access to Safeguards Information or unescorted access to the radioactive materials. These requirements will remain in effect until the Commission determines otherwise.

Some measures may not be possible or necessary for all shipments of radioactive material quantities of concern, or may need to be tailored to accommodate the Licensee's specific circumstances to achieve the intended objectives and avoid any unforeseen

[2] Attachment B contains some requirements that are SAFEGUARDS INFORMATION, and cannot be released to the public. The remainder of the requirements contained in Attachment B that are not SAFEGUARDS INFORMATION will be released to the public.

effect on the safe transport of radioactive material quantities of concern.

In light of the continuing threat environment, the Commission concludes that these security measures must be embodied in an Order, consistent with the established regulatory framework. The Commission has determined that some of the security measures contained in Attachment B of this Order contain Safeguards Information and will not be released to the public as per NRC's ''Order Imposing Requirements for the Protection of Certain Safeguards Information'' (EA–13–040), issued specifically to the Licensee identified in Attachment A to this Order. Access to Safeguards Information is limited to those persons who have established a need-to-know the information, are considered to be trustworthy and reliable, and have been fingerprinted and undergone a Federal Bureau of Investigation (FBI) identification and criminal history records check in accordance with the NRC's ''Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information'' (EA–13–041). A need-to-know means a determination by a person having responsibility for protecting Safeguards Information that a proposed recipient's access to Safeguards Information is necessary in the performance of official, contractual, or Licensee duties of employment. Individuals who have been fingerprinted and granted access to Safeguards Information by the reviewing official under the NRC's ''Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information'' (EA–13–041) do not need to be fingerprinted again for purposes of being considered for unescorted access.

This Order also requires that a reviewing official must consider the results of the FBI criminal history records check in conjunction with other applicable requirements to determine whether an individual may be granted or allowed continued unescorted access. The reviewing official may be one that has previously been approved by NRC in accordance with the ''Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information'' (EA–13–041). Licensees may nominate additional reviewing officials for making unescorted access determinations in accordance with NRC Order EA–13–041. The nominated reviewing officials must have access to Safeguards Information or require unescorted access to the radioactive material as part of their job duties.

To provide assurance that Licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, the Licensee identified in Attachment A to this Order shall implement the requirements identified in Attachments B and C to this Order. In addition, pursuant to 10 CFR 2.202, I find that in light of the common defense and security matters identified above, which warrant the issuance of this Order, the public health and safety require that this Order be immediately effective.

III.

Accordingly, pursuant to Sections 53, 63, 81, 147, 149, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 30, 32, 70, and 71, *it is hereby ordered, effective immediately, that the licensee identified in attachment a to this order shall comply with the following:*

A. The Licensee shall, notwithstanding the provisions of any Commission or Agreement State regulation or license to the contrary, comply with the requirements described in Attachments B and C to this Order. The Licensee shall immediately start implementation of the requirements in Attachments B and C to the Order and shall complete implementation before the first shipment of radioactive material quantities of concern.

B. 1. The Licensee shall, within twenty (20) days of the date of this Order, notify the Commission, (1) if it is unable to comply with any of the requirements described in Attachments B or C, (2) if compliance with any of the requirements is unnecessary in its specific circumstances, or (3) if implementation of any of the requirements would cause the Licensee to be in violation of the provisions of any Commission or Agreement State regulation or its license. The notification shall provide the Licensees' justification for seeking relief from or variation of any specific requirement.

2. If the Licensee considers that implementation of any of the requirements described in Attachments B or C to this Order would adversely impact the safe transport of radioactive material quantities of concern, the Licensee must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachments B or requirement in question, or a schedule for modifying the activity to address the adverse safety condition. If neither approach is appropriate, the Licensee must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

C. 1. In accordance with the NRC's ''Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information'' (EA–13–041) only the NRC-approved reviewing official shall review results from an FBI criminal history records check. The Licensee may use a reviewing official previously approved by the NRC as its reviewing official for determining access to Safeguards Information or the Licensee may nominate another individual specifically for making unescorted access to radioactive material determinations, using the process described in EA–13–041. The reviewing official must have access to Safeguards Information or require unescorted access to the radioactive material as part of their job duties. The reviewing official shall determine whether an individual may have, or continue to have, unescorted access to radioactive materials that equal or exceed the quantities in Attachment B to this Order. Fingerprinting and the FBI identification and criminal history records check are not required for individuals exempted from fingerprinting requirements under 10 CFR 73.61 (72 FR 4945; February 2, 2007). In addition, individuals who have a favorably decided U.S. Government criminal history records check within the last five (5) years, or have an active federal security clearance (provided in each case that the appropriate documentation is made available to the Licensee's reviewing official), have satisfied the Atomic Energy Act of 1954, as amended, fingerprinting requirement and need not be fingerprinted again for purposes of being considered for unescorted access.

2. No person may have access to Safeguards Information or unescorted access to radioactive materials if the NRC has determined, in accordance with its administrative review process based on fingerprinting and an FBI identification and criminal history records check, either that the person may not have access to Safeguards Information or that the person may not have unescorted access to a utilization facility, or radioactive material or other

property subject to regulation by the NRC.

D. Fingerprints shall be submitted and reviewed in accordance with the procedures described in Attachment C to this Order. Individuals who have been fingerprinted and granted access to Safeguards Information by the reviewing official under Order EA–13–041, do not need to be fingerprinted again for purposes of being considered for unescorted access.

E. The Licensee may allow any individual who currently has unescorted access to radioactive materials, in accordance with this Order, to continue to have unescorted access without being fingerprinted, pending a decision by the reviewing official (based on fingerprinting, an FBI criminal history records check and a trustworthy and reliability determination) that the individual may continue to have unescorted access to radioactive materials that equal or exceed the quantities listed in Attachment B to this Order. The Licensee shall complete implementation of the requirements of Attachments B and C to this Order before the first shipment of radioactive material quantities of concern.

F. 1. The Licensee shall, within twenty (20) days of the date of this Order, submit to the Commission a schedule for completion of each requirement described in Attachments B and C.

2. The Licensee shall report to the Commission when they have achieved full compliance with the requirements described in Attachments B and C.

G. Notwithstanding any provisions of the Commission's or an Agreement State's regulations to the contrary, all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

Licensee response to Conditions B.1, B.2, F.1, and F.2 above shall be submitted to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. In addition, Licensee submittals that contain specific physical protection or security information considered to be Safeguards Information shall be put in a separate enclosure or attachment and, marked as ''SAFEGUARDS INFORMATION—MODIFIED HANDLING'' and mailed (no electronic transmittals, i.e., no email or FAX) to the NRC.

The Director, Office of Federal and State Materials and Environmental Management Programs, may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by the Licensee.

IV.

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order within twenty (20) days of the date of this Order. In addition, the Licensee and any other person adversely affected by this Order may request a hearing of this Order within twenty (20) days of the date of the Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made, in writing, to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension.

The answer may consent to this Order. If the answer includes a request for a hearing, it shall, under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee relies and the reasons as to why the Order should not have been issued. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

All documents filed in the NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for a hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice

confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee may, in addition to requesting a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 27th day of August 2013.

For the Nuclear Regulatory Commission.

Brian E. Holian,

Acting Director, Office of Federal and State Materials and Environmental Management Programs.

Attachment A: List of Licensees—Redacted

Attachment B: Additional Security Measures for Transportation of Radioactive Material Quantities of Concern—Revision 3

A. General Basis Criteria

These Additional Security Measures (ASMs) are established to delineate licensee responsibility in response to the current threat environment. The following security measures apply to the Nuclear Regulatory Commission (NRC) and Agreement States licensees, who ship Radioactive Material Quantities of Concern (RAMQC) as defined in Section A .1. Shipments of RAMQC that do not fall within the NRC's jurisdiction under the Atomic Energy Act of 1954, as amended, are not subject to the provisions of these ASMs.

1. Licensees who are subject to this Order shall ensure that the requirements listed in Section B below are in effect when they ship radioactive materials that meet the following criterion:

a. Radionuclides listed in Table A, greater than or equal to the quantities specified, or

b. For mixtures of radionuclides listed in Table A, the sum of the fractions of those radionuclides if greater than or equal to 1, or

c. For shipments of spent nuclear fuel containing greater than or equal to 1000 Terabecquerels (TBq) (27,000 Curies) but less than or equal to 100 grams of spent nuclear fuel.

For shipments containing greater than 100 grams of spent nuclear fuel, licensees shall follow the ASMs for ''Transportation of Spent Nuclear Fuel Greater than 100 Grams,'' dated October 3, 2002.

These ASMs supersede Safeguards Advisories SA–01–01, Rev. 1, and SA–03–02. For radioactive materials shipments containing radionuclides not addressed by this ASM guidance will be provided by Safeguards Advisory.

2. The requirements of these ASMs apply to a conveyance (i.e., the requirements apply irrespective of whether the RAMQC is shipped in a single package or in multiple packages in a single conveyance).

3. Licensees are not responsible for complying with the requirements of these ASMs if a carrier aggregates, during transport or storage incident to transport, radioactive material from two or more conveyances from separate licensees which individually do not exceed the limits of Paragraph A.1. but which together meet or exceed any of the criteria in Paragraph A.1.

4. The requirements of these ASMs only apply to RAMQC shipments using highway or rail modes of transportation. For multi-mode shipments, the requirements of these ASMs apply only to the portion of shipments that are made using highway or rail modes of transportation, as appropriate.

5. For domestic highway and rail shipments of materials in quantities greater than or equal to the quantities in

Paragraph A.1, per conveyance, the licensee shall ensure that:

a. Only carriers are used which:

1. Use established package tracking systems,

2. Implement methods to assure trustworthiness and reliability of personnel associated with the transportation of RAMQC,

3. Maintain constant control and/or surveillance during transit, and

4. Have the capability for immediate communication to summon appropriate response or assistance.

b. The licensee shall verify and document that the carrier employs the measures listed above.

6. The preplanning, coordination, and tracking requirements of these ASMs are intended to reduce unnecessary delays and shipment duration and to facilitate the transfer of the RAMQC shipment and any escorts at State borders.

7. Unless specifically noted otherwise, the requirements of these ASMs do not apply to local law enforcement agencies (LLEA) personnel performing escort duties.

8. The requirements of these ASMs apply to RAMQC domestic shipments within the United States (U.S.), imports into the U.S., or exports from the U.S. The requirements of these ASMs do not apply to transshipments through the U.S. Licensees are responsible for complying with the requirements of Section B for the highway and rail shipment portion of an import or export which occurs inside of the U.S.

For import and export RAMQC shipments, while located at the port or shipments on U.S. navigable waterways, the U.S. Coast Guard Maritime Transportation security regulations will be in effect and these ASMs are not applicable. For RAMQC shipments while located at the air freight terminal, security requirements will be performed in accordance with the Transportation Security Administration security regulations.

For import and export RAMQC shipments, the licensee shall ensure that the requirements of these ASMs are implemented after the transportation package has been loaded onto the highway or rail vehicle (except for the advance notification requirements in section B.4) and the package begins the domestic portion of the shipment to or from the U.S. port of entry [i.e., the package(s) departs for or from the port of entry facility or the airfreight terminal].

B. Specific Requirements

Licensees who ship RAMQC in quantities that meet the criteria of Paragraph A.1. shall ensure that any carriers used have developed and implemented transportation security plans that embody the additional security measures imposed by this Order.

1. Licensee Verification

Before transfer of radioactive materials in quantities which meet the criterion of Paragraph A.1, per conveyance, the licensee shall:

a. For new recipient(s), verify that the intended recipient's license authorizes receipt of the regulated material by direct contact with the regulatory authority that issued the license (NRC Region or Agreement State) prior to transferring the material,

b. Verify the validity of unusual orders or changes (if applicable) that depart from historical patterns of ordering by existing recipients,

c. Verify the material is shipped to an address authorized in the license and that the address is valid,

d. Verify the address for a delivery to a temporary job site is valid,

e. Document the verification and validation process, and

f. Coordinate departure and arrival times with the recipient.

2. Background Investigations

a. Background investigations are intended to provide high assurance that individuals performing assigned duties associated with the transport of RAMQC or access to sensitive information associated with such transport are trustworthy and reliable, and do not constitute an unreasonable risk to the common defense and security, including the potential to commit radiological sabotage.

b. For highway shipments only, the licensee shall ensure background investigations for all drivers, accompanying individuals, communications center managers, and other appropriate communications center personnel have been performed. The NRC only has the authority to impose a Federal Bureau of Investigation (FBI) criminal history check, which includes fingerprinting, on those individuals who seek access to Safeguards Information (SGI) or unescorted access to licensed material.

c. For rail shipments, the licensee shall ensure background investigations for employees filling the positions of communications center managers and other appropriate communications center personnel have been performed. The NRC only has the authority to impose a FBI criminal history check, which includes fingerprinting, on those individuals who seek access to SGI or unescorted access to licensed material.

d. Licensees shall document the basis for concluding that there is high assurance that individuals granted access to safeguards information or unescorted access to licensed material are trustworthy and reliable, and do not constitute an unreasonable risk for malevolent use of the regulated material. ''Access'' means that an individual could exercise some physical control over the material or device containing radioactive material.

(1) The trustworthiness, reliability, and verification of an individual's true identity shall be determined based on a background investigation. The background investigation shall address at least the past three (3) years, and as a minimum, include fingerprinting and an FBI criminal history check, verification of employment history, education, employment eligibility and personal references. If an individual's employment has been less then the required three (3) years period, educational references may be used in lieu of employment history.

(2) Fingerprints shall be submitted and reviewed in accordance with the procedures described in Attachment C to this Order.

(3) A reviewing official that the licensee nominated and has been approved by the NRC, in accordance with NRC ''Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information,'' may continue to make trustworthiness and reliability determinations. The licensee may also nominate another individual specifically for making unescorted access determinations using the process identified in the NRC ''Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information.'' The nominated reviewing official must have access to Safeguards Information or require unescorted access to the radioactive material as part of their job duties.

e. Licensees background investigation requirements may also be satisfied for an individual that has:

(1) Current access authorization permitting unescorted access to a power reactor facility or access to Safeguards Information,

(2) current U.S. Government-issued security clearance (based upon a national agency check, at a minimum), or

(3) satisfactorily completed a background investigation under an NRC-approved access authorization program.

f. Individuals shall not perform assigned duties associated with the

transport of RAMQC until the licensee has confirmed that a determination of trustworthiness and reliability, based on the appropriate background investigation requirements in B.2.d. and B.2.e., has been performed and documented.

3. Preplanning and Coordination

a. As part of the shipment planning process, the licensee shall ensure that appropriate security information is provided to and is coordinated with affected States through which the shipment will pass to ensure minimal delays. These discussions shall include whether a State intends to provide escorts for a shipment.

b. The licensee shall ensure States are provided with position information on a shipment (see Paragraph B.5.a), if requested and practical.

c. For shipments by highway, the licensee's coordination required in Paragraph B.3.a. shall include identification of Highway Route Controlled Quantity (HRCQ) shipments of material and safe havens.[1]

4. Notifications

a. The licensee shall ensure an advance notification of a shipment is provided, or of a series of shipments, of RAMQC to the NRC. The licensee shall ensure the notification is submitted sufficiently in advance to ensure it is received by NRC at least seven (7) days, where practicable, before the shipment commences physically within the U.S.

For written notifications, the notice should be addressed to: (10 CFR 2.390) U.S. Nuclear Regulatory Commission, ATTN: Director, Division of Nuclear Security, M/S: T–4–D–8, Office of Nuclear Security and Incident Response, 11555 Rockville Pike, Rockville, MD 20852–2738.

Notifications may also be submitted electronically via email to *RAMQC_SHIPMENTS@nrc.gov* or via fax to 301–816–5151. (10 CFR 2.390)

b. The advance notification shall contain the following information:

(1) [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

(2) [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

(3) [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

(4) [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

(5) [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

(6) [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

(7) [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

Refer to Paragraph B.7.c. for determination of information designation of advance notifications during preplanning, coordinating, and reporting information activities.

c. The licensee shall ensure the information required by Paragraph B.4.b. is provided to each State through which the shipment will pass. The licensee shall ensure that the notification is received at least seven (7) days, where practicable, before the U.S. highway or railroad portion of a shipment commences.

d. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

5. Communications

a. (1) For highway shipments, monitor each RAMQC shipment with a telemetric position monitoring system that communicates with a communication center or is equipped with an alternative tracking system that communicates position information to a communications center.

(2) For rail shipments, monitor each RAMQC shipment with either: (i) A telemetric position monitoring system that communicates with a licensee or third-party communication center, (ii) a railroad track-side car location monitoring systems tracking system that relays a car's position to a railroad communications center (which can provide position information to any separate licensee communications center per Paragraph B.5.b), or (iii) alternate licensee monitoring system. Additionally, licensees may use a railroad communications center to monitor the rail portion of a shipment, in lieu of using a separate communications center.

b. (1) For highway shipments, provide for a communication center that has the capability to continuously and actively monitor in-progress shipments to ensure positive confirmation of the location, status, and control over the shipment and implement pre-planned procedures in response to deviations from the authorized route or notification of actual, attempted, or suspicious activities related to theft, loss, diversion, or radiological sabotage of a shipment. These procedures shall include identification of the designated LLEA contact(s) along the shipment route.

(2) For rail shipments, provide for a communication center that has the capability to periodically monitor in-progress shipments to ensure positive confirmation of the location of the shipment and implement pre-planned procedures in response to notification of actual, attempted, or suspicious activities related to theft, loss, diversion, or radiological sabotage of a shipment. These procedures shall include identification of the designated LLEA contact(s) along the shipment route. Licensees may use a railroad communications center in lieu of establishing a separate communications center.

c. (1) For highway shipments, ensure that a two-way telecommunication capability is available for the transport and any escort vehicles allowing them to communicate with each other with the communications center, and with designated LLEAs along the route. The communications center must be capable of contacting the designated authorities along the shipment route.

(2) For rail shipments, ensure that a two-way telecommunication capability is available between the train and the communications center and between any escort vehicles and the communications center. The communications center must be capable of contacting the designated authorities along the shipment route.

d. A licensee may utilize a carrier or third-party communications center in lieu of establishing such a facility itself. A commercial communications center must have the capabilities, necessary procedures, training, and personnel background investigations to meet the applicable requirements of these ASMs.

e. (1) For highway shipments, provide a backup means for the transport and any escort vehicle to communicate with the communications center, using a diverse method not subject to the same interference factors as the primary capability selected for compliance with

[1] In general, a safe haven is a readily recognizable and readily accessible site at which security is present or from which, in the event of an emergency, the transport crew can notify and wait for the local law enforcement authorities (LLEA). The following criteria are used by the NRC to determine the safe haven sites and licensees should use these criteria in identifying safe havens for shipments subject to this Order:

—Close proximity to the route, i.e., readily available to the transport vehicle.

—Security from local, State, or Federal assets is present or is accessible for timely response.

—Site is well lit, has adequate parking, and can be used for emergency repair or wait for LLEA response on a 24-hours-a-day basis.

—Have additional telephone facilities should the communications system of the transport vehicle not function properly.

—Possible safe haven sites include:

Military installations and other Federal sites having significant security assets; secure company terminals; State weigh stations; truck stops with secure areas; and LLEA sites, including State police barracks.

Paragraph B.5.c. (e.g., two-way radio or portable telephone).

(2) For rail shipments, provide a backup means for the train to talk with the communications center, using a diverse method not subject to the same interference factors as the primary capability selected for compliance with Paragraph B.5.c. (e.g., two-way radio or portable telephone).

f. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

(1) Not later than one hour after the time when, through the course of the investigation, it is determined the shipment is lost or stolen, the licensee shall ensure the appropriate local law enforcement agency, the NRC Operations Center at 301–816–5100, and the appropriate Agreement State regulatory agency, if any, are notified.

(2) If after 24 hours of initiating the investigation, the radioactive material cannot be located, licensee shall ensure the NRC's Operations Center and, for Agreement State licensees, the appropriate Agreement State regulatory agency are immediately notified.

g. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

6. Drivers and Accompanying Individuals

a. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

b. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

c. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

d. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

7. Procedures, Training, and Control of Information

a. (1) For highway shipments the licensee shall ensure that normal and contingency procedures have been developed, including, for example: Notifications, communications protocols, loss of communications, and response to actual, attempted, or suspicious activities related to theft, loss, diversion, or radiological sabotage of a shipment. Communication protocols must include a strategy for use of authentication and duress codes, provision for refueling or other stops, detours, and locations where communication is expected to be temporarily lost.

(2) For rail shipments, the licensee shall ensure that normal and contingency procedures have been developed, including, for example: Notifications, communications protocols, loss of communications, and response to actual, attempted, or suspicious activities related to theft, loss, diversion, or radiological sabotage of a shipment. Communication protocols must include a strategy for use of authentication and duress codes, provision for stops, and locations where communication is expected to be temporarily lost.

b. (1) For highway shipments, the licensee shall ensure that personnel, including drivers, accompanying individuals, responsible communication center managers, and other appropriate communication center personnel are trained in and understand the normal and contingency procedures.

(2) For rail shipments, the licensee shall ensure that personnel, including the appropriate train crew members and responsible railroad communication center managers, and other appropriate railroad communication center personnel are trained in and understand the normal and contingency procedures.

c. Information to be protected as Safeguards Information—Modified Handling, shall include, but is not limited to:

(1) Integrated transportation physical security plans.

(2) Schedules and itineraries for shipments. For shipments that are not inherently self disclosing, schedule and itineraries information may be decontrolled 2 days after a shipment is completed. For shipments that are inherently self disclosing, schedule may be released as necessary after departure.

(3) Details of alarm and communications systems, communication protocols and duress codes, and security contingency response procedures.

(4) Arrangements with designated LLEA (i.e., Federal, State Police, and/or local police departments) and information on whether a State intends to provide armed escorts for a shipment.

For preplanning; coordinating, for example with States organizations and carriers; reporting information as described in B.1., B.4., and B.5. related to shipments of radioactive material, and the radionuclides identified in Paragraph A.1, the licensee shall ensure the information is protected at least as sensitive information (for example, proprietary or business financial information). Licensees shall ensure access is restricted to this information to those licensee and contractor personnel with a need to know. Licensees shall ensure all parties receiving this information protect it similarly. Information may be transmitted either in writing or electronically and shall be marked as ''Sensitive Information—Not for Public Disclosure.''

C. Implementation Schedule

1. Licensees shall implement the requirements of this ASM within 180 days of the date of issuance of the Order or before the first shipment of RAMQC, whichever issooner.

TABLE A: RADIONUCLIDES OF CONCERN

Radionuclide	Quantity of concern[2] (TBq)	Quantity of concern[3] (Ci)
Am-241	0.6	16
Am-241/Be	0.6	16
Cf-252	0.2	5.4
Cm-244	0.5	14
Co-60	0.3	8.1
Cs-137	1	27
Gd-153	10	270
Ir-192	0.8	22
Pm-147	400	11,000
Pu-238	0.6	16
Pu-239/Be	0.6	16
Ra-226	0.4	11
Se-75	2	54
Sr-90 (Y-90)	10	270
Tm-170	200	5,400
Yb-169	3	81
Combinations of radioactive materials listed above[4]	[5]	

Guidance for Aggregation of Sources

The NRC supports the use of the International Atomic Energy Association's (IAEA) source categorization methodology as defined in IAEA Safety Standards Series No. RS–G–1.9, ''Categorization of Radioactive Sources,'' (2005) (see *http://www-pub.iaea.org/MTCD/publications/PDF/Pub1227_web.pdf*) and as endorsed by the agency's Code of

[2] The aggregate activity of multiple, collocated sources of the same radionuclide should be included when the total activity equals or exceeds the quantity of concern.

[3] The primary values used for compliance with this Order are Terabecquerels (TBq). The curie (Ci) values are rounded to two significant figures for informational purposes only.

[4] Radioactive materials are to be considered aggregated or collocated if breaching a common physical security barrier (e.g., a locked door at the entrance to a storage room) would allow access to the radioactive material or devices containing the radioactive material.

[5] If several radionuclides are aggregated, the sum of the ratios of the activity of each source, *i*, of radionuclide, *n*, $A_{(i,n)}$, to the quantity of concern for radionuclide *n*, $Q_{(n)}$, listed for that radionuclide equals or exceeds one. [(aggregated source activity for radionuclide A) ÷ (quantity of concern for radionuclide A)] + [(aggregated source activity for radionuclide B) ÷ (quantity of concern for radionuclide B)] + etc.....≥1.

Conduct for the Safety and Security of Radioactive Sources, January 2004 (see *http://www-pub.iaea.org/MTCD/publications/PDF/Code-2004_web.pdf*). The Code defines a three-tiered source categorization scheme. Category 1 corresponds to the largest source strength (equal to or greater than 100 times the quantity of concern values listed in Table 1.) and Category 3, the smallest (equal or exceeding one-tenth the quantity of concern values listed in Table 1.). Additional security measures apply to sources that are equal to or greater than the quantity of concern values listed in Table 1, plus aggregations of smaller sources that are equal to or greater than the quantities in Table 1. Aggregation only applies to sources that are collocated.

Licensees who possess individual sources in total quantities that equal or exceed the Table 1 quantities are required to implement additional security measures. Where there are many small (less than the quantity of concern values) collocated sources whose total aggregate activity equals or exceeds the Table 1 values, licensees are to implement additional security measures.

Some source handling or storage activities may cover several buildings, or several locations within specific buildings. The question then becomes, ''When are sources considered collocated for purposes of aggregation?'' For purposes of the additional controls, sources are considered collocated if breaching a single barrier (e.g., a locked door at the entrance to a storage room) would allow access to the sources. Sources behind an outer barrier should be aggregated separately from those behind an inner barrier (e.g., a locked source safe inside the locked storage room). However, if both barriers are simultaneously open, then all sources within these two barriers are considered to be collocated. This logic should be continued for other barriers within or behind the inner barrier.

The following example illustrates the point: A lockable room has sources stored in it. Inside the lockable room, there are two shielded safes with additional sources in them. Inventories are as follows:

The room has the following sources outside the safes: Cf-252, 0.12 TBq (3.2 Ci); Co-60, 0.18 TBq (4.9 Ci), and Pu-238, 0.3 TBq (8.1 Ci). Application of the unity rule yields: (0.12 ÷ 0.2) + (0.18 ÷ 0.3) + (0.3 ÷ 0.6) = 0.6 + 0.6 + 0.5 = 1.7. Therefore, the sources would require additional security measures. Shielded safe #1 has a 1.9 TBq (51 Ci) Cs-137 source and a 0.8 TBq (22 Ci) Am-241 source. In this case, the sources would require additional security measures, regardless of location, because they each exceed the quantities in Table 1. Shielded safe #2 has two Ir-192 sources, each having an activity of 0.3 TBq (8.1 Ci). In this case, the sources would not require additional security measures while locked in the safe. The combined activity does not exceed the threshold quantity 0.8 TBq (22 Ci).

Because certain barriers may cease to exist during source handling operations (e.g., a storage location may be unlocked during periods of active source usage), licensees should, to the extent practicable, consider two modes of source usage—''operations'' (active source usage) and ''shutdown'' (source storage mode). Whichever mode results in the greatest inventory (considering barrier status) would require additional security measures for each location.

Use the following method to determine which sources of radioactive material require implementation of the Additional Security Measures:

- Include any single source equal to or greater than the quantity of concern in Table
- Include multiple collocated sources of the same radionuclide when the combined quantity equals or exceeds the quantity of concern
- For combinations of radionuclides, include multiple collocated sources of different radionuclides when the aggregate quantities satisfy the following unity rule: [(amount of radionuclide A) ÷ (quantity of concern of radionuclide A)] + [(amount of radionuclide B) ÷ (quantity of concern of radionuclide B)] + etc.....≥ 1

Attachment C: Requirements for Fingerprinting and Criminal History Checks of Individuals When Licensee's Reviewing Official Is Determining Access to Safeguards Information or Unescorted Access to Radioactive Materials

General Requirements

Licensees shall comply with the following requirements of this attachment.

1. Each Licensee subject to the provisions of this attachment shall fingerprint each individual who is seeking or permitted access to Safeguards Information (SGI) or unescorted access to radioactive material quantities of concern (RAMQC). The Licensee shall review and use the information received from the Federal Bureau of Investigation (FBI) and ensure that the provisions contained in this Order and this attachment are satisfied.

2. The Licensee shall notify each affected individual that the fingerprints will be used to secure a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the ''Right to Correct and Complete Information'' section of this attachment.

3. Fingerprints for access to SGI or unescorted access need not be taken if an employed individual (e.g., a Licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.59 for access to SGI or 10 CFR 73.61 for unescorted access, has a favorably-decided U.S. Government criminal history check (e.g. National Agency Check, Transportation Worker Identification Credentials in accordance with 49 CFR Part 1572, Bureau of Alcohol Tobacco Firearms and Explosives background checks and clearances in accordance with 27 CFR Part 555, Health and Human Services security risk assessments for possession and use of select agents and toxins in accordance with 27 CFR Part 555, Hazardous Material security threat assessments for hazardous material endorsement to commercial drivers license in accordance with 49 CFR Part 1572, Customs and Border Protection's Free and Secure Trade Program [6]) within the last five (5) years, or has an active federal security clearance. Written confirmation from the Agency/employer which granted the federal security clearance or reviewed the criminal history check must be provided. The Licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires access to SGI or unescorted access to radioactive materials associated with the Licensee's activities.

4. All fingerprints obtained by the Licensee pursuant to this Order must be submitted to the Commission for transmission to the FBI.

5. The Licensee shall review the information received from the FBI and consider it, in conjunction with the trustworthy and reliability requirements of this Order, in making a determination whether to grant, or continue to allow, access to SGI or unescorted access to radioactive materials.

6. The Licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an

[6] The FAST program is a cooperative effort between the Bureau of Customs and Border Protection and the governments of Canada and Mexico to coordinate processes for the clearance of commercial shipments at the U.S.-Canada and U.S.-Mexico borders. Participants in the FAST program, which requires successful completion of a background records check, may receive expedited entrance privileges at the northern and southern borders.

individual's suitability for access to SGI or unescorted access to RAMQC.

7. The Licensee shall document the basis for its determination whether to grant, or continue to allow, access to SGI or unescorted access to RAMQC.

Prohibitions

1. A Licensee shall not base a final determination to deny an individual access to radioactive materials solely on the basis of information received from the FBI involving: An arrest more than one (1) year old for which there is no information of the disposition of the case, or an arrest that resulted in dismissal of the charge or an acquittal.

2. A Licensee shall not use information received from a criminal history check obtained pursuant to this Order in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the Licensee use the information in any way which would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

Procedures for Processing Fingerprint Checks

1. For the purpose of complying with this Order, Licensees shall, using an appropriate method listed in 10 CFR 73.4, submit to the NRC's Division of Facility and Security, Mail Stop T–03B46M, one completed, legible standard fingerprint card (Form FD–258, ORIMDNRC000Z) or, where practicable, other fingerprint records for each individual seeking access to SGI or unescorted access to RAMQC, to the Director of the Division of Facility and Security, marked for the attention of the Division's Criminal History Program. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling 1–630–829–9565, or by email to *forms.resource@nrc.gov.* Practicable alternative formats are set forth in 10 CFR 73.4. The Licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards due to illegible or incomplete cards.

2. The NRC will review submitted fingerprint cards for completeness. Any Form FD–258 fingerprint record containing omissions or evident errors will be returned to the Licensee for corrections. The fee for processing fingerprint checks includes one re-submission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free re-submission must have the FBI Transaction Control Number reflected on the re-submission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

3. Fees for processing fingerprint checks are due upon application. Licensees shall submit payment with the application for processing fingerprints by corporate check, certified check, cashier's check, or money order, made payable to ''U.S. NRC.'' [For guidance on making electronic payments, contact the Facility Security Branch, Division of Facility and Security, at 301–415–7513]. Combined payment for multiple applications is acceptable. The application fee (currently $26) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a Licensee, and an NRC processing fee, which covers administrative costs associated with NRC handling of Licensee fingerprint submissions. The Commission will directly notify Licensees who are subject to this regulation of any fee changes.

4. The Commission will forward to the submitting Licensee all data received from the FBI as a result of the Licensee's application(s) for criminal history checks, including the FBI fingerprint record.

Right To Correct and Complete Information

1. Prior to any final adverse determination, the Licensee shall make available to the individual the contents of any criminal records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the Licensee for a period of one (1) year from the date of the notification.

2. If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR Part 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The Licensee must provide at least ten (10) days for an individual to initiate an action challenging the results of an FBI criminal history records check after the record is made available for his/her review. The Licensee may make a final determination on access to SGI or unescorted access RAMQC based upon the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination on access to SGI or unescorted access to RAMQC, the Licensee shall provide the individual its documented basis for denial. Access to SGI or unescorted access to RAMQC shall not be granted to an individual during the review process.

Protection of Information

1. Each Licensee who obtains a criminal history record on an individual pursuant to this Order shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

2. The Licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining access to SGI or unescorted access to RAMQC. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have a need-to-know.

3. The personal information obtained on an individual from a criminal history record check may be transferred to another Licensee if the Licensee holding the criminal history record receives the individual's written request to re-disseminate the information contained in his/her file, and the gaining Licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

4. The Licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the NRC to

determine compliance with the regulations and laws.

5. The Licensee shall retain all fingerprint and criminal history records received from the FBI, or a copy if the individual's file has been transferred, for three (3) years after termination of employment or determination of access to SGI or unescorted access to RAMQC (whether access was approved or denied). After the required three (3) year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole or in part.

[FR Doc. 2013–24093 Filed 10–1–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Request To Amend a License To Export High-Enriched Uranium

Pursuant to 10 CFR 110.70 (b) ''Public Notice of Receipt of an Application,'' please take notice that the Nuclear Regulatory Commission (NRC) has received the following request for an export license amendment. Copies of the request are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link *http://www.nrc.gov/reading-rm.html* at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within thirty days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

A request for a hearing or petition for leave to intervene may be filed with the NRC electronically in accordance with NRC's E-Filing rule promulgated in August 2007, 72 Fed. Reg 49139 (Aug. 28, 2007). Information about filing electronically is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* To ensure timely electronic filing, at least 5 (five) days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by email at *HEARINGDOCKET@NRC.GOV,* or by calling (301) 415–1677, to request a digital ID certificate and allow for the creation of an electronic docket.

In addition to a request for hearing or petition for leave to intervene, written comments, in accordance with 10 CFR 110.81, should be submitted within thirty (30) days after publication of this notice in the **Federal Register** to Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications.

The information concerning this export license amendment application follows.

NRC EXPORT LICENSE AMENDMENT APPLICATION

[Description of Material]

Name of applicant, Date of application, Date received, Application No., Docket No.	Material type	Total quantity	End use	Recipient country
U.S. Department of Energy, National Nuclear Security Administration, September 9, 2013, September 12, 2013, XSNM3730/01, 11006054.	High-Enriched Uranium (93.35%).	18.4 kilograms uranium (17.1 kilograms U–235).	To manufacture HEU targets in France for irradiation in research reactors for fabrication of molybdenum-99 (Mo-99) medical isotopes in the Covidien Molybdenum Production Facility in the Netherlands. Amend to: 1) increase the quantity of HEU authorized for export from 9.4 kg of U–235 contained in 10.1 kg uranium to a new cumulative total of 17.1 kg of U–235 contained in 18.4 kg uranium; and 2) add Maria Reactor in Poland to ''Intermediate Foreign Consignees(s)''.	The Netherlands.

Dated this 26th day of September, 2013, at Rockville, Maryland.

For The Nuclear Regulatory Commission.

Mark R. Shaffer,

Deputy Director, Office of International Programs.

[FR Doc. 2013–24070 Filed 10–1–13; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Transfer of Post Office Box Section 21412 to Competitive Fee Group

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service hereby provides notice that Post Office® Box service for ZIP Code® 21412 is reassigned from its market dominant fee group to a competitive fee group.

DATES: *Effective date:* September 19, 2013.

FOR FURTHER INFORMATION CONTACT: Direct questions or comments to: Frank Ippolito (*frank.p.ippolito@usps.gov*), 202–268–4681; or David Rubin (*david.h.rubin@usps.gov*), 202–268–2986.

SUPPLEMENTARY INFORMATION: Locations providing Post Office Box service are assigned to fee groups and classified as competitive or market dominant based upon the Post Office location and other criteria.

In May 2011, a *Request of the United States Postal Service* was filed with the Postal Regulatory Commission (PRC) to transfer approximately 6,800 P.O. Box locations from market dominant to competitive fee groups. At that time, the Postal Service advised the PRC that a **Federal Register** notice would be filed when any future P.O. Box locations are transferred.

While the Naval Academy was excluded from the initial PRC filing due to a lack of public access, the customers at that location have a competitive choice. The U.S. Naval Academy (USNA), Box Section ZIP 21412 facility, in Annapolis, Maryland, serves

approximately 4,701 P.O. Box customers, and the location meets the criteria to be classified as and assigned to a competitive fee group. Therefore, the Postal Service has reassigned USNA Box Section ZIP 21412 from Market Dominant Fee Group 3 to Competitive Fee Group 35.

Documents pertinent to this request are available at *www.prc.gov,* Docket No. MC2011–25.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2013–23978 Filed 10–1–13; 8:45 am]

BILLING CODE 7710–12–P

PRESIDIO TRUST

Notice of Public Meeting of the Fort Scott Council

AGENCY: The Presidio Trust.

ACTION: Notice of public meeting of the Fort Scott Council.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given that a public meeting of the Fort Scott Council (Council) will be held from 10 a.m. to 12:30 p.m. on Thursday, October 17, 2013. The meeting is open to the public, and oral public comment will be received at the meeting. The Council was formed to advise the Executive Director of the Presidio Trust (Trust) on matters pertaining to the rehabilitation and reuse of Fort Winfield Scott as a new national center focused on service and leadership development.

SUPPLEMENTARY INFORMATION: The Trust's Executive Director, in consultation with the Chair of the Board of Directors, has determined that the Council is in the public interest and supports the Trust in performing its duties and responsibilities under the Presidio Trust Act, 16 U.S.C. 460bb appendix.

The Council will advise on the establishment of a new national center (Center) focused on service and leadership development, with specific emphasis on: (a) Assessing the role and key opportunities of a national center dedicated to service and leadership at Fort Scott in the Presidio of San Francisco; (b) providing recommendations related to the Center's programmatic goals, target audiences, content, implementation and evaluation; (c) providing guidance on a phased development approach that leverages a combination of funding sources including philanthropy; and (d) making recommendations on how to structure the Center's business model to best achieve the Center's mission and ensure long-term financial self-sufficiency.

Meeting Agenda: In this meeting of the Council, a Director's report will be followed by updates from Council task groups, and members will discuss a draft business plan for the Center. The period from 12:00 p.m. to 12:30 p.m. will be reserved for public comments.

Public Comment: Individuals who would like to offer comments are invited to sign-up at the meeting and speaking times will be assigned on a first-come, first-served basis. Written comments may be submitted on cards that will be provided at the meeting, via mail to Linh Tran, Presidio Trust, 1201 Ralston Avenue, San Francisco, CA 94129–0052, or via email to *fortscott@presidiotrust.gov.* If individuals submitting written comments request that their address or other contact information be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently at the beginning of the comments. The Trust will make available for public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses.

Time: The meeting will be held from 10:00 a.m. to 12:30 p.m. on Thursday, October 17, 2013.

Location: The meeting will be held at 1202 Ralston Avenue, The Presidio, San Francisco, CA 94129.

FOR FURTHER INFORMATION CONTACT: Additional information is available online at *http://www.presidio.gov/explore/Pages/fort-scott-council.aspx.*

Dated: September 20, 2013.

Karen A. Cook,

General Counsel.

[FR Doc. 2013–24086 Filed 10–1–13; 8:45 am]

BILLING CODE 4310–4R–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30735; 812–14137]

Guinness Atkinson Asset Management, Inc., et al.; Notice of Application

September 26, 2013.

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, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and (B) of the Act.

Applicants: Guinness Atkinson Asset Management, Inc. (''GAAM''), SmartX ETF Trust (the ''Trust'') and Foreside Fund Services, LLC (''Distributor'').

SUMMARY: *Summary of Application:* Applicants request an order that permits: (a) Certain open-end management investment companies or series thereof 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; (e) certain series to issue Shares in less than Creation Unit size to investors participating in a distribution reinvestment program (''Distribution Reinvestment Program''); and (f) 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 March 22, 2013, and amended on September 11, 2013 and September 18, 2013.

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. October 21, 2013, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, 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: Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants, c/o Alexandra Alberstadt,

Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, NY 10036.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 551–6817 or Daniele Marchesani, Branch Chief, at (202) 551–6821 (Division of Investment Management, Exemptive Applications 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 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 under the Act as an open-end management investment company. Applicants request that the order apply to the initial series of the Trust, SmartX NASDAQ Quality Dividend Index ETF (''Initial Fund''), and future series of the Trust and future open-end management investment companies and series thereof advised by GAAM or an entity controlling, controlled by or under common control with GAAM (each, an ''Adviser'') that comply with the terms and conditions of the application (each such company or series, a ''Future Fund,'' and collectively with the Initial Fund, the ''Funds'').[1] The Initial Fund and the Future Funds will each track the performance of a specified equity or fixed income securities index (''Underlying Index'').[2] Certain Future Funds will be based on Underlying Indexes comprised solely of equity and/or fixed income securities issued by (i) domestic issuers (''Domestic Funds'') or (ii) foreign issuers (''International Funds''). Other Future Funds may be based on Underlying Indexes that include foreign and domestic equity or fixed income securities (''Global Funds'').

2. GAAM or another Adviser will serve as the investment adviser to the Funds. GAAM and each other Adviser will be registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). The Adviser may enter into subadvisory agreements with investment advisers to act as subadvisers with respect to any Fund (each, a ''Subadviser''). Any Subadviser to a Fund will be registered under the Advisers Act or not subject to registration. The Distributor, a broker-dealer registered under the Securities Exchange Act of 1934 (''Broker'') and an affiliate of the Adviser, will act as the distributor and principal underwriter of Creation Units of Shares. In the future, another Broker may act as distributor and principal underwriter. No Distributor will be affiliated with any Exchange (as defined below) or any Index Provider (as defined below).

3. Each Fund will consist of a portfolio of securities and other assets and positions (''Portfolio Positions'') selected to correspond generally to the price and yield performance of an Underlying Index. No entity that creates, compiles, sponsors or maintains an Underlying Index (''Index Provider'') is or will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person of the Trust or a Fund, a promoter, the Adviser, a Subadviser, or a Distributor.

4. The investment objective of each Fund will be to provide investment returns that closely correspond, before fees and expenses, to the price and yield performance of its Underlying Index.[3] Each Fund will sell and redeem Creation Units on a ''Business Day,'' which is defined to include any day that the Trust is open for business as required by section 22(e) of the Act. The Adviser and/or Subadviser may utilize a replication or a representative sampling strategy to track its Underlying Index. A Fund using a replication strategy will invest in substantially all of the Component Securities in its Underlying Index in the same approximate proportions as in the Underlying Index. A Fund using a representative sampling strategy generally will hold a significant number, but not necessarily all, of the Component Securities of its Underlying Index. Applicants state that if representative sampling is used, a Fund will not be expected to track its Underlying Index with the same degree of accuracy as a Fund employing the replication strategy. Applicants expect that each Fund will have a tracking error relative to the performance of its Underlying Index of no more than five percent.

5. Applicants anticipate that the price of a Share will range from $15 to $25, and that Creation Units will consist of at least 10,000 Shares. All orders to purchase and redeem Creation Units must be placed with the Distributor by or through an ''Authorized Participant,'' which is either: (a) a ''participating party,'' i.e., 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''), which in any case, has executed an agreement with the Distributor. The Distributor will transmit all purchase orders to the relevant Fund.

6. The 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'').[4] On any given Business Day 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, unless the Fund is Rebalancing (as defined below). In addition, the Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in a Fund's portfolio (including cash positions),[5] 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

[1] All existing entities that intend to rely on the requested order have been named as applicants. Any other existing or future entity that subsequently relies on the order will comply with the terms and conditions of the application. An Acquiring Fund (as defined below) may rely on the order only to invest in a Fund and not in any other registered investment company.

[2] The Underlying Index for the Initial Fund is NASDAQ SmartX Quality Dividend Index.

[3] Applicants represent that at least 80% of each Fund's total assets will be invested in the constituent securities of its respective Underlying Index (''Component Securities''), TBA Transactions (as defined below) representing Component Securities, and Depositary Receipts (as defined below) representing Component Securities. Each Fund also may invest the remaining 20% of its total assets in instruments not included in its Underlying Index, which the Adviser or Subadviser believes will assist the Fund in tracking the performance of its Underlying Index.

[4] 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.

[5] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's NAV for that Business Day.

differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots; [6] (c) ''to be announced'' transactions (''TBA Transactions''),[7] derivatives and other positions that cannot be transferred in kind [8] will be excluded from the Deposit Instruments and the Redemption Instruments; [9] (d) to the extent the Fund determines, on a given Business Day, to use a representative sampling of the Fund's portfolio; [10] or (e) for temporary periods, to effect changes in the Fund's portfolio as a result of the rebalancing of its Underlying Index (any such change, a ''Rebalancing''). If there is a difference between the net asset value (''NAV'') attributable to a Creation Unit and the aggregate market value of the Deposit Instruments or Redemption Instruments 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 ''Balancing 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 Balancing 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; [11] (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 Global Funds and International 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 or International Fund would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[12]

8. Each Business Day, before the open of trading on a national securities exchange, as defined in section 2(a)(26) of the Act (''Exchange'') on which Shares are listed (''Primary Listing Exchange''), each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Deposit Instruments and the Redemption Instruments, as well as the estimated Balancing Amount (if any), for that day.[13] The list of Deposit Instruments and Redemption Instruments will apply until a new list is announced on the following Business Day, and there will be no intra-day changes to the list except to correct errors in the published list. The intra-day indicative value of Shares, which will represent on a per Share basis the sum of the current value of the Portfolio Positions, will be published on the Consolidated Tape every 15 seconds throughout the regular trading hours of the Primary Listing Exchange.

9. Each Fund may recoup settlement costs charged by NSCC and DTC by imposing a transaction fee on investors purchasing or redeeming Creation Units (''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.[14] All orders to purchase Creation Units will 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 furnish a prospectus and a confirmation to Authorized Participants placing purchase orders and will maintain a record of the instructions given to a Fund to implement delivery of its Shares.

10. Shares of each Fund will be listed on an Exchange. The principal secondary market for the Shares will be the Primary Listing Exchange. It is expected that one or more member firms of the Primary Listing Exchange will be designated to act as a specialist or market maker and maintain a market for the Shares trading on the Primary Listing Exchange. The price of Shares will be based on a current bid/offer in the secondary market. Transactions involving the purchases or sales of Shares on an Exchange will be subject to customary brokerage fees and charges.

11. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Authorized Participants also may purchase or redeem Creation Units in connection with their market making activities. Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[15] The price at which Shares

[6] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[7] 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. The actual pools delivered generally are determined two days prior to the settlement date.

[8] 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.

[9] Because these instruments will be excluded from the Deposit Instruments and the Redemption Instruments, their value will be reflected in the determination of the Balancing Amount (defined below).

[10] A Fund may only use sampling for this purpose if the sample: (i) Is designed to generate performance that is highly correlated to the performance of the Fund's portfolio; (ii) consists entirely of instruments that are already included in the Fund's portfolio; and (iii) is the same for all Authorized Participants on a given Business Day.

[11] In determining whether a particular Fund will sell or redeem Creation Units entirely on a cash or in kind basis (whether for a given day or a given order), the key consideration will be the benefit that would accrue to the Fund and its investors. For instance, in bond transactions, the Adviser may be able to obtain better execution than Share purchasers because of the Adviser's size, experience and potentially stronger relationships in the fixed income markets. Purchases of Creation Units either on an all cash basis or in kind are expected to be neutral to the Funds from a tax perspective. In contrast, cash redemptions typically require selling portfolio holdings, which may result in adverse tax consequences for the remaining Fund shareholders that would not occur with an in kind redemption. As a result, tax considerations may warrant in kind redemptions.

[12] 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).

[13] If the Fund is Rebalancing, it may need to announce two estimated Balancing Amounts for that day, one for deposits and one for redemptions.

[14] Where a Fund permits an in-kind purchaser to substitute cash-in-lieu of depositing one or more Deposit Instruments, the purchaser may be assessed a higher Transaction Fee to cover the cost of purchasing 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.

[15] 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.

trade will be disciplined by arbitrage opportunities created by the ability to purchase or redeem Creation Units at NAV, which applicants believe should ensure that Shares similarly do not trade at a material premium or discount in relation to NAV.

12. Shares will not be individually redeemable and owners of Shares may acquire those Shares from a Fund (other than pursuant to a Distribution Reinvestment Program) 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 traditional open-end investment company or a ''mutual fund.'' Instead, each Fund will be marketed as an ''exchange-traded fund.'' All marketing materials that describe the features or method of obtaining, buying or selling Creation Units, or Shares being listed and traded on an Exchange, or refer to redeemability, will prominently disclose that Shares are not individually redeemable shares and will disclose that the owners of Shares may acquire those Shares from the Fund (other than pursuant to a Distribution Reinvestment Program) or tender such Shares for redemption to the Fund only in Creation Units. Copies of annual and semi-annual shareholder reports will also be provided to the DTC Participants for distribution to Beneficial Owners (defined below) of Shares.

14. The Web site for the Funds (the ''Web site''), which 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 midpoint of the bid-ask spread at the time of the calculation of the NAV (''Bid/Ask Price''), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

15. The requested order would also permit the Funds to operate the ''Distribution Reinvestment Program,'' as described below. The Trust will make the DTC Dividend Reinvestment Service available for use by the beneficial owners of Shares (''Beneficial Owners'') through DTC Participants for reinvestment of their cash dividends.[16] DTC Participants whose customers participate in the program will have the distributions of their customers automatically reinvested in additional whole Shares issued by the applicable Fund at NAV per Share. Shares will be issued at NAV under the DTC Dividend Reinvestment Service regardless of whether the Shares are trading in the secondary market at a premium or discount to NAV as of the time NAV is calculated. Thus, Shares may be purchased through the DTC Dividend Reinvestment Service at prices that are higher (or lower) than the contemporaneous secondary market trading price. Applicants state that the DTC Dividend Reinvestment Service differs from dividend reinvestment services offered by broker-dealers in two ways. First, in dividend reinvestment programs typically offered by broker-dealers, the additional shares are purchased in the secondary market at current market prices at a date and time determined by the broker-dealer at its discretion. Shares purchased through the DTC Dividend Reinvestment Service are purchased directly from the fund on the date of the distribution at the NAV per share on such date. Second, in dividend reinvestment programs typically offered by broker-dealers, shareholders are typically charged a brokerage or other fee in connection with the secondary market purchase of shares. Applicants state that brokers typically do not charge customers any fees for reinvesting distributions through the DTC Dividend Reinvestment Service.

16. Applicants state that the DTC Dividend Reinvestment Service will be operated by DTC in exactly the same way it runs such service for other open-end management investment companies. The initial decision to participate in the DTC Dividend Reinvestment Service is made by the DTC Participant. Once a DTC Participant elects to participate in the DTC Dividend Reinvestment Service, it offers its customers the option to participate. Beneficial Owners will have to make an affirmative election to participate by completing an election notice. Before electing to participate, Beneficial Owners will receive disclosure describing the terms of the DTC Dividend Reinvestment Service and the consequences of participation. This disclosure will include a clear and concise explanation that under the Distribution Reinvestment Program, Shares will be issued at NAV, which could result in such Shares being acquired at a price higher or lower than that at which they could be sold in the secondary market on the day they are issued (this will also be clearly disclosed in the Prospectus). Brokers providing the DTC Dividend Reinvestment Service to their customers will determine whether to charge Beneficial Owners a fee for this service.

17. The Prospectus will make clear to Beneficial Owners that the Distribution Reinvestment Program is optional and that its availability is determined by their broker, at its own discretion. Broker-dealers are not required to utilize the DTC Dividend Reinvestment Service, and may instead offer a dividend reinvestment program under which Shares are purchased in the secondary market at current market prices or no dividend reinvestment program at all.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act granting 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 granting an exemption from sections 17(a)(1) and (2) of the Act, and under section 12(d)(1)(J) 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 provision 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 5(a)(1) and 2(a)(32) 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.

[16] Some DTC Participants may not elect to utilize the DTC Dividend Reinvestment Service. Beneficial Owners will be encouraged to contact their broker to ascertain the availability of the DTC Dividend Reinvestment Service through such broker.

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 issue Shares in Creation Units only. Applicants state that Creation Units will always be redeemable in accordance with the provisions of the Act. Applicants further state that because the market price of Shares 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 per Share.

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 an 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 the purchase and sale of Shares of a Fund will not be accomplished at an offering price described in the Fund's prospectus, as required by section 22(d), nor will sales and repurchases be made at a price based on the current NAV next computed after receipt of an order, as required by rule 22c–1. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants believe 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 intended 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, and (c) ensure an orderly distribution system of shares by contract dealers by eliminating price competition from non-contract dealers who could offer investors shares at less than the published sales price and who could pay investors a little 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 transactions in Shares would not cause dilution for owners of such Shares, because such transactions do not directly involve Fund assets. Similarly, secondary market trading in Shares should not create unjust discrimination or preferential treatment among buyers to the extent different prices exist during a given trading day, or from day to day. Applicants state that such variances occur as a result of third-party market forces, such as supply and demand, but do not occur as a result of unjust or discriminatory manipulation. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity will ensure that the Shares do not trade at a material discount or premium in relation to their NAV.

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 the settlement of redemptions of Creation Units of the Global and International 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 Positions to redeeming investors, coupled with local market holiday schedules, will require a delivery process of up to fourteen (14) calendar days. Applicants request relief under section 6(c) of the Act from section 22(e) to allow Global and International Funds to pay redemption proceeds up to 14 calendar days after the tender of the Creation Units. With respect to Future Funds based on a global or an international Underlying Index, applicants seek the same relief from section 22(e) only to the extent that similar circumstances exist. Except as disclosed in the relevant Global Fund's or International Fund's SAI, applicants expect that the Global Funds and International Funds will be able to deliver redemption proceeds within seven days.[17]

8. Applicants submit that Congress adopted section 22(e) to prevent unreasonable, undisclosed and unforeseen delays in the actual payment of redemption proceeds. Applicants state that allowing redemption payments for Creation Units of a Fund to be made within 14 calendar days would not be inconsistent with the spirit and intent of section 22(e). Applicants state that the SAI will disclose those local holidays (over the period of at least one year following the date thereof), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days and the maximum number of days (up to 14 calendar days) needed to deliver the proceeds for each affected Global Fund and International Fund.

9. Applicants are not seeking relief from section 22(e) for Global or International Funds that do not effect redemptions of Creation Units in-kind.

Section 12(d)(1) of the Act

10. 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 the investment company's shares to another investment company if the sale would cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale would cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

11. Applicants request an exemption to permit management investment companies (''Acquiring Management Companies'') and unit investment trusts (''Acquiring Trusts'') registered under the Act that are not advised or sponsored by the Adviser and are not part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as the Funds (collectively, ''Acquiring Funds'') to acquire Shares beyond the limits of section 12(d)(1)(A). In addition, applicants seek relief to permit each Fund, the Distributor and/or a Broker to

[17] Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations that applicants 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.

sell Shares to Acquiring Funds in excess of the limits of section 12(d)(1)(B).

12. Each investment adviser to an Acquiring Management Company within the meaning of section 2(a)(20)(A) of the Act (''Acquiring Fund Adviser'') will be registered as an investment adviser under the Advisers Act. An ''Acquiring Fund Subadviser'' is any investment advisor within the meaning of section 2(a)(20)(B) of the Act to an Acquiring Management Company. Each Acquiring Trust's sponsor is the ''Sponsor.''

13. Applicants submit that the proposed conditions to the requested relief adequately address the concerns underlying the limits in section 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees and overly complex fund structures. Applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

14. Applicants believe that neither an Acquiring Fund nor an Acquiring Fund Affiliate would be able to exert undue influence over a Fund.[18] Condition 5 limits the ability of an Acquiring Fund's Advisory Group [19] or an Acquiring Fund's Subadvisory Group [20] to control a Fund within the meaning of section 2(a)(9) of the Act. Applicants propose other conditions to limit the potential for undue influence over the Funds, including that no Acquiring Fund or Acquiring Fund Affiliate 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'').[21]

15. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. With respect to Acquiring Management Companies, applicants note that the board of directors or trustees, including a majority of the independent directors or trustees within the meaning of section 2(a)(19) of the Act, of any Acquiring Fund, will find that any fees charged under the Acquiring Management Company's advisory contract(s) are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Fund in which the Acquiring Management Company may invest. Under condition 13, the Acquiring Fund Adviser, or trustee of any Acquiring Trust (''Trustee''), or Sponsor, will waive fees otherwise payable to it by the Acquiring Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted under rule 12b–1 under the Act) received from a Fund by the Acquiring Fund Adviser, Trustee or Sponsor, or an affiliated person of the Acquiring Fund Adviser, Trustee or Sponsor, in connection with the investment by the Acquiring Fund in the Fund. Applicants also state that any sales charges or service fees charged with respect to shares of an Acquiring Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.[22]

16. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Fund will acquire securities of any investment company or company relying on section 3(c)(l) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(l)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes. To ensure that the Acquiring Funds understand and will comply with the terms and conditions of the requested order, any Acquiring Fund will be required to enter into a written agreement with the Fund (the ''Acquiring Fund Agreement''). The Acquiring Fund Agreement will include an acknowledgment from the Acquiring Fund that it may rely on the order only to invest in a Fund and not in any other investment company.

17. Applicants note that a Fund may choose to reject any direct purchase of Creation Units by an Acquiring Fund. A Fund would also retain its right to reject any initial investment by an Acquiring Fund in excess of the limits in section 12(d)(l)(A) of the Act by declining to execute an Acquiring Fund Agreement with an Acquiring Fund.

Section 17 of the Act

18. 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'' of another 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 a company's voting securities. The Funds may be deemed to be controlled by the 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 the Adviser (an ''Affiliated Fund''). Applicants believe there exists a possibility that, with respect to one or more Funds and the Trust, a large institutional investor could own more than 5% of a Fund or the Trust, or in excess of 25% of the outstanding Shares of a Fund or the Trust, making that investor a first-tier affiliate of each Fund under section 2(a)(3)(A) or section 2(a)(3)(C) of the Act. In addition, a large institutional investor could own 5% or more of, or in excess of 25% of the outstanding shares of one or more Affiliated Funds, making that investor a second-tier affiliate of a Fund.

[18] An ''Acquiring Fund Affiliate'' is defined as the Acquiring Fund Adviser, Acquiring Fund Subadviser(s), any Sponsor, promoter or principal underwriter of an Acquiring Fund and any person controlling, controlled by or under common control with any of these entities. A ''Fund Affiliate'' is defined as the Adviser, Subadviser(s), promoter or principal underwriter of a Fund and any person controlling, controlled by or under common control with any of these entities.

[19] An ''Acquiring Fund's Advisory Group'' is defined as the Acquiring Fund Adviser, Sponsor, any person controlling, controlled by or under common control with the Acquiring Fund Adviser or Sponsor, and any investment company or issuer that would be an investment company but for section 3(c)(l) or 3(c)(7) of the Act, that is advised or sponsored by the Acquiring Fund Adviser, Sponsor or any person controlling, controlled by or under common control with the Acquiring Fund Adviser or Sponsor.

[20] An ''Acquiring Fund's Subadvisory Group'' is defined as any Acquiring Fund Subadviser, any person controlling, controlled by, or under common control with the Acquiring Fund Subadviser, and any investment company or issuer that would be an investment company but for section 3(c)(l) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Acquiring Fund Subadviser or any person controlling, controlled by or under common control with the Acquiring Fund Subadviser.

[21] An ''Underwriting Affiliate'' is defined as a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Acquiring Fund Adviser, Acquiring Fund Subadviser, Sponsor, or employee of the Acquiring Fund, or a person of which any such officer, director, member of an advisory board, Acquiring Fund Adviser, Acquiring Fund Subadviser, Sponsor, or employee 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.

[22] Any references to NASD Conduct Rule 2830 include any successor or replacement rule that may be adopted by the Financial Industry Regulatory Authority.

19. 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 in order to permit persons that are affiliated persons or second-tier affiliates of the Funds solely by virtue of (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, to effectuate purchases and redemptions in-kind. Applicants also request an exemption in order to permit a Fund to sell Shares to, and purchase Shares from, and to engage in any accompanying in-kind transactions with, an Acquiring Fund of which the Fund is an affiliated person or a second-tier affiliate.[23]

20. 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. Deposit Instruments and Redemption Instruments will be valued in the same manner as those Portfolio Positions 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. Deposit Instruments, Redemption Instruments, and the Balancing Amount, except for any permitted cash-in-lieu amounts consistent with the terms of the application, will be the same regardless of the identity of the purchaser or redeemer. Therefore, applicants state that in-kind purchases and redemptions create no opportunity for affiliated persons or applicants to effect a transaction detrimental to the other holders of Shares of that Fund. Applicants also believe that in-kind purchases and redemptions will not result in abusive self-dealing or overreaching of the Fund. Applicants believe that an exemption is appropriate under sections 17(b) and 6(c) because the proposed arrangement meets the standards for relief in those sections. 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.[24] Applicants also state that the proposed transactions are consistent with the general purposes of the Act and appropriate in the public interest.

Distribution Reinvestment Relief

21. Applicants also seek an order to permit the Funds to operate the Distribution Reinvestment Program. Applicants state that the Distribution Reinvestment Program is reasonable and fair because it is voluntary and each Beneficial Owner will have in advance accurate and explicit information that makes clear the terms of the Distribution Reinvestment Program and the consequences of participation. The Distribution Reinvestment Program does not involve any overreaching on the part of any person concerned because it operates the same for each Beneficial Owner who elects to participate, and is structured in the public interest because it is designed to give those Beneficial Owners who elect to participate a convenient and efficient method to reinvest distributions without paying a brokerage commission. In addition, although brokers providing the Distribution Reinvestment Program could charge a fee, applicants represent that typically brokers do not charge for this service.

22. Applicants do not believe that the issuance of Shares under the Distribution Reinvestment Program will have a material effect on the overall operation of the Funds, including on the efficiency of the arbitrage mechanism inherent in ETFs. In addition, applicants do not believe that providing Beneficial Owners with an added optional benefit (the ability to reinvest in Shares at NAV) will change the Beneficial Owners' expectations about the Funds or the fact that individual Shares trade at secondary market prices. Applicants believe that Beneficial Owners (other than Authorized Participants) generally expect to buy and sell individual Shares only through secondary market transactions at market prices and that such owners will not be confused by the Distribution Reinvestment Program. Therefore, applicants believe that the Distribution Reinvestment Program meets the standards for relief under section 6(c) of the Act.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

ETF Relief

1. As long as a Fund operates in reliance on the requested relief to permit ETF operations, its Shares will be listed on an 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 Shares are not individually redeemable and that owners of Shares may acquire those Shares from a Fund (other than pursuant to the Distribution Reinvestment Program) and tender those Shares for redemption to a 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 the Bid/Ask Price, and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

4. The requested relief to permit ETF operations will expire on the effective date, of any Commission rule under the Act that provides relief permitting the operation of index-based exchange-traded funds.

12(d)(1) Relief

5. The members of the Acquiring 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 an Acquiring Fund's Subadvisory 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 Acquiring Fund's Advisory Group or the Acquiring Fund's Subadvisory 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 in the same proportion as the vote of all other holders of the Shares. This condition does not apply to an

[23] To the extent that purchases and sales of Shares of a Fund occur in the secondary market and not through principal transactions directly between an Acquiring 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 Acquiring Fund and redemptions of those Shares. 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 a second-tier affiliate of an Acquiring Fund because the Adviser provides investment advisory services to that Acquiring Fund.

[24] Applicants acknowledge that the receipt of compensation by (a) an affiliated person of an Acquiring Fund, or a second-tier affiliate, for the purchase by the Acquiring Fund of Shares or (b) an affiliated person of a Fund, or a second-tier affiliate, for the sale by the Fund of its Shares to an Acquiring Fund, may be prohibited by section 17(e) of the Act. The Acquiring Fund Agreement also will include this acknowledgment.

Acquiring Fund Subadvisory Group with respect to a Fund for which the Acquiring Fund Subadviser or a person controlling, controlled by, or under common control with the Acquiring Fund Subadviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

6. No Acquiring Fund or Acquiring Fund Affiliate will cause any existing or potential investment by the Acquiring Fund in a Fund to influence the terms of any services or transactions between the Acquiring Fund or an Acquiring Fund Affiliate and the Fund or a Fund Affiliate.

7. The board of directors or trustees of an Acquiring Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to ensure that the Acquiring Fund Adviser and any Acquiring Fund Subadviser are conducting the investment program of the Acquiring Management Company without taking into account any consideration received by the Acquiring Management Company or an Acquiring Fund Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

8. Once an investment by an Acquiring Fund in Shares exceeds the limits in section 12(d)(1)(A)(i) of the Act, the board of trustees of the Trust (''Board''), including a majority of the disinterested directors/trustees, will determine that any consideration paid by the Fund to an Acquiring Fund or an Acquiring 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).

9. No Acquiring Fund or Acquiring Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause the Fund to purchase a security in any Affiliated Underwriting.

10. The Board, including a majority of the independent trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund in an Affiliated Underwriting, once an investment by an Acquiring 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 Acquiring 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.

11. 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 Acquiring 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 determinations of the Board were made.

12. Before investing in Shares in excess of the limits in section 12(d)(1)(A), each Acquiring Fund and the Fund will execute an Acquiring Fund Agreement stating, without limitation, that their boards of directors or trustees and their investment adviser(s), or their Sponsors or Trustee, 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 in excess of the limit in section 12(d)(1)(A)(i), an Acquiring Fund will notify the Fund of the investment. At such time, the Acquiring Fund will also transmit to the Fund a list of the names of each Acquiring Fund Affiliate and Underwriting Affiliate. The Acquiring Fund will notify the Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Fund and the Acquiring Fund will maintain and preserve a copy of the order, the Acquiring Fund 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.

13. An Acquiring Fund Adviser, Trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Acquiring Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted under rule 12b–1 under the Act) received from the Fund by the Acquiring Fund Adviser, Trustee or Sponsor, or an affiliated person of the Acquiring Fund Adviser, Trustee or Sponsor, other than any advisory fees paid to the Acquiring Fund Adviser, Trustee, or Sponsor, or its affiliated person by the Fund, in connection with the investment by the Acquiring Fund in the Fund. Any Acquiring Fund Subadviser will waive fees otherwise payable to the Acquiring Fund Subadviser, directly or indirectly, by the Acquiring Management Company in an amount at least equal to any compensation received from a Fund by the Acquiring Fund Subadviser, or an affiliated person of the Acquiring Fund Subadviser, other than any advisory fees paid to the Acquiring Fund Subadviser or its affiliated person by the Fund, in connection with any investment by the Acquiring Management Company in the Fund made at the direction of the Acquiring Fund Subadviser. In the event that the Acquiring Fund Subadviser waives fees, the benefit of the waiver will be passed through to the Acquiring Management Company.

14. Any sales charges and/or service fees charged with respect to shares of an Acquiring Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

15. No Fund will acquire securities of any other 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 permitted by exemptive relief from the Commission permitting the Fund to purchase shares

of other investment companies for short-term cash management purposes.

16. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Acquiring Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such advisory 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 Acquiring Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Acquiring Management Company.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–24024 Filed 10–1–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70530; File No. 4–631]

Joint Industry Plan; Order Approving the Fifth Amendment to the National Market System Plan to Address Extraordinary Market Volatility by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc.

September 26, 2013.

1. Introduction

On July 18, 2013, NYSE Euronext, on behalf of New York Stock Exchange LLC (''NYSE''), NYSE MKT LLC (''NYSE MKT''), and NYSE Arca, Inc. (''NYSE Arca''), and the following parties to the National Market System Plan: BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, and National Stock Exchange, Inc. (collectively with NYSE, NYSE MKT, and NYSE Arca, the ''Participants''), filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 608 thereunder,[2] a proposal to amend the Plan to Address Extraordinary Market Volatility (''Plan'').[3] The proposal represents the fifth amendment to the Plan (''Fifth Amendment''), and reflects changes unanimously approved by the Participants. The Fifth Amendment to the Plan: (i) Provides that, if a Trading Pause is triggered in the last ten minutes of trading before the end of Regular Trading Hours, then the NMS Stock shall not reopen for continuous trading and shall close pursuant to established closing procedures of the Primary Listing Exchange; and (ii) revises the definition of which Exchange Traded Products (''ETPs'') are eligible to be included in the list of Tier 1 NMS Stocks under the Plan. The Fifth Amendment was published for comment in the **Federal Register** on September 3, 2013.[4] The Commission received no comments letter in response to the Notice. This order approves the Fifth Amendment to the Plan.

II. Description of the Proposal

A. Purpose of the Plan

The Participants filed the Plan in order to create a market-wide limit up-limit down mechanism that is intended to address extraordinary market volatility in ''NMS Stocks,'' as defined in Rule 600(b)(47) of Regulation NMS under the Act.[5] The Plan sets forth procedures that provide for market-wide limit up-limit down requirements that would be designed to prevent trades in individual NMS Stocks from occurring outside of the specified price bands.[6] These limit up-limit down requirements would be coupled with Trading Pauses, as defined in Section I(Y) of the Plan, to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity).

As set forth in Section V of the Plan, the price bands would consist of a Lower Price Band and an Upper Price Band for each NMS Stock.[7] The price bands would be calculated by the Securities Information Processors (''SIPs'' or ''Processors'') responsible for consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Act.[8] Those price bands would be based on a Reference Price[9] for each NMS Stock that equals the arithmetic mean price of Eligible Reported Transactions for the NMS Stock over the immediately preceding five-minute period. The price bands for an NMS Stock would be calculated by applying the Percentage Parameter for such NMS Stock to the Reference Price, with the Lower Price Band being a Percentage Parameter[10] below the Reference Price, and the Upper Price Band being a Percentage Parameter above the Reference Price. Between 9:30 a.m. and 9:45 a.m. ET and 3:35 p.m. and 4:00 p.m. ET, the price bands would be calculated by applying double the Percentage Parameters as set forth in Appendix A of the Plan.

The Processors would also calculate a Pro-Forma Reference Price for each NMS Stock on a continuous basis during Regular Trading Hours. If a Pro-Forma Reference Price did not move by one percent or more from the Reference Price in effect, no new price bands would be disseminated, and the current Reference Price would remain the effective Reference Price. If the Pro-Forma Reference Price moved by one percent or more from the Reference Price in effect, the Pro-Forma Reference Price would become the Reference Price, and the Processors would disseminate new price bands based on

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] See Letter from Janet M. McGinness, Executive Vice President & Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated July 18, 2013 (''Transmittal Letter'').

[4] See Securities Exchange Act Release No. 70274 (August 27, 2013), 78 FR 54305 (''Notice'').

[5] 17 CFR 242.600(b)(47). See also Section I(H) of the Plan.

[6] See Section V of the Plan.

[7] Capitalized terms used herein but not otherwise defined shall have the meaning ascribed to such terms in the Plan.

[8] 17 CFR 242.603(b). The Plan refers to this entity as the Processor.

[9] See Section I(T) of the Plan.

[10] As initially proposed by the Participants, the Percentage Parameters for Tier 1 NMS Stocks (*i.e.*, stocks in the S&P 500 Index or Russell 1000 Index and certain ETPs) with a Reference Price of $1.00 or more would be five percent and less than $1.00 would be the lesser of (a) $0.15 or (b) 75 percent. The Percentage Parameters for Tier 2 NMS Stocks (*i.e.*, all NMS Stocks other than those in Tier 1) with a Reference Price of $1.00 or more would be 10 percent and less than $1.00 would be the lesser of (a) $0.15 or (b) 75 percent. The Percentage Parameters for a Tier 2 NMS Stock that is a leveraged ETP would be the applicable Percentage Parameter set forth above multiplied by the leverage ratio of such product. On May 24, 2012, the Participants amended the Plan to create a 20% price band for Tier 1 and Tier 2 stocks with a Reference Price of $0.75 or more and up to and including $3.00. The Percentage Parameter for stocks with a Reference Price below $0.75 would be the lesser of (a) $0.15 or (b) 75 percent. See Letter from Janet M. McGinness, Senior Vice President, Legal and Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated May 24, 2012.

the new Reference Price. Each new Reference Price would remain in effect for at least 30 seconds.

When one side of the market for an individual security is outside the applicable price band, the Processors would be required to disseminate such National Best Bid [11] or National Best Offer [12] with an appropriate flag identifying it as non-executable. When the other side of the market reaches the applicable price band, the market for an individual security would enter a Limit State,[13] and the Processors would be required to disseminate such National Best Offer or National Best Bid with an appropriate flag identifying it as a Limit State Quotation.[14] All trading would immediately enter a Limit State if the National Best Offer equals the Lower Limit Band and does not cross the National Best Bid, or the National Best Bid equals the Upper Limit Band and does not cross the National Best Offer. Trading for an NMS Stock would exit a Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the market did not exit a Limit State within 15 seconds, then the Primary Listing Exchange would declare a five-minute Trading Pause, which would be applicable to all markets trading the security.

These limit up-limit down requirements would be coupled with Trading Pauses [15] to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity). As set forth in more detail in the Plan, all trading centers [16] in NMS Stocks, including both those operated by Participants and those operated by members of Participants, would be required to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the limit up-limit down and Trading Pause requirements specified in the Plan.

Under the Plan, all trading centers would be required to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for an NMS Stock. The Processors would disseminate an offer below the Lower Price Band or bid above the Upper Price Band that nevertheless inadvertently may be submitted despite such reasonable policies and procedures, but with an appropriate flag identifying it as non-executable; such bid or offer would not be included in National Best Bid or National Best Offer calculations. In addition, all trading centers would be required to develop, maintain, and enforce policies and procedures reasonably designed to prevent trades at prices outside the price bands, with the exception of single-priced opening, reopening, and closing transactions on the Primary Listing Exchange.

As stated by the Participants in the Plan, the limit up-limit down mechanism is intended to reduce the negative impacts of sudden, unanticipated price movements in NMS Stocks,[17] thereby protecting investors and promoting a fair and orderly market.[18] In particular, the Plan is designed to address the type of sudden price movements that the market experienced on the afternoon of May 6, 2010.[19] The initial date of Plan operations was April 8, 2013.[20]

B. Fifth Amendment to the Plan

The Fifth Amendment proposes two changes to the Plan. First, the Participants propose to amend Section VII(C)(1) of the Plan to provide that if a Trading Pause is declared for an NMS Stock in the last ten minutes of trading before the end of Regular Trading Hours, the Primary Listing Exchange shall not reopen for trading and shall attempt to execute a closing transaction using its established closing procedures. Second, the Participants propose to amend Section I of Appendix A of the Plan to revise the definition of which ETPs are eligible to be included in the list of Tier 1 NMS Stocks under the Plan. The Commission received no comment letters in response to the Notice.[21]

III. Discussion and Commission Findings

After careful review, the Commission finds that the Fifth Amendment is consistent with the requirements of the Act and the rules and regulations thereunder.[22] Specifically, the Commission finds that the Fifth Amendment is consistent with Section 11A of the Act [23] and Rule 608 thereunder [24] in that it is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, removes impediments to, and perfects the mechanism of, a national market system.

First, the Participants proposed to amend Section VII(C)(1) of the Plan to provide that if a Trading Pause is declared for an NMS Stock in the last ten minutes of trading before the end of Regular Trading Hours, the Primary Listing Exchange shall not reopen for trading and shall attempt to execute a closing transaction using its established closing procedures.[25] The Participants believe that reopening trading in a security within five minutes of the closing transaction could introduce additional volatility into trading for that particular symbol. The Participants stated that it would be more prudent to use the time during the Trading Pause and the period preceding the end of Regular Trading Hours for interest to be entered for the closing auction, rather than to hold a reopening auction that would be followed shortly by a closing auction. According to the Participants, holding two auctions so near in time may introduce additional uncertainty into the market as market participants may not want to enter interest for a

[11] 17 CFR 242.600(b)(42). See also Section I(G) of the Plan.

[12] Id.

[13] A stock enters the Limit State if the National Best Offer equals the Lower Price Band and does not cross the National Best Bid, or the National Best Bid equals the Upper Price Band and does not cross the National Best Offer. See Section VI(B) of the Plan.

[14] See Section I(D) of the Plan.

[15] The primary listing market would declare a Trading Pause in an NMS Stock; upon notification by the primary listing market, the Processor would disseminate this information to the public. No trades in that NMS Stock could occur during the Trading Pause, but all bids and offers may be displayed. See Section VII(A) of the Plan.

[16] As defined in Section I(X) of the Plan, a trading center shall have the meaning provided in Rule 600(b)(78) of Regulation NMS under the Act.

[17] 17 CFR 242.600(b)(47).

[18] See Transmittal Letter, supra note 3.

[19] The limit up-limit down mechanism set forth in the Plan would replace the existing single-stock circuit breaker pilot. See *e.g.*, Securities Exchange Act Release Nos. 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR–FINRA–2010–025); 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033).

[20] See Securities Exchange Act Release No. 68953 (February 20, 2013), 78 FR 13113 (February 26, 2013).

[21] The Participants noted that they developed the proposal to amend Section VII(C)(1) of the Plan based on feedback from SIFMA and other market participants. The Participants also noted that SIFMA raised issues concerning how the Plan operates at the close in its comment letter on the initial filing of the Plan. See Letter from Ann L. Vlcek, Managing Director and Associate General Counsel, SIFMA, to Elizabeth M. Murphy, Secretary, Commission dated June 22, 2011.

[22] In approving the Fifth Amendment, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[23] 15 U.S.C. 78k–1.

[24] 17 CFR 242.608.

[25] Section VII(C) of the Plan currently addresses only the situation of when a Trading Pause is declared less than five minutes before the end of Regular Trading Hours. In such case, because a Trading Pause is a minimum of five minutes and trading would not reopen, the Plan contemplates that the Primary Listing Exchange shall attempt a closing transaction using its established closing procedures.

reopening auction if the security is going to close shortly thereafter. This may cause price dislocations, uncertainty of executions, and added confusion during an already volatile period.[26] Based on the Participants' statements, the Commission believes the proposal to amend Section VII(C)(1) of the Plan is consistent with with Section 11A of the Act.

Second, the Participants propose to amend Section I of Appendix A of the Plan to revise the definition of which ETPs are eligible to be included in the list of Tier 1 NMS Stocks under the Plan by deleting the following language: ''To ensure that ETPs that track similar benchmarks but that do not meet this volume criterion do not become subject to pricing volatility when a component security is the subject of a Trading Pause, non-leveraged ETPs that have traded below this volume criterion, but that track the same benchmark as an ETP that does meet the volume criterion, will be deemed eligible to be included as a Tier 1 NMS Stock.'' The Participants note that based on experience thus far with the Plan, certain thinly traded ETPs with wide quotes that are included as Tier 1 NMS Stocks because they track an index of an ETP that meets the volume criterion are triggering Trading Pauses.[27] These Trading Pauses are triggered because of bids or offers that cross the Price Band rather than because of an execution of a trade in the underlying security. This results in certain ETPs that have not traded during the day triggering Trading Pauses and requiring a reopening auction process, despite the lack of trading in that security.[28] The amendment to Section I of Appendix A will reduce the potential for certain thinly-traded NMS Stock in Tier 1 that have not experienced any trading volatility to be halted and then have to go through a reopening auction process. Based on the Participants' statements, the Commission believes that the proposal to amend Section I of Appendix A of the Plan is consistent with Section 11A of the Act.

The Commission reiterates its expectation that the Participants will continue to monitor the scope and operation of the Plan and study the data produced during that time with respect to such issues, and will propose any modifications to the Plan that may be necessary or appropriate.[29] Similarly, the Commission expects that the Participants will propose any modifications to the Plan that may be necessary or appropriate in response to the data being gathered by the Participants during the pilot period, including any proposed changes to thinly-traded NMS Stocks in Tier 2 that have not experienced any trading volatility.

Therefore, the Commission finds that the Fifth Amendment to the Plan is consistent with Section 11A of the Act[30] and Rule 608 thereunder.[31]

IV. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act[32] and Rule 608 thereunder,[33] that the Fifth Amendment to the Plan (File No. 4–631) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–24019 Filed 10–1–13; 8:45 am]

BILLING CODE 8011–01–P

[26] The Participants noted that Primary Listing Exchanges will be filing proposed rule changes with the Commission to update their respective closing procedures to address the ability to permit additional interest to be entered for the purpose of a closing auction if there is a Trading Pause declared near the end of Regular Trading Hours. See Notice, supra note 4.

[27] The Participants noted that since the initial date of Plan operations through to July 8, 2013, there have been 32 Trading Pauses in NYSE Arca-listed securities triggered pursuant to the Plan. These Trading Pauses have been in only ten NMS Stocks, some more than once a day, and all are ETPs with less than $2,000,000 notional ADV. The symbols are BXDB, BDG, GIY, VIOO, BOS, SAGG, IELG, IESM, HUSE, and GMTB. See id.

[28] See id.

[29] See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

[30] 15 U.S.C. 78k–1.

[31] 17 CFR 242.608.

[32] 15 U.S.C. 78k–1.

[33] 17 CFR 242.608.

[34] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70520; File No. SR–NYSEARCA–2013–94]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services Regarding Calculation of the Mid-Point Passive Liquidity Order Tier

September 26, 2013.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 17, 2013, 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, 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to proposes to amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services (the ''Fee Schedule'') regarding calculation of the Mid-Point Passive Liquidity (''MPL'') Order Tier. The Exchange proposes to implement the fee change on October 1, 2013. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule regarding calculation of the MPL Order Tier.[4] The Exchange proposes to implement the fee change on October 1, 2013.

Under the MPL Order Tier, MPL Orders that provide liquidity to the Exchange receive a credit of $0.0020 per share for Tape A, B and C Securities. As specified in the Fee Schedule, the MPL

[4] *See* Securities Exchange Act Release No. 69926 (July 3, 2013), 78 FR 41154 (July 9, 2013) (SR–NYSEArca–2013–67). A Passive Liquidity (''PL'') Order is an order to buy or sell a stated amount of a security at a specified, undisplayed price. *See* Rule 7.31(h)(4). An MPL Order is a PL Order executable only at the midpoint of the Protected Best Bid and Offer. *See* Rule 7.31(h)(5).

Order Tier currently applies to ETP Holders, including Market Makers, that execute an average daily volume (''ADV'') of MPL Orders during the month that is 0.0775% or more of U.S. consolidated ADV (''CADV'').[5] For all other fees and credits, Tiered or Basic Rates apply based on a firm's qualifying levels.[6]

The Exchange proposes to specify that the 0.0775% threshold includes only MPL Orders that provide liquidity, whereas the Fee Schedule currently specifies that it includes executed MPL Orders, which could also include MPL Orders that remove liquidity. For example, if U.S. CADV during a month is 6.5 billion shares across Tapes A, B and C, an ETP Holder would need to execute an ADV of at least 5,037,500 shares of providing MPL Orders during the month in order to qualify for the applicable MPL Order Tier credit of $0.0020 per share, in which case the ETP Holder's executions of MPL Orders that provided liquidity would receive a credit of $0.0020 per share for Tape A, B and C Securities. Under this example, an ETP Holder that executed an ADV of less than 5,037,500 shares of providing MPL Orders during the month would not qualify for the MPL Order Tier and, therefore, the ETP Holder's executions of MPL Orders that provided liquidity would receive a credit of $0.0015 per share for Tape A, B and C Securities.

The proposed change is not otherwise intended to address any other issues, and the Exchange is not aware of any problems that ETP Holders 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,[7] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[8] in particular, because 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 change is reasonable because the proposed specification would result in the MPL Order Tier threshold relating only to volume that provides liquidity, which would be identical to the type of volume to which the corresponding credit would apply. The Exchange also believes that the proposed change is reasonable because the MPL Order Tier and corresponding credit of $0.0020 per share would continue to incentivize ETP Holders to submit additional MPL Orders that provide liquidity on the Exchange. This would continue to increase the liquidity available on the Exchange and, therefore, potential price improvement to incoming marketable orders submitted to the Exchange. In this regard, MPL Orders allow for additional opportunities for passive interaction with trading interest on the Exchange and are designed to offer potential price improvement to incoming marketable orders submitted to the Exchange.[9] The Exchange also believes that the proposed change is equitable and not unfairly discriminatory because the MPL Order Tier would continue to be available to all ETP Holders to qualify for and would apply equally to providing MPL Orders from all ETP Holders in all Tape A, B and C Securities traded on 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,[10] 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. Instead, the Exchange believes that the proposed change would continue to encourage competition, including by attracting additional liquidity to the Exchange, which would continue to make the Exchange a more competitive venue for, among other things, order execution and price discovery. All ETP Holders have the ability to submit MPL Orders, and ETP Holders could readily choose to submit additional liquidity-providing MPL Orders in order to qualify for the MPL Order Tier. The Exchange does not believe that the proposed change will impair the ability of ETP Holders or competing order execution venues to maintain their competitive standing in the financial markets.

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 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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[11] of the Act and subparagraph (f)(2) of Rule 19b–4[12] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[13] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

[5] U.S. CADV means United States Consolidated Average Daily Volume for transactions reported to the Consolidated Tape and excludes volume on days when the market closes early.

[6] For ETP Holders that do not satisfy the MPL Order Tier threshold, an MPL Order that provides liquidity receives a credit of $0.0015 per share for Tape A, B and C Securities. A $0.0030 fee applies to MPL Orders in Tape A, B and C Securities that remove liquidity.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4) and (5).

[9] *See, e.g.,* Securities Exchange Act Release No. 54511 (September 26, 2006), 71 FR 58460, 58461 (October 3, 2006) (SR–PCX–2005–53).

[10] 15 U.S.C. 78f(b)(8).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 15 U.S.C. 78s(b)(2)(B).

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2013–94 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2013–94. 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–NYSEARCA–2013–94 and should be submitted on or before October 23, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–24011 Filed 10–1–13; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70511; File No. SR–EDGX–2013–35]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend EDGX Rule 11.13, Clearly Erroneous Executions

September 26, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 25, 2013, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the 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 is filing with the Commission a proposal to extend a pilot program related to Rule 11.13, entitled ''Clearly Erroneous Executions.'' The Exchange also proposes to remove certain references to individual stock trading pauses contained in Rule 11.13(c)(4). The Exchange has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b–4(f)(6)(iii) under the Act.[3] All of the changes described herein are applicable to EDGX Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 purpose of this filing is to extend the effectiveness of the Exchange's current rule applicable to Clearly Erroneous Executions and to remove references to individual stock trading pauses described in Rule 11.13(c)(4).

Portions of Rule 11.13, explained in further detail below, are currently operating as a pilot program set to expire on September 30, 2013.[4] The Exchange proposes to extend the pilot program to April 8, 2014.

On September 10, 2010, the Commission approved, on a pilot basis, changes to Exchange Rule 11.13 to provide for uniform treatment: (1) of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary listing market and subsequent transactions that occur before the trading pause is in effect on the Exchange.[5] The Exchange also adopted additional changes to Rule 11.13 that reduced the ability of the Exchange to deviate from the objective standards set forth in Rule 11.13,[6] and in 2013, adopted a provision designed to address the operation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or the ''Plan'').[7] The Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should continue on a pilot basis through April 8, 2014, which is one year following the commencement of operations of the Plan. The Exchange believes that continuing the pilot during this time will protect against any unanticipated consequences. Thus, the Exchange believes that the protections of the Clearly Erroneous Rule should continue while the industry gains

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6)(iii).

[4] Securities Exchange Act Release No. 68814 (February 1, 2013), 78 FR 9086 (February 7, 2013) (SR–EDGX–2013–06).

[5] Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–EDGX–2010–03).

[6] *Id.*

[7] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release''); *see also* Exchange Rule 11.13(i).

further experience operating the Limit Up-Limit Down Plan.

The Exchange also proposes to eliminate all references in Rule 11.13 to individual stock trading pauses issued by a primary listing market. Specifically, Rule 11.13(c)(4) provides specific rules to follow with respect to review of an execution as potentially clearly erroneous when there was an individual stock trading pause issued for that security and the security is included in the S&P 500® Index, the Russell 1000® Index, or a pilot list of Exchange Traded Products (''Original Circuit Breaker Securities''). The stock trading pauses described in Rule 11.13(c)(4) are being phased out as securities become subject to the Plan pursuant to a phased implementation schedule. The Plan is already operational with respect to all Original Circuit Breaker Securities, and thus, the Exchange believes that all references to individual stock trading pauses should be removed, including all cross-references to Rule 11.13(c)(4) contained in other portions of Rule 11.13.[8]

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[9] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[10] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system. The Exchange believes that the pilot program promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. More specifically, the Exchange believes that the extension of the pilot would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Although the Limit Up-Limit Down Plan will become fully operational during the same time period as the proposed extended pilot, the Exchange believes that maintaining the pilot will help to protect against unanticipated consequences. To that end, the extension will allow the Exchange to determine whether Rule 11.13 is necessary once the Plan is fully operational and, if so, whether improvements can be made. Finally, the elimination of references to individual stock trading pauses will help to avoid confusion amongst market participants, which is consistent with the protection of investors and the public interest and therefore consistent with the Act. As described above, individual stock trading pauses have been replaced by the Limit Up-Limit Down Plan with respect to all Subject [sic] Securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change implicates any competitive issues. To the contrary, the Exchange believes that the Financial Industry Regulatory Authority (''FINRA'') and other national securities exchanges are also filing similar proposals, and thus, that the proposal will help to ensure consistency across market centers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6)(iii) thereunder.[12]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–EDGX–2013–35 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–EDGX–2013–35. This file number should be included on the subject line if email is used. To help the Commission process and review your

[8] The Exchange notes that certain Exchange Traded Products (''ETPs'') are not yet subject to the Limit Up-Limit Down Plan. Because such ETPs are not on the pilot list of securities, such ETPs are not subject to Rule 11.13(c)(4). *See* Securities Exchange Act Release No. 65109 (August 11, 2011), 76 FR 51103 (August 17, 2011) (SR–EDGX–2011–25) (notice of filing and immediate effectiveness to define Subject [sic] Securities and to limit application of Rule 11.13(c)(4) to such securities). Accordingly, the proposed rule change does not change the status quo with respect to such ETPs. As amended, all securities, including ETPs not subject to the Limit Up-Limit Down Plan, will continue to be subject to Rule 11.13(c)(1) through (3).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6)(iii). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

[13] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's 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–EDGX–2013–35 and should be submitted on or before October 23, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–24002 Filed 10–1–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70517; File No. SR–NYSEMKT–2013–78]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Program for Certain Clearly Erroneous Executions Under Rule 128—Equities and Removing References to Individual Security Trading Pauses Contained in Rule 128(c)(4)—Equities

September 26, 2013.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 24, 2013, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot program for certain clearly erroneous executions under Rule 128—Equities and remove references to individual security trading pauses contained in Rule 128(c)(4)—Equities. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the pilot program for certain clearly erroneous executions under Rule 128—Equities and remove references to individual security trading pauses contained in Rule 128(c)(4)—Equities. Portions of Rule 128—Equities, explained in further detail below, are currently operating as a pilot program set to expire on September 30, 2013.[4] The Exchange proposes to extend the pilot program to April 8, 2014.

On September 10, 2010, the Securities and Exchange Commission (''Commission'') approved, on a pilot basis, changes to Rule 128—Equities to provide for uniform treatment: (1) Of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual security trading pause by the primary listing market and subsequent transactions that occur before the trading pause is in effect on the Exchange.[5] The Exchange also adopted additional changes to Rule 128—Equities that reduced the ability of the Exchange to deviate from the objective standards set forth in Rule 128—Equities,[6] and in 2013, adopted a provision designed to address the operation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or the ''Plan'').[7] The Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should continue on a pilot basis through April 8, 2014, which is one year following the commencement of operations of the Plan. The Exchange believes that continuing the pilot during this time will protect against any unanticipated consequences. Thus, the Exchange believes that the protections of Rule 128—Equities should continue while the industry gains further experience operating the Limit Up-Limit Down Plan.

The Exchange also proposes to eliminate all references in Rule 128—Equities to individual security trading pauses issued by a primary listing market. Specifically, Rule 128(c)(4)—Equities provides specific rules to follow with respect to review of an execution as potentially clearly erroneous when there is an individual security trading pause pursuant to Rule 80C—Equities. The individual security trading pauses described in Rule 128(c)(4)—Equities, which apply to the securities included in the S&P 500 and Russell 1000 indexes as well as to a pilot list of Exchange Traded Products (the ''subject securities''), are being phased out as securities become subject to the Plan pursuant to a phased implementation schedule. The Plan is already operational with respect to all subject securities, and thus, the Exchange believes that all references to individual security trading pauses should be removed, including all cross-

[14] 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* Securities Exchange Act Release No. 68801 (February 1, 2013), 78 FR 8630 (February 6, 2013) (SR–NYSEMKT–2013–11).

[5] *See* Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–NYSEAmex–2010–60).

[6] *Id.*

[7] *See* Securities Exchange Act Release No. 68801 (February 1, 2013), 78 FR 8630 (February 6, 2013) (SR–NYSEMKT–2013–11); Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release''); *see also* Rule 128(i)—Equities.

references to Rule 128(c)(4)—Equities contained in other portions of Rule 128—Equities.[8]

2. Statutory Basis

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, because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system. The Exchange believes that the pilot program promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. More specifically, the Exchange believes that the extension of the pilot would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help ensure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Although the Limit Up-Limit Down Plan will become fully operational during the same time period as the proposed extended pilot, the Exchange believes that maintaining the pilot will help to protect against unanticipated consequences. To that end, the extension will allow the Exchange to determine whether Rule 128—Equities is necessary once the Plan is fully operational and, if so, whether improvements can be made. Finally, the elimination of references to individual security trading pauses will help to avoid confusion among market participants, which is consistent with the protection of investors and the public interest and therefore consistent with the Act. As described above, individual security trading pauses have been replaced by the Limit Up-Limit Down Plan with respect to securities that are subject to Rule 80C—Equities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change implicates any competitive issues. To the contrary, the Exchange believes that the Financial Industry Regulatory Authority (''FINRA'') and other national securities exchanges are also filing similar proposals, and thus, the proposal will help to ensure consistency across market centers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6)(iii) thereunder.[12]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[13]

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 proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*; or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEMKT–2013–78 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2013–78. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtm*). 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

[8] The Exchange notes that certain Exchange Traded Products (''ETPs'') are not yet subject to the Limit Up-Limit Down Plan. Because such ETPs are not on the pilot list of securities, such ETPs are not subject to Rule 128(c)(4)—Equities. *See* Securities Exchange Act Release No. 65102 (August 11, 2011), 76 FR 51111 (August 17, 2011) (SR–NYSEAmex–2011–60) (notice of filing and immediate effectiveness to amend Rule 128—Equities so that clearly erroneous executions involving securities recently added to the individual security trading pause pilot under Rule 80C—Equities continue to be resolved in the same manner before being added to the pilot). Accordingly, the proposed rule change does not change the status quo with respect to such ETPs. As amended, all securities, including ETPs not subject to the Limit Up-Limit Down Plan, will continue to be subject to Rule 128(c)(1) through (3)—Equities.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6)(iii). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

[13] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–2013–78 and should be submitted on or before October 23, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–24008 Filed 10–1–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70515; File No. SR–CHX–2013–17]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend a Pilot Program Related to Article 20, Rule 10 Concerning the Handling of Clearly Erroneous Transactions

September 26, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1], and Rule 19b–4 [2] thereunder, notice is hereby given that, on September 24, 2013 the Chicago Stock Exchange, Inc. (''CHX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CHX proposes to extend a pilot program related to Article 20, Rule 10, entitled ''Handling of Clearly Erroneous Transactions.'' The Exchange also proposes to remove certain references to individual stock trading pauses contained in Article 20, Rule 10(c)(4). The Exchange has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b–4(f)(6)(iii) under the Act.[3]

The text of this proposed rule change is available on the Exchange's Web site at (*www.chx.com*) and in 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 CHX included statements concerning the purpose of and basis for the proposed rule changes 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 CHX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to extend the effectiveness of the Exchange's current rule applicable to Clearly Erroneous Executions and to remove references to individual stock trading pauses described in Article 20, Rule 10(c)(4).

Portions of Article 20, Rule 10, explained in further detail below, are currently operating as a pilot program set to expire on September 30, 2013.[4] The Exchange proposes to extend the pilot program to April 8, 2014.

On September 10, 2010, the Commission approved, on a pilot basis, changes to Article 20, Rule 10 to provide for uniform treatment: (1) Of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary listing market and subsequent transactions that occur before the trading pause is in effect on the Exchange.[5] The Exchange also adopted additional changes to Article 20, Rule 10 that reduced the ability of the Exchange to deviate from the objective standards set forth in Article 20, Rule 10,[6] and in 2013, adopted a provision designed to address the operation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or the ''Plan'').[7] The Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should continue on a pilot basis through April 8, 2014, which is one year following the commencement of operations of the Plan. The Exchange believes that continuing the pilot during this time will protect against any unanticipated consequences. Thus, the Exchange believes that the protections of the Clearly Erroneous Rule should continue while the industry gains further experience operating the Limit Up-Limit Down Plan.

The Exchange also proposes to eliminate all references in Article 20, Rule 10 to individual stock trading pauses issued by a primary listing market. Specifically, Article 20, Rule 10(c)(4) provides specific rules to follow with respect to review of an execution as potentially clearly erroneous when there was an individual stock trading pause issued for that security and the security is included in the S&P 500® Index, the Russell 1000® Index, or a pilot list of Exchange Traded Products (''Subject Securities''). The stock trading pauses described in Article 20, Rule 10(c)(4) are being phased out as securities become subject to the Plan pursuant to a phased implementation schedule. The Plan is already operational with respect to all Subject Securities, and thus, the Exchange believes that all references to individual stock trading pauses should be removed, including all cross-references to Article 20, Rule 10(c)(4) contained in other portions of Article 20, Rule 10.[8]

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6)(iii).

[4] *See* Securities Exchange Act Release No. 68802 (February 1, 2013), 78 FR 9092 (Feb. 7, 2013) (SR–CHX–2013–04).

[5] Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–CHX–2010–13).

[6] *Id.*

[7] *See* Securities Exchange Act Release No. 68802 (February 1, 2013), 78 FR 9092 (Feb. 7, 2013) (SR–CHX–2013–04); Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release''); *see also* CHX Article 20, Rule 10(i).

[8] The Exchange notes that certain Exchange Traded Products (''ETPs'') are not yet subject to the Limit Up-Limit Down Plan. Because such ETPs are not on the pilot list of securities, such ETPs are not subject to Article 20, Rule 10(c)(4). *See* Securities Exchange Act Release No. 65115 (August 11, 2011), 76 FR 51447 (August 18, 2011) (SR–CHX–2011–22) (notice of filing and immediate effectiveness to limit application of Article 20, Rule 10(c)(4) to the Subject Securities). Accordingly, the proposed rule change does not change the status quo with respect to such ETPs. As amended, all securities, including ETPs not subject to the Limit Up-Limit Down Plan, will continue to be subject to Article 20, Rule 10(c)(1) through (3).

and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[9] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[10] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system. The Exchange believes that the pilot program promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. More specifically, the Exchange believes that the extension of the pilot would help assure that the determination of whether a clearly erroneous transaction has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous transactions across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Although the Limit Up-Limit Down Plan will become fully operational during the same time period as the proposed extended pilot, the Exchange believes that maintaining the pilot will help to protect against unanticipated consequences. To that end, the extension will allow the Exchange to determine whether Article 20, Rule 10 is necessary once the Plan is fully operational and, if so, whether improvements can be made. Finally, the elimination of references to individual stock trading pauses will help to avoid confusion amongst market participants, which is consistent with the protection of investors and the public interest and therefore consistent with the Act. As described above, individual stock trading pauses have been replaced by the Limit Up-Limit Down Plan with respect to all Subject Securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change implicates any competitive issues. To the contrary, the Exchange believes that the Financial Industry Regulatory Authority (''FINRA'') and other national securities exchanges are also filing similar proposals, and thus, that the proposal will help to ensure consistency across market centers.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6)(iii) thereunder.[12]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[13]

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 proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CHX–2013–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number *SR–CHX–2013–17.* 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 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–CHX–2013–17 and should be submitted on or before October 23, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–24006 Filed 10–1–13; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6)(iii). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

[13] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70508; File No. SR–C2–2013–034]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Message Types, Connectivity and Bandwidth Allowance

September 26, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 16, 2013, C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to codify certain definitions, practices and requirements related to System connectivity, message types and bandwidth allowance to promote transparency and maintain clarity in the rules. The text of the proposed rule change is available on the Exchange's Web site (*http://www.c2exchange.com/Legal/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

C2 proposes to codify certain definitions, practices and requirements related to System connectivity, message types and bandwidth allowance to promote transparency and maintain clarity in the rules. Specifically, the Exchange is proposing to (i) amend Rule 1.1 (Definitions) to define ''API'' and ''Order''; (ii) amend Rule 6.34 (Participant Electronic Connectivity) to clarify that authorized market participants connect electronically to the Exchange via an ''Application Programming Interface'' (''API'') and specify which APIs are available; (iii) amend Rule 6.35 (Message Packets) to clarify that a Trading Permit shall entitle the holder to a maximum number of orders and quotes per second(s) as determined by the Exchange and that the Exchange may expand bandwidth limitations in certain situations; and, adopt new Rule 6.19 (Types of Order Formats) to describe the types of order formats available to Permit Holders to facilitate order entry.

C2 first proposes to define ''Application Programming Interface'' (''API'') and ''Order'' in its rules. While there are various references to these two terms throughout the C2 Rules, nowhere in the rules are the definitions codified. Therefore, C2 believes it would be useful to explicitly define these terms within the rule text to reduce confusion. First, C2 proposes to define ''API'' as a computer interface that allows market participants with authorized access to interface electronically with C2. This proposed definition is substantially similar to the definition of API previously adopted by the Chicago Board Options Exchange, Incorporated (''CBOE'') and the CBOE Stock Exchange, LLC (''CBSX'').[3] Additionally, C2 will define the term ''order'' as a firm commitment to buy or sell option contracts. The proposed definition of the term ''order'' is similar to the definition previously adopted by CBOE.[4]

Next, C2 believes it would be useful to codify how authorized market participants may access the C2 System. Specifically, the Exchange will make clear that authorized market participants access C2 via an API. Currently, C2 offers two APIs: (1) CBOE Market Interface (''CMi'') and (2) Financial Information eXchange (''FIX'') Protocol. Multiple versions of each API may exist and be made available to all authorized market participants. Authorized market participants may select which of the available APIs they would like to use to connect to the System. C2 believes it is important to provide market participants with this flexibility so that they can determine the API that will be most compatible with their systems and maximize the efficiency of their interface. Connection to the System allows authorized market participants to engage in order and quote entry, as well as auction participation.

C2 believes that while information relating to connectivity and available APIs for C2 is already widely available to all market participants via technical specifications, codifying this information within the rule text will provide additional transparency.

C2 also seeks to codify and describe the types of order formats that are available for order entry in new Rule 6.19 (Types of Order Formats). Order formats are message types that are used to send new orders into CBOE Command [5] through a user's selected API. C2 currently offers one order format, C2 Order Format 1 (''OF1''). In addition to C2 OF1, C2 seeks to make another order format available to Permit Holders, namely, C2 Order Format 2 (''C2 OF2'').[6] C2 will announce the implementation date of the proposed rule change as it relates to the availability of C2 OF2 in a Regulatory Circular to be published no later than 90 days following the effective date of this rule filing. The implementation date will be no later than 180 days following the effective date of this rule filing. Once C2 Of2 is available, Permit Holders may elect to use either order format, provided that the order format selected supports the given order type. The Exchange believes it is important to provide market participants with this flexibility so that they can determine the order format that will be most compatible with their needs.

Orders using the C2 OF1 format must pass through various processes, including validation checks which occur in the trade engine. Examples of such validation checks include validating an order's origin code or contingency type. C2 OF1 supports all

[3] *See* CBSX Rule 50.1 (Definitions) and CBOE Rule 1.1 (Definitions).

[4] *See* CBOE Rule 1.1 (Definitions).

[5] CBOE Command is the trading engine platform for CBOE, C2, CBSX and CBOE Futures Exchange (''CFE''). CBOE Command incorporates both order handling and trade processing on the same platform.

[6] C2 Order Format 2 was previously offered and available to all C2 Permit Holders.

order types, including auction responses.

Orders using the C2 OF2 format will also be subject to various processes, including validation checks similar to C2 OF1 validation checks (e.g., validating an order's origin code). These validation checks will occur in the trade engine. Additionally, fewer fields will be required for order entry using C2 OF2 compared to using C2 OF1. The utilization of fewer fields results in a smaller message size, thereby increasing efficiency. C2 OF2 will support only Immediate-Or-Cancel, ISO, ISO-Book and C2-Only orders. Accordingly, orders using the C2 OF2 format will not route to other market centers.

Although C2 OF1 is currently offered by C2 and is detailed in technical specifications available to all Permit Holders, it has never been codified in the C2 rules.[7] Therefore, C2 is proposing to introduce new C2 Rule 6.19 to make it absolutely clear that C2 OF1 and C2 OF2 will be available to users and to provide transparency and certainty with respect to how orders using these order formats are processed.

The Exchange next proposes to amend Rule 6.35 (Message Packets). Rule 6.35 currently provides that a Trading Permit shall entitle the holder to a maximum number of orders and quotes per second as determined by the Exchange, that only Market-Makers may submit quotes, and that Participants seeking to exceed that number of messages per second may purchase additional message packets at prices set forth in the Exchange's Fees Schedule.[8] The Exchange first seeks to amend Rule 6.35 to clarify that a Trading Permit shall entitle the holder to a maximum number of orders and quotes per second*(s)* (i.e., bandwidth is set at x messages per 1 second or over the course of multiple seconds). C2 next proposes to provide that C2 may set a different maximum number of orders per second(s) for each of the available order formats under proposed Rule 6.19. Next, C2 seeks to provide that C2 shall, upon request and where good cause is shown, temporarily increase a Permit Holder's order entry bandwidth allowance at no additional cost. All determinations to temporarily expand bandwidth allowances will be made in a non-discriminatory manner and on a fair and equal basis. C2 also seeks to provide that no bandwidth limits shall be in effect during the pre-opening prior to 8:15 a.m. CT, which shall apply to all Permit Holders. Finally, C2 seeks to amend Rule 6.35 to provide that C2 may determine times periods for which there shall temporarily be no bandwidth limits in effect for all Permit Holders. Any such determination shall be made in the interest of maintaining a fair and orderly market. C2 shall notify all Permit Holders of any such determination.

C2 does not have unlimited system bandwidth capacity to support an unlimited number of order and quote entry per second. For this reason, C2 limits each Trading Permit to a maximum number of messages per second(s). C2 however, also recognizes that different Permit Holders have different needs and affords any Permit Holder the opportunity to purchase additional bandwidth packets at prices set forth in C2's Fee Schedule. C2 first seeks to amend Rule 6.35 to clarify that a Trading Permit shall entitle the holder to a maximum number of orders and quotes per second*(s)*. For example, C2 notes that a Permit Holder may have the option of choosing to have its bandwidth set at x orders per 1 second or 5x orders per 5 seconds. Currently, all Permit Holders may choose to have its bandwidth set at x orders per one second or 5x orders per 5 seconds for C2 OF1 orders only. Bandwidth for C2 OF2 orders will be set at x orders per one second. To illustrate, if the maximum number of orders per second is 5 orders, a user may choose to have its bandwidth set for C2 OF1 orders so that it may send in 5 orders per 1 second, or send in 25 orders over the course of 5 seconds. Additionally, continuing with the above illustration (i.e., ''x'' equals 5), if a Permit Holder purchased one (1) additional Order Entry bandwidth packet, pursuant to the current Fees Schedule, the Permit Holder would have the ability to submit, depending on how its bandwidth is set, either a total of 10 C2 OF1 or OF2 orders per 1 second or a total of 50 C2 OF1 orders over the course of 5 seconds. As for quotes, a Permit Holder is limited to x quote messages (''blocks'') per 1 second. C2 notes that each block is limited to a maximum number of quotes. Additionally, C2 has set a maximum number of total quotes per 3 seconds. For example, if the Exchange limited each Trading Permit to 100 quotes per 1 block, 10 blocks per 1 second and 200 quotes per 3 seconds, then a user cannot, for example, enter 11 blocks per 1 second. The Exchange will reject the entire block of quotes that puts the user over the threshold. If a user in the above example were to enter, 10 blocks comprised of 10 quotes (i.e., total of 100 quotes) in the first second and 5 blocks comprised of 20 quotes (i.e., total of 100 quotes) in the following second, then the user would not be able to enter any more blocks (and therefore quotes) in the third second, as the user would exceed the 200 quotes per 3 second threshold. C2 believes that adding ''(s)'' to the end of ''per second'' will clarify that a Trading Permit entitles the holder to a maximum number of orders and quotes per 1 second or per multiple seconds.

C2 next proposes to provide that it may set a different maximum number of orders per second(s) for each of the order formats discussed above. As noted above, C2 OF2 will utilize fewer fields resulting in a smaller message size and increased efficiency. The System can therefore better accommodate increased bandwidth capacity due to this smaller message size. Accordingly, the Exchange may implement a higher maximum number of orders per second for orders using C2 OF2 as compared to C2 OF1. C2 proposes to increase the maximum numbers of orders per second for all orders submitted using message format C2 OF2. Any Permit Holder sending orders using C2 OF2 would be entitled to this increased bandwidth allowance for C2 OF2 orders only. To illustrate, C2 may determine to set the maximum number of orders per second for C2 OF1 orders at 5 (i.e., 5 OF1 orders per 1 second or 25 OF1 orders per 5 seconds) and the maximum number of orders per second for C2 OF2 orders at 15 (i.e., 15 OF2 orders per 1 second). Additionally, continuing with the illustration, if a Permit Holder purchased one (1) additional Order Entry bandwidth packet, the Permit Holder would have the ability to submit, depending on how its bandwidth is set, a total of 10 OF1 orders per 1 second or a total of 50 OF1 orders over the course of 5 seconds and 30 OF2 orders per 1 second. The Exchange notes that each Permit Holder will be subject to the same maximum number of orders per second(s) set for each order format. Additionally, any change to the maximum number of orders per second(s) for any order format will be applicable to all Permit Holders.

The Exchange next seeks to amend Rule 6.35 to make clear that under certain circumstances and upon request, C2 may determine to temporarily waive the maximum number of orders per second(s) and expand the bandwidth settings at no additional cost to the requesting Permit Holder. One such example in which bandwidth may be temporarily increased is in situations where a Permit Holder's system is experiencing technical problems,

[7] The Exchange notes that C2 Order Format 2 was previously available to all Permit Holders and was detailed in technical specifications which were available to all Permit Holders.

[8] *See* C2 Rule 6.35.

resulting in a large order queue. Once the problem is resolved, the queue has to be drained. In these instances, it may be necessary to temporarily expand the bandwidth limits for that particular Permit Holder to accommodate the accumulation of orders in its system and to drain the queue of orders. Another example is when another exchange declares a trading halt and a Permit Holder that has orders resting at that exchange redirects that order flow to C2. The redirected order flow may at times consist of thousands of orders. To enter such a large quantity of orders, the Permit Holder's bandwidth allowance would require a temporary expansion, which, upon request and demonstrated need, C2 could provide at no additional charge.

All determinations to temporarily expand bandwidth allowances shall be made in a non-discriminatory manner and on a fair and equal basis. Additionally, all Permit Holders who make such request and demonstrate a need shall be entitled to a temporary expansion. C2 shall document all requests for a temporary expansion of bandwidth, including whether each request was granted or denied, along with the reasons for each grant or denial. Also, temporary increases of bandwidth generally are in effect for not longer than a few seconds or for as long as is necessary to accommodate an order queue.

Next, C2 notes that no bandwidth limits shall be in effect for any Permit Holder during pre-opening, prior to 8:15 a.m. CT. This allows Permit Holders to release, and C2 to absorb, order flow that has accumulated overnight and pre-opening. C2 also notes that prior to the opening of trading, such bandwidth restrictions are unnecessary. C2 may also determine times periods for which there shall temporarily be no bandwidth limits in effect for any Permit Holder. Any such determination shall be made in the interest of maintaining a fair and orderly market. C2 shall notify all Permit Holders of any such determination and shall keep a record of any such notification.

C2 finally notes that the proposed changes to Rule 6.35 are based off a substantially similar rule previously adopted on CBOE. Specifically, CBOE recently adopted Rule 6.23B (Bandwidth Packets), which provides that a Trading Permit shall entitle the holder to a maximum number of orders and quotes per second(s) as determined by CBOE, that only Market-Makers may submit quotes, and that a Trading Permit Holder seeking to exceed that number of messages per second may purchase additional message packets at prices set forth in the CBOE's Fees Schedule. Additionally, CBOE Rule 6.23B provides that CBOE shall, upon request and where good cause is shown, temporarily increase a Trading Permit Holder's order entry bandwidth allowance at no additional cost and that all such determinations will be made in a non-discriminatory manner and on a fair and equal basis. CBOE Rule 6.23B also provides that no bandwidth limits shall be in effect during the pre-opening prior to 8:25 a.m. CT, which shall apply to all Trading Permit Holders. Finally, CBOE Rule 6.23B may determine times periods for which there shall temporarily be no bandwidth limits in effect for all Trading Permit Holders and that any such determination shall be made in the interest of maintaining a fair and orderly market.[9]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) [10] of the Act. Specifically, the Exchange believes the proposed rule change is consistent with the requirements under Section 6(b)(5) [11] that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

First, clearly defining in the rules two key terms (i.e., API and Order) informs market participants. Next, codifying in the rules how authorized market participants access C2 electronically and specifying the manner in which inbound orders are submitted and processed provides additional transparency in the rules and provides market participants an additional avenue to easily understand the system and processes C2 offers. C2 believes additional transparency removes a potential impediment to and perfecting the mechanism for a free and open market and a national market system, and, in general, protecting investors and the public interest. Additionally, C2 believes that the order formats being codified in proposed Rule 6.19 allows C2 to receive from Permit Holders information in a uniform format, which aids C2's efforts to monitor and regulate C2's markets and Permit Holders and helps prevent fraudulent and manipulative practices.

C2 also believes that the proposed rule changes are designed to not permit unfair discrimination among market participants. For example, under proposed Rule 6.34(a), all authorized market participants may access C2 via an available API of their choosing. Additionally, under proposed C2 Rule 6.35, all holders of a Trading Permit are limited to maximum number of orders and quotes per second(s) and all holders of Trading Permits are afforded the opportunity to exceed that number by purchasing additional message packets. Any determinations to temporarily expand bandwidth allowances would also be made on a non-discriminatory basis. Finally, proposed Rule 6.19 is applicable to all Permit Holders and provides that any Permit Holder may elect to use either one of the two available order formats.

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 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. Specifically, C2 believes the proposed rule change will not impose any burden because C2 is merely harmonizing its Rules with current functionalities and practices. Therefore, the proposed rule change promotes transparency in the rules without adding any burden on market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. Impose any significant burden on competition; and

C. 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 [12] and Rule 19b–4(f)(6) [13] thereunder. At any time within 60 days of the filing of the proposed rule change,

[9] *See* CBOE Rule 6.23B.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–C2–2013–034 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2013–034. 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 referto File Number SR–C2–2013–034, and should be submitted on or before October 23, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–23999 Filed 10–1–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70518; File No. SR–NYSEArca–2013–100]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Program for Certain Clearly Erroneous Executions Under Rule 7.10 and Removing References to Individual Security Trading Pauses Contained in Rule 7.10(c)(4)

September 26, 2013.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 24, 2013, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot program for certain clearly erroneous executions under Rule 7.10 and remove references to individual security trading pauses contained in Rule 7.10(c)(4). The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the pilot program for certain clearly erroneous executions under Rule 7.10 and remove references to individual security trading pauses contained in Rule 7.10(c)(4). Portions of Rule 7.10, explained in further detail below, are currently operating as a pilot program set to expire on September 30, 2013.[4] The Exchange proposes to extend the pilot program to April 8, 2014.

On September 10, 2010, the Securities and Exchange Commission (''Commission'') approved, on a pilot basis, changes to Rule 7.10 to provide for uniform treatment: (1) Of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual security trading pause by the primary listing market and subsequent transactions that occur before the trading pause is in effect on the Exchange.[5] The Exchange also adopted additional changes to Rule 7.10 that reduced the ability of the Exchange to deviate from the objective standards set forth in Rule 7.10,[6] and in 2013, adopted a provision designed to address the operation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or the ''Plan'').[7] The

[14] 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* Securities Exchange Act Release No. 68809 (February 1, 2013), 78 FR 9081 (February 7, 2013) (SR–NYSEArca–2013–12).

[5] *See* Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–NYSEArca–2010–58).

[6] *Id.*

[7] *See* Securities Exchange Act Release No. 68809 (February 1, 2013), 78 FR 9081 (February 7, 2013) (SR–NYSEArca–2013–12); Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498

Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should continue on a pilot basis through April 8, 2014, which is one year following the commencement of operations of the Plan. The Exchange believes that continuing the pilot during this time will protect against any unanticipated consequences. Thus, the Exchange believes that the protections of Rule 7.10 should continue while the industry gains further experience operating the Limit Up-Limit Down Plan.

The Exchange also proposes to eliminate all references in Rule 7.10 to individual security trading pauses issued by a primary listing market. Specifically, Rule 7.10(c)(4) provides specific rules to follow with respect to review of an execution as potentially clearly erroneous when there is an individual security trading pause pursuant to Rule 7.11. The individual security trading pauses described in Rule 128[sic](c)(4), which apply to the securities included in the S&P 500 and Russell 1000 indexes as well as to a pilot list of Exchange Traded Products (the ''subject securities''), are being phased out as securities become subject to the Plan pursuant to a phased implementation schedule. The Plan is already operational with respect to all subject securities, and thus, the Exchange believes that all references to individual security trading pauses should be removed, including all cross-references to Rule 7.10(c)(4) contained in other portions of Rule 7.10.[8]

2. Statutory Basis

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, because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system. The Exchange believes that the pilot program promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. More specifically, the Exchange believes that the extension of the pilot would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help ensure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Although the Limit Up-Limit Down Plan will become fully operational during the same time period as the proposed extended pilot, the Exchange believes that maintaining the pilot will help to protect against unanticipated consequences. To that end, the extension will allow the Exchange to determine whether Rule 7.10 is necessary once the Plan is fully operational and, if so, whether improvements can be made. Finally, the elimination of references to individual security trading pauses will help to avoid confusion among market participants, which is consistent with the protection of investors and the public interest and therefore consistent with the Act. As described above, individual security trading pauses have been replaced by the Limit Up-Limit Down Plan with respect to securities that are subject to Rule 7.11.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change implicates any competitive issues. To the contrary, the Exchange believes that the Financial Industry Regulatory Authority (''FINRA'') and other national securities exchanges are also filing similar proposals, and thus, the proposal will help to ensure consistency across market centers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6)(iii) thereunder.[12]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[13]

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 proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

(June 6, 2012) (the ''Limit Up-Limit Down Release''); *see also* Rule 7.10(i).

[8] The Exchange notes that certain Exchange Traded Products (''ETPs'') are not yet subject to the Limit Up-Limit Down Plan. Because such ETPs are not on the pilot list of securities, such ETPs are not subject to Rule 7.10(c)(4). *See* Securities Exchange Act Release No. 65107 (August 11, 2011), 76 FR 51105 (August 17, 2011) (SR–NYSEArca–2011–58) (notice of filing and immediate effectiveness to amend Rule 7.10 so that clearly erroneous executions involving securities recently added to the individual security trading pause pilot under Rule 7.11 continue to be resolved in the same manner before being added to the pilot). Accordingly, the proposed rule change does not change the status quo with respect to such ETPs. As amended, all securities, including ETPs not subject to the Limit Up-Limit Down Plan, will continue to be subject to Rule 7.10(c)(1) through (3).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6)(iii). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

[13] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2013–100 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2013–100. 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–NYSEArca–2013–100 and should be submitted on or before October 23, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–24009 Filed 10–1–13; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70516; File No. SR–FINRA–2013–041]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Clearly Erroneous Pilot Period and to Remove Certain References to Individual Stock Trading Pauses in FINRA Rule 11892

September 26, 2013.

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 September 24, 2013, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b-4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 11892 (Clearly Erroneous Transactions in Exchange-Listed Securities) to extend the effective date of the clearly erroneous pilot, which currently is scheduled to expire on September 30, 2013. FINRA also proposes to remove certain references to individual stock trading pauses contained in Rule 11892. FINRA has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) under the Act.[4]

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] 17 CFR 240.19b–4(f)(6)(iii).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1.Purpose

FINRA proposes to amend FINRA Rule 11892 (Clearly Erroneous Transactions in Exchange-Listed Securities) to extend the effective date of the amendments set forth in File No. SR–FINRA–2010–032 (the ''clearly erroneous pilot''). Portions of Rule 11892, explained in further detail below, currently are operating as a pilot set to expire on September 30, 2013.[5] FINRA proposes to extend the clearly erroneous pilot until April 8, 2014. FINRA also proposes to remove references to individual stock trading pauses described in Rule 11892(b)(4).

On September 10, 2010, the Commission approved, on a pilot basis, changes to FINRA Rule 11892 to provide for uniform treatment: (1) Of clearly erroneous execution reviews in multi-stock events involving twenty or more securities, and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary listing market and subsequent transactions that occur before the trading pause is in effect.[6] FINRA also adopted additional changes to Rule 11892 that reduced the ability of FINRA to deviate from the objective standards set forth in Rule 11892,[7] and in 2013, adopted a provision designed to address the operation of the clearly erroneous rules and the Plan to Address Extraordinary Market Volatility

[5] *See* Securities Exchange Act Release No. 68808 (February 1, 2013), 78 FR 9083 (February 7, 2013) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Clearly Erroneous Pilot Period and To Adopt a New Provision in Connection With the Limit Up-Limit Down Plan) (''File No. SR–FINRA–2013–012'').

[6] *See* Securities Exchange Act Release No. 62885 (September 10, 2010), 75 FR 56641 (September 16, 2010) (Order Granting Approval of Proposed Rule Change Relating to Clearly Erroneous Transactions) (''File No. SR–FINRA–2010–032'').

[7] *See* File No. SR–FINRA–2010–032.

Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or the ''Plan'').[8] FINRA believes the benefits to market participants from the more objective clearly erroneous executions rule should continue on a pilot basis through April 8, 2014, which is one year following the commencement of operations of the Plan. FINRA believes that continuing the pilot during this time will protect against any unanticipated consequences. Thus, FINRA believes that the protections of the clearly erroneous rule should continue while the industry gains further experience with the operation of the Limit Up-Limit Down Plan.

FINRA also proposes to eliminate all references in Rule 11892 to individual stock trading pauses issued by a primary listing market. Specifically, Rule 11892(b)(4) provides specific rules that apply to the review of an execution as potentially clearly erroneous in the context of an individual stock trading pause issued for that security where the security is included in the S&P 500® Index, the Russell 1000® Index, or a pilot list of Exchange Traded Products (''Subject Securities''). The trading pauses described in Rule 11892(b)(4) are being phased out as securities become subject to the Plan pursuant to a phased implementation schedule. The Plan already is operational with respect to all Subject Securities, and thus, FINRA believes that all references to individual stock trading pauses should be removed, including all cross-references to Rule 11892(b)(4) contained in other portions of Rule 11892.[9]

FINRA has filed the proposed rule change for immediate effectiveness. The effective date of the proposed rule change will be the date of filing.

2. Statutory Basis

FINRA believes that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities association and, in particular, with the requirements of Section 15A of the Act.[10] In particular, the proposal is consistent with Section 15A(b)(6) [11] because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest.

FINRA believes that the clearly erroneous pilot promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. More specifically, FINRA believes that the extension of the clearly erroneous pilot would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process.

The proposed rule change also would help assure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Although the Limit Up-Limit Down Plan will become fully operational during the same time period as the proposed extended clearly erroneous pilot, FINRA believes that maintaining the pilot will help to protect against unanticipated consequences. To that end, the extension will allow FINRA to determine whether the pilot provisions of Rule 11892 are appropriate once the Plan is fully operational and, if so, whether improvements can be made. Finally, the elimination of references to individual stock trading pauses will help to avoid confusion amongst market participants, which is consistent with the protection of investors and the public interest and therefore consistent with the Act. As described above, individual stock trading pauses have been replaced by the Limit Up-Limit Down Plan with respect to all Subject Securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change implicates any competitive issues. FINRA believes that the other self-regulatory organizations also are filing similar proposals, and thus, that the proposal will help to ensure consistency across the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

FINRA has not solicited, and does not intend to solicit, comments on this proposed rule change. FINRA has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6)(iii) thereunder.[13]

FINRA has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[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 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,

[8] *See* File No. SR–FINRA–2013–012.

[9] FINRA notes that certain Exchange Traded Products (''ETPs'') are not yet subject to the Limit Up-Limit Down Plan. Because such ETPs are not on the pilot list of securities, such ETPs are not subject to Rule 11892(b)(4). Accordingly, the proposed rule change does not change the status quo with respect to such ETPs. As amended, all securities, including ETPs not subject to the Limit Up-Limit Down Plan, will continue to be subject to Rule 11892(b)(1) through (3). *See* Securities Exchange Act Release No. 65101 (August 11, 2011), 76 FR 51097 (August 17, 2011) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend FINRA Rule 11892) (SR–FINRA–2011–039).

[10] 15 U.S.C. 78*o*–3.

[11] 15 U.S.C. 78*o*–3(b)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6)(iii). As required under Rule 19b–4(f)(6)(iii), FINRA provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

[14] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2013–041 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number *SR–FINRA–2013–041.* 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 FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2013–041 and should be submitted on or before October 23, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–24007 Filed 10–1–13; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70525; File No. SR–NSX–2013–18]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend its Fee and Rebate Schedule

September 26, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act '')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 23, 2013, National Stock Exchange, Inc. (''NSX®'' 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 comment 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 to amend its Fee and Rebate Schedule (the ''Fee Schedule'') issued pursuant to Exchange Rule 16.1(a) in order to change two of the stocks on the list of five select securities (the ''Select Securities'') for which the Exchange pays a rebate of $0.0045 per executed share to Equity Trading Permit (''ETP'')[3] Holders that direct Double Play Orders[4] in those securities to the CBOE Stock Exchange, Inc. (''CBSX''). The Exchange is proposing no other changes to the Fee Schedule except to amend the list of Select Securities. Specifically, the Exchange proposes to remove Advanced Micro Devices, Inc., (''AMD'') and Micron Technology, Inc. (''MU'') from the list of Select Securities, and replace them with Apple Inc. (''AAPL'') and Google Inc. (''GOOG'')[5] AMD and MU will revert to the fee and rebate programs applicable for all other securities that trade on the Exchange, which provide for a rebate of $0.0015 for Double Play Orders, other than those in the Select Securities, routed to and executed on CBSX.

The text of the proposed rule change is available on the Exchange's Web site at *www.nsx.com,* at the Exchange's principal office, and at the Commission's public reference room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Section IIIA of its Fee Schedule to change two of the five stocks on the list of Select Securities that will receive a rebate of $0.0045 per executed share to ETP Holders that direct Double Play Orders to CBSX. A Double Play Order is a market or limit order for which the ETP Holder instructs the NSX System[6] to bypass the NSX Book[7] and route the order to a designated away Trading Center(s)[8] that has been approved by

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NSX Rule 1.5 defines the term ''ETP'' as an Equity Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange's Trading Facilities.

[4] NSX Rule 11.11(c)(10) defines a ''Double Play Order'' as market or limit orders for which an ETP Holder instructs the System to route to designated away Trading Centers which are approved by the Exchange from time to time without first exposing the order to the NSX Book. A Double Play Order that is not executed in full after routing away receives a new time stamp upon return to the Exchange and is ranked and maintained in the NSX Book in accordance with Rule 11.14(a).

[5] The Exchange previously filed for immediate effectiveness amendments to its Fee Schedule, effective July 1, 2013, that: (i) Established the $0.0045 per share rebate for executions of Double Play Orders in the Select Securities on CBSX; (ii) clarified that the unexecuted portion of a Double Play Order that is returned to NSX after its initial route to CBSX and subsequently executed on the NSX or routed away in accordance with NSX Rule 11.15(a)(ii) is subject to the standard Fee Schedule; and (iii) clarified that the $0.0030 per share routing fee applies only to orders routed by the Exchange in accordance with NSX Rule 11.15(a)(ii). In addition to AMD and MU, the Select Securities identified were Bank of America Corp. (''BAC''), Nokia Corporation (''NOK''), and Sirius XM Radio Inc. (''SIRI''). *See* Exchange Act Release No. 34–69941; 78 FR 41966; SR–NSX–2013–14 [sic].

[6] Under NSX Rule 1.5, the term ''System'' is defined as ''the electronic securities communications and trading facility. , . through which orders of Users are consolidated for ranking and execution.''

[7] Under NSX Rule 1.5, the term ''NSX Book'' is defined as ''the System's electronic file of orders.''

[8] NSX Rule 2.11(a) defines a Trading Center as other securities exchanges, facilities of securities exchanges, automated trading systems, electronic

the Exchange.[9] The NSX System will provide any unexecuted portion of a Double Play Order with a new timestamp upon return to the Exchange, and the order will be processed in the manner described in NSX Rule 11.14 (Priority of Orders).

Under the revised Fee Schedule, symbols AAPL and GOOG will replace symbols AMD and MU. CBSX has determined to change these two Select Securities in its fee schedule.[10] The Exchange intends to pass through the rebates to ETP Holders that direct Double Play Orders in the Select Symbols to the CBSX and, accordingly, is making this conforming change to the Fee Schedule in order to pass through the rebates received from CBSX to ETP Holders that direct Double Play Orders in the Select Securities to CBSX. The Exchange notes that its proposed amendment to the Fee Schedule to substitute two symbols on the list of Select Securities does not affect the amount of the rebate applicable to Double Play orders in such securities routed to CBSX, for the select securities and for all other securities.

The removal of AMD and MU from the list of Select Securities and the addition of AAPL and GOOG is proposed as a means to increase the liquidity in AAPL and GOOG. AMD and MU had been included in the Select Symbols in an attempt to attract greater liquidity in both symbols, but increased liquidity has not occurred. By returning those symbols to the fee and rebate structure applicable to all other securities, and substituting AAPL and GOOG, the Exchange hopes to attract greater liquidity provision in AAPL and GOOG. AAPL and GOOG are higher-priced stocks that typically have larger spreads than other products, and it is anticipated that the enhanced rebate structure may result in more liquidity in these symbols.

2. Statutory Basis

The Exchange believes that the proposed change to the list of Select Symbols to which the increased rebate for Double Play Orders routed away and executed on the CBSX will apply is consistent with the provisions of Section 6(b) of the Act in general, and Sections 6(b)(4)[11] and 6(b)(5)[12] of the Act in particular. The Exchange submits that increased rebate is consistent with Section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable dues and fees among ETP Holders, issuers and persons using the Exchange's facilities. All ETP Holders are eligible to submit (or not submit) Double Play Orders in the Select Securities at their discretion. Providing ETP Holders with the enhanced rebate for directing Double Play Orders in the Select Securities to the CBSX is a reasonable method to increase order flow handled by the Exchange, and the periodic substitution of securities on the list of Select Securities is responsive to whether the enhanced rebate structure is attaining the anticipated results in these symbols, and whether changes to the list of Select Securities should be made to provide new opportunities for ETP Holders and their customers to benefit from increased liquidity in these symbols that the enhanced rebates were designed to encourage.

The Exchange notes that its proposed amendment to the Fee Schedule to substitute two symbols on the list of Select Securities does not affect the amount of the rebate applicable to Double Play orders in such securities routed to CBSX. The Exchange's proposal mirrors that of the CBSX, which is proposing to amend its fee schedule to effect the same change to the list of Select Securities, to be effective as of September 3, 2013. The Exchange intends to merely pass through rebates to ETP Holders that direct Double Play Orders in the Select Symbols to the CBSX and, accordingly, is making this conforming change to the Fee Schedule in order to pass through the rebates received from CBSX to ETP Holders that direct Double Play Orders in the Select Securities to CBSX.

As noted by the Exchange in its initial filing to implement the enhanced rebate schedule in the Select Securities,[13] the liquidity profiles of the Select Securities are different from those for other symbols and the rebate structure for the Select Securities is intended to incentivize the trading in the Select Securities and thus provide a greater pool of liquidity. The substitution of two symbols meeting this profile for two other symbols that did not attain the increased liquidity levels is a reasonable means of attracting greater liquidity in these symbols to the Exchange. The rebates for the Select Securities apply equally to all market participants. The Exchange submits that the rebate structure for the Select Securities constitutes an equitable allocation of reasonable fees and other charges among ETP Holders, issuers and other persons using the facilities of the Exchange, and the substitution of two symbols on the current list of five is consistent with the [sic] of Section 6(b)(4) of the Act.

The Exchange believes that the fee and rebate structure for the Select Securities is consistent with Section 6(b)(5) of the Act in that it does not permit unfair discrimination between ETP Holders, issuers and customers, and substituting two symbols on the list of Select Securities does not affect the non-discriminatory nature of the enhanced rebate program. ETP Holders and their customers will continue to choose to send Double Play Orders in the Select Securities to NSX to be eligible for the enhanced rebate schedule and they will also continue to have a choice of other execution venues with different pricing mechanisms as well. By offering the enhanced rebate structure in the Select Securities, the Exchange is providing alternatives to ETP Holders and their customers, while also striving to increase the liquidity in the Select Securities on the Exchange.

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 submits that the enhanced rebate in the Select Securities promotes competition by potentially attracting additional liquidity to the Exchange and providing access to liquidity on the CBSX. The increased rebate is designed to encourage ETP Holders to use Double Play Orders and increase the number of shares handled by the Exchange and CBSX. To this extent, the Exchange submits that the proposed substitution of AAPL and GOOG for AMD and MU on the list of Select Securities is responsive to the competitive forces that impact liquidity and order flow and are intended to enhance competition for order flow in these securities.

Moreover, as the Exchange has previously noted, it does not believe that passing through the rebate received from the CBSX to ETP Holders imposes a burden on competition for any other Exchange-approved Trading Center to which ETP Holders may direct orders since other Trading Centers may offer other competitive functions or features such as low cost executions, increased levels of liquidity or faster executions. The ETP Holder may choose which offering is most attractive and the increased rebate is one factor which an ETP Holder may consider.

communications networks or other brokers or dealers.

[9] *See* NSX Rule 11.11(c)(10).

[10] Exchange Act Release No. 34–70382; 78 FR 57247; SR–CBOE–2013–86 [sic].

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78f(b)(5).

[13] *Id.* at footnote 5.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has taken effect upon filing pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act [14] and subparagraph (f)(2) of Rule 19b–4.[15] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–NSX–2013–18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSX–2013–18. 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–NSX–2013–18 and should be submitted on or before October 23, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–24016 Filed 10–1–13; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 240.19b–4.

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70532; File No. SR–MSRB–2013–05]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend MSRB Rules G–8, G–11, and G–32 To Include Provisions Specifically Tailored for Retail Order Periods

September 26, 2013.

I. Introduction

On June 17, 2013, the Municipal Securities Rulemaking Board (''MSRB'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change consisting of amendments to MSRB Rules G–8, G–11, and G–32, and conforming changes to Form G–32. The proposed rule change was published for comment in the **Federal Register** on June 28, 2013.[3] The Commission received eight comment letters on the proposal.[4] On September 6, 2013, the MSRB submitted a response to these comments [5] and filed Amendment No. 1 to the proposed rule change.[6] The Commission is publishing this notice to solicit comments on Amendment No. 1 to the proposed rule change from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposed Rule Change

The MSRB states that this proposed rule change will establish basic protections for issuers and customers and provide additional tools to assist with the administration and examinations of retail order period requirements, as described below. The thrust of the proposal, according to the MSRB, is to provide a mechanism by which issuers can have greater assurance that a dealer has, when directed to do so by the issuer, made a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 69834 (June 24, 2013), 78 FR 39038 (''Notice'').

[4] *See* Letters to Elizabeth M. Murphy, Secretary, Commission, from David L. Cohen, Managing Director and Associate General Counsel, SIFMA, dated July 18, 2013 (''SIFMA Letter''); Dustin McDonald, Director, Federal Liaison Center, Government Finance Officers Association (''GFOA''), dated July 18, 2013 (''GFOA Letter''); Jeanine Rodgers Caruso, President, National Association of Independent Public Finance Advisors, dated July 19, 2013 (''NAIPFA Letter''); Dorothy Donohue, Deputy General Counsel—Securities Regulation, Investment Company Institute, dated July 19, 2013 (''ICI Letter''); Robert J. McCarthy, Director of Regulatory Policy, Wells Fargo Advisors, LLC, dated July 19, 2013 (''WFA Letter''); Michael Nicholas, Chief Executive Officer, Bond Dealers of America, dated July 19, 2013 (''BDA Letter''); Leslie M. Norwood, Managing Director and Associate General Counsel, SIFMA, and Dustin McDonald, Director, Federal Liaison Center, GFOA, dated August 29, 2013 (''SIFMA and GFOA Joint Letter''); and David L. Cohen, Managing Director and Associate General Counsel, SIFMA, dated September 23, 2013 (''SIFMA Letter II'').

[5] *See* Letter to Elizabeth M. Murphy, Secretary, Commission, from Michael L. Post, Deputy General Counsel, MSRB, dated September 6, 2013 (''MSRB Letter'').

[6] In Amendment No. 1, the MSRB partially amended the text of the original proposed rule change to: (i) Revise the definition of ''retail order period'' in Rule G–11(a)(vii) to make clear the MSRB's intent that the definition covers order periods during which orders that meet the issuer's designated eligibility criteria for retail orders and for which the customer is already conditionally committed will be either (a) the only orders solicited or (b) given priority over other orders; (ii) revise proposed Rule G–11(k) to clarify that dealers submitting institutional orders during a retail order period are not required to submit certain additional information that is intended to relate to retail orders; (iii) eliminate the use of the defined term ''going away order,'' while retaining the concept represented by the term; (iv) delete certain duplicative language from the definition of ''selling group'' in Rule G–11(a); and (v) synchronize the effective dates so that all parts of the proposed rule change would take effect at the same time. The MSRB also made minor technical changes to correct marking of rule text that was incorrect in the original filing.

bona fide public offering of securities to retail customers at their initial offering prices. According to the MSRB, the proposed rule change addresses specific concerns raised by issuers, dealers, and municipal advisors that (i) Orders have been mischaracterized as ''retail''; (ii) syndicate managers fail to disseminate timely notice of the terms and conditions of a retail order period to all dealers, including selling group members; and (iii) requested pricing information is not delivered in sufficient time to allow for communication with the requesting dealer's ''retail'' customers to determine whether the investor would like to purchase the bonds. The proposed rule change amends MSRB rules to include provisions specifically tailored to address these identified issues.

1. Proposed Changes to Rule G–11

MSRB Rule G–11 addresses syndicate practices and management of the syndicate. Among other things, the rule requires syndicates to establish priorities for different categories of orders and requires various disclosures to syndicate members, which are intended to assure that allocations are made in accordance with those priorities.

The MSRB proposes to amend Rule G–11 by adding definitions for terms used in the proposed new provisions addressing retail order periods. The term ''retail order period'' will be defined in subparagraph (a)(vii) to mean an order period during which orders that meet the issuers' designated eligibility criteria for retail orders and for which the customer is already conditionally committed will be either (i) the only orders solicited or (ii) given priority over other orders.[7] In addition, the MSRB proposes to define the term ''selling group'' in subparagraph (a)(xii) to mean a group of brokers, dealers, or municipal securities dealers formed for the purpose of assisting in the distribution of a new issue of municipal securities for the issuer other than members of the syndicate.[8]

Rule G–11(f) requires that the senior syndicate manager furnish in writing to the other members of the syndicate a written statement of all terms and conditions required by the issuer. The MSRB proposes to amend Rule G–11(f) to require expressly that the written statement also be delivered to selling group members. Additionally, the proposal requires that such written statement include all of the issuer's retail order period requirements, if any, and all pricing information. The proposal also requires a written statement be provided to syndicate and selling group members of any changes in either the priority provisions or pricing information. The proposed rule change further requires that an underwriter furnish in writing to any other broker, dealer, or municipal securities dealer with which it has an arrangement to market the issuer's securities all of the information provided by the senior syndicate manager.[9]

Rule G–11(f) also currently provides that if a senior syndicate manager, rather than the issuer, prepares the statement of all of the terms and conditions required by the issuer, such statement must be provided to the issuer. The proposed rule change adds the requirement to obtain the approval of the issuer of any statement prepared by the senior syndicate manager. This approval must be secured in all cases and is not limited solely to those instances when a retail order period is conducted.

Rule G–11(h)(i) currently provides, among other things, that management fees and discretionary fees for clearance costs to be imposed by a syndicate manager shall be disclosed to the syndicate members prior to submission of a bid. The proposed rule change will require the syndicate manager specifically to disclose to each syndicate member the *amount* of any management fees or discretionary fees for clearance costs imposed by the syndicate manager.

The MSRB also proposes to add new paragraph (k) to Rule G–11. New paragraph (k) will require any broker, dealer, or municipal securities dealer that submits an order that is designated as retail during a retail order period to provide certain information, which the MSRB states will assist in the determination that such order is a *bona fide* retail order. Specifically, the broker, dealer, or municipal securities dealer must provide the following information relating to each order designated as retail submitted during a retail order period: (i) Whether the order is from a customer that meets the issuer's eligibility criteria for participation in the retail order period; (ii) whether the order is one for which a customer is already conditionally committed; (iii) whether the broker, dealer, or municipal securities dealer has received more than one order from the retail customer for a security for which the same CUSIP number has been assigned; (iv) any identifying information required by the issuer, or the senior syndicate manager on the issuer's behalf, in connection with such retail order (but not including customer names or social security numbers); and (v) the par amount of the order. This Rule G–11(k) information must be submitted no later than the Time of Formal Award,[10] and may be submitted electronically. The proposed rule change also provides that the senior syndicate manager may rely on the information furnished by such dealer, unless the senior syndicate manager knows, or has reason to know, that the information is not true, accurate, or complete.

2. Proposed Changes to Rule G–8

MSRB Rule G–8 imposes books and records requirements on brokers, dealers, and municipal securities dealers. Rule G–8(a)(viii)(A) requires that, for each primary offering for which a syndicate has been formed for the purchase of municipal securities, the syndicate manager must maintain a variety of records. Currently, the rule provides these records must show, among other things, a statement of all terms and conditions required by the issuer (including whether there was a retail order period and the issuer's definition of ''retail,'' [11] if applicable) and all orders received for the purchase of the securities from the syndicate.[12] The MSRB proposes to amend Rule G–8(a)(viii)(A) so that senior syndicate managers also will need to maintain the

[7] The definition of ''retail order period'' was amended in Amendment No. 1 in response to comments received in order to make clear the MSRB's intent that the definition covers retail order periods during which qualified orders are either the only orders solicited or are given priority over other orders. *See supra* note 6.

[8] The MSRB notes that selling groups are sometimes included by issuers in the distribution of new issues of municipal securities to expand the distribution channel beyond the customers of syndicate members. *See* Notice, *supra* note 3 at 39039.

[9] The MSRB states that this arrangement, commonly referred to as a ''distribution or marketing agreement,'' is used by some firms to enhance the firm's ability to ''reach'' retail customers, such as in the case where a firm does not have a significant retail distribution network. Notice, *supra* note 3 at 39040, n. 9. Under the proposed rule change, the onus to furnish the information would be placed on the underwriter that has entered into such arrangement, rather than the senior syndicate manager.

[10] As defined in MSRB Rule G–34(a)(ii)(C)(1)(a).

[11] The MSRB also proposes to alter Rules G–8(a)(viii)(A) and (B) by deleting the parenthetical reference to ''whether there was a retail order period and the issuer's definition of retail'' and to replace it with ''those of any retail order period.'' The MSRB states that this part of proposed rule change is not intended to be a substantive change.

[12] *See* Rule G–8(a)(vii) relating to dealer records for principal transactions. Dealers are not required to retain records related to customer orders unless an order has been filled. The requirement in the rule for a memorandum of the transaction including a record of the customer's order applies only in the event such purchase or sale occurs with the customer.

following records: (i) All orders received for the purchase of the securities from the selling group; (ii) the information required by Rule G–11(k) (as discussed below); and (iii) all pricing information distributed pursuant to Rule G–11(f) (as discussed below).

Rule G–8(a)(viii)(B) requires that, for each primary offering for which a syndicate has not been formed for the purchase of municipal securities, the sole underwriter must maintain a variety of records which show, among other things, all terms and conditions required by the issuer (including whether there was a retail order period and the issuer's definition of ''retail,'' [13] if applicable). The MSRB proposes to change Rule G–8(a)(viii)(B) to require the sole underwriter also to maintain in its files the information required by Rule G–11(k) (as discussed below).

3. Proposed Changes to Rule G–32

MSRB Rule G–32 governs disclosures in connection with primary offerings. Specifically, Rule G–32(a) provides requirements for the disclosure to customers of certain information in connection with primary offerings of municipal securities. Rule G–32(a)(i) provides, among other requirements, that no broker, dealer, or municipal securities dealer shall sell, whether as a principal or agent, any offered municipal securities to a customer unless such broker, dealer, or municipal securities dealer delivers to the customer a copy of the official statement by no later than the settlement of the transaction. The proposed rule change amends Rule G–32(a)(i) to replace the terms ''whether as principal or agent'' with the phrase ''whether as an underwriter or otherwise'' to clarify that all brokers, dealers, and municipal securities dealers, not just underwriters, are subject to the official statement delivery requirement of the rule during the primary offering disclosure period. The MSRB notes that this proposed change codifies its long-standing interpretation of Rule G–32(a)(i).

Rule G–32(b) provides detailed requirements for underwriters submitting documents or disclosure-related information to the Electronic Municipal Market Access (''EMMA'') system. Rule G–32(b)(v) provides that in the event a syndicate or similar account has been formed for the underwriting of a primary offering, the managing underwriter shall take the actions required under the provisions of the rule and shall also comply with the recordkeeping requirements of Rule G–8(a)(xiii)(B), which addresses the recordkeeping requirements in the case of a primary offering in which a syndicate has *not* been formed. The MSRB proposes to delete the reference in Rule G–32(b)(v) to such recordkeeping requirements because the cross reference to ''(B)'' is incorrect.

Rule G–32(b)(vi)(C)(1)(a) provides that an underwriter must submit data, including: (i) CUSIP numbers; (ii) initial offering prices or yields, if applicable; (iii) the expected closing date for the transaction; and (iv) whether the issuer or other obligated persons have agreed to undertake to provide continuing disclosure information as contemplated by Rule 15c2–12 under the Act. The proposed change to Rule G–32(b)(vi)(C)(1)(a) adds to the data that must be submitted a requirement that the underwriter report to EMMA (for solely regulatory purposes) whether a primary offering of securities included a retail order period and each date and time (beginning and end) [14] it was conducted.[15]

4. Implementation Date

The MSRB proposes that the implementation date would be no later than March 31, 2014, or such earlier date to be announced by the MSRB in a notice published on the MSRB Web site with at least a thirty-day advance notification prior to the effective date.[16]

III. Summary of Comments Received and the Commission's Response

As previously noted, the Commission received eight comment letters on the proposed rule change and a response letter from the MSRB.[17] The commenters generally supported the proposed rule change, but raised some specific concerns discussed in more detail below.

1. Definition of ''Retail'' Customer

Three commenters addressed the MSRB's proposal to allow issuers to determine eligibility criteria for participating in a retail order period on an issue-by-issue basis in lieu of proposing a rule to define ''retail'' customer.[18] One commenter stated that, although it supports MSRB's intention of allowing the issuer to establish its own terms and conditions, including order priority provisions, for offerings, it believes the MSRB could do more to protect issuers by developing a non-binding definition of the term ''retail'' customer.[19] This commenter noted that many issuers would benefit from a baseline definition of ''retail'' that they could tailor to their specific needs.[20] Another commenter suggested that the MSRB adopt a uniform definition of ''retail'' that recognizes that retail investors access the municipal bond markets in many ways, including through collective investment vehicles such as mutual funds.[21]

In response to these comments, the MSRB reiterated its belief that it is appropriate to allow issuers the flexibility to designate the eligibility criteria for their retail order periods on an issue-by-issue basis and adopt criteria that best suits their unique circumstances. The MSRB noted that this discretion is necessary given the vast array of potential factors that an issuer may consider in developing the eligibility criteria and the wide range of issuers in the municipal market.[22] Although declining to provide a definition of ''retail'' order in the rule, in its response letter, the MSRB provided a number of non-exclusive examples of some of the options that issuers may choose from when establishing eligibility criteria for orders solicited through its retail order period. The MSRB noted, for example, that an issuer could determine that retail orders include orders from a specific type of person, such as a natural person or a trust department or registered investment adviser acting on behalf of a natural person.[23] The MSRB also noted that an issuer also could choose to define ''retail'' to include only orders from ''local'' investors, defined by reference to the residency or domicile of the investor. Alternatively, an issuer

[13] *See supra* note 11.

[14] All times will be required to be reported as Eastern Time.

[15] Under the proposed rule change, the underwriter will be required to report to EMMA that a retail order period has occurred by no later than the closing date of the transaction. Under Rule G–32(b)(vi)(C)(1)(a), Form G–32 submissions shall be ''initiated on or prior to the date of first execution . . .'' The ''date of first execution'' is defined in Rule G–32(d)(xi) and, for purposes of this report, is deemed to occur by no later than the closing date.

[16] *See* Amendment No. 1 at 4. As originally proposed, the amendments to Rules G–8 and G–11 would have become effective six months following the date of this order while the amendments to Rule G–32 would have taken effect no later than March 31, 2014, or such earlier date as announced by the MSRB in a notice published on its Web site with at least a thirty-day advance notification prior to the effective date. The MSRB determined that, consistent with the suggestion of commenters, it would be appropriate to synchronize these effective dates.

[17] *See supra* notes 4 and 5.

[18] *See* GFOA Letter; ICI Letter; NAIPFA Letter.

[19] *See* GFOA Letter at 1.

[20] *See* GFOA Letter at 1.

[21] *See* ICI Letter at 1–2. This commenter believes that, absent a definition of ''retail'' that includes collective investment vehicles, retail investors that seek exposure to the municipal bond markets through these vehicles will be disadvantaged.

[22] MSRB Letter at 2.

[23] MSRB Letter at 2.

also could choose to include an order from an institutional investor that represents a family foundation or trust or an order from a mutual fund. The MSRB also stated that an issuer could determine which orders are ''retail'' orders by imposing an aggregate limitation on the total par amount of the order.[24]

Further, the MSRB noted that even a non-binding definition of ''retail'' customer could have the effect of skewing issuers' selection of eligibility criteria, which would be contrary to the MSRB's intention of granting broad flexibility to issuers. As an alternative to imposing eligibility criteria for retail order periods, the MSRB committed to develop educational materials concerning retail order periods that would assist issuers in developing such criteria.[25] The MSRB stated that it intends to solicit and incorporate input from issuers in developing these educational materials.[26]

Two commenters expressed concerns about issuers not having the requisite experience and having to rely on advice from their brokers or underwriters in developing their eligibility criteria in the absence of a definition of ''retail'' in the rule.[27] One commenter argued that an issuer is likely to believe that its underwriters' advice is provided with the issuer's best interest in mind, but this may not be the case, as underwriters are likely to advise issuers to use a definition of ''retail'' customer that suits the underwriters' business model and/or distribution channels without regard to the interests of the issuer.[28] Another commenter noted that dealers do not have a fiduciary duty to the issuer, and thus, it would be helpful for issuers to have a baseline definition of ''retail'' to reference, rather than relying solely on the advice of the dealer.[29]

In response, the MSRB noted that an issuer could engage a municipal advisor experienced in retail order periods to assist the issuer in managing all aspects of the primary offering process, including the development of eligibility criteria, to help ensure that the issuer's objectives for the offering will be met.[30] The MSRB also noted that today underwriters may assist issuers in establishing eligibility criteria for retail order periods without a standard definition of retail customer and that the commenter provided no argument as to why this is violative of existing MSRB rules. The MSRB further observed that the proposed rule change ''simply seeks to reinforce dealer compliance with the terms of a retail order period'' and that concerns about an underwriter's ability to manipulate the marketing process in order to be engaged by an issuer do not speak to the substance of the proposal.[31]

One commenter also noted that the MSRB's use of the term ''retail'' throughout its proposal suggests that the MSRB believes the term is generally understood by market participants, but that absent a definition of ''retail,'' it is not possible to evaluate the MSRB's assessment that retail investors will benefit from its proposed rule.[32] This commenter expressed the view that *bona fide* retail investors will, in fact, be hurt by the MSRB's proposal because they will be squeezed out by issuers that use definitions, developed with underwriter advice, favoring *non-bona fide* retail investors.[33] In response, the MSRB defended its statement that retail investors will benefit from the proposed rule change by explaining that, in context, the statement refers to retail investors that *issuers have determined* should have the opportunity to compete to buy their bonds in the primary market.[34] Further, the MSRB stated its belief that the proposed rule change will benefit those investors that meet the issuer's eligibility criteria, because all orders participating in the retail order period will be more likely to comply with the issuer's eligibility criteria and regulatory authorities will have additional tools to enforce compliance with Rule G–11.

2. Definition of ''Retail Order Period''

Commenters addressed three aspects of the MSRB's proposed definition of ''retail order period'' in proposed Rule G–11(a)(vii). One commenter urged the MSRB to revise the definition of ''retail order period'' to cover order periods in which both retail and institutional investors are permitted to place orders, but retail orders are given priority over other orders.[35] The commenter noted that many issuers currently conduct order periods in this manner, particularly those whose bond issues are not large in size.[36] In response to this comment, the MSRB proposed to revise the definition to clarify that ''retail order period'' includes both: (i) Order periods where orders for retail customers are the only orders solicited; and (ii) order periods where retail orders are given priority over other orders.[37] The MSRB also noted that it had originally intended for the rule to be flexible enough to accommodate an order period that runs concurrently as well as sequentially, stating that the term ''issuer's designated eligibility criteria'' was designed to be broad enough to encompass an order period where retail orders are given priority.

Two commenters recommended replacing all references to ''going away orders'' with references to ''*bona fide''* customer orders.[38] As originally proposed, the term ''retail order period'' was defined as a period during which solely going away orders would be solicited solely from customers that met the issuer's designed eligibility criteria, and ''going away order'' was defined to mean an order for which a customer was already conditionally committed.[39] One of the commenters argued that the proposal's usage of the term ''going away orders'' was inconsistent with the commonly accepted meaning of the term.[40] The commenter further explained that the terms used by many issuers for retail order periods are designed to have the bonds purchased during the retail order period by ''ultimate investors'' who will buy and hold the bonds, rather than ''intermediate investors'' who will sell the bonds quickly and affect the secondary market pricing of the issuer's securities even prior to closing.[41] While acknowledging that the MSRB's definition would exclude dealer orders (which is one of the stated goals of the proposal), this commenter advocated for the use of the term ''*bona fide,''* arguing that this term is commonly understood to mean ''real'' or ''genuine,'' and therefore would enhance the likelihood of bonds going to ''ultimate investors.'' As such, the commenter argued that adoption of this term would address more appropriately the concern that issuers' directions concerning retail order periods are being ignored.[42] The other commenter observed that the term ''conditionally committed'' is less precise than ''*bona fide''* customer

[24] MSRB Letter at 2.

[25] MSRB Letter at 3.

[26] MSRB Letter at 6.

[27] *See* NAIPFA Letter at 1–2 and GFOA Letter at 1.

[28] *See* NAIPFA Letter at 1–2.

[29] *See* NAIPFA Letter at 1–2 and GFOA Letter at 1.

[30] MSRB Letter at 2.

[31] MSRB Letter at 3.

[32] *See* NAIPFA Letter at 2–3.

[33] *See* NAIPFA Letter at 3.

[34] MSRB Letter at 2–3 (emphasis in original).

[35] *See* GFOA Letter at 2.

[36] *See* GFOA Letter at 2.

[37] *See* Amendment No. 1 at 3–4; MSRB Letter at 5.

[38] *See* GFOA Letter at 2–3; SIFMA Letter at 2, n.5; SIFMA Letter II at 2.

[39] *See* Notice, *supra* note 3.

[40] *See* GFOA Letter at 2.

[41] *See* GFOA Letter at 2.

[42] *See* GFOA Letter at 2.

orders that meet the issuer's designated eligibility criteria.[43]

In response, the MSRB proposed to eliminate the term ''going away order,'' while retaining the concept represented by the term to ensure that orders for dealer inventory are not permitted to be submitted during a retail order period.[44] The MSRB declined to use the term ''*bona fide*'' because, in the MSRB's view, the use of the *bona fide* concept to categorize customers that are likely to hold newly-issued municipal bonds rather than sell them quickly would lead to a highly subjective inquiry.[45] Moreover, the MSRB noted that the commenters did not clearly distinguish between intermediate investors and ultimate investors.[46] The MSRB also noted that the proposed rule change is not intended to prescribe a holding period in order to participate in a retail order period and, accordingly, the MSRB has not conducted an assessment of whether a holding period requirement would be consistent with the promotion of a free and efficient market.[47]

Lastly, one commenter recommended that any educational materials regarding the definition of ''retail order period'' developed by MSRB should include a recommendation that issuers reserve the right to conduct an audit of compliance by the syndicate of the issuer's retail order period rules.[48] In its comment letter, the MSRB confirmed that issuers may audit customer orders.[49]

3. Representations by Dealers Required by MSRB Rule G–11(k)

Five comments addressed the new representations that dealers would need to make to comply with proposed Rule G–11(k).[50] One commenter stated that the representations required by the rule should account for order periods during which both retail and institutional orders are accepted.[51] The MSRB addressed this comment by proposing to amend the definition of ''retail order period'' to include both: (i) Order periods where orders for retail customers are the only orders solicited; and (ii) order periods where retail orders are given priority over other orders, as described above.[52]

Three commenters raised concerns about the scope of information required by proposed Rule G–11(k).[53] One commenter argued that proposed Rule G–11(k) is too prescriptive and burdensome and suggested that dealers should be permitted to make certain representations required by the rule only once, rather than each time an order is submitted during a retail order period.[54] The commenter recommended that this single set of representations could be made in either the Master Agreement Among Underwriters or the Selling Group Agreement.[55] The commenter further suggested that dealers should only be required to separately inform the syndicate manager in writing if an order does not comply with proposed Rule G–11(k)(i), (ii), or (iii).[56]

In its response letter, the MSRB noted that the order-by-order information submission requirement is intended to highlight the importance of submitting (as retail orders) only orders that meet an issuer's eligibility criteria. In the MSRB's view, accepting this commenter's proposal would result in a rule that is not materially different from what is required today.[57] MSRB further noted that, in practice, the diligence necessary for a dealer to provide a blanket statement is likely to approximate, if not exceed, the requirements set forth in the proposed rule change.[58] With regard to the commenter's suggestion that dealers should only be required to separately contact the syndicate manager when an order does not comply with the rule, the MSRB stated that a dealer should not submit any orders that do not comply with applicable provisions of Rule G–11(k).[59]

Another commenter stated that proposed Rule G–11(k) will impose a costly, unreasonable, and unnecessary burden on dealers and recommended that issuers be able to determine the scope of information that dealers are required to compile to assess the validity of retail orders, in addition to the information required by current MSRB rules.[60] The other commenter noted that requiring a dealer to submit any identifying information required by or on behalf of an issuer creates legitimate customer privacy protection issues that should be addressed within the rule.[61] This commenter stated that Rule G–11(k) should prohibit issuers from requiring the submission of customer account numbers, addresses, phone numbers, and tax identification numbers, in addition to social security numbers and customer names.[62]

The MSRB responded that issuers should be given the tools to verify orders for their municipal securities.[63] The MSRB noted that although it is aware of the responsibilities imposed on dealers to protect customer information, it does not believe that the regulations that address the protection of customer specific information prohibit regulatory authorities from requiring dealers to provide specific customer information to advance a legitimate regulatory objective, in this case, giving issuers the tools to verify orders for their municipal securities.[64] The MSRB further noted that it believes issuers will be sensitive to concerns regarding customer privacy and that issuers should be open to modifying, at a dealer's request, a specific information collection requirement if the dealer can demonstrate legitimate customer privacy concerns or that capturing such information may violate applicable laws.[65] The MSRB also stated that the amount of customer specific information that is required by the proposed rule change is not significantly greater than the amount of information that dealers routinely collect and submit today.[66] Moreover, the MSRB noted that GFOA and NAIPFA, two professional associations who may represent the interest of issuers in this regard, generally support the proposed requirement to provide additional information about each order.[67]

---

[43] SIFMA Letter II at 2.

[44] Amendment No. 1 at 4, MSRB Letter at 4–5.

[45] MSRB Letter at 5.

[46] MSRB Letter at 5.

[47] MSRB Letter at 5. The MSRB did note that although they were not prescribing a holding period, issuers have the ability to establish customer eligibility criteria to define the customers that they would like to participate in the retail order period to the extent consistent with applicable laws and regulations.

[48] *See* BDA Letter at 2.

[49] MSRB Letter at 4.

[50] *See* BDA Letter; GFOA Letter; SIFMA Letter; SIFMA Letter II; WFA Letter.

[51] *See* GFOA Letter at 2.

[52] *See supra* note 6; Amendment No. 1 at 3–4.

[53] BDA Letter at 1–2; SIFMA Letter at 2–3; SIFMA Letter II at 2; WFA Letter at 3.

[54] *See* SIFMA Letter at 2–3. Specifically this commenter noted that the dealer could make a single representation that: (i) Each order meets the issuer's eligibility criteria for retail; (ii) each order is a *bona fide* customer order; and (iii) such order is not duplicative. *See also* SIFMA Letter II at 2.

[55] *See* SIFMA Letter at 2–3.

[56] *See* SIFMA Letter at 3.

[57] *See* MSRB Letter at 4.

[58] MSRB Letter at 4.

[59] MSRB Letter at 4

[60] *See* BDA Letter at 1–2.

[61] *See* WFA Letter at 3.

[62] *See* WFA Letter at 3.

[63] MSRB Letter at 3.

[64] *See* MSRB Letter at 3.

[65] *See* MSRB Letter at 3–4.

[66] MSRB Letter at 3.

[67] MSRB Letter at 4 (referencing letters that GFOA and NAIPFA submitted in response to one of the MSRB's earlier requests for comment on this proposed rule change). In its earlier letter, NAIPFA argued that proposed Rule G–11(k) would likely result in increased market transparency and would allow issuers to better assess the effectiveness of their underwriter both in terms of the underwriter's ability to sell the issuer's securities as well as the underwriter's adherence to the issuer's desires. Letter to Ronald W. Smith, Corporate Secretary,

4. Issuer Approval of Terms and Conditions

One commenter opposed the proposed amendment to Rule G–11(f) to require that an issuer approve any written statement of the terms and conditions required by the issuer if the senior syndicate manager prepares such statement, rather than the issuer.[68] The commenter stated that the current language of Rule G–11(f) is sufficient and, in any event, this proposed change likely will result in some unintended consequences, including questions as to what will result in the event that issuers are unwilling to provide the required approval, among others.[69] The MSRB responded to this comment by stating that it believes the new requirement is desirable and will help ensure that issuers understand their role and choices with respect to the syndicate process.[70]

5. Implementation Timeline

Two commenters addressed the MSRB's proposed implementation timeline, which, as originally proposed, would have had two separate dates for requiring compliance: the amendments to Rules G–8 and G–11 would become effective six months following the date of the order; and the amendments to Rule G–32 would take effect no later than March 31, 2014, or such earlier date to be announced by the MSRB in a notice published on the MSRB Web site with at least a thirty-day advance notification prior to the effective date.[71] One of the two commenters that addressed the MSRB's implementation timeline supported the timeline as proposed.[72] The other urged the MSRB to align the implementation date for the proposed changes to Rules G–8 and G–11 with the amendments to Rule G–32.[73] This commenter noted that dealers will need time to design and test software to ensure that they can comply with the changes to Rules G–8 and G–11.[74] In response, the MSRB agreed that the effective dates for the proposed amendments to Rules G–8 and G–11 could be synchronized with the later effective date for Rule G–32.[75] The new effective dates for the changes to Rules G–8 and G–11 are reflected in the proposed rule change, as modified by Amendment No. 1.[76]

6. Proposed Rule Change Process

Prior to the filing of Amendment No. 1, two professional associations submitted a joint letter urging the Commission not to permit the proposed rule change to become immediately effective without public input.[77] These commenters speculated that Amendment No. 1 would make significant and material amendments to controversial aspects of the proposed rule change. The commenters asked that the proposed rule change, as modified by Amendment No. 1, be resubmitted for public comment rather than becoming immediately effective.[78]

In response, the MSRB stated that the only substantive change made by Amendment No. 1—the modification of the definition of ''retail order period'' to cover concurrent as well as sequential retail order periods—was made in response to comments submitted by one of the professional associations that authored the joint comment letter.[79] MSRB further noted that it does not believe this refinement itself is significant or likely to result in controversy, in light of the stated goal of the original proposed rule change of enhancing the regulation of customer orders meeting an issuer's eligibility criteria for retail orders.[80]

IV. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change, as well as the comment letters received and the MSRB's response, and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB.[81] In particular, the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which provides that the MSRB's rules shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.[82]

The MSRB states that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, because it is intended to protect, among others, investors and municipal entities by establishing certain basic regulatory standards to support the use of retail order periods. As the MSRB explained in its Notice, the proposed rule change is designed to addresses concerns that had been highlighted by issuers, dealers, and municipal advisors regarding the mischaracterization of orders as ''retail,'' the failure of syndicate managers to disseminate timely notice of the terms and conditions of a retail order period to all dealers, and the failure to deliver requested pricing information in a timely manner. The thrust of the proposal, according to the MSRB, is to provide a mechanism by which issuers can have greater assurance that a dealer has, when directed to do so by the issuer, made a *bona fide* public offering of securities to retail customers at their initial offering prices.

According to the MSRB, the proposed rule change will prevent fraudulent and manipulative acts and practices by requiring additional representations and disclosures to support whether the orders placed during a retail order period meet the eligibility criteria for retail orders established by issuers. In addition, the MSRB states that the proposed rule change will reduce the opportunities for misrepresentation of orders as ''retail orders'' by requiring that certain information about each order is submitted in writing to the syndicate manager or sole underwriter in sufficient time so that the information can be examined by issuers and their financial advisors before bonds are allocated to dealers. The MSRB further states that the proposed rule change will provide enhanced recordkeeping to assist regulators in determining whether the requirements of Rule G–11 are being

MSRB, from Colette J. Irwin-Knott, President, NAIPFA, dated April 13, 2012, at 1.

[68] *See* SIFMA Letter at 3.

[69] *See* SIFMA Letter at 3–4; SIFMA Letter II at 3. To support its contention that the current language of Rule G–11(f) is sufficient, this commenter noted that it is not aware of enforcement actions taken against syndicate managers for not honoring terms and conditions required by the issuer. SIFMA Letter II at 3.

[70] *See* MSRB Letter at 6.

[71] *See* Notice, *supra* note 3.

[72] *See* GFOA Letter at 3.

[73] *See* WFA Letter at 3–4.

[74] *See* WFA Letter at 3–4.

[75] *See* MSRB Letter at 6.

[76] Amendment No. 1 at 4.

[77] SIFMA and GFOA Joint Letter at 1–2.

[78] SIFMA and GFOA Joint Letter at 1–2. The commenters state that a proposed rule change may take effect immediately only in limited circumstances under Section 19(b)(3)(A) of the Act, 15 U.S.C. 78s(b)(3)(A). The Commission notes that the MSRB filed this proposed rule change under Section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2), and, with this notice, the Commission is soliciting comment and accelerating approval because it ''finds good cause for so doing'' under Section 19(b)(2)(C)(iii) of the Act, 15 U.S.C. 78s(b)(2)(C)(iii).

[79] MSRB Letter at 5.

[80] MSRB Letter at 5–6.

[81] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[82] 15 U.S.C. 78*o*–4(b)(2)(C).

met. The MSRB also represents that, by ensuring that a syndicate manager must communicate an issuer's requirements for the retail order period and other syndicate information to all dealers, including selling group members, the proposed rule change will foster cooperation and coordination among all dealers engaged in the marketing and sale of new issue municipal securities. Finally, the MSRB states that, by requiring that issuers approve the statement required by Rule G–11(f) if such statement is prepared by the senior syndicate manager on the issuer's behalf, the proposed rule change will ensure that issuers are aware of and agree with any requirement imposed on the syndicate and selling group in its name.

The MSRB states that it does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The MSRB has recognized that there are compliance costs with certain aspects of the proposed rule change, in particular, relating to the new representations that dealers will need to make in connection with retail orders submitted during retail order periods.[83] However, the MSRB believes these costs are properly balanced against the need for issuers to have confidence that orders placed during a retail order period are *bona fide* and meet the issuer's eligibility requirements for participation in the retail order period. In addition, the MSRB represented that the proposal attempts to minimize the potential burden on dealers by permitting the required information to be submitted electronically, noting that many dealers currently operate software platforms which can be modified to capture the new disclosures.[84]

As noted above, the Commission received eight comment letters on the filing.[85] The Commission notes that while many of the commenters suggested means to improve the filing or opposed certain aspects of the proposal, no commenters argued that the proposed rule change was inconsistent with the applicable provisions of the Act. For the reasons noted above, including those discussed in the MSRB Letter, the Commission believes that the proposed rule change, as amended by Amendment No. 1, is consistent with the Act.

[83] *See* Notice at 39042.

[84] *See* Notice at 39042.

[85] *See supra* Section III for a detailed discussion of the comment letters.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 to 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–MSRB–2013–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number *SR–MSRB–2013–05*. 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 MSRB. 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–MSRB–2013–05 and should be submitted on or before October 23, 2013.

VI. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause for approving the proposed rule change, as amended by Amendment No. 1, prior to the 30th day after the date of publication of notice in the **Federal Register**. As discussed above, Amendment No. 1 partially amends the text of the original proposed rule change to: (i) Revise the definition of ''retail order period'' in Rule G–11(a)(vii) to make clear the MSRB's intent that the definition covers order periods during which orders that meet the issuer's designated eligibility criteria for retail orders and for which the customer is already conditionally committed will be either (a) the only orders solicited or (b) given priority over other orders; (ii) revise proposed Rule G–11(k) to clarify that dealers submitting institutional orders during a retail order period are not required to submit certain additional information that is intended to relate to retail orders; (iii) eliminate the use of the defined term ''going away order,'' while retaining the concept represented by the term; (iv) delete certain duplicative language from the definition of ''selling group'' in Rule G–11(a); and (v) synchronize the effective dates so that all parts of the proposed rule change would take effect at the same time. As noted by the MSRB, the only substantive change in the proposed amendment—the refinement of the definition of ''retail order period''—was made to accommodate concerns raised during the comment period. MSRB has further noted that the modifications contained in Amendment No. 1 are unlikely to be controversial, in light of the stated goal of the original proposal to enhance the regulation of customer orders meeting the issuer's eligibility criteria for retail order. Moreover, the MSRB Letter responds to the concerns raised by other commenters. For the foregoing reasons, the Commission finds good cause for approving the proposed rule change, as amended, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[86] that the proposed rule change (SR–MSRB–2013–05), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[87]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–24021 Filed 10–1–13; 8:45 am]

BILLING CODE 8011–01–P

[86] 15 U.S.C. 78s(b)(2).

[87] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70514; File No. SR–BYX–2013–033]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to the Clearly Erroneous Execution Rule

September 26, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 25, 2013, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The 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 the Substance of the Proposed Rule Change

The Exchange filed a proposal to extend a pilot program related to Rule 11.17, entitled ''Clearly Erroneous Executions.'' The Exchange also proposes to remove certain references to individual stock trading pauses contained in Rule 11.17(c)(4). The Exchange has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b–4(f)(6)(iii) under the Act.[5]

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to extend the effectiveness of the Exchange's current rule applicable to Clearly Erroneous Executions and to remove references to individual stock trading pauses described in Rule 11.17(c)(4).

Portions of Rule 11.17, explained in further detail below, are currently operating as a pilot program set to expire on September 30, 2013.[6] The Exchange proposes to extend the pilot program to April 8, 2014.

On October 4, 2010, the Exchange filed an immediately effective filing to adopt various rule changes to bring BYX Rules up to date with the changes that had been made to the rules of BATS Exchange, Inc., the Exchange's affiliate, while BYX's Form 1 Application to register as a national securities exchange was pending approval. Such changes included changes to BYX Rule 11.17, on a pilot basis, to provide for uniform treatment: (1) Of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary listing market and subsequent transactions that occur before the trading pause is in effect on the Exchange.[7] The Exchange also adopted additional changes to Rule 11.17 that reduced the ability of the Exchange to deviate from the objective standards set forth in Rule 11.17,[8] and in 2013, adopted a provision designed to address the operation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or the ''Plan'').[9] The Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should continue on a pilot basis through April 8, 2014, which is one year following the commencement of operations of the Plan. The Exchange believes that continuing the pilot during this time will protect against any unanticipated consequences. Thus, the Exchange believes that the protections of the Clearly Erroneous Rule should continue while the industry gains further experience operating the Limit Up-Limit Down Plan.

The Exchange also proposes to eliminate all references in Rule 11.17 to individual stock trading pauses issued by a primary listing market. Specifically, Rule 11.17(c)(4) provides specific rules to follow with respect to review of an execution as potentially clearly erroneous when there was an individual stock trading pause issued for that security and the security is included in the S&P 500® Index, the Russell 1000® Index, or a pilot list of Exchange Traded Products (''Subject Securities''). The stock trading pauses described in Rule 11.17(c)(4) are being phased out as securities become subject to the Plan pursuant to a phased implementation schedule. The Plan is already operational with respect to all Subject Securities, and thus, the Exchange believes that all references to individual stock trading pauses should be removed, including all cross-references to Rule 11.17(c)(4) contained in other portions of Rule 11.17.[10]

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[11] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[12] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market

[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] 17 CFR 240.19b–4(f)(6)(iii).

[6] *See* Securities Exchange Act Release No. 68798 (Jan. 31, 2013), 78 FR 8628 (Feb. 6, 2013) (SR–BYX–2013–005).

[7] *See* Securities Exchange Act Release No. 63097 (Oct. 13, 2010), 75 FR 56613 (Oct. 20, 2010) (SR–BYX–2010–002).

[8] *Id.*

[9] *See* Securities Exchange Act Release No. 68798 (Jan. 31, 2013), 78 FR 8628 (Feb. 6, 2013) (SR–BYX–2013–005); Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release''); *see also* BYX Rule 11.17(h).

[10] The Exchange notes that certain Exchange Traded Products (''ETPs'') are not yet subject to the Limit Up-Limit Down Plan. Because such ETPs are not on the pilot list of securities, such ETPs are not subject to Rule 11.17(c)(4). *See* Securities Exchange Act Release No. 65112 (August 11, 2011), 76 FR 51092 (August 17, 2011) (SR–BYX–2011–019) (notice of filing and immediate effectiveness to define Subject Securities and to limit application of Rule 11.17(c)(4) to such securities). Accordingly, the proposed rule change does not change the status quo with respect to such ETPs. As amended, all securities, including ETPs not subject to the Limit Up-Limit Down Plan, will continue to be subject to Rule 11.17(c)(1) through (3).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

and a national market system. The Exchange believes that the pilot program promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. More specifically, the Exchange believes that the extension of the pilot would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Although the Limit Up-Limit Down Plan will become fully operational during the same time period as the proposed extended pilot, the Exchange believes that maintaining the pilot will help to protect against unanticipated consequences. To that end, the extension will allow the Exchange to determine whether Rule 11.17 is necessary once the Plan is fully operational and, if so, whether improvements can be made. Finally, the elimination of references to individual stock trading pauses will help to avoid confusion amongst market participants, which is consistent with the protection of investors and the public interest and therefore consistent with the Act. As described above, individual stock trading pauses have been replaced by the Limit Up-Limit Down Plan with respect to all Subject Securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change implicates any competitive issues. To the contrary, the Exchange believes that the Financial Industry Regulatory Authority (''FINRA'') and other national securities exchanges are also filing similar proposals, and thus, that the proposal will help to ensure consistency across market centers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6)(iii) thereunder.[14]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BYX–2013–033 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BYX–2013–033. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BYX–2013–033, and should be submitted on or before October 23, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–24005 Filed 10–1–13; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6)(iii). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

[15] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70512; File No. SR–EDGA–2013–28]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGA Rule 11.13, Clearly Erroneous Executions

September 26, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 25, 2013, EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the 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 is filing with the Commission a proposal to extend a pilot program related to Rule 11.13, entitled ''Clearly Erroneous Executions.'' The Exchange also proposes to remove certain references to individual stock trading pauses contained in Rule 11.13(c)(4). The Exchange has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b–4(f)(6)(iii) under the Act.[3] All of the changes described herein are applicable to EDGA Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *www.directedge.com*, at the Exchange's principal office, and at the Public Reference Room of the Commission.

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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 purpose of this filing is to extend the effectiveness of the Exchange's current rule applicable to Clearly Erroneous Executions and to remove references to individual stock trading pauses described in Rule 11.13(c)(4).

Portions of Rule 11.13, explained in further detail below, are currently operating as a pilot program set to expire on September 30, 2013.[4] The Exchange proposes to extend the pilot program to April 8, 2014.

On September 10, 2010, the Commission approved, on a pilot basis, changes to Exchange Rule 11.13 to provide for uniform treatment: (1) Of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary listing market and subsequent transactions that occur before the trading pause is in effect on the Exchange.[5] The Exchange also adopted additional changes to Rule 11.13 that reduced the ability of the Exchange to deviate from the objective standards set forth in Rule 11.13,[6] and in 2013, adopted a provision designed to address the operation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or the ''Plan'').[7] The Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should continue on a pilot basis through April 8, 2014, which is one year following the commencement of operations of the Plan. The Exchange believes that continuing the pilot during this time will protect against any unanticipated consequences. Thus, the Exchange believes that the protections of the Clearly Erroneous Rule should continue while the industry gains further experience operating the Limit Up-Limit Down Plan.

The Exchange also proposes to eliminate all references in Rule 11.13 to individual stock trading pauses issued by a primary listing market. Specifically, Rule 11.13(c)(4) provides specific rules to follow with respect to review of an execution as potentially clearly erroneous when there was an individual stock trading pause issued for that security and the security is included in the S&P 500® Index, the Russell 1000® Index, or a pilot list of Exchange Traded Products (''Original Circuit Breaker Securities''). The stock trading pauses described in Rule 11.13(c)(4) are being phased out as securities become subject to the Plan pursuant to a phased implementation schedule. The Plan is already operational with respect to all Original Circuit Breaker Securities, and thus, the Exchange believes that all references to individual stock trading pauses should be removed, including all cross-references to Rule 11.13(c)(4) contained in other portions of Rule 11.13.[8]

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[9] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[10] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system. The Exchange believes that the pilot program promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. More specifically, the Exchange believes that the extension of the pilot would help assure that the determination of whether

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6)(iii).

[4] Securities Exchange Act Release No. 68813 (February 1, 2013), 78 FR 9073 (February 7, 2013) (SR–EDGA–2013–06).

[5] Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–EDGA–2010–03).

[6] *Id.*

[7] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release''); *see also* Exchange Rule 11.13(i).

[8] The Exchange notes that certain Exchange Traded Products (''ETPs'') are not yet subject to the Limit Up-Limit Down Plan. Because such ETPs are not on the pilot list of securities, such ETPs are not subject to Rule 11.13(c)(4). *See* Securities Exchange Act Release No. 65110 (August 11, 2011), 76 FR 51084 (August 17, 2011) (SR–EDGA–2011–26) (notice of filing and immediate effectiveness to define Subject [sic] Securities and to limit application of Rule 11.13(c)(4) to such securities). Accordingly, the proposed rule change does not change the status quo with respect to such ETPs. As amended, all securities, including ETPs not subject to the Limit Up-Limit Down Plan, will continue to be subject to Rule 11.13(c)(1) through (3).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Although the Limit Up-Limit Down Plan will become fully operational during the same time period as the proposed extended pilot, the Exchange believes that maintaining the pilot will help to protect against unanticipated consequences. To that end, the extension will allow the Exchange to determine whether Rule 11.13 is necessary once the Plan is fully operational and, if so, whether improvements can be made. Finally, the elimination of references to individual stock trading pauses will help to avoid confusion amongst market participants, which is consistent with the protection of investors and the public interest and therefore consistent with the Act. As described above, individual stock trading pauses have been replaced by the Limit Up-Limit Down Plan with respect to all Subject [sic] Securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change implicates any competitive issues. To the contrary, the Exchange believes that the Financial Industry Regulatory Authority (''FINRA'') and other national securities exchanges are also filing similar proposals, and thus, that the proposal will help to ensure consistency across market centers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6)(iii) thereunder.[12]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–EDGA–2013–28 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–EDGA–2013–28. 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 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–EDGA–2013–28 and should be submitted on or before October 23, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–24003 Filed 10–1–13; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6)(iii). As required under Rule 19b7–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

[13] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70523; File No. SR–MIAX–2013–47]

Self-Regulatory Organizations: Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the MIAX Fee Schedule

September 26, 2013.

Pursuant to the provisions of 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 September 19, 2013, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 is filing a proposal to amend its Fee Schedule.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend its current Priority Customer Rebate Program (the ''Program'') until October 31, 2013.[3] The Program currently applies to the period beginning July 1, 2013 and ending September 30, 2013.[4] The Program is based on the substantially similar fees of another competing options exchange.[5] Under the Program, the Exchange shall credit each Member the per contract amount set forth in the table below resulting from each Priority Customer[6] order transmitted by that Member which is executed on the Exchange in all multiply-listed option classes (excluding mini-options and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in Rule 1400), provided the Member meets certain volume thresholds in a month as described below. The volume thresholds are calculated based on the customer average daily volume over the course of the month. Volume will be recorded for and credits will be delivered to the Member Firm that submits the order to the Exchange.

Percentage Thresholds of National Customer Volume in Multiply-Listed Options Classes Listed on MIAX (Monthly)	Per Contract Credit
0.00%–0.25%	$0.00
Above 0.25%–0.50%	$0.10
Above 0.50%–1.00%	$0.11
Above 1.00%–2.00%	$0.12
Above 2.00%	$0.14

The Exchange will aggregate the contracts resulting from Priority Customer orders transmitted and executed electronically on the Exchange from affiliated Members for purposes of the thresholds above, provided there is at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A. In the event of a MIAX System outage or other interruption of electronic trading on MIAX, the Exchange will adjust the national customer volume in multiply-listed options for the duration of the outage. A Member may request to receive its credit under the Priority Customer Rebate Program as a separate direct payment.

In addition, the rebate payments will be calculated from the first executed contract at the applicable threshold per contract credit with the rebate payments made at the highest achieved volume tier for each contract traded in that month. For example, if Member Firm XYZ, Inc. (''XYZ'') has enough Priority Customer contracts to achieve 2.5% of the national customer volume in multiply-listed option contracts during the month of October, XYZ will receive a credit of $0.14 for each Priority Customer contract executed in the month of October.

The purpose of the Program is to encourage Members to direct greater Priority Customer trade volume to the Exchange. Increased Priority Customer volume will provide for greater liquidity, which benefits all market participants. The practice of incentivizing increased retail customer order flow in order to attract professional liquidity providers (Market-Makers) is, and has been, commonly practiced in the options markets. As such, marketing fee programs,[7] and customer posting incentive programs,[8] are based on attracting public customer order flow. The Program similarly intends to attract Priority Customer order flow, which will increase liquidity, thereby providing greater trading opportunities and tighter spreads for other market participants and causing a corresponding increase in order flow from such other market participants.

The specific volume thresholds of the Program's tiers were set based upon business determinations and an analysis of current volume levels. The volume thresholds are intended to incentivize firms that route some Priority Customer orders to the Exchange to increase the number of orders that are sent to the Exchange to achieve the next threshold and to incent new participants to send Priority Customer orders as well. Increasing the number of orders sent to the Exchange will in turn provide tighter and more liquid markets, and therefore attract more business overall. Similarly, the different credit rates at the different tier levels were based on an analysis of revenue and volume levels and are intended to provide increasing ''rewards'' for increasing the volume of trades sent to the Exchange. The specific amounts of the tiers and rates were set in order to encourage suppliers of Priority Customer order flow to reach for higher tiers.

The Exchange proposes limiting the Program to multiply-listed options classes on MIAX because MIAX does not compete with other exchanges for order flow in the proprietary, singly-listed products.[9] In addition, the Exchange does not trade any singly-listed products at this time, but may develop such products in the future. If at such time the Exchange develops proprietary products, the Exchange anticipates having to devote a lot of resources to develop them, and therefore would need to retain funds

[3] The Exchange notes that at the end of the period, the Program will expire unless the Exchange files another 19b–4 Rule Filing to amend its fees.

[4] *See* Securities Exchange Act Release No. 69947 (July 9, 2013), 78 FR 42138 (July 15, 2013) (SR–MIAX–2013–31).

[5] *See* Chicago Board Options Exchange, Incorporated (''CBOE'') Fees Schedule, p. 4. *See also* Securities Exchange Act Release Nos. 66054 (December 23, 2011), 76 FR 82332 (December 30, 2011) (SR–CBOE–2011–120); 68887 (February 8, 2013), 78 FR 10647 (February 14, 2013) (SR–CBOE–2013–017).

[6] The term ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial accounts(s). *See* MIAX Rule 100.

[7] *See* MIAX Fee Schedule, Section 1(b).

[8] *See* NYSE Arca, Inc. Fees Schedule, page 3 (section titled ''Customer Monthly Posting Credit Tiers and Qualifications for Executions in Penny Pilot Issues'').

[9] If a multiply-listed options class is not listed on MIAX, then the trading volume in that options class will be omitted from the calculation of national customer volume in multiply-listed options classes.

collected in order to recoup those expenditures.

The Exchange proposes excluding mini-options and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in Exchange Rule 1400 from the Program. The Exchange notes these exclusions are nearly identical to the ones made by CBOE.[10] Mini-options contracts are excluded from the Program because the cost to the Exchange to process quotes, orders and trades in mini-options is the same as for standard options. This, coupled with the lower per-contract transaction fees charged to other market participants, makes it impractical to offer Members a credit for Priority Customer mini-option volume that they transact. Providing rebates to Priority Customer executions that occur on other trading venues would be inconsistent with the proposal. Therefore, routed away volume is excluded from the Program in order to promote the underlying goal of the proposal, which is to increase liquidity and execution volume on the Exchange.

The credits paid out as part of the program will be drawn from the general revenues of the Exchange.[11] The Exchange calculates volume thresholds on a monthly basis.

2. Statutory Basis

The Exchange believes that its proposal to amend its fee schedule is consistent with Section 6(b) of the Act[12] in general, and furthers the objectives of Section 6(b)(4) of the Act[13] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that the proposed Priority Customer Rebate Program is fair, equitable and not unreasonably discriminatory. The Program is reasonably designed because it will incent providers of Priority Customer order flow to send that Priority Customer order flow to the Exchange in order to receive a credit in a manner that enables the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants. The proposed rebate program is fair and equitable and not unreasonably discriminatory because it will apply equally to all Priority Customer orders. All similarly situated Priority Customer orders are subject to the same rebate schedule, and access to the Exchange is offered on terms that are not unfairly discriminatory. In addition, the Program is equitable and not unfairly discriminatory because, while only Priority Customer order flow qualifies for the Program, an increase in Priority Customer order flow will bring greater volume and liquidity, which benefit all market participants by providing more trading opportunities and tighter spreads. Similarly, offering increasing credits for executing higher percentages of total national customer volume (increased credit rates at increased volume tiers) is equitable and not unfairly discriminatory because such increased rates and tiers encourage Members to direct increased amounts of Priority Customer contracts to the Exchange. The resulting increased volume and liquidity will benefit those Members who receive the lower tier levels, or do not qualify for the Program at all, by providing more trading opportunities and tighter spreads.

Limiting the Program to multiply-listed options classes listed on MIAX is reasonable because those parties trading heavily in multiply-listed classes will now begin to receive a credit for such trading, and is equitable and not unfairly discriminatory because the Exchange does not trade any singly-listed products at this time. If at such time the Exchange develops proprietary products, the Exchange anticipates having to devote a lot of resources to develop them, and therefore would need to retain funds collected in order to recoup those expenditures.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed change would increase both intermarket and intramarket competition by incenting Members to direct their Priority Customer orders to the Exchange, which will enhance the quality of quoting and increase the volume of contracts traded here. To the extent that there is additional competitive burden on non-Priority Customers, the Exchange believes that this is appropriate because the rebate program should incent Members to direct additional order flow to the Exchange and thus provide additional liquidity that enhances the quality of its markets and increases the volume of contracts traded here. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange. 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 adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. The Exchange believes that the proposed rule change reflects this competitive environment because it reduces the Exchange's fees in a manner that encourages market participants to direct their customer order flow, to provide liquidity, and to attract additional transaction volume to the Exchange. Given the robust competition for volume among options markets, many of which offer the same products, implementing a volume based customer rebate program to attract order flow like the one being proposed in this filing is consistent with the above-mentioned goals of the Act. This is especially true for the smaller options markets, such as MIAX, which is competing for volume with much larger exchanges that dominate the options trading industry. As a new exchange, MIAX has a nominal percentage of the average daily trading volume in options, so it is unlikely that the customer rebate program could cause any competitive harm to the options market or to market participants. Rather, the customer rebate program is a modest attempt by a small options market to attract order volume away from larger competitors by adopting an innovative pricing strategy. The Exchange notes that if the rebate program resulted in a modest percentage increase in the average daily trading volume in options executing on MIAX, while such percentage would represent a large volume increase for MIAX, it would represent a minimal reduction in volume of its larger competitors in the industry. The Exchange believes that the proposal will help further competition, because market participants will have yet another additional option in determining where to execute orders and post liquidity if they factor the

[10] *See* CBOE Fee Schedule, page 4. CBOE also excludes QCC trades from their rebate program. CBOE excluded QCC trades because a bulk of those trades on CBOE are facilitation orders which are charged at the $0.00 fee rate on their exchange.

[11] Despite providing credits under the Program, the Exchange represents that it will continue to have adequate resources to fund its regulatory program and fulfill its responsibilities as a self-regulatory organization while the Program will be in effect.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

benefits of a customer rebate program into the determination.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–MIAX–2013–47 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2013–47. 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 at 100 F Street NE., Washington, DC 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing 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–MIAX–2013–47 and should be submitted on or before October 23, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–24014 Filed 10–1–13; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70519; File No. SR–NYSE–2013–65]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Program for Certain Clearly Erroneous Executions Under Rule 128 and Removing References to Individual Security Trading Pauses Contained in Rule 128(c)(4)

September 26, 2013.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 24, 2013, 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot program for certain clearly erroneous executions under Rule 128 and remove references to individual security trading pauses contained in Rule 128(c)(4). The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the pilot program for certain clearly erroneous executions under Rule 128 and remove references to individual security trading pauses contained in Rule 128(c)(4). Portions of Rule 128, explained in further detail below, are currently operating as a pilot program set to expire on September 30, 2013.[4] The Exchange proposes to extend the pilot program to April 8, 2014.

On September 10, 2010, the Securities and Exchange Commission (''Commission'') approved, on a pilot basis, changes to Rule 128 to provide for uniform treatment: (1) Of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual security trading pause by the primary listing market and subsequent transactions that occur before the trading pause is in

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 68804 (February 1, 2013), 78 FR 8677 (February 6, 2013) (SR–NYSE–2013–11).

effect on the Exchange.[5] The Exchange also adopted additional changes to Rule 128 that reduced the ability of the Exchange to deviate from the objective standards set forth in Rule 128,[6] and in 2013, adopted a provision designed to address the operation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or the ''Plan'').[7] The Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should continue on a pilot basis through April 8, 2014, which is one year following the commencement of operations of the Plan. The Exchange believes that continuing the pilot during this time will protect against any unanticipated consequences. Thus, the Exchange believes that the protections of Rule 128 should continue while the industry gains further experience operating the Limit Up-Limit Down Plan.

The Exchange also proposes to eliminate all references in Rule 128 to individual security trading pauses issued by a primary listing market. Specifically, Rule 128(c)(4) provides specific rules to follow with respect to review of an execution as potentially clearly erroneous when there is an individual security trading pause pursuant to Rule 80C. The individual security trading pauses described in Rule 128(c)(4), which apply to the securities included in the S&P 500 and Russell 1000 indexes as well as to a pilot list of Exchange Traded Products (the ''subject securities''), are being phased out as securities become subject to the Plan pursuant to a phased implementation schedule. The Plan is already operational with respect to all subject securities, and thus, the Exchange believes that all references to individual security trading pauses should be removed, including all cross-references to Rule 128(c)(4) contained in other portions of Rule 128.[8]

2. Statutory Basis

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, because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system. The Exchange believes that the pilot program promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. More specifically, the Exchange believes that the extension of the pilot would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help ensure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Although the Limit Up-Limit Down Plan will become fully operational during the same time period as the proposed extended pilot, the Exchange believes that maintaining the pilot will help to protect against unanticipated consequences. To that end, the extension will allow the Exchange to determine whether Rule 128 is necessary once the Plan is fully operational and, if so, whether improvements can be made. Finally, the elimination of references to individual security trading pauses will help to avoid confusion among market participants, which is consistent with the protection of investors and the public interest and therefore consistent with the Act. As described above, individual security trading pauses have been replaced by the Limit Up-Limit Down Plan with respect to securities that are subject to Rule 80C.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change implicates any competitive issues. To the contrary, the Exchange believes that the Financial Industry Regulatory Authority (''FINRA'') and other national securities exchanges are also filing similar proposals, and thus, the proposal will help to ensure consistency across market centers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6)(iii) thereunder.[12]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[13]

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

[5] *See* Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–NYSE–2010–47).

[6] *Id.*

[7] *See* Securities Exchange Act Release No. 68804 (February 1, 2013), 78 FR 8677 (February 6, 2013) (SR–NYSE–2013–11); Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release''); *see also* Rule 128(i).

[8] The Exchange notes that certain Exchange Traded Products (''ETPs'') are not yet subject to the Limit Up-Limit Down Plan. Because such ETPs are not on the pilot list of securities, such ETPs are not subject to Rule 128(c)(4). *See* Securities Exchange Act Release No. 65111 (August 11, 2011), 76 FR 52028 (August 19, 2011) (SR–NYSE–2011–42) (notice of filing and immediate effectiveness to amend Rule 128 so that clearly erroneous executions involving securities recently added to the individual security trading pause pilot under Rule 80C continue to be resolved in the same manner before being added to the pilot). Accordingly, the proposed rule change does not change the status quo with respect to such ETPs. As amended, all securities, including ETPs not subject to the Limit Up-Limit Down Plan, will continue to be subject to Rule 128(c)(1) through (3).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6)(iii). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

[13] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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 proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2013–65 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2013–65. 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–2013–65 and should be submitted on or before October 23, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–24010 Filed 10–1–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70509; File No. SR–CBOE–2013–091]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the CBSX Clearly Erroneous Policy Pilot Program

September 26, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 23, 2013, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend a pilot program related to Rule 52.4 (Clearly Erroneous Executions) and remove certain references to individual stock trading pauses contained in Rule 52.4(c)(4). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to extend the effectiveness of the Exchange's current rule applicable to Clearly Erroneous Executions and to remove references to individual stock trading pauses described in CBOE Stock Exchange, LLC (''CBSX'') Rule 52.4(c)(4). Portions of CBSX Rule 52.4, explained in further detail below, are currently operating as a pilot program set to expire on September 30, 2013. The Exchange proposes to extend the pilot program to April 8, 2014.

On September 10, 2010, the Commission approved, on a pilot basis, changes to CBSX Rule 52.4 to provide for uniform treatment: (1) Of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary listing market and subsequent transactions that occur before the trading pause is in effect on the Exchange. The Exchange also adopted additional changes to CBSX Rule 52.4 that reduced the ability of the Exchange to deviate from the objective standards set forth in CBSX Rule 52.4, and in 2013, adopted a provision designed to address the operation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or the ''Plan''). The Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should continue on a pilot basis through April 8, 2014, which is one year following the commencement of operations of the Plan. The Exchange believes that continuing the pilot during this time will protect against any unanticipated consequences. Thus, the Exchange believes that the protections of the Clearly Erroneous Rule should continue while the industry gains further experience operating the Plan.

The Exchange also proposes to eliminate all references in CBSX Rule 52.4 to individual stock trading pauses issued by a primary listing market. Specifically, CBSX Rule 52.4(c)(4)

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

provides specific rules to follow with respect to review of an execution as potentially clearly erroneous when there was an individual stock trading pause issued pursuant to Rule 6.3C.03(a). The stock trading pauses described in CBSX Rule 52.4(c)(4) are being phased out as securities become subject to the Plan pursuant to a phased implementation schedule. The Plan is already operational with respect to all securities included in Rule 6.3C.03(a), and thus, the Exchange believes that all references to individual stock trading pauses should be removed, including all cross-references to CBSX Rule 52.4(c)(4) contained in other portions of CBSX Rule 52.4.[3]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[5] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the extension of the pilot would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Although the Plan will become fully operational during the same time period as the proposed extended pilot, the Exchange believes that maintaining the pilot will help to protect against unanticipated consequences. To that end, the extension will allow the Exchange to determine whether CBSX Rule 52.4 is necessary once the Plan is fully operational and, if so, whether improvements can be made. Finally, the elimination of references to individual stock trading pauses will help to avoid confusion amongst market participants, which is consistent with the protection of investors and the public interest and therefore consistent with the Act. As described above, individual stock trading pauses have been replaced by the Plan.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE 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. To the contrary, the Exchange believes that the Financial Industry Regulatory Authority (''FINRA'') and other national securities exchanges are also filing similar proposals, and thus, that the proposal will help to ensure consistency across market centers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6)(iii) thereunder.[8]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2013–091 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2013–091. 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

[3] The Exchange notes that certain Exchange Traded Products (''ETPs'') are not yet subject to the Plan. Because such ETPs are not on the pilot list of securities, such ETPs are not subject to Rule 52.4(c)(4). *See* Securities Exchange Act Release No. 65103 (August 11, 2011), 76 FR 51094 (August 17, 2011) (SR–CBOE–2011–078) (notice of filing and immediate effectiveness Proposed Rule Change Related to the CBSX Clearly Erroneous Policy Pilot Program). Accordingly, the proposed rule change does not change the status quo with respect to such ETPs. As amended, all securities, including ETPs not subject to the Plan, will continue to be subject to Rule 52.4(c)(1) through (3).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] *Id.*

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6)(iii). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

[9] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2013–091, and should be submitted on or before October 23, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–24000 Filed 10–1–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70513; File No. SR–BATS–2013–053]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to the Clearly Erroneous Execution Rule

September 26, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 24, 2013, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The 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 the Substance of the Proposed Rule Change

The Exchange filed a proposal to extend a pilot program related to Rule 11.17, entitled ''Clearly Erroneous Executions.'' The Exchange also proposes to remove certain references to individual stock trading pauses contained in Rule 11.17(c)(4). The Exchange has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b–4(f)(6)(iii) under the Act.[5]

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to extend the effectiveness of the Exchange's current rule applicable to Clearly Erroneous Executions and to remove references to individual stock trading pauses described in Rule 11.17(c)(4).

Portions of Rule 11.17, explained in further detail below, are currently operating as a pilot program set to expire on September 30, 2013.[6] The Exchange proposes to extend the pilot program to April 8, 2014.

On September 10, 2010, the Commission approved, on a pilot basis, changes to BATS Rule 11.17 to provide for uniform treatment: (1) Of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary listing market and subsequent transactions that occur before the trading pause is in effect on the Exchange.[7] The Exchange also adopted additional changes to Rule 11.17 that reduced the ability of the Exchange to deviate from the objective standards set forth in Rule 11.17,[8] and in 2013, adopted a provision designed to address the operation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or the ''Plan'').[9] The Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should continue on a pilot basis through April 8, 2014, which is one year following the commencement of operations of the Plan. The Exchange believes that continuing the pilot during this time will protect against any unanticipated consequences. Thus, the Exchange believes that the protections of the Clearly Erroneous Rule should continue while the industry gains further experience operating the Limit Up-Limit Down Plan.

The Exchange also proposes to eliminate all references in Rule 11.17 to individual stock trading pauses issued by a primary listing market. Specifically, Rule 11.17(c)(4) provides specific rules to follow with respect to review of an execution as potentially clearly erroneous when there was an individual stock trading pause issued for that security and the security is included in the S&P 500® Index, the Russell 1000® Index, or a pilot list of Exchange Traded Products (''Subject Securities''). The stock trading pauses described in Rule 11.17(c)(4) are being phased out as securities become subject

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] 17 CFR 240.19b–4(f)(6)(iii).

[6] *See* Securities Exchange Act Release No. 68797 (Jan. 31, 2013), 78 FR 8635 (Feb. 6, 2013) (SR–BATS–2013–008).

[7] Securities Exchange Act Release No. 62886 (Sept. 10, 2010), 75 FR 56613 (Sept. 16, 2010) (SR–BATS–2010–016).

[8] *Id.*

[9] *See* Securities Exchange Act Release No. 68797 (Jan. 31, 2013), 78 FR 8635 (Feb. 6, 2013) (SR–BATS–2013–008); Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release''); *see also* BATS Rule 11.17(h).

to the Plan pursuant to a phased implementation schedule. The Plan is already operational with respect to all Subject Securities, and thus, the Exchange believes that all references to individual stock trading pauses should be removed, including all cross-references to Rule 11.17(c)(4) contained in other portions of Rule 11.17.[10]

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[11] In particular, the proposal is consistent with Section 6(b)(5) of the Act, [12] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system. The Exchange believes that the pilot program promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. More specifically, the Exchange believes that the extension of the pilot would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Although the Limit Up-Limit Down Plan will become fully operational during the same time period as the proposed extended pilot, the Exchange believes that maintaining the pilot will help to protect against unanticipated consequences. To that end, the extension will allow the Exchange to determine whether Rule 11.17 is necessary once the Plan is fully operational and, if so, whether improvements can be made. Finally, the elimination of references to individual stock trading pauses will help to avoid confusion amongst market participants, which is consistent with the protection of investors and the public interest and therefore consistent with the Act. As described above, individual stock trading pauses have been replaced by the Limit Up-Limit Down Plan with respect to all Subject Securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change implicates any competitive issues. To the contrary, the Exchange believes that the Financial Industry Regulatory Authority (''FINRA'') and other national securities exchanges are also filing similar proposals, and thus, that the proposal will help to ensure consistency across market centers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6)(iii) thereunder.[14]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BATS–2013–053 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2013–053. 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 at 100 F Street, NE., Washington, DC 20549–1090 on official

[10] The Exchange notes that certain Exchange Traded Products (''ETPs'') are not yet subject to the Limit Up-Limit Down Plan. Because such ETPs are not on the pilot list of securities, such ETPs are not subject to Rule 11.17(c)(4). *See* Securities Exchange Act Release No. 65113 (August 11, 2011), 76 FR 51089 (August 17, 2011) (SR–BATS–2011–028) (notice of filing and immediate effectiveness to define Subject Securities and to limit application of Rule 11.17(c)(4) to such securities). Accordingly, the proposed rule change does not change the status quo with respect to such ETPs. As amended, all securities, including ETPs not subject to the Limit Up-Limit Down Plan, will continue to be subject to Rule 11.17(c)(1) through (3).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6)(iii). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

[15] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2013–053, and should be submitted on or before October 23, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–24004 Filed 10–1–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70528; File No. SR–NYSEArca–2013–99]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rule 5.3(i)(1)(i)(H) To Change The Required Advance Notice Period For Submitting Certain Notices to the Exchange

September 26, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 23, 2013, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 5.3(i)(1)(i)(H) to change the required advance notice period for submitting certain notices to the Exchange. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Arca Equities Rule 5.3(i)(1)(i)(H) to change the required advance notice period for submitting certain notices to the Exchange.

Under NYSE Arca Equities Rule 5.3(i)(1), each listed company is required to submit certain financial reports and related notices to the Exchange. Under paragraph (i)(H) of the rule, any notice with respect to the payment or non-payment of dividends should be provided to the Exchange at least 10 business days prior to the record date. The same notice requirement also applies to an issuance of rights to subscribe, a closing of stock transfer books, or the taking of a record of shareholders for any purposes. The Exchange proposes to amend this rule to change the required notice period from 10 business days to 10 calendar days in advance of the record date. This modification will align the Exchange's notice period requirements with those of New York Stock Exchange LLC (''NYSE'') and NYSE MKT LLC (''NYSE MKT'' and, together with the NYSE and the Exchange, the ''NYSE Exchanges''), which are under common ownership with the Exchange.[3] The Exchange believes that harmonizing its record date notification policies with those of the other NYSE Exchanges will reduce the possibility of confusion among listed issuers and their counsel. The NYSE Exchanges disseminate record date information broadly, including to market data vendors, the Depository Trust & Clearing Corporation (''DTCC'') and broker-dealers, so investors are able to readily access record date information for securities they hold. Record date information is automatically disseminated to market participants almost immediately after Exchange staff input the information in the Exchange's data management systems, so the proposed shortening of the record date notification requirement will not impede the ability of the Exchange to disseminate record date information on a timely basis. The Exchange recognizes that a 10 calendar day period could include two weekends, so the maximum required notice could be effectively six business days, which is significantly shorter than the current 10 business day requirement. In addition, if that period includes an Exchange holiday, the effective maximum required notice could be five business days (or four business days when that period includes two holidays).

However, the Exchange notes that the record date notification policies of the other NYSE Exchanges have been in place for many years and that it is clear from this lengthy experience that 10 calendar days notice of the setting of a record dates has been sufficient for the needs of investors and that this is also the case where the 10 calendar day period includes one or more holidays. Prior to the date on which the proposed rule change becomes operative, the Exchange will inform all of its equity permit holders by issuing a client notice announcing the rule change and the date on which it will become operative.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[4] of the Securities Exchange Act of 1934 (the ''Act''),[5] in general, and furthers the objectives of Section 6(b)(5)

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* NYSE Listed Company Manual Sections 204.12 (requiring 10 days notice to the NYSE as to any dividend action or action relating to a stock distribution in respect of a listed security) and 204.21 (requiring 10 days' notice to the NYSE of the fixing of a record date for any purpose) and NYSE MKT Company Guide Section 502. *See also* NYSE Listed Company Manual Section 703.03(C) for the NYSE's notice requirements with respect to rights offerings. While none of the aforementioned rules specify in their text whether the required notice must be 10 calendar or 10 business days in advance of the record date, both the NYSE and NYSE MKT have always interpreted those provisions as requiring 10 calendar days rather than 10 business days advance notice. The NYSE is considering submitting a filing seeking to eliminate from Section 204.21 the notice requirements with respect to shareholder meeting record dates. However, Section 204.21 would continue to require 10 days' notice of the setting of the record date for any other purpose, including all of those purposes specified in NYSE Arca Equities Rule 5.3(i)(1).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78a.

of the Act,[6] in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed amendment is consistent with Section 6(b)(5) of the Act in that it is consistent with the protection of the investors and the public interest and raises no novel regulatory issues, because it simply conforms the Exchange's policy with respect to record date notifications with the rules of the other NYSE Exchanges, thereby reducing the possibility of confusion while continuing to provide investors with adequate notice of record dates. The NYSE Exchanges disseminate record date information broadly, including to market data vendors, DTCC and broker-dealers, so investors are able to readily access record date information for securities they hold. Record date information is automatically disseminated to market participants almost immediately after Exchange staff input the information in the Exchange's data management systems, so the proposed shortening of the record date notification requirement will not impede the ability of the Exchange to disseminate record date information on a timely basis. The Exchange notes that the record date notification policies of the other exchanges have been in place for many years and that it is clear from this lengthy experience that 10 calendars days notice of the setting of a record dates has been sufficient for the needs of investors and that this is also the case where the 10 calendar day period includes one or more holidays.

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 simply makes the Exchange's record date notification policies the same as those of the NYSE and NYSE MKT and therefore imposes no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act[9] to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2013–99 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2013–99. 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 publicly available. All submissions should refer to File Number SR–NYSEArca–2013–99 and should be submitted on or before October 23, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–24017 Filed 10–1–13; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[9] 15 U.S.C. 78s(b)(2)(B).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70529; File No. SR–NASDAQ–2013–127]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to the Clearly Erroneous Rule

September 26, 2013.

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 September 26, 2013, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot period of recent amendments to Rule 11890, concerning clearly erroneous transactions, so that the pilot will now expire on April 8, 2014. The Exchange also proposes to remove certain references to individual stock trading pauses contained in Rule 11890(a)(2)(C)(4).

The text of the proposed rule change is available from NASDAQ's Web site at *http://nasdaq.cchwallstreet.com/Filings/,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On September 10, 2010, the Commission approved, for a pilot period to end December 10, 2010, a proposed rule change submitted by the Exchange, together with related rule changes of the BATS Exchange, Inc., NASDAQ OMX BX, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., International Securities Exchange LLC, New York Stock Exchange LLC, NYSE MKT LLC (formerly, NYSE Amex LLC), NYSE Arca, Inc., and National Stock Exchange, Inc., to amend certain of their respective rules to set forth clearer standards and curtail discretion with respect to breaking erroneous trades.[3] The changes were adopted to address concerns that the lack of clear guidelines for dealing with clearly erroneous transactions may have added to the confusion and uncertainty faced by investors on May 6, 2010. The pilot program was extended several times since its adoption and is currently set to expire on September 30, 2013.[4] In its rule change that extended the pilot program to September 30, 2013,[5] the Exchange also adopted a provision designed to address the operation of the National Market System Plan to Address Extraordinary Market Volatility[6] (the ''Limit Up-Limit Down Plan''). The Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should continue on a pilot basis through April 8, 2014, which is one year following commencement of operations of the Limit Up-Limit Down Plan. The Exchange believes that continuing the pilot during this time will protect against any unanticipated consequences. Thus, the Exchange believes that the protections of the Clearly Erroneous Rule should continue while the industry gains further experience operating the Limit Up-Limit Down Plan.

The Exchange also proposes to eliminate all references in Rule 11890 to individual stock trading pauses issued by a primary listing market. Specifically, Rule 11890(a)(2)(C)(4) provides specific rules to follow with respect to review of an execution as potentially clearly erroneous when there was an individual stock trading pause issued for that security and the security is included in the S&P 500 Index, the Russell 1000 Index, or a pilot list of Exchange Traded Products (''Subject Securities''). The stock trading pauses described in Rule 11890(a)(2)(C)(4) are being phased out as securities become subject to the Limit Up-Limit Down Plan pursuant to a phased implementation schedule. The Limit Up-Limit Down Plan is already operational with respect to all Subject Securities, and thus, the Exchange believes that all references to individual stock trading pauses should be removed, including all cross-references to Rule 11890(a)(2)(C)(4) contained in other portions of Rule 11890.[7]

The Exchange is also making technical amendments to certain citations within Rule 11890 to make them more accurate.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the ''Act''),[8] which requires the rules of an exchange 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 pilot program promotes just and equitable principals of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. More specifically, the Exchange believes that the extension of the pilot would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a

[3] Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010).

[4] Securities Exchange Act Release No. 68819 (February 1, 2013), 78 FR 9438 (February 8, 2013) (SR–NASDAQ–2013–022).

[5] *Id.*

[6] Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012); *see also* Rule 11890(g).

[7] The Exchange notes that certain Exchange Traded Products (''ETPs'') are not yet subject to the Limit Up-Limit Down Plan. Because such ETPs are not on the pilot list of securities, such ETPs are not subject to Rule 11890(a)(2)(C)(4). Securities Exchange Act Release No. 65104 (August 11, 2011), 76 FR 51076 (August 17, 2011) (SR–NASDAQ–2011–116) (notice of filing and immediate effectiveness to amend the clearly erroneous rule to specify that Rule 11890(a)(2)(C)(4) applies only to the current securities of the Individual Stock Trading Pause pilot). Accordingly, the proposed rule change does not change the status quo with respect to such ETPs. As amended, all securities, including ETPs not subject to the Limit Up-Limit Down Plan, will continue to be subject to Rule 11890(a)(2)(C)(1)–(3).

[8] 15 U.S.C. 78f(b)(5).

transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Although the Limit Up-Limit Down Plan will become fully operational during the same time period as the proposed extended pilot, the Exchange believes that maintaining the pilot will help to protect against unanticipated consequences. To that end, the extension will allow the Exchange to determine whether Rule 11890 is necessary once the Limit Up-Limit Down Plan is fully operational and, if so, whether improvements can be made. Finally, the elimination of references to individual stock trading pauses will help to avoid confusion amongst market participants, which is consistent with the Act. As described above, individual stock trading pauses have been replaced by the Limit Up-Limit Down Plan with respect to all Subject Securities.

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, as amended. To the contrary, the Exchange believes that the Financial Industry Regulatory Authority and other national securities exchanges are also filing similar proposals, and thus, that the proposal will help to ensure consistency across market centers.

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 proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)(iii) thereunder.[10]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[11]

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 proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2013–127 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2013–127. 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–2013–127 and should be submitted on or before October 23, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–24018 Filed 10–1–13; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6)(iii). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

[11] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70522; File No. SR–CBOE–2013–090]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fees Schedule

September 26, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 17, 2013, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available at the Exchange's Office of the Secretary, on the Exchange's Web site at *http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx,* at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule. First, the Exchange is proposing to make changes to Footnote 26 of the Fees Schedule. Pursuant to that section, the Exchange charges a Trading Permit Holder (''TPH'') a monthly fee for a Trading Permit or Tier Appointment, the amount of which fee is based on the type of Trading Permit or Tier Appointment. Pursuant to the Fees Schedule, the Exchange assesses these access fees in arrears during the first week of the following month. For example, a TPH will be billed in February for use of a Trading Permit in January. The Fees Schedule further provides that if a Trading Permit is issued during a calendar month after the first trading day of the month, the access fee for the Trading Permit for that calendar month is prorated based on the remaining trading days in the calendar month. A Trading Permit will be renewed automatically for the next month unless the TPH submits written notification to the Registration Services Department by the 25th day of the prior month (or the preceding business day if the 25th is not a business day) to cancel the Trading Permit effective at or prior to the end of the applicable month.

Under the Fees Schedule, if a TPH cancels a Trading Permit effective prior to the end of the applicable month, the TPH will still be assessed the full access fee for that month (the same amount it would pay if the TPH had cancelled the Trading Permit effective at the end of the month). However, if the TPH later requests that the Exchange issue the same type of Trading Permit for the remainder of that same month, pursuant to the Fees Schedule, the Exchange will assess a prorated access fee based on the remaining trading days in that month. Thus, the TPH would be double-paying the access fee for that remaining portion of the month.

The purpose of the proposed rule change is to prevent a TPH from double-paying a portion of the monthly access fee in this situation. The proposed rule change amends Footnote 26 of the Fees Schedule to provide that if cancellation of a Trading Permit is effective prior to the end of the applicable month, and the cancelling TPH later requests issuance of the same type of Trading Permit for the remainder of that same month, the Exchange may issue the same type of Trading Permit (assuming one is available) but will not impose the additional prorated access fee for the remainder of the month.[3] The proposed rule change results in a TPH that cancels a Trading Permit prior to the end of the month but then has the same type of Trading Permit issued during that same month paying the same monthly access fee amount as it would if it had cancelled its Trading Permit effective at the end of a month. This change is similar to a change made by C2 Options Exchange, Incorporated (''C2'').[4]

The Exchange proposes to make one other change to Footnote 26. Currently, Footnote 26 states that ''Trading Permits will be renewed automatically for the next month unless the Trading Permit Holder submits written notification to the Registration Services Department by the 25th day of the prior month (or the preceding business day if the 25th is not a business day) to cancel the Trading Permit effective at or prior to the end of the applicable month.'' The Exchange proposes to amend this statement to give TPHs until 4 p.m. on the second-to-last business day of the prior month to cancel a Trading Permit. This will give TPHs more time to cancel Trading Permits before such permits renew.[5]

The Exchange also proposes to amend Footnote 28 (which is currently ''reserved'') to state that monthly fees are assessed and applied in their entirety and are not prorated. This explicit statement will apply specifically to monthly Facility Fees and CBOE Command Connectivity Charges (but is not intended to imply that other monthly charges are not applied in their entireties). This is not a proposed change, as this is the manner in which those fees are currently assessed; the Exchange merely desires to make this fact explicit. This means that, regardless of whether a market participant incurs the fee at the beginning or the end of the month, or the amount of the month for which the market participant incurs the fee, the entirety of the monthly fee will be assessed. For example, the OEX Standard Booth Rental Fee is $550 per month. Regardless of whether a market participant rents an OEX Standard Booth on the third of the month or the thirtieth of the month, that market participant will be assessed the full $550 fee. This is how the Exchange's billing system is set up, and absent a statement that such fees are prorated, the manner that such fees have been and are to be assessed. The Exchange expends resources to provide and administer these facilities and connectivity, and in many circumstances, the same amounts of Exchange resources are necessary regardless of the portion of the month that the services, facilities and connectivity are used (or at the very least, a disproportionate amount of resources are necessary). Further, Exchange billing systems are arranged to bill for these services on a monthly basis, and determining these costs on a prorated basis would prove difficult and require further resources.

The Exchange also proposes to amend its paper fees (which apply to the paper that the Exchange provides for TPHs on the trading floor for use in printing trade tickets). The Fees Schedule currently lists a fee of $50 per box for 5-part and 2-part paper. However, the Exchange no

[3] The proposed rule change does not change the amounts of the access fees imposed on TPHs for the use of Trading Permits.

[4] *See* Securities Exchange Act Release No. 68751 (January 29, 2013), 78 FR 7837 (February 4, 2013) (SR–C2–2013–005).

[5] The proposed new language would read ''Trading Permits will be renewed automatically for the next month unless the Trading Permit Holder submits written notification to the Registration Services Department by 4 p.m. [sic] on the second-to-last business day of the prior month to cancel the Trading Permit effective at or prior to the end of the applicable month.''

longer offers 5-part and 2-part paper. Instead, the Exchange provides two types of printers to TPHs on the trading floor, and sells paper to TPHs based on the type of printer the TPH uses. For TPHs that use a Hewlett-Packard (''HP'') Laser Printer, the Exchange provides packets of 500 sheets, for which the Exchange proposes to assess a fee of $5 per packet. For TPHs that use the more powerful Zebra printer, the Exchange provides rolls of ink as well as rolls of paper, and proposes to assess a fee of $19.50 for each roll of either. The proposed fees would be intended to cover the costs of the paper (and ink), as well as the costs of provision of such paper (and ink).

The Exchange also proposes to add fees for the installation, relocation, and removal of CBOE Trading Floor Terminals to the Fees Schedule. Specifically, the Exchange proposes to list a fee of $175 for the installation, $225 for the relocation, and $125 for the removal of such terminals. These fee amounts are currently being assessed for such services, as they are the fees that are assessed by electricians for their work and then passed through to the relevant TPHs by the Exchange.[6] Because these are set fee amounts, the Exchange proposes to list them on the Fees Schedule for clarity.

Finally, the Exchange proposes to amend a typographical error on its Fees Schedule. The ''Trading Permit and Tier Appointment Fees'' table of the Fees Schedule lists a column for ''Origin Code'' to delineate to which origin codes (which correspond to different types of market participants) the different permits and tier appointments apply. Next to the ''Electronic Access Permit'' and ''CBSX Trading Permit'', the letter ''M'' (corresponding to Market-Makers) is listed in the ''Origin Code'' column. However, these types of permits are not limited to Market-Makers, and the Exchange believes that the letter ''M'' was unintentionally added to these rows because it was also added (correctly) to a number of rows above it. As such, the Exchange proposes to delete the ''M'' from these rows.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation [sic] transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[10] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes that the proposed change to amend Footnote 26 to prevent the double-paying of a Trading Permit fee is equitable and not unfairly discriminatory as it applies to all TPHs that cancel a Trading Permit effective prior to the end of a month and request issuance of the same type of Trading Permit during that same month. The Exchange believes the proposed rule change protects investors and the public interest, as it prevents a TPH from paying the monthly access fee twice during the same month for a Trading Permit in the event that the TPH cancels the Trading Permit effective prior to the end of the month but later requests issuance of the same type of Trading Permit during that month. The Exchange believes that the proposed rule change is fair and reasonable, because it results in a TPH that cancels a Trading Permit prior to the end of the month but then has the same type of Trading Permit issued that month paying the same amount in access fees for that month as a TPH that cancels a Trading Permit effective at the end of a month. A Trading Permit Holder is able to trade the same amount in either situation; therefore, the Exchange believes it is reasonable that the TPH pay the same amount in either situation.

The Exchange believes that the proposal to amend Footnote 26 to give TPHs until 4 p.m. on the second-to-last business day of the prior month to cancel a Trading Permit is reasonable because it will give TPHs more time to determine whether to cancel a Trading Permit. The Exchange believes that the proposed change is equitable and not unfairly discriminatory because it will apply to all TPHs.

The Exchange believes that the proposal to amend Footnote 28 state that monthly Facility Fees and CBOE Command Connectivity Charges are assessed and applied in their entireties and are not prorated removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest because it makes clear this current policy, thereby avoiding possible confusion. The Exchange believes that assessing these fees in their entireties is reasonable, equitable and not unfairly discriminatory because the Exchange expends resources to provide and administer these facilities and connectivity, and in many circumstances, the same amounts of Exchange resources are necessary regardless of the portion of the month that the services, facilities and connectivity are used (or at the very least, a disproportionate amount of resources are necessary). Further, Exchange billing systems are arranged to bill for these services on a monthly basis, and determining these costs on a prorated basis would prove difficult and require further resources. Also, this policy applies to all TPHs equally.

The Exchange believes that its proposed amendment to state that paper fees are assessed for $5 per packet of 500 sheets for HP Laser Printer paper and $19.50 per roll of either Zebra printer paper or ink (and the deletion of the $50 fee per box of 5-part or 2-part paper) is reasonable because this change would better align the Exchange's paper provision practice, and because the proposed fees would be intended to cover the costs of the paper (and ink), as well as the costs of provision of such paper (and ink). The Exchange believes that this change is equitable and not unfairly discriminatory because the fees will apply to all TPHs equally.

The Exchange believes that the proposed listing of the fees for the installation, relocation, and removal of CBOE Trading Floor Terminals will remove impediments to and perfect the mechanism of a free and open market and a national market system by letting TPHs who may need those services know explicitly on the Fees Schedule

[6] This is pursuant to the ''DPM requests for post modifications/equipment'' fee listed in the ''Miscellaneous'' section of the Fees Schedule.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *Id.*

[10] 15 U.S.C. 78f(b)(4).

what the fees for such services will be (thereby eliminating any possible confusion). The Exchange believes that these fee amounts are reasonable because they reflect the amounts necessary to perform such services (and indeed, are the amounts assessed by electricians for such services). The Exchange believes that these fees are equitable and not unfairly discriminatory because they will apply to all TPHs equally.

The Exchange believes that the proposal to delete the erroneous listing of the letter ''M'' from the ''Origin Code'' column of [sic] next to the ''Electronic Access Permit'' and ''CBSX Trading Permit'' rows of the Trading Permit and Tier Appointment Fees table of the Fees Schedule will eliminate possible investor confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule changes will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule changes will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes apply to all TPHs equally, regardless of the type of market participant. The Exchange does does [sic] not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because these changes all apply to billing and fees that affect CBOE only (and not other exchanges). Further, to the extent that the proposed changes make CBOE more attractive to market participants on other exchanges, such market participants may elect to become CBOE market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and paragraph (f) of Rule 19b–4 [12] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2013–090 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2013–090. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2013–090 and should be submitted on or before October 23, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–24013 Filed 10–1–13; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70524; File No. SR–CBOE–2013–079]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposal To Amend Rule 24.7 To Add Factors for Determining Whether To Halt Volatility Index Options Trading

September 26, 2013.

I. Introduction

On July 29, 2013, Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend CBOE Rule 24.7 (Trading Halts, Suspensions, or Primary Market Closure) to add factors that may be considered when determining whether to halt trading in volatility index options. The proposed rule change was published for comment in the **Federal Register** on August 14, 2013.[3] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

As described further below, CBOE Rule 24.7 sets forth several factors that CBOE may consider in determining whether to halt trading in an index

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 34–70136 (August 8, 2013), 78 FR 49563 (''Notice'').

option class. The Exchange proposes to amend CBOE Rule 24.7(a) to add additional factors that may be considered when determining whether to halt trading in volatility index options.

First, CBOE proposes to amend CBOE Rule 24.7(a)(i), which permits consideration to be given to ''the extent to which trading is not occurring in the stocks underlying the index[.]'' Since volatility indexes are comprised of options, not stocks, CBOE proposes to amend CBOE Rule 24.7(a)(i) to permit consideration to be given (in determining whether to halt trading in a volatility index option class) to whether the component options in a volatility index are not trading.[4] Similarly, the Exchange proposes to amend CBOE Rule 24.7(b) which sets forth factors that may be considered in determining whether to resume trading of a halted options class or series. The Exchange proposes to amend the factor regarding the ''extent to which trading is occurring in stocks underlying the index'' to also include options.

Second, CBOE proposes to add a new factor (as subparagraph (iii) to CBOE Rule 24.7(a)) for consideration when determining whether to halt trading in volatility index options. Specifically, CBOE proposes to add a provision that would permit consideration to be given (in determining whether to halt trading in a volatility index option class) to whether the ''current index level'' [5] for a volatility index option is not available or the spot (cash) [6] value for a volatility index option is not available.

Third, the Exchange is proposing to make technical changes to CBOE Rule 24.7(a), CBOE Rule 24.7(d) and CBOE Rule 24.7.01 to make numbering changes.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act [7] and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[9] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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 proposes to amend CBOE Rule 24.7 to add additional factors that may be considered when determining whether to halt trading in volatility index options. CBOE Rule 24.7 is currently predicated on indexes being comprised of stocks and includes factors that may be considered by the Exchange when determining whether to halt trading based on the index components being comprised of stocks. The current proposal amends CBOE Rule 24.7(a) to account for indexes comprised of options and allows the Exchange to consider the following factors when determining whether to halt trading: (1) Whether the component options are not trading; (2) whether the ''current index level'' (as measured by the implied forward level based on volatility index (security) futures prices) is not available; or (3) whether the spot (cash) value for a volatility index is not available.

The Commission notes that the proposed change is designed to allow the Exchange to consider additional factors when determining whether to halt or resume trading in volatility index options. The Commission believes that the proposed change would grant discretion to the Exchange to halt trading in an index option class if component options are not trading and/or the current index level or spot (cash) value for a volatility index is not available. The Commission further believes that the proposal is designed to provide CBOE with discretion to protect the integrity of its marketplace by permitting it to consider additional factors that are specifically relevant to volatility index options when determining whether to halt or resume trading in those products.

Accordingly, the Commission finds that the Exchange's proposal is consistent with the Act, including Section 6(b)(5) thereof, in that it is designed to remove impediments to and perfect the mechanism of a free and open market, and in general, protect investors and the public interest.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–CBOE–2013–079) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–24015 Filed 10–1–13; 8:45 am]

BILLING CODE 8011–01–P

[4] As an example, consider the CBOE Volatility Index (''VIX''), which is comprised of S&P 500 Index (''SPX'') options. Under the proposal, the Exchange may consider whether to halt trading in VIX options if trading in SPX options were not occurring. *See* Notice, *supra* note 3, at 49563.

[5] CBOE proposes to define the term ''current index level'' in new Interpretation and Policy .03 to Rule 24.7 to mean the implied forward level based on corresponding volatility index (security) futures prices. *See* Notice, *supra* note 3, at 49563.

[6] In the Notice, CBOE stated that the spot (cash) value of a volatility index is an instantaneous measure of the expected volatility in 30 days. *See* Notice, *supra* note 3, at 49564.

[7] 15 U.S.C. 78f.

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70521; File No. SR–FINRA–2013–033]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change to Amend FINRA Rule 9217 (Violations Appropriate for Disposition Under Plan Pursuant to Securities Exchange Act Rule 19d–1(c)(2))

September 26, 2013.

I. Introduction

On July 24, 2013, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend FINRA Rule 9217 (Violations Appropriate for Disposition Under Plan Pursuant to Exchange Act Rule 19d–1(c)(2)). The proposed rule change was published for comment in the **Federal Register** on August 13, 2013.[3] The Commission received two comments on the proposal.[4] On September 17, 2013,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 70131 (Aug. 7, 2013), 78 FR 49313 (''Notice'').

[4] *See* Letter to the Commission from David T. Bellaire, Esq., Executive Vice President & General Counsel, Financial Services Institute (''FSI''), dated September 3, 2013. The Commission also received another comment letter which does not address the substance of the proposed rule change. *See* Letter to the Commission from John Frattellone, dated September 3, 2013.

FINRA responded to the comments.[5] This order approves the proposed rule change.

II. Description of the Proposal

FINRA proposes to amend FINRA Rule 9217 (Violations Appropriate for Disposition Under Plan Pursuant to Exchange Act Rule 19d–1(c)(2)) to include additional rule violations eligible for disposition under FINRA's Minor Rule Violation Plan (''MRVP''). In its proposal, FINRA states that it believes that the purpose of the MRVP is to provide reasonable but meaningful sanctions for minor or technical violations of rules when the conduct at issue does not warrant stronger, reportable disciplinary sanctions.

In the proposal, FINRA states that the inclusion of a rule in FINRA's MRVP does not minimize the importance of compliance with that rule; nor does it preclude FINRA from choosing to pursue violations of eligible rules through an Acceptance, Waiver and Consent (''AWC'') or Complaint if the nature of the violations or prior disciplinary history warrants more significant sanctions. Rather, FINRA notes that the option to impose an MRVP sanction gives FINRA additional flexibility to administer its enforcement program in the most effective and efficient manner, while still fully meeting FINRA's remedial objectives in addressing violative conduct. FINRA represents that it will continue to examine and surveil for compliance with eligible rules in a manner consistent with its examination programs and will determine on a case-by-case basis whether disposition pursuant to the MRVP is appropriate.[6]

FINRA has represented that it conducted a comprehensive review of its rules and examination dispositions to determine which rules to propose to add to Rule 9217.[7] Among other things, FINRA considered (1) rules routinely cited in formal disciplinary actions that are not currently part of the MRVP; (2) rules cited frequently in informal actions; (3) rules comparable to existing rules in the MRVP; and (4) rules included in other self-regulatory organization MRVPs.

The rules FINRA proposes to include in Rule 9217 can, broadly, be grouped into several categories, as described below:

Filings and Notifications

FINRA proposes to include in Rule 9217 several filing and notification rules because violations of these rules typically involve, FINRA believes, isolated failures to comply with periodic reporting, filing, or notification requirements and are thus appropriate for disposition under the MRVP. These rules include: FINRA Rule 2251(a) (failure to timely forward proxy and other issuer-related materials); FINRA Rule 4524 (failure to timely file or filing of incomplete reports or information); FINRA Rule 5110(b) (failure to timely file or filing of incomplete documents or information); FINRA Rule 5121(b)(2) (failure to give timely notification of termination or settlement of public offering or failure to file net capital computation); FINRA Rule 5122(b)(2) (failure to timely file private placement documents); FINRA Rule 5190 (failure to give timely notification of participation in offerings); and FINRA Rule 6760 (failure to give timely or complete notification concerning offerings of TRACE-Eligible Securities).

FINRA notes, however, that willful, widespread or repeated failures of these rules may be appropriate for disposition through an AWC or the filing of a Complaint.

Late Registrations

FINRA also proposes to include in the Rule 9217 certain rule violations involving isolated or technical failures to timely register. The relevant rules include: NASD Rule 1021(d) (failure to timely register) and MSRB Rules G–2, G–3(b)(ii)(D), and G–3(c)(ii)(D) (failure to timely register).

Untimely Marking, Transaction Reporting and other Market Rules

FINRA proposes to add rules that involve late filing and notification requirements related to market regulation. FINRA notes that the MRVP already includes several such rules. The rules FINRA proposes to add include: Rule 605(a)(1) and (3) of Regulation NMS [8] (failure to timely report or provide complete order execution information); Rule 606 of Regulation NMS (failure to timely disclose or provide complete order routing information); FINRA Rule 6181 (failure to timely report transactions in NMS securities); and FINRA Rule 6623 (failure to timely report transactions in over-the-counter (''OTC'') and restricted equity securities).

FINRA also proposes to include marking and reporting rules related to trade and audit data. These rules include: Rule 200(g) of Regulation SHO [9] (failure to accurately mark sell orders of equity securities); FINRA Rule 6182 and FINRA 6624 (failure to accurately mark short sale transaction in NMS and OTC securities); FINRA Rule 6250 (failure to comply with quote and order access requirements for FINRA's Alternative Display Facility); FINRA Rule 7330 (failure to timely and accurately input trade reports into the OTC Reporting Facility); and FINRA Rule 7360 (ongoing obligation to input trade reporting requirements in Rule 7330(d) accurately and completely).

In addition, FINRA proposes to add to the MRVP three rules governing the FINRA/NYSE Trade Reporting Facility, because similar rules regarding the FINRA/NASDAQ Trade Reporting Facility are already included in the MRVP. These rules include: FINRA Rule 6380B (transaction Reporting); FINRA Rule 7230B (trade Report Input); and FINRA Rule 7260B (Audit Trail Requirements).

Rules to Achieve Consistency

FINRA proposes to add certain rules to Rule 9217 to achieve consistency with rules that already are part of FINRA's MRVP. These rules include FINRA Rule 1250 in its entirety, in order to bring both the Regulatory Element and Firm Element of FINRA's continuing education requirements into the scope of Rule 9217, and MSRB Rule G–3(h), which likewise would bring both the Regulatory Element and Firm Element of the MSRB's equivalent education requirements rule into the scope of Rule 9217. FINRA also proposes to include MSRB Rule G–21 (advertising), because the FINRA's corresponding rules for communication with the public (FINRA Rules 2210 2212, 2213, 2215, and 2216 and NASD Interpretive Material 2210–2) already are subject to MRVP disposition.

FINRA also proposes to add several rules sanctioning the failure to provide or update contact information. Those rules include: NASD Rule 1150 (failure to review and update executive representative designation and contact information) and NASD Rule 1160 (failure to report or update contact information). Similarly, FINRA has also proposed to add MSRB Rules G–40(a) and (c) (failure to designate and update electronic mail contact information for communications with MSRB) and FINRA Rule 4370(f) (Business Continuity and Emergency Contact Information), which requires a member to designate emergency contact persons

[5] *See* Letter to the Commission from Philip Shaikun, Associate Vice President and Associate General Counsel, FINRA, dated September 17, 2013 (''Response Letter'').

[6] *See* Notice, 78 FR at 49313.

[7] *See id.*

[8] 17 CFR 242.605(a)(1) and (a)(3).

[9] 17 CFR 242.200.

and to report emergency contact information to FINRA.

Recordkeeping

FINRA proposes to add specific Commission and MSRB rules that require records to be made and preserved. These rules include: Exchange Act Rule 17a–3(a) (Records to be made by certain exchange members, brokers and dealers); Exchange Act Rule 17a–4 (Records to be preserved by certain exchange members, brokers and dealers); MSRB Rule G–8 (Books and records to be made by brokers, dealers and municipal securities dealers); and MSRB Rule G–9 (Preservation of records). FINRA states in its proposal that it is including these rules because it often charges recordkeeping violations under the applicable FINRA rule, MSRB rule, and Exchange Act rule.

Supervisory Procedures Regarding MRVP Rules

FINRA proposes to expand the MRVP to include any violation of NASD Rule 3010(b) (failure to maintain adequate written supervisory procedures where the underlying conduct is subject to Rule 9217). According to FINRA, the proposal would allow FINRA to resolve under Rule 9217 a failure to maintain adequate written supervisory procedures with respect to a rule that is already subject to the MRVP, whether or not there is a violation of the underlying rule. FINRA's proposal also includes the parallel MSRB rule, MSRB Rule G–27(c) (failure to maintain adequate written supervisory procedures where the underlying conduct is subject to Rule 9217).

Options

FINRA also proposes to include Rule 2360(b)(5) (failure to report options positions), which requires, among other things, that members report each account in which they have an interest and that has established an aggregate position of 200 or more option contracts.

Other Rules

FINRA proposes to include other rules because it asserts that their violation, depending on the circumstances, could appropriately be remediated under the MRVP without compromising investor protection. These rules include: Exchange Act Rule 10b–10 (confirmation of Transactions); FINRA Rule 4360(b) (failure to maintain adequate fidelity bond coverage); MSRB Rule G–6 (failure to maintain adequate fidelity bonding coverage); MSRB Rule G–10(a) (failure to deliver investor brochure to customers promptly); FINRA By-Laws Schedule A, Sec. 1(b) (failure to make accurate payment of Trading Activity Fee); FINRA Rule 2266 (failure to provide written notification of availability of information from the Securities Investor Protection Corporation at account opening or annually thereafter); and FINRA Rules 3160(a)(1), (3), (4) and (5) (standards of conduct for conducting broker-dealer services on or off the premises of a financial institution pursuant to a networking arrangement, but excluding the networking agreement requirements).

FINRA also proposes to include Rule 4370(a), (b), (c) and (e) (requirements to create, maintain and update a written business continuity plan and disclosure of such to customers). FINRA notes that, while it recognizes the importance of a business continuity plan, FINRA also has seen minor violations of Rule 4370 that may not implicate the overall effectiveness of a business continuity plan, such as when FINRA members have failed for a short time to timely update their plans or when a member has failed in an isolated circumstance to timely provide disclosure about its business continuity plan after receiving a request from a customer under Rule 4370(d).

FINRA notes, however, that it does not believe that a disposition under FINRA's MRVP would be appropriate where a member has no business continuity plan or procedures required by Rule 4370(a). Also, FINRA does not propose to include Rule 4370(d) in Rule 9217. According to FINRA, it does not foresee any circumstance in which a violation of Rule 4370(d)—which requires members to designate a member of senior management to approve a business continuity plan and to be responsible for the annual review of the plan—would be appropriately addressed under Rule 9217.

FINRA also proposes to include Rule 5121(a) (failure to prominently disclose conflict of interest) and FINRA Rule 7430 (failure to synchronize business clocks used for recording date and time as required by applicable FINRA by-laws and rules). Regarding Rule 5121(a), FINRA states that the disclosure of a conflict of interest in an insufficiently large font may constitute a violation appropriate for disposition under Rule 9217. With respect to Rule 7430, FINRA states that it believes that isolated violations due to certain business clocks falling out of synch because of software glitches or other technical reasons may be appropriate to resolve as a minor rule violation.

According to FINRA, the inclusion of a rule in the MRVP does not mean that all violations of that rule must be treated pursuant to the MRVP. FINRA states that FINRA staff maintains the discretion to handle any violation through AWCs or Complaints with the full range of applicable sanctions. Similarly, members and associated persons maintain the right to a hearing, with all the same procedural rights accorded in all formal disciplinary proceedings, instead of accepting a Minor Rule Violation.

FINRA proposes that the implementation date for proposed rule change will be the date of Commission approval of this filing.

III. Summary of Comment Letter and the FINRA's Response

The Commission received one comment letter on the proposed rule change. The Financial Services Institute (''FSI'') expressed its general support for the appropriateness of imposing a sanction or fine that is appropriate to a rule violation. However, FSI stated that it believes that some minor violations of rule should not be subject to any disciplinary action at all, even under the MRVP. As an example, FSI noted FINRA's example of ''isolated violations where certain business clocks fall out of synch due to software glitches or other technical reasons.'' FSI wrote that ''minor violations such as the example given, which are isolated as opposed to systematic and are neither willful nor intentional, should not qualify as rule violations.'' FSI further stated that, where a rule violation is isolated, FINRA should inform the firm of the violation so the firm may undertake efforts to fix the issue and that FINRA should only consider the issue a rule violation if it is not addressed and therefore becomes ''systemic as well as intentional or willful.''

In response, FINRA noted that inclusion of a rule in the MRVP does not obligate FINRA to treat any particular violation of that rule pursuant to the MRVP and that the purpose of the proposed rule change is to give FINRA additional flexibility to administer its enforcement program in the most effective and efficient manner. FINRA added that it retains the discretion to resolve minor violations as informal matters or through an AWC or the filing of a complaint, depending on the facts and circumstances. FINRA noted that it does not intend to develop a formula as to when a matter must be handled pursuant to the MRVP as opposed to other alternatives, including informal action. Responding directly to FSI's example of a member violating Rule 7430, which requires FINRA members to synchronize their business clocks,

FINRA stated that ''while many such violations may appropriately be handled with a Cautionary Action Letter or other informal action, FINRA can envision circumstances where negligence or insufficient vetting or oversight of a software vendor might warrant a disposition pursuant to the MRVP or, in more serious cases, through a reportable disciplinary action.'' Finally, FINRA noted that a FINRA member or associated person is not obligated to accept an MRV disposition and may always avail itself of the procedural rights under FINRA rules to challenge an allegation in any complaint that may be filed.

IV. Discussion and Commission Findings

After careful review of the proposal, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a Registered Securities Association.[10] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[11] because expanding the list of FINRA rules that are subject to the MRVP should afford FINRA increased flexibility in carrying out its enforcement and disciplinary responsibilities and, in doing so, help to meet the aim of protecting investors and the public interest.

The Commission also believes that the proposal is consistent with Section 15A(b)(2) and 15A(b)(7) of the Act,[12] which require that the rules of a Registered Securities Association enforce compliance with, and provide appropriate discipline for, violations of Commission and Association rules. The Commission believes that the proposed changes to Rule 9217 should, by expanding the list of rules subject to the MRVP, strengthen FINRA's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation. However, the Commission notes that designating a rule as subject to the MRVP does not signify that violation of the rule will always be deemed a minor violation. In the proposal, FINRA represents that it will remain able to require, on a case-by-case basis, formal disciplinary action for any particular violation. Therefore, the Commission believes that the proposed rule change will not compromise FINRA's ability to seek more stringent sanctions for the more serious violations of rules listed in FINRA Rule 9217.

In addition, because members may contest any fine imposed under Rule 9217 and thus receive a full disciplinary proceeding, the Commission believes that FINRA's rules provide for a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 15A(b)(8) and 15A(h)(1).[13]

The Commission also finds that the proposal is consistent with the public interest, the protection of investors, or is otherwise in furtherance of the purposes of the Act, as required by Rule 19d–1(c)(2) under the Act,[14] which governs minor rule violation plans. The Commission believes that the proposed changes to Rule 9217 will strengthen FINRA's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization, in cases where full disciplinary proceedings are unsuitable in view of the nature of a particular violation.

The Commission notes FSI's views that some minor violations of rules should not be subject to disciplinary action at all and that FINRA should only consider a member's activity a rule violation if the violation becomes systemic as well as intentional or willful. The Commission believes that it is appropriate and consistent with the Act to permit FINRA to exercise its discretion, based on the facts and circumstances of each situation, to assess whether or not to address the alleged violation of a FINRA rule through more informal means, such as a Cautionary Action Letter, or through progressively more formal actions up to and including action under the MRVP, an AWC, or a formal complaint against a member. The Commission notes that, as FINRA stated in its Response Letter, a FINRA member or associated person can always avail itself of the procedural rights under FINRA rules to challenge any allegation of a rule violation.

In approving this proposed rule change, the Commission emphasizes that in no way should the amendment of the rule be seen as minimizing the importance of compliance with FINRA's rules and all the other rules subject to imposition of fines under Rule 9217. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, Rule 9216 provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handing certain violations. The Commission expects that FINRA will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, of whether a violation requires formal disciplinary action under FINRA Rule 9000 *et seq.* The Commission also notes that Exchange Act Rule 19d–1(c)(2) [15] and FINRA 9216(b) [16] require that FINRA, on a quarterly basis, report to the Commission all disciplinary actions taken under its MRVP.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–FINRA–2013–033) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–24012 Filed 10–1–13; 8:45 am]

BILLING CODE 8011–01–P

[10] In approving the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78o–3(b)(6).

[12] 15 U.S.C. 78o–3(b)(2) and 78o–3(b)(7).

[13] 15 U.S.C. 78o–3(b)(8) and 78o–3(h)(1).

[14] 17 CFR 240.19d–1(c)(2).

[15] 17 CFR 240.19d–1(c)(2).

[16] *See* Securities Exchange Act Release No. 32076 (March 3, 1993), 58 FR 18291 (April 3, 1993).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70531; File No. SR–MSRB–2013–04]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Instituting Proceedings to Determine Whether to Disapprove Proposed Rule Change Relating to a New MSRB Rule G–45, on Reporting of Information on Municipal Fund Securities

September 26, 2013.

I. Introduction

On June 10, 2013, the Municipal Securities Rulemaking Board (''MSRB'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change consisting of new MSRB Rule G–45 (reporting of information on municipal fund securities) and MSRB

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Form G–45; amendments to MSRB Rule G–8 (books and records); and MSRB Rule G–9 (preservation of records). The proposed rule change was published for comment in the **Federal Register** on June 28, 2013.[3] The Commission received five comment letters on the proposal.[4] On August 9, 2013, the MSRB granted an extension of time for the Commission to act on the filing until September 26, 2013. This order institutes proceedings under Section 19(b)(2)(B) of the Act[5] to determine whether to disapprove the proposed rule change.

II. Description of the Proposed Rule Change

The MSRB's Electronic Municipal Market Access (''EMMA'') system currently serves as a centralized venue for the submission by underwriters of 529 plan primary offering disclosure documents (''plan disclosure documents'') and continuing disclosures, such as annual financial reports submitted by issuers or their agents. However, the MSRB does not currently receive detailed underwriting or transaction information as it does for other types of municipal securities. Accordingly, the proposed rule change would, for the first time, provide the MSRB with more comprehensive information regarding 529 plans underwritten by brokers, dealers, or municipal securities dealers by gathering data directly from such persons.

The MSRB proposes to adopt new Rule G–45 to require each underwriter of a primary offering of municipal fund securities[6] that are not interests in local government investment pools to report to the MSRB on new Form G–45 the information relating to such offering by no later than 60 days following the end of each semi-annual reporting period ending on June 30 and December 31.[7] In addition, the MSRB would require that performance data be submitted annually. As described in further detail below, the required information would include plan descriptive information, assets, asset allocation information (at the investment option level), contributions, withdrawals, fee and cost structure, performance data, and other information.[8]

Under proposed Rule G–45, the obligation to submit the requested information to the MSRB would be placed on brokers, dealers, or municipal securities dealers that are underwriters under Rule 15c2–12(f)(8) of the Act.[9] The MSRB notes that there may be more than one underwriter in a particular primary offering, stating that in the case of 529 plans, program managers, their affiliates, including primary distributors, and/or their contractors, may fall within the definition of underwriter. However, the MSRB would deem the obligation to submit the required information fulfilled if any one of the underwriters submits the required information. Accordingly, on Form G–45, each submitter could indicate the identity of each underwriter on whose behalf the information is submitted.

Form G–45 would require the submission of the following information:

Plan Descriptive Information: The underwriter would provide the MSRB with the (i) Name of the state, (ii) name of the plan, (iii) name of the underwriter and contact information, (iv) name of other underwriters on whose behalf the underwriter is submitting information, (v) name of the program manager and contact information, (vi) plan Web site address and (vii) type of marketing channel (whether sold with or without the advice of a broker-dealer).

Aggregate Plan Information: The underwriter would provide the MSRB with (i) total plan assets, as of the end of each semi-annual reporting period, (ii) total contributions for the most recent semi-annual reporting period, and (iii) total distributions for the most recent semi-annual reporting period.

Investment Option Information: For each investment option offered by the plan, the underwriter would provide the MSRB with (i) the name and type of investment option (*e.g.,* age-based, conservative), (ii) the inception date of the investment option, (iii) total assets in the investment option as of the end of the most recent semi-annual period, (iv) the asset classes in the investment option, (v) the actual asset class allocation of the investment option as of the end of the most recent semi-annual period, (vi) the name of each underlying investment in each investment option as of the end of the most recent semi-annual period, (vii) the investment option's performance for the most recent calendar year (as well as any benchmark and its performance for the most recent calendar year), (viii) total contributions to and distributions from the investment option for the most recent semi-annual reporting period and (ix) the fee and expense structure in effect as of the end of the most recent semi-annual reporting period. The MSRB proposes to permit the performance and fee and expense information to be submitted in a format consistent with the College Savings Plans Network's (''CSPN'') published Disclosure Principles Statement No. 5 (''Disclosure Principles''), which commenters informed the MSRB is the industry norm for reporting such information.

Lastly, the MSRB proposes to amend its books and records rules under MSRB Rules G–8 and G–9 to require underwriters obligated to submit information to the MSRB under proposed Rule G–45 to maintain the information required to be reported on new Form G–45 for six years.

III. Summary of Comments Received

As noted above, the Commission received five comment letters on the proposed rule change.[10] Four of the commenters expressed general support for the MSRB's desire to collect more comprehensive information relating to 529 plans.[11] However, all of the commenters[12] raised concerns or sought clarification about certain specific aspects of the proposal, including: (i) The scope of the definition of ''underwriter;''[13] (ii) the disclosure obligations of underwriters, including their ability to obtain, and verify the accuracy of, the requested

[3] Securities Exchange Act Release No. 69835 (June 24, 2013), 78 FR 39048 (''Notice'').

[4] *See* letters to Elizabeth M. Murphy, Secretary, Commission, from Tamara K. Salmon, Senior Associate Counsel, Investment Company Institute, dated July 16, 2013 (''ICI Letter''); David L. Cohen, Managing Director, Associate General Counsel, Securities Industry and Financial Markets Association, dated July 18, 2013 (''SIFMA Letter''); Roger Michaud, Chairman, College Savings Foundation, dated July 19, 2013 (''CSF Letter''); Michael L. Fitzgerald, Chairman, College Savings Plans Network, dated July 19, 2013 (''CSPN Letter''); and Michael B. Koffler, Partner, Sutherland Asbill & Brennan, dated July 19, 2013 (''Sutherland Letter'').

[5] 15 U.S.C. 78s(b)(2)(B).

[6] The term ''municipal fund security'' is defined in MSRB Rule D–12 to mean a municipal security issued by an issuer that, but for the application of Section 2(b) of the Investment Company Act of 1940, would constitute an investment company within the meaning of Section 3 of the Investment Company Act of 1940.

[7] The proposed rule change would require an underwriter to report such information in the manner prescribed in the Form G–45 procedures and as set forth in the Form G–45 Manual. The MSRB provides that the Form G–45 Manual would be a new manual created to assist persons in the submission of the information required under proposed Rule G–45. This manual was not submitted as part of the proposed rule change.

[8] Interests in 529 plans are the only type of municipal fund security that would be covered by the proposed rule change.

[9] 17 CFR 240.15c2–12(f)(8).

[10] *See supra* notes 4.

[11] *See* ICI Letter, SIFMA Letter, CSPN Letter, CSF Letter.

[12] *See supra* note 4.

[13] *See* ICI Letter, SIFMA Letter, CSPN Letter, CSF Letter. One commenter also questioned the MSRB's interpretation of ''direct-sold'' versus ''advisor-sold'' plans in relation to the scope of the rule and its application to underwriters. *See* Sutherland Letter.

information; [14] (iii) the need for publication of the Form G–45 Manual; [15] (iv) the MSRB's plans to publicly disseminate information filed on Form G–45; [16] (v) the regulatory basis for the proposed rule change and value of the requested information on Form G–45; [17] and (vi) requests for certain modifications to the content of Form G–45.[18]

A. Definition of ''Underwriter''

Several commenters objected to the MSRB's description of the meaning of the term ''underwriter'' as used in Rule G–45 and stated that the MSRB should clarify the scope of the definition.[19] These commenters cited the MSRB's statements in the Notice suggesting that 529 plans may have multiple underwriters; that Rule 15c2–12(f)(8) under the Act, which the MSRB incorporates into Rule G–45, defines ''underwriter'' broadly; and that other entities (in addition to primary distributors) involved in operating or maintaining a plan, such as the plan's program manager, their affiliates and/or contractors, could be deemed underwriters for purposes of the rule. One commenter asserted that 529 plans typically have only one underwriter [20] and argued, along with other concurring commenters,[21] that many other entities involved in operating and maintaining a plan, such as the plan's program manager, recordkeeper, investment manager, custodian, and state sponsor, in most cases, would not and should not be underwriters for purposes of Rule G–45.[22]

Several commenters emphasized that, to fall within the definition of ''underwriter'' under Rule G–45, the person or entity must be a broker, dealer, or municipal securities dealer.[23] One commenter argued that a plan's program manager, recordkeeper, investment manager, custodian, and state sponsor generally are not brokers or dealers and therefore would not qualify as underwriters under the MSRB's definition.[24] Accordingly, this commenter requested that the MSRB clarify that the term ''underwriter'' would not include such entities if they provide services to the plan on behalf of the plan or its state sponsor and not as a broker, dealer, or municipal securities dealer.[25]

Two commenters also specifically argued that a state sponsor should not be treated as an underwriter for purposes of Rule G–45, as they are not brokers, dealers, or municipal securities dealers.[26] These commenters stated that language in the Notice implied that state sponsors could be deemed underwriters and thus requested confirmation that proposed Rule G–45 would not apply to municipal securities issuers exempted under Section 3(d) of the Act.[27]

Although not directly discussing the definition of ''underwriter,'' one commenter argued that the proposed rule and form should not apply to ''direct-sold'' plans because, by definition, such plans are sold without the involvement of a broker-dealer.[28] This commenter stated that the distinction between ''direct-sold'' and ''advisor-sold'' plans is not simply a ''marketing distinction,'' as MSRB had categorized it in the Notice, but is ''critical in assessing the MSRB's jurisdiction as it delineates between those 529 [p]lans that are sold through broker-dealers and those that are not.'' [29] Accordingly, this commenter concluded that ''direct-sold'' plans are not subject to the MSRB's jurisdiction.[30]

Finally, one commenter expressed opposition to the imposition of the reporting requirements of new Rule G–45 on ''broker dealers that are not underwriters but that instead have entered into contracts with the plan's underwriter (primary distributor) to sell plan shares to retail investors.'' [31]

B. Underwriter Reporting Obligation

All five commenters believed the MSRB should clarify the disclosure obligations of underwriters.[32] Four of these commenters stated that the MSRB is seeking information that many primary distributors will not be able to provide.[33] All of the commenters suggested that the MSRB clarify or confirm that underwriters would not be responsible for certain information that is outside of their possession, custody, or control.[34] For example, one commenter requested that the MSRB clarify that, when an underwriter, in its normal course of business, does not create, own, control, or possess information necessary for Form G–45, the underwriter is not required to obtain such information.[35] Another commenter requested that the MSRB clarify that an underwriter is required to provide the requisite information only to the extent such information relates to the distribution by the underwriter of municipal fund securities and is in the underwriter's possession or maintained by another entity on the underwriter's behalf for purposes of complying with MSRB rules.[36]

Several commenters raised concerns that contractual provisions or privacy laws might not permit an underwriter to obtain the information required by the proposed rule and form.[37] In this regard, one commenter sought confirmation that, where the sharing of information between an underwriter and a recordkeeper would violate contractual provisions, the information would be deemed to be outside of the possession or control of the underwriter and not subject to the reporting obligations of Rule G–45.[38] Another commenter noted that, in the context of omnibus agreements, whether the required information is available to an underwriter is dependent on comprehensive servicing agreements between the plan, the underwriter, and the selling dealers.[39] Thus, this commenter noted that the agreements may not provide the underwriter with legal access to certain information and, as such, an underwriter should not be required to report such information on Form G–45.[40]

Two commenters raised concerns about the MSRB's suggestion that an underwriter's disclosure obligation extends to ''information in the possession of an underwriter's subcontractor.'' [41] These commenters believed this suggestion ''will produce confusion and disparate reporting results'' depending on factors unrelated to Rule G–45 regulatory compliance.[42] In particular, the commenters noted that, while some information may be in the possession of an underwriter's

[14] *See* ICI Letter, CSPN Letter, CSF Letter.

[15] *See* ICI Letter, SIFMA Letter.

[16] *See* ICI Letter, SIFMA Letter, CSPN Letter, CSF Letter.

[17] *See* Sutherland Letter.

[18] *See* ICI Letter, SIFMA Letter, Sutherland Letter.

[19] *See* ICI Letter, SIFMA Letter, CSPN Letter, CSF Letter.

[20] *See* ICI Letter.

[21] *See* SIFMA Letter, CSPN Letter, and CSF Letter, which stated that they concur and/or endorse the ICI's commenter.

[22] *See* ICI Letter.

[23] *See* CSPN Letter, CSF Letter, ICI Letter.

[24] *See* ICI Letter.

[25] *See* ICI Letter.

[26] *See* CSPN Letter, CSF Letter.

[27] *See* CSPN Letter, CSF Letter.

[28] *See* Sutherland Letter.

[29] *See* Sutherland Letter.

[30] *See* Sutherland Letter.

[31] *See* SIFMA Letter.

[32] *See* ICI Letter, SIFMA Letter, CSPN Letter, CSF Letter, Sutherland Letter.

[33] *See* ICI Letter, CSPN Letter, CSF Letter, Sutherland Letter.

[34] *See* ICI Letter, SIFMA Letter, CSPN Letter, CSF Letter, Sutherland Letter.

[35] *See* ICI Letter.

[36] *See* CSPN Letter.

[37] *See* CSF Letter, CSPN Letter, SIFMA Letter, Sutherland Letter.

[38] *See* Sutherland Letter.

[39] *See* SIFMA Letter.

[40] *See* SIFMA Letter.

[41] *See* CSPN Letter, CSF Letter.

[42] *See* CSPN Letter, CSF Letter.

''subcontractor,'' other information may be in the possession of an unaffiliated or affiliated entity that is not a subcontractor, and privacy laws and contractual requirements may apply differently.[43]

One commenter questioned the meaning of the MSRB's statement in the Notice that underwriters would be required to produce only information that they possess or ''have a legal right to obtain.'' [44] The commenter stated that ''unless the primary distributor has a specific, enforceable legal right, such as one existing under law (such as a right created by a statutory provision) or arising from a specific contractual provision, to obtain specified information maintained by a third party, the primary distributor does not have a legal right to obtain the information for purposes of the proposal.'' [45] As such, the commenter asserted that an underwriter may not be able to provide information in the possession of an underwriter's subcontractor.[46]

Two commenters also provided comments relating specifically to omnibus accounts, stating that Rule G–45 and Form G–45 should recognize that, to the extent an underwriter does not, in the normal course of business, have access to information on the accounts underlying an omnibus accounting arrangement, the underwriter should not be required to report such information.[47] These commenters also stated that, ''in practice, the mere fact that there is an omnibus relationship between a selling dealer and a plan's underwriter does not necessarily mean the underwriter has full transparency into all account information, including account owners, beneficiaries, contributions, and withdrawals, underlying the omnibus account.'' [48]

Lastly, two commenters contended that, if the underwriter is able to obtain the required information from a third party, the MSRB should clarify that the underwriter is not responsible for ensuring the accuracy or completeness of the information before including it on Form G–45.[49]

C. Publication of the Form G–45 Manual

Two commenters believed that the MSRB should be required to publish for comment the contents of the Form G–45 Manual (''Manual'') because the Manual will contain important substantive information concerning the reporting obligations under Form G–45.[50] One commenter stated that the ''Manual's contents will not be limited to technical specifications or design or system considerations relating to the mechanics of the electronic filing process.'' [51] This commenter asserted that, apart from the addition of boxes for notes regarding performance data and fee and expense data, neither Form G–45 nor Rule G–45 reflects the MSRB's statements in the Notice that information may be submitted in a manner consistent with the Disclosure Principles.[52] As such, the commenter concluded that the details regarding how to report data consistent with these Disclosure Principles would necessarily have to be set forth in the Manual.[53] Another commenter similarly stated that it believed that the Manual would incorporate the detailed substantive instructions of the Disclosure Principles.[54] Both commenters also suggested that the one-year implementation period should commence after the Manual has been published for comment and approved by the Commission.[55]

D. Publication of the G–45 Data

Three commenters believed that confidential or proprietary information reported on Form G–45 should not be made available to the general public.[56] For example, one commenter stated that the data collected pursuant to Rule G–45 ''should be used to inform the MSRB's regulatory initiatives and priorities and not to compete with other more mature, robust, and comprehensive public sources of information on 529 plans.'' [57] Another commenter stated that the MSRB should be required to file a proposed rule change subject to Commission approval if the MSRB desires to publicly disseminate certain 529 plan data reported on Form G–45.[58]

E. Regulatory Value of Required Information and Regulatory Basis for the Proposal

While four commenters expressed general support for the MSRB's effort to collect more comprehensive information on 529 plans for regulatory purposes,[59] one commenter believed that the MSRB failed to provide a ''compelling rationale as to how the requested information would be useful to the MSRB, the SEC and FINRA given the nature of the requested information, the limited reach of the rule . . . , and the comprehensive regulatory system the MSRB has implemented for broker-dealers distributing 529 plans.'' [60] In particular, the commenter asserted that the requested information has limited value as a regulatory tool because such information cannot impact the value of mutual funds or other investments in which plan investment options invest.[61] In this regard, the commenter argued that, unlike the prices of municipal bonds, which are set by the market, the prices of 529 plans are based on the net asset value of the mutual funds in which such investment options invest.[62] This commenter also questioned the MSRB's assertion in the Notice that the information will ''inform the MSRB of the risks and impact of each plan and investment option'' and ''allow the MSRB to assess the impact of each plan on the market.'' [63] In contrast, the commenter stated that the requested information merely provides information regarding fund flows and does not indicate the risks or impact of any plan or investment option on investors.[64]

The commenter further asserted that the requested information would be substantially incomplete because the information obtained would not include data on ''direct-sold'' 529 plans, which the commenter stated represents more than half of the assets in the 529 plan industry.[65] The commenter also noted that certain data is already available in the public domain that includes both ''broker-sold'' and ''direct-sold'' plans, and therefore such existing data would be more comprehensive than the information collected by the MSRB under the proposal.'' [66] Finally, the commenter argued that the MSRB's jurisdiction does not extend to

[43] *See* CSPN Letter, CSF Letter.

[44] *See* Sutherland Letter.

[45] *See* Sutherland Letter.

[46] *See* Sutherland Letter.

[47] *See* ICI Letter, SIFMA Letter.

[48] *See* ICI Letter, SIFMA Letter.

[49] *See* ICI Letter, Sutherland Letter.

[50] *See* ICI Letter, SIFMA Letter.

[51] *See* ICI Letter.

[52] *See* ICI Letter.

[53] *See* ICI Letter. Similarly, another commenter noted that, while the MSRB explained in the Notice that the information required on Form G–45 will be reported consistently with the reporting formats under the Disclosure Principles, proposed Rule G–45 and Form G–45 are silent on this point. *See* SIFMA Letter.

[54] *See* SIFMA Letter.

[55] *See* ICI Letter, SIFMA Letter.

[56] *See* ICI Letter, CSPN Letter, CSF Letter.

[57] *See* ICI Letter.

[58] *See* SIFMA Letter.

[59] *See* ICI Letter, SIFMA Letter, CSF Letter and CSPN Letter.

[60] *See* Sutherland Letter.

[61] *See* Sutherland Letter.

[62] *See* Sutherland Letter.

[63] *See* Sutherland Letter.

[64] *See* Sutherland Letter.

[65] *See* Sutherland Letter.

[66] *See* Sutherland Letter.

regulating the 529 plan market because the ''MSRB's role is limited to regulating broker-dealers that distribute and sell municipal securities.'' [67]

F. Contents of Form G–45

Some commenters provided suggestions for modifications to the specific information requested by Form G–45 or sought clarification on how to report certain information on the form.[68] These comments are summarized below.

i. Investment Option Information

One commenter requested that the MSRB clarify in Form G–45 how to report an investment option that is used for multiple purposes.[69] This commenter also recommended that the MSRB clarify how underwriters should report fee, expense, and performance information for a mutual fund that issues multiple classes of shares with fees and expenses that vary from class to class.[70] Another commenter questioned how underwriters are supposed to report asset class and asset class percentages, and suggested that the two items related to asset class be eliminated.[71] This commenter asserted that investment options do not have or invest in asset classes, thus the use of the phrase ''asset classes in investment option'' is unclear.[72]

One commenter also recommended that the investment option information be reported in ranges rather than precise amounts, where appropriate (*e.g.,* asset class allocation percentages), because the use of ranges would relieve underwriters of having to revise previously reported information whenever there is a *de minimus* change to such information.[73] This commenter further suggested that if the MSRB elects not to use ranges, it should consider revising the updating requirements such that an update is not required to previously reported information unless there has been more than a *de minimus* change to such information.[74]

ii. Performance Information

One commenter raised several issues with respect to performance information and advanced the following specific recommendations with regard thereto: (i) The MSRB should resolve a discrepancy between the definition of ''performance'' in Rule G–45(d)(viii) that means ''total returns of the investment option expressed as a percentage net of all generally applicable fees and costs'' and the requirement in Form G–45 that requires performance be reported both ''including sale charges'' and ''excluding sales charges''; (ii) the MSRB should clarify whether a plan that is directly distributed and that has no ''sales charges,'' is expected to report the same information under ''Investment Performance (Including Sales Charges)'' and ''Investment Performance (Excluding Sales Charges)'' or just the later; (iii) the MSRB should clarify that fees that are not specific to any particular investment option are not required to be included in the performance calculation; (iv) the MSRB should resolve a discrepancy between a statement in the Notice that Form G–45 requires ''performance for the most recent calendar year'' and the Form G–45 requirement for disclosure of each investment option's 1, 3, 5 and 10 year performance, as well as the option's performance since inception; and (v) the MSRB should include a comment box under each of the two sections of Form G–45 relating to Investment Performance to avoid confusion as to whether the comments relate to performance excluding or including a sales charge.[75] Furthermore, this commenter recommended that the MSRB clarify that a 529 plan is only required to report benchmark information if the 529 plan, in fact, uses a benchmark.[76]

iii. Underlying Investments

Three commenters objected to the requirement to provide data regarding underlying investments on Form G–45.[77] In particular, two commenters recommended deleting the ''Underlying Investments'' section from Form G–45.[78] The other commenter suggested that the Commission should reject the proposed rule change as it relates to underlying investments, arguing that the MSRB does not have the legal authority or jurisdiction to mandate the filing of such information because such underlying investments are not municipal securities.[79] Two commenters also stated that this information is beyond what is required by the Disclosure Principles and is inconsistent with the MSRB's previous response to comments stating that it had eliminated from its initial proposal the collection of information regarding the underlying portfolio investments.[80] Moreover, one commenter recommended that if the MSRB determines in the future that there would be regulatory value in having this information, the MSRB should revise Form G–45 at that time.'' [81]

Another commenter believed that the MSRB's request for information on ''the name of each underlying investment in each investment option . . .'' is inaccurate because 529 plan account owner funds invest solely in the 529 plan and nothing else.[82] This commenter noted that the plan trust is the sole legal and beneficial owner of the underlying investments.[83] This commenter therefore believed that it is inappropriate to request information about underlying investments because they are not part of what investors purchase and are not municipal securities.'' [84]

iv. Marketing Channel

One commenter questioned the value of requesting information on the ''marketing channel,'' which the MSRB described to be commonly known as either ''advisor-sold'' or ''direct sold.'' [85] As discussed above, this commenter argued that the requirements of the rule should not apply to ''direct-sold'' plans, since they do not involve a broker-dealer offering the securities.[86] As such, the commenter asserted that only broker-dealers would be providing the required information about ''advisor-sold'' plans, unless non-broker-dealers also made voluntary filings.[87] Such voluntary filings, the commenter urged, would only cause investor confusion.[88]

v. Program Managers

One commenter suggested that all information requests related to program managers should be deleted from Form G–45 because the MSRB lacks jurisdiction ''to seek information about an entity hired by 529 [p]lan trustees to provide services to the plan when neither the issuer nor the entity are regulated by the MSRB.'' [89] The commenter further questioned the relevance of such information to the MSRB's role as a securities regulator of

[67] *See* Sutherland Letter.

[68] *See* ICI Letter, Sutherland Letter, SIFMA Letter.

[69] *See* ICI Letter.

[70] *See* ICI Letter.

[71] *See* Sutherland Letter.

[72] *See* Sutherland Letter.

[73] *See* ICI Letter.

[74] *See* ICI Letter.

[75] *See* ICI Letter.

[76] *See* ICI Letter.

[77] *See* ICI Letter, SIFMA Letter, and Sutherland Letter.

[78] *See* ICI Letter, SIFMA Letter.

[79] *See* Sutherland Letter.

[80] *See* ICI Letter, SIFMA Letter.

[81] *See* ICI Letter.

[82] *See* Sutherland Letter.

[83] *See* Sutherland Letter.

[84] *See* Sutherland Letter.

[85] *See* Sutherland Letter.

[86] *See* Sutherland Letter; *see also supra* notes 28–30 and accompanying text.

[87] *See* Sutherland Letter.

[88] *See* Sutherland Letter.

[89] *See* Sutherland Letter.

broker-dealers distributing municipal securities.[90]

vi. Fees and Expenses

One commenter objected to the MSRB's request for information on Form G–45 related to plan fees and expenses, including State fees, audit fees, asset-based fees, annual account maintenance fees, and bank administration fees.[91] The commenter suggested that because the MSRB does not have jurisdiction over the regulation of 529 plans, it should not require primary distributors to submit data concerning securities product fees that are unrelated to the primary distributor.[92]

G. Cost/Benefit of Data Collected

Three commenters addressed the costs of the proposed rule change versus the benefits of collecting the required information.[93] One commenter stated that, while the MSRB concluded in the Notice that the benefits of its proposal will outweigh the costs, the MSRB failed to quantify either the benefits or the costs.[94] Two commenters suggested that the Commission consider adding a waiver and/or sunset provision designed to mitigate the cost burden of an underwriter's disclosure duty.[95] These two commenters stated that the addition of ''a waiver application process will allow the affected underwriter to request relief from providing data that is not reasonably practicable to obtain.'' [96] Similarly, these commenters believed a sunset provision could also ''ease the administrative burden to underwriters required to submit information on Form G–45.'' [97] In addition, these commenters suggested that the MSRB reexamine its need to collect each data point after a specified period of time and revise Rule G–45 accordingly in the event the MSRB determines that certain data points are no longer relevant.[98]

IV. Proceedings To Determine Whether To Disapprove SR–MSRB–2013–04 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [99] to determine whether the proposed rule change should be disapproved. Institution of such proceedings appears appropriate at this time in view of the legal and policy issues raised by the proposal, as discussed below. Institution of disapproval proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described in greater detail below, the Commission seeks and encourages interested persons to comment on the proposed rule change to inform the Commission's analysis whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[100] the Commission is providing notice of the grounds for disapproval under consideration. In particular, Section 15B(b)(2)(C) of the Act requires, among other things, that the rules of the MSRB shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.[101]

As discussed above, the MSRB's proposal would require underwriters of 529 plans to report certain information to the MSRB regarding the plans. The MSRB believes that its proposal would better position the MSRB to protect investors and the public interest because the information collected under the proposed rule would allow the MSRB to assess the impact of each 529 plan on the market, evaluate trends and differences among plans, and gain an understanding of the aggregate risk taken by investors by the allocation of assets in each investment option. In the MSRB's view, the information about activity in 529 plans is necessary to assist the MSRB in evaluating whether its current regulatory scheme for 529 plans is sufficient or whether additional rulemaking is necessary to protect investors and the public interest.

Four of the commenters expressed general support for the MSRB's desire to collect more comprehensive information relating to 529 plans. However, as discussed in detail above, all of the commenters raised concerns about various aspects of the proposal. Most notably, several commenters questioned the MSRB's description of the meaning of the term ''underwriter'' and suggested that the MSRB should clarify the scope of the definition as used in proposed Rule G–45. In their view, the MSRB's description of the definition of ''underwriter'' is overbroad and encompasses many other entities involved in the operation and maintenance of a 529 plan that would not, in fact, meet the Commission definition of underwriter and thus should not be deemed to be underwriters for purposes of Rule G–45.

Commenters also questioned the scope of the underwriter's reporting obligations under the proposed rule. In particular, commenters asserted that underwriters would be, in many cases, unable to obtain the required information and requested clarification as to whether underwriters would be relieved from the obligation to provide information not in the underwriter's possession or control or if the underwriter is unable to obtain the information due to contractual provisions. Further, commenters sought confirmation that, to the extent that underwriters could obtain the information from third parties, they would not be held liable for the accuracy and completeness of the requested information.

The Commission believes that these comments raise questions as to whether the MSRB's proposal is consistent with the requirements Section 15B(b)(2)(C) of the Act, including whether it would remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, protect investors, municipal entities, obligated persons, and the public interest. In particular, the comments raise concerns that the proposed rule change is unclear as to whom the obligations of the rule apply and is being interpreted in a manner that is potentially inconsistent with statutory and Commission rule definitions of ''underwriters'' and ''broker dealers.'' This uncertainty could result in noncompliance or needless compliance by entities and/or unnecessary duplicative reporting. Further, respondents may not be able to ascertain the scope of their obligations to provide the requested information under the proposed rule, including the extent to which they are responsible for providing, and verifying the accuracy of, information not in their possession. In light of the confusion related to whom the proposed rule applies, questions are raised as to whether the disclosure obligations are sufficiently balanced to support the MSRB's statutory obligation

[90] *See* Sutherland Letter.

[91] *See* Sutherland Letter.

[92] *See* Sutherland Letter.

[93] *See* CSPN Letter, CSF Letter, Sutherland Letter.

[94] *See* Sutherland Letter.

[95] *See* CSPN Letter, CSF Letter.

[96] *See* CSPN Letter, CSF Letter.

[97] *See* CSPN Letter, CSF Letter.

[98] *See* CSPN Letter, CSF Letter. The CSPN Letter and CSF Letter suggested three years.

[99] 15 U.S.C. 78s(b)(2)(B).

[100] *Id.*

[101] 15 U.S.C. 78*o*–4(b)(2)(C).

to protect both investors and municipal entities without being overly burdensome.

As summarized above, commenters also pointed out various aspects of Form G–45 that they believe needs further clarification. Accordingly, the Commission believes that, without further clarification, the proposal may result in incomplete or incorrectly reported data. As such, the MSRB would not able to fulfill its stated regulatory goals of obtaining accurate, reliable, and complete data in order to further assess and carry out its rulemaking responsibilities in this area.

For the foregoing reasons, the Commission believes the issues raised by the proposed rule change can benefit from additional consideration and evaluation in light of the requirements of Section 15B(c)(2)(C) of the Act.

V. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the concerns identified above, as well as any others they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is inconsistent with Section 15B(b)(2)(C) or any other provision of the Act, or the rules and regulation thereunder. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.[102]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be disapproved by November 18, 2013. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by December 2, 2013.

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–MSRB–2013–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MSRB–2013–04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2013–04 and should be submitted on or before November 18, 2013. Rebuttal comments should be submitted by December 2, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[103]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–24020 Filed 10–1–13; 8:45 am]

BILLING CODE 8011–01–P

[102] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[103] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70510; File No. SR–ISE–2013–49]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend ISE Rule 2128 Relating to Clearly Erroneous Trades

September 26, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 23, 2013, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to extend a pilot program related to Rule 2128, entitled ''Clearly Erroneous Executions.'' The Exchange also proposes to remove certain references to individual stock trading pauses contained in Rule 2128(c)(4). The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.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 self-regulatory organization 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.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to extend the effectiveness of the Exchange's current rule applicable to Clearly Erroneous Executions and to remove references to individual stock trading pauses described in Rule 2128(c)(4).

Portions of Rule 2128, explained in further detail below, are currently operating as a pilot program set to expire on September 30, 2013.[3] The Exchange proposes to extend the pilot program to April 8, 2014.

On September 10, 2010, the Commission approved, on a pilot basis, changes to ISE Rule 2128 to provide for uniform treatment: (1) Of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary listing market and subsequent transactions that occur before the trading pause is in effect on the Exchange.[4] The Exchange also adopted additional changes to Rule 2128 that reduced the ability of the Exchange to deviate from the objective standards set forth in Rule 2128,[5] and in 2013, adopted a provision designed to address the operation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or the ''Plan'').[6] The Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should continue on a pilot basis through April 8, 2014, which is one year following the commencement of operations of the Plan. The Exchange believes that continuing the pilot during this time will protect against any unanticipated consequences. Thus, the Exchange believes that the protections of the Clearly Erroneous Rule should continue while the industry gains further experience operating the Limit Up-Limit Down Plan.

The Exchange also proposes to eliminate all references in Rule 2128 to individual stock trading pauses issued by a primary listing market. Specifically, Rule 2128(c)(4) provides specific rules to follow with respect to review of an execution as potentially clearly erroneous when there was an individual stock trading pause issued for that security and the security is included in the S&P 500® Index, the Russell 1000® Index, or a pilot list of Exchange Traded Products (''Original Circuit Breaker Securities''). The stock trading pauses described in Rule 2128(c)(4) are being phased out as securities become subject to the Plan pursuant to a phased implementation schedule. The Plan is already operational with respect to all Original Circuit Breaker Securities, and thus, the Exchange believes that all references to individual stock trading pauses should be removed, including all cross-references to Rule 2128(c)(4) contained in other portions of Rule 2128.[7]

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[8] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[9] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system. The Exchange believes that the pilot program promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. More specifically, the Exchange believes that the extension of the pilot would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Although the Limit Up-Limit Down Plan will become fully operational during the same time period as the proposed extended pilot, the Exchange believes that maintaining the pilot will help to protect against unanticipated consequences. To that end, the extension will allow the Exchange to determine whether Rule 2128 is necessary once the Plan is fully operational and, if so, whether improvements can be made. Finally, the elimination of references to individual stock trading pauses will help to avoid confusion amongst market participants, which is consistent with the protection of investors and the public interest and therefore consistent with the Act. As described above, individual stock trading pauses have been replaced by the Limit Up-Limit Down Plan with respect to all Original Circuit Breaker Securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change implicates any competitive issues. To the contrary, the Exchange believes that the Financial Industry Regulatory Authority (''FINRA'') and other national securities exchanges are also filing similar proposals, and thus, that the proposal will help to ensure consistency across market centers.

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 the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the

[3] *See* Securities Exchange Act Release No. 68822 (Feb. 4, 2013), 78 FR 9440 (Feb. 8, 2013) (SR–ISE–2013–12).

[4] Securities Exchange Act Release No. 62886 (Sept. 10, 2010), 75 FR 56613 (Sept. 16, 2010) (SR–ISE–2010–62).

[5] *Id.*

[6] *See* Securities Exchange Act Release No. 68822 (Feb. 4, 2013), 78 FR 9440 (Feb. 8, 2013) (SR–ISE–2013–12); Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release''); *see also* ISE Rule 2128(i).

[7] The Exchange notes that certain Exchange Traded Products (''ETPs'') are not yet subject to the Limit Up-Limit Down Plan. Because such ETPs are not on the pilot list of securities, such ETPs are not subject to Rule 2128(c)(4). *See* Securities Exchange Act Release No. 65108 (August 11, 2011), 76 FR 51082 (August 17, 2011) (SR–ISE–2011–53) (notice of filing and immediate effectiveness to define Original Circuit Breaker Securities and to limit application of Rule 2128(c)(4) to such securities). Accordingly, the proposed rule change does not change the status quo with respect to such ETPs. As amended, all securities, including ETPs not subject to the Limit Up-Limit Down Plan, will continue to be subject to Rule 2128(c)(1) through (3).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6)(iii) thereunder.[11]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–ISE–2013–49 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2013–49. 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2013–49, and should be submitted on or before October 23, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–24001 Filed 10–1–13; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6)(iii). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

[12] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of China Ruitai International Holdings Co., Ltd.; Order of Suspension of Trading

September 30, 2013.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of China Ruitai International Holdings Co., Ltd. (''China Ruitai'') because of questions regarding the accuracy of assertions by China Ruitai, concerning the characterization of certain liabilities in its periodic reports, and because it has not filed any periodic reports since the period ended September 30, 2011.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT, on September 30, 2013 through 11:59 p.m. EDT, on October 11, 2013.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2013–24202 Filed 9–30–13; 4:15 pm]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 8489]

30-Day Notice of Proposed Information Collection: Application To Determine Returning Status

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments directly to the Office of Management and Budget (OMB) up to November 1, 2013.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Sydney Taylor, who may be reached at *PRA_BurdenComments@state.gov.*

SUPPLEMENTARY INFORMATION:

• *Title of Information Collection:* Application to Determine Returning Resident Status.

• *OMB Control Number:* 1405–0091.

• *Type of Request:* Extension of a Currently Approved Collection.

• *Originating Office:* CA/VO/L/R.

• *Form Number:* DS–0117.

• *Respondents:* Aliens applying for special immigrant classification as a returning resident.

• *Estimated Number of Respondents:* 1,005 applicants per year.

• *Estimated Number of Responses:* 1,005 applicants per year.

• *Average Time per Response:* 30 minutes.

• *Total Estimated Burden Time:* 502.5 hours.

• *Frequency:* Once per respondent.

• *Obligation to Respond:* Required to Obtain or Retain 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:

Under INA Section 101(a)(27)(A)[8 U.S.C. 1101], Form DS–0117 is used by consular officers to determine the eligibility of an alien applicant for special immigrant status as a returning resident.

Methodology:

The DS–0117 is available online. Applicants will fill out the application online, print the form, and submit the DS–0117 during their interview at a Consular Post.

Dated: September 25, 2013.

Edward Ramotowski,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2013–23957 Filed 10–1–13; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 8491]

Culturally Significant Objects Imported for Exhibition Determinations: ''In Grand Style: Celebrations in Korean Art During the Joseon Dynasty''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''In Grand Style: Celebrations in Korean Art during the Joseon Dynasty,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Asian Art Museum, San Francisco, CA, from on or about October 25, 2013, until on or about January 12, 2014, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: September 26, 2013.

Lee Satterfield,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2013–24109 Filed 10–1–13; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 8490]

Culturally Significant Objects Imported for Exhibition Determinations: ''Christopher Wool''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Christopher Wool,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Solomon R. Guggenheim Museum, New York, NY, from on or about October 25, 2013, until on or about January 22, 2014, Art Institute of Chicago, Chicago, IL, from on or about February 23, 2014, until on or about May 11, 2014; and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: September 26, 2013.

Lee Satterfield,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2013–24110 Filed 10–1–13; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 8492]

U.S. National Commission for UNESCO; Notice of Teleconference Meeting

The U.S. National Commission for UNESCO will hold a conference call on Thursday, October 17, 2013, from 11:00 a.m. until 12:00 p.m. Eastern Time. The purpose of the teleconference meeting is to consider the recommendations of the Commission's National Committee for the International Hydrological Programme (IHP). The call will also be an opportunity to provide an update on

recent and upcoming Commission and UNESCO activities. The Commission will accept brief oral comments during a portion of this conference call. The public comment period will be limited to approximately 10 minutes in total, with two minutes allowed per speaker. For more information or to arrange to participate in the conference call, individuals must make arrangements with the Executive Director of the National Commission by October 15.

The National Commission, Washington, DC 20037 may be contacted via email *DCUNESCO@state.gov* or Telephone (202) 663–0026; Fax (202) 663–0035. The Web site can be accessed at: *http://www.state.gov/p/io/unesco/.*

Dated: September 24, 2013.

Allison Wright,

Executive Director, U.S. National Commission for UNESCO, Department of State.

[FR Doc. 2013–24111 Filed 10–1–13; 8:45 am]

BILLING CODE 4710–19–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of rescheduled public meeting.

SUMMARY: This notice announces the rescheduling of a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) Transport Airplane and Engine (TAE) Subcommittee to discuss TAE issues. A number of issues have arisen that may affect the Committee's ability to have an effective meeting on October 2, 2013, including uncertainty regarding Federal Government shutdown and travel.

DATES: The October 2 meeting is re-scheduled to Wednesday, November 13, 2013, starting at 9:00 a.m. Eastern Standard Time. The public must make arrangements by October 30, 2013, to present oral statements at the meeting.

ADDRESSES: The Boeing Company, 1200 Wilson Boulevard, Room 234, Arlington, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: Ralen Gao, Office of Rulemaking, ARM–209, FAA, 800 Independence Avenue SW., Washington, DC 20591, Telephone (202) 267–3168, FAX (202) 267–5075, or email at *ralen.gao@faa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. 2), notice is given of an ARAC meeting to be held November 13, 2013.

The agenda for the meeting is as follows:

- Opening Remarks, Review Agenda and Minutes
- FAA Report
- ARAC Report
- Transport Canada Report
- EASA Report
- Flight Controls Working Group Report
- Airworthiness Assurance Working Group Report
- Engine Harmonization Working Group Report
- Flight Test Harmonization Working Group Report
- Any Other Business
- Action Items Review

Attendance is open to the public, but will be limited to the availability of meeting room space. Please confirm your attendance with the person listed in the **FOR FURTHER INFORMATION CONTACT** section no later than October 30, 2013. Please provide the following information: Full legal name, country of citizenship, and name of your industry association, or applicable affiliation. If you are attending as a public citizen, please indicate so.

The FAA will arrange for teleconference service for individuals wishing to join in by teleconference if we receive notice by October 30, 2013. For persons participating by telephone, please contact the person listed in **FOR FURTHER INFORMATION CONTACT** by email or phone for the teleconference call-in number and passcode. Anyone calling from outside the Arlington, VA, metropolitan area will be responsible for paying long-distance charges.

The public must make arrangements by October 30, 2013, to present oral statements at the meeting. Written statements may be presented to the Subcommittee at any time by providing 25 copies to the person listed in the **FOR FURTHER INFORMATION CONTACT** section or by providing copies at the meeting. Copies of the documents to be presented to the Subcommittee may be made available by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

If you need assistance or require a reasonable accommodation for the meeting or meeting documents, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC, on September 26, 2013.

Lirio Liu,

Designated Federal Officer.

[FR Doc. 2013–23940 Filed 10–1–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2013–47]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14, Code of Federal Regulations (14 CFR). The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before October 22, 2013.

ADDRESSES: You may send comments identified by docket number FAA–2013–0800 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments digitally.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or

signing the comment for an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark Forseth, ANM–113, (425) 227–2796, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356, or Andrea Copeland, ARM–208, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; email *andrea.copeland@faa.gov;* (202) 267–8081.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on September 23, 2013.

Lirio Liu,

Director, Office of Rulemaking.

Petition For Exemption

Docket No.: FAA–2013–0800.
Petitioner: Learjet Inc.
Section of 14 CFR Affected:
§ 25.813(e) at Amendment 25–116
Description of Relief Sought: Exemption from the emergency-exit access requirement to permit the installation of partition doors in the cabin of Learjet Model LJ–200–1A10 airplanes.

[FR Doc. 2013–23975 Filed 10–1–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2013–48]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14, Code of Federal Regulations (CFR) part 25. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before October 22, 2013.

ADDRESSES: You may send comments identified by Docket Number FAA–2012–1169 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for 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).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Andrea Copeland, ARM–200, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; email *andrea.copeland @faa.gov;* (202) 267–8081.

Issued in Washington, DC, on September 27, 2013.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2012–1169.
Petitioner: Air Transport International, Inc.
Section of 14 CFR Affected:
§ 121.313(j)(1)(ii).
Description of Relief Sought. Air Transport International, Inc., requests relief from section 121.313(j)(1)(ii) to use a flightcrew member other than a flight attendant to access the pilot compartment during operation of its Boeing 757–200 airplanes configured for combined cargo and passenger carriage where the pilot compartment and the passenger compartment are not contiguous, but physically separated by a Class C cargo compartment.

[FR Doc. 2013–23994 Filed 10–1–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2013–0051]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request approval from the Office of Management and Budget (OMB) for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by December 2, 2013.

ADDRESSES: You may submit comments identified by DOT Docket ID 2013–0051 by any of the following methods:

Web site: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. David Bartz, (512) 536–5906, Office of Program Administration, Federal Highway Administration, Department of Transportation, 300 East 8th Street, Suite 826, Austin, Texas, 78701. Office hours are from 7:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Preparation and Execution of the Project Agreement and Modifications.

OMB Control Number: 2125–0529.

Background: Formal agreements between State Transportation Departments and the FHWA are required for Federal-aid highway projects. These agreements, referred to as ''project agreements'' are written contracts between the State and the Federal government that define the extent of work to be undertaken and commitments made concerning a highway project. Section 1305 of the Transportation Equity Act for the 21st Century (TEA–21, Pub. L. 105–178) amended 23 U.S.C. 106(a) and combined authorization of work and execution of the project agreement for a Federal-aid project into a single action. States continue to have the flexibility to use whatever format is suitable to provide the statutory information required, and burden estimates for this information collection are not changed.

Respondents: There are 56 respondents, including 50 State Transportation Departments, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Territories of Guam, the Virgin Islands and American Samoa.

Frequency: On an on-going basis as project agreements are written.

Estimated Average Annual Burden per Response: There is an average of 400 annual agreements per respondent. Each agreement requires 1 hour to complete.

Estimated Total Annual Burden Hours: 22,400 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: September 26, 2013.

Michael Howell,

Information Collection Officer.

[FR Doc. 2013–24108 Filed 10–1–13; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Research & Innovative Technology Administration

[Docket ID Number: RITA 2008–0002]

Agency Information Collection: Activity Under OMB Review: Report of Passengers Denied Confirmed Space—BTS Form 251

AGENCY: Research & Innovative Technology Administration (RITA), Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for re-instatement of an expired collection. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on July 19, 2013 (FR Vol 78, No 139–43272). There were no comments.

DATES: Written comments should be submitted by November 1, 2013.

FOR FURTHER INFORMATION CONTACT: Cecelia Robinson, Office of Airline Information, RTS–42, Room E34–410, RITA, BTS, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, Telephone Number (202) 366–4405, Fax Number (202) 366–3383 or EMAIL *cecelia.robinson@dot.gov.*

Comments: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: RITA/BTS Desk Officer.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 2138–0018.

Title: Report of Passengers Denied Confirmed Space.

Form No.: BTS Form 251.

Type of Review: Re-instatement of an expired collection.

Respondents: Large certificated air carriers.

Number of Respondents: 16.

Number of Responses: 64.

Total Annual Burden: 640 hours.

Needs and Uses: BTS Form 251 is a one-page report on the number of passengers denied seats either voluntarily or involuntarily, whether these bumped passengers were provided alternate transportation and/or compensation, and the amount of the payment. U.S. air carriers that account for at least 1 percent of domestic scheduled passenger service must report all operations with 30 seat or larger aircraft that depart a U.S. airport.

Carriers do not report data from inbound international flights because the protections of 14 CFR Part 250 *Oversales* do not apply to these flights. The report allows the Department to monitor the effectiveness of its oversales rule and take enforcement action when necessary. The involuntarily denied-boarding rate has decreased from 4.38 per 10,000 passengers in 1980 to 0.71 for the quarter ended December 2011. The publishing of the carriers' individual denied boarding rates has negated the need for more intrusive regulation. The rate of denied boarding can be examined as a continuing fitness factor. This rate provides an insight into a carrier's customer service practices. A rapid sustained increase in the rate of denied boarding may indicate operational difficulties. Because the rate of denied boarding is released quarterly, travelers and travel agents can select carriers with lower incidences of bumping passengers. This information is available in the *Air Travel Consumer Report* at: *http://airconsumer.ost.dot.gov/reports/index.htm.* The *Air Travel Consumer Report* is also sent to newspapers, magazines, and trade journals. Without Form 251, determining the effectiveness of the Department's oversales rule would be impossible.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the

information to agencies outside BTS for review, analysis, and possible use in regulatory and other administrative matters.

Issued in Washington, DC, on September 26, 2013.

William Chadwick, Jr.,

Director, Office of Airline Information, Bureau of Transportation Statistics.

[FR Doc. 2013–24122 Filed 10–1–13; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection: Information Collection Surrounding the Sale and Issue of Marketable Book-Entry Securities

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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). Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the Sale and Issue of Marketable Book-Entry Securities.

DATES: Written comments should be received on or before December 1, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Fiscal Service, Bruce A. Sharp, 200 Third Street A4–A, Parkersburg, WV 26106–1328, or *bruce.sharp@bpd.treas.gov.* The opportunity to make comments online is also available at *www.pracomment.gov*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies should be directed to Bruce A. Sharp, Bureau of the Fiscal Service, 200 Third Street A4–A, Parkersburg, WV 26106–1328, (304) 480–8150.

SUPPLEMENTARY INFORMATION:

Title: Sale and Issue of Marketable Book-Entry Securities.

OMB Number: 1535–0112.

Abstract: The information is requested to ensure compliance with regulations during the auction, sale, and issuance of marketable Treasury securities held in the commercial book-entry system.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals, business or other for profit, or not-for-profit institutions.

Estimated Total Annual Burden Hours: 1.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (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 estimate 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 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.

Dated: September 27, 2013.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2013–24059 Filed 10–1–13; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

[Docket ID TREAS–DO–2013–0006]

Strategies To Accelerate the Testing and Adoption of Pay for Success (PFS) Financing Models

AGENCY: Office of Domestic Finance, Department of the Treasury.

ACTION: Request for Information.

SUMMARY: The President's FY 2014 budget included a request for a $300 million one-time mandatory appropriation for a new Incentive Fund to help state and local governments implement PFS programs. In order to inform the Administration's development of this legislative initiative, this request for information (RFI) seeks information on options for financing models and the most promising programmatic areas [1] that could be served by the Incentive Fund. The input we receive will inform the Treasury Department and an interagency working group on PFS [2] about the best use of the authority requested in the President's FY 2014 Budget for the Incentive Fund [3] and on other state, local, and tribal performance-based funding mechanisms. In addition, responses may be used to identify opportunities for flexibility within existing authorities to support PFS and similar outcomes-based efforts.

DATES: Responses must be received by December 2, 2013.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via U.S. mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email. To ensure that we do not receive duplicate copies, please submit your comments only one time. In addition, please include the Docket ID and the term ''PFS Incentive Fund RFI'' at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under a tab titled ''Are you new to the site?''
- *U.S. Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments, address them to Cara Camacho, Attention: Pay for Success Incentive Fund RFI, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Room 1325, Washington, DC 20220.
- *Privacy Note:* The Department's policy for comments received from members of the public (including comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available on the Internet.

FOR FURTHER INFORMATION CONTACT: Cara Camacho by email: *cara.camacho@treasury.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

[1] THE BUDGET FOR FISCAL YEAR 2014—See page 978 of the President's FY 2014 Budget Appendix (see *http://www.whitehouse.gov/omb/budget/Appendix*).

[2] See *www.payforsuccess.org* for general information on PFS and social impact bonds.

[3] THE BUDGET FOR FISCAL YEAR 2014—See page 978 of the President's FY 2014 Budget Appendix (see *http://www.whitehouse.gov/omb/budget/Appendix*).

Purpose

This request for information offers states, tribal governments, localities, community based and other non-profit organizations, private sector donors, researchers, and other interested individuals and entities the opportunity to provide information on effective approaches for improving outcomes for social services and other program areas by employing financing mechanisms that pay for results.

Background

What is pay for success?

PFS is an innovative financing model that offers new ways for the government to partner with philanthropic and other lenders to provide capital to test promising practices and scale programs that work, significantly enhancing the return on taxpayer investments. PFS maximizes taxpayer dollars by paying for demonstrated results, and allows effective and evidence-based solutions to be identified and implemented.

Administration Activities to Date (FY 2011–2013)

The President's 2012 and 2013 Budget Proposals sought authority from Congressional appropriators to use limited funding across select program areas in agencies including the Department of Education, the Department of Labor, the Department of Justice, the Social Security Administration and the Corporation for National and Community Service, and to extend the availability of funds for PFS beyond a single fiscal year, to enable longer term projects to achieve the desired outcomes.

Under existing statutory authority, the Administration implemented several PFS initiatives in 2012: The Department of Justice announced three awards in September 2012 under the Second Chance Act,[4] and the Department of Labor announced the availability of up to $20 million within the Workforce Innovation Fund for PFS [5] projects.

Strengthening the Commitment in FY 2014

The Administration is reinforcing its commitment to advancing the use of PFS in the federal government by proposing $495 million in mandatory and discretionary programs in the President's FY 2014 Budget. This includes $195 million in discretionary programming across three agencies (Education, Justice, and Labor).

The Pay for Success Incentive Fund

In addition, the President proposes to establish a $300 million Incentive Fund, as a one-time mandatory appropriation, to strengthen the achievement of program outcomes by accelerating adoption of PFS to improve program outcomes.

What is the purpose of the new PFS Incentive Fund?

Over the past three years, multiple states and local communities have embraced PFS because it offers the potential to bring significant new capital to scale programs that work. It does this by harnessing the savings that are generated by providing services that mitigate the need for more costly remedial interventions in the future. Successful outcomes may generate savings at multiple levels of government including local, state and federal. However, in many cases, state and local jurisdictions investigating potential Pay for Success projects find that the savings they capture are not sufficient to justify the investment and have difficulty accessing savings that occur at the state or federal level.

The first purpose of the Incentive Fund is to help states and local communities to partner with the federal government to realize savings when PFS projects achieve the agreed-upon outcomes. These early projects will provide substantive evidence of these savings and inform future policy decisions to enable sustainable investment.

Lenders and investors are becoming interested in financing PFS programs, but this market is still new. If this market develops, private financing may expand the potential for PFS and the positive outcomes it generates.

The second purpose of the Incentive Fund is to better allocate program performance and other risk to catalyze testing of PFS models where there is a federal financial interest.

The Fund would be managed by the Department of the Treasury in consultation with a Federal Interagency Council on PFS. To support the cross-cutting nature of PFS, the Incentive Fund would help state, local, and tribal governments advance projects that achieve savings across programs and across levels of government and provide limited credit enhancement to build investor confidence in this emerging model. In some cases, promising PFS projects are likely to result in savings in other governmental programs or activities. Projects may also have savings and cost implications that cut across levels of government, e.g., for a program with both federal and state funds the fund might support projects that yield savings at the federal level as well as the state and local level.

A Federal Interagency Council on PFS would advise Treasury on specific programmatic and policy matters related to the use of the fund. The Council also would:

1. *Coordinate Federal Pay for Success efforts by:*

- Aligning evidence standards used to determine and measure PFS outcomes across federal agencies and programs;
- Sharing best practices for effectively coordinating PFS programs at the federal, state, and local levels.

2. *Understand and respond to needs in the field by:*

- Soliciting ideas from a broad array of stakeholders on strategies for accelerating PFS adoption and learning, including facilitation of comprehensive, multi-systems approaches and leveraging existing resources;
- Disseminating tools for defining, measuring, and evaluating outcomes in PFS projects, especially where cost and savings implications cut across multiple funding streams.

3. *Foster partnerships across stakeholders by:*

- Assessing the potential for the development of public-private partnerships to support promising pilot projects;
- Working with states and localities to align authorities necessary to support implementation of PFS projects and achieve better outcomes.

Request for Information

Through this RFI, Treasury and the interagency working group on PFS are soliciting ideas and information from a broad array of stakeholders on the Incentive Fund. We are also seeking input on how the Incentive Fund could be linked to existing federal, state and local resources in more coordinated and comprehensive ways to leverage private and philanthropic investment. Responses to this RFI will inform work on the design, logistics, and implementation of the Incentive Fund.

This RFI is for information and planning purposes only and should not be construed as a solicitation or as an obligation on the part of the Treasury or other participating federal agencies.

In general, we are interested in receiving information on current challenges in implementing PFS, and essential elements for development of a robust PFS market. Additionally, we are seeking information on the potential impact of the Incentive Fund on market

[4] See *http://www.justice.gov/opa/pr/2012/October/12-ag-1185.html.*

[5] See *http://www.dol.gov/opa/media/press/eta/ETA20121237.htm.*

development and the potential advantages to taxpayers.

We also ask respondents to address the following questions where possible, in the context of the discussion in this document. You do not need to address every question and should focus on those where you have relevant expertise. You may also address the questions in the context of a detailed pilot proposal outlining how a state, local, or tribal government could use the Incentive Fund to implement PFS projects that achieve better outcomes across a variety of programs and levels of government.

To the extent possible, please clearly indicate which question(s) you address in your response.

Key Questions:

1. Instead of focusing on particular programs, the budget language proposing the Fund is broad in scope. What agencies and/or program areas are best suited for the Fund and why? What level of evidence exists in these areas about interventions that work? What is the threshold of evidence that a program should have in order to merit consideration for a PFS approach? What other factors should be considered in setting resource priorities for the Fund?

2. The budget proposal encourages maximizing the leverage of Federal funds by engaging intermediaries, including state, local and tribal governments. What other kinds of groups should be considered as intermediaries? Are there other organizational constructs that should be considered? The ability to demonstrate whether a PFS intervention produces the desired results is the backbone of the model. How can the Federal government encourage the adoption of low-cost yet rigorous outcome measures? What are some of the barriers to using administrative data in a PFS scenario, and how might they be addressed?

3. Outcome payments and financing support (e.g., credit enhancement, loans or advances) are two forms of assistance meant to complement one another in stimulating PFS approaches. What criteria should be used to decide how to split the Fund between these two forms of assistance? Should a certain proportion of the fund go toward outcome payments versus financing support, such as 50/50, 30/70, etc.?

4. Is there an optimal structure for both the timing and tiering of outcome payments? For example, should the projects allow for some degree of ''progress payments'' based upon achievement of early outcomes? Should the projects allow for ''bonus payments'' for extraordinary performance? What are the trade-offs of adapting different structures to different projects versus supporting a standardized approach?

5. Among the possible forms of financing support, would credit enhancements, loans or advances be most helpful? What role would financing support play in the overall structure of a PFS structure?

6. Please suggest one or more examples of promising PFS projects or programs. For each example, what are its characteristics or features that make it a good candidate for PFS? Who would be the key partners and what would be their roles? How would the activity be funded? How would risks be shared and interests aligned among the partners? What might be appropriate outcomes and metrics? Over what timeframe would outcomes be determined?

7. What process would be most helpful to states, local governments and tribes to apply for either outcome payments or financing supports? What do states and localities need in order to be ready to participate in a competitive process and resulting projects?

8. The ability to ensure that outcome payments are available for successful projects, either directly or via credit enhancement has been a significant risk that the Fund would help to address. Are there other functions that the Fund should serve in order to accelerate adoption and testing of the PFS model?

9. Please address any other factors you believe important for consideration in development of the Fund. You may also provide examples to illustrate how the Fund could be used to accelerate or enhance implementation of PFS.

Guidance for Submitting Documents

We ask that each respondent include the name and address of his or her institution or affiliation, and the name, title, mailing and email addresses, and telephone number of a contact person for his or her institution or affiliation, if any.

Dated:

Donet Graves,

Deputy Assistant Secretary for Small Business, Community Development and Housing Policy.

[FR Doc. 2013–24078 Filed 10–1–13; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations, Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is publishing the names of five individuals and six entities whose property and interests in property have been blocked pursuant to the Foreign Narcotics Kingpin Designation Act (''Kingpin Act'') (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The designation by the Director of OFAC of the five individuals and six entities identified in this notice pursuant to section 805(b) of the Kingpin Act is effective on September 24, 2013.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Office of Foreign Assets Control, U.S. Department of the Treasury, Washington, DC 20220, Tel: (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site at *http://www.treasury.gov/ofac* or via facsimile through a 24-hour fax-on-demand service at (202) 622–0077.

Background

The Kingpin Act became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis. It provides a statutory framework for the imposition of sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury, in consultation with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security may designate and block the property and interests in property, subject to U.S. jurisdiction, of persons who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or

services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On September 24, 2013, the Director of OFAC designated the following five individuals and six entities whose property and interests in property are blocked pursuant to section 805(b) of the Kingpin Act.

Individuals

1. DURAN NUNEZ, Juan Carlos, Calle Johanes Brahams #355, Interior 10, Fraccionamiento La Estancia, Zapopan, Jalisco, Mexico; DOB 29 Jun 1967; POB Guadalajara, Jalisco; R.F.C. DUNJ670629IL4 (Mexico); C.U.R.P. DUNJ670629HJCRXN08 (Mexico) (individual) [SDNTK] (Linked To: GRUPO COMERCIAL ROOL, S.A. DE C.V.; Linked To: RANCHO EL NUEVO PACHON, S. DE R.L. DE C.V.; Linked To: ASESORIA Y SERVICIOS ADMINISTRATIVOS, TECNICOS Y OPERATIVOS DUREL, S.A. DE C.V.).
2. ELIZONDO CASTANEDA, Andres Martin, Guadalajara, Jalisco, Mexico; DOB 14 Nov 1961; C.U.R.P. EICA611114HJCLSN03 (Mexico) (individual) [SDNTK] (Linked To: CASA EL VIEJO LUIS DISTRIBUIDORA, S.A. DE C.V.; Linked To: GRUPO COMERCIAL ROOL, S.A. DE C.V.; Linked To: RANCHO EL NUEVO PACHON, S. DE R.L. DE C.V.; Linked To: OPERADORA Y ADMINISTRADORA DE RESTAURANTES Y BARES RUDU, S.A. DE C.V.; Linked To: ROOL EUROPE AG; Linked To: ASESORIA Y SERVICIOS ADMINISTRATIVOS, TECNICOS Y OPERATIVOS DUREL, S.A. DE C.V.).
3. OLIVERA JIMENEZ, Juana, Calle Velazquez #167, Colonia Real Vallarta, Zapopan, Jalisco, Mexico; DOB 05 Apr 1941; POB Pihuamo, Jalisco; C.U.R.P. OIJJ410405MJCLMN04 (Mexico) (individual) [SDNTK] (Linked To: GRUPO COMERCIAL ROOL, S.A. DE C.V.).
4. REYES MAGANA, Felipe, Calle Juan Jose Arreola #535, Col. Lomas Vista Hermosa, Colima, Colima, Mexico; DOB 11 Oct 1967; POB Tonila, Jalsico; C.U.R.P. REMF671011HJCYGL02 (Mexico); RFC REMF671011QH1 (Mexico) (individual) [SDNTK] (Linked To: OPERADORA Y ADMINISTRADORA DE RESTAURANTES Y BARES RUDU, S.A. DE C.V.; Linked To: CASA EL VIEJO LUIS DISTRIBUIDORA, S.A. DE C.V.).
5. RODRIGUEZ OLIVERA, Rosalina; DOB 03 Sep 1969; POB Tecalitlan, Jalisco; C.U.R.P. ROOR690903MJCDLS07 (Mexico) (individual) [SDNTK] (Linked To: GRUPO COMERCIAL ROOL, S.A. DE C.V.).

Entities

1. ASESORIA Y SERVICIOS ADMINISTRATIVOS, TECNICOS Y OPERATIVOS DUREL, S.A. DE C.V., Av. Mexico No. 2798, Int 3B, Col. Terranova, Guadalajara, Jalisco C.P. 44689, Mexico; Folio Mercantil No. 3048*1 (Mexico) [SDNTK].
2. CASA EL VIEJO LUIS DISTRIBUIDORA, S.A. DE C.V. (a.k.a. CASA EL VIEJO LUIS; a.k.a. CASA VIEJO LUIS; a.k.a. EL VIEJO LUIS; a.k.a. TEQUILA EL VIEJO LUIS), El Paraiso No. 6848, Col. Ciudad Granja, Zapopan, Jalisco 45010, Mexico; Blvd. Luis Donaldo Colosio s/n Bonfil, Cancun, Quintana Roo, Mexico; RFC CVL090120UT2 (Mexico); Folio Mercantil No. 46920 [SDNTK].
3. GRUPO COMERCIAL ROOL, S.A. DE C.V. (a.k.a. EL VIEJO LUIS; a.k.a. TEQUILA VALENTON), Alberta No. 2288 4B, Col. Jardines de Providencia, Guadalajara, Jalisco 44630, Mexico; Acueducto No. 2380, Col. Colinas de San Javier, Guadalajara, Jalisco 44660, Mexico; Lazaro Cardenas No. 3430, Desp. 403 and 404, Piso 4, Zapopan, Jalisco 45040, Mexico; Av. Mexico No. 2798, Col. Terranova, Guadalajara, Jalisco 44689, Mexico; RFC GCR990628KR9 (Mexico); Folio Mercantil No. 38347 [SDNTK].
4. OPERADORA Y ADMINISTRADORA DE RESTAURANTES Y BARES RUDU, S.A. DE C.V., Vallarta No. 2380, Col. Colinas De San Javier, Guadalajara, Jalisco, Mexico; R.F.C. OAR001006113 (Mexico); Folio Mercantil No. 15247 (Mexico) [SDNTK].
5. RANCHO EL NUEVO PACHON, S. DE R.L. DE C.V. (a.k.a. FRESCOS EL PACHON), Km. 14 Camino Viejo a San Isidro Mazatepec, Tala, Jalisco 45340, Mexico; Folio Mercantil No. 6022 (Mexico) [SDNTK].
6. ROOL EUROPE AG, Alsterberg 18 B, 22335, Hamburg 22335, Germany; Dessauer Str. 2–4, Hamburg 20457, Germany; Commercial Registry Number HRB96201 (Germany) [SDNTK].

In addition, OFAC is publishing an addition to the identifying information for the following individual previously designated pursuant to the Kingpin Act.

1. RODRIGUEZ OLIVERA, Luis (a.k.a. MORFAN RODRIGUEZ, Luis Fernando; a.k.a. RODRIGUEZ MORFIN, Luis; a.k.a. RODRIGUEZ OLIVERA, Luis Fernando), Plaza Pabellion, Zapopan, Jalisco, Mexico; Colonia Providencia, Calle Quebec, Apt. 1127, Guadalajara, Jalisco, Mexico; 4179 Colonia Miravalle, Guadalajara, Jalisco, Mexico; Sendero Las Acacias 92, Guadalajara, Jaslico, Mexico; Vereda Del Canario 1, Guadalajara, Jalisco, Mexico; Puerto de Hierro, Zapopan, Jalisco, Mexico; Fresno, CA; DOB 3 Apr 1972; alt. DOB 1960; alt. DOB 1966; POB Tecalitlan, Jalisco, Mexico; citizen Mexico; nationality Mexico (individual) [SDNTK]

The listing for this individual now appears as follows:

1. RODRIGUEZ OLIVERA, Luis (a.k.a. MORFAN RODRIGUEZ, Luis Fernando; a.k.a. RODRIGUEZ MORFIN, Luis; a.k.a. RODRIGUEZ OLIVERA, Luis Fernando; a.k.a. SANCHEZ JIMENEZ, Jose Luis), Plaza Pabellion, Zapopan, Jalisco, Mexico; Colonia Providencia, Calle Quebec, Apt. 1127, Guadalajara, Jalisco, Mexico; 4179 Colonia Miravalle, Guadalajara, Jalisco, Mexico; Sendero Las Acacias 92, Guadalajara, Jaslico, Mexico; Vereda Del Canario 1, Guadalajara, Jalisco, Mexico; Puerto de Hierro, Zapopan, Jalisco, Mexico; Fresno, CA; DOB 3 Apr 1972; alt. DOB 5 March 1972; alt. DOB 1960; alt. DOB 1966; POB Tecalitlan, Jalisco, Mexico; alt. POB Tototlan, Jalisco, Mexico; citizen Mexico; nationality Mexico (individual) [SDNTK]

Dated: September 24, 2013.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2013–24132 Filed 10–1–13; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0089]

Agency Information Collection (Statement of Dependency of Parent(s)) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 1, 2013.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0089'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@.va.gov.* Please refer to ''OMB Control No. 2900–0089.''

SUPPLEMENTARY INFORMATION:

Title: Statement of Dependency of Parent(s), VA Form 21–509.

OMB Control Number: 2900–0089.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans receiving compensation benefits based on 30 percent or higher for service-connected injuries and depends on his or her parent(s) for support complete VA Form 21–509 to report income and dependency information. Surviving parents of deceased Veterans are required to establish dependency only if they are seeking death compensation. Death compensation is payable when a Veteran died on active duty or due to service-connected disabilities prior to January 1, 1957, or died between May 1, 1957 and January 1, 1972 while the veteran's waiver of U.S. Government Life Insurance was in effect. The data collected will be used to determine the dependent parent(s) eligibility for benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 18, 2013, at pages 36642–36643.

Affected Public: Individuals or households.

Estimated Annual Burden: 4,000 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 8,000.

Dated: September 26, 2013.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2013–24047 Filed 10–1–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Loan Guaranty: Assistance to Eligible Individuals in Acquiring Specially Adapted Housing; Cost-of-Construction Index

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) announces that the aggregate amounts of assistance available under the Specially Adapted Housing (SAH) grant program will increase by 3.995 percent for fiscal year (FY) 2014.

FOR FURTHER INFORMATION CONTACT: John Bell, III Assistant Director for Loan Policy and Valuation, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–8786. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In accordance with 38 U.S.C. 2102(e), 2102A(b)(2), and 38 CFR 36.4412(c), the Secretary of Veterans Affairs announces the aggregate amounts of assistance available to eligible veterans and servicemembers eligible for SAH program grants during FY 2014.

Public Law 110–289, the Housing and Economic Recovery Act of 2008, authorized the Secretary to increase the aggregate amounts of SAH assistance annually based on a residential home cost-of-construction index. The Secretary uses the Turner Building Cost Index for this purpose.

In the most recent quarter for which the Turner Building Cost Index is available, Quarter 2 FY 2013, the index showed an increase of 3.995 percent over the index value in Quarter 2 FY 2012. Pursuant to the authority cited above, therefore, the aggregate amounts of assistance of SAH grants will increase by 3.995 percent during FY 2014.

Public Law 112–154, the Honoring America's Veterans and Caring for Camp Lejeune Families of 2012, requires that the same percentage of increase apply to grants authorized pursuant to 38 U.S.C. 2102A. As such, the maximum amount of assistance of these grants, which are called grants for Temporary Residence Adaptation (TRA grants), will be increased by 3.995 percent during FY 2014.

Specially Adapted Housing: Aggregate Amounts of Assistance Available During Fiscal Year 2014

Section 2101(a) Grants and TRA Grants

The aggregate amount of assistance available for SAH grants made pursuant to 38 U.S.C. 2101(a) will be $67,555 during FY 2014. The maximum TRA grant made to an individual who satisfies the eligibility criteria under section 2101(a) will be $29,657 during FY 2014.

Section 2101(b) Grants and TRA Grants

The aggregate amount of assistance available for SAH grants made pursuant to 38 U.S.C. 2101(b) will be $13,511 during FY 2014. The maximum TRA grant made to an individual who satisfies the eligibility criteria under section 2101(b) will be $5,295 during FY 2014.

Approved: September 25, 2013.

Jose D. Riojas,

Chief of Staff, Department of Veterans Affairs.

[FR Doc. 2013–24134 Filed 10–1–13; 8:45 am]

BILLING CODE 8320–01–P



FEDERAL REGISTER

Vol. 78 Wednesday,
No. 191 October 2, 2013

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Endangered Species Status for the Florida Bonneted Bat; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2012–0078; 4500030113]

RIN 1018–AY15

Endangered and Threatened Wildlife and Plants; Endangered Species Status for the Florida Bonneted Bat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, determine endangered species status under the Endangered Species Act of 1973, as amended, for the Florida bonneted bat (*Eumops floridanus*), a bat species from south Florida. This final rule adds this species to the List of Endangered and Threatened Wildlife and implements the Federal protections provided by the Act for this species.

DATES: This rule is effective November 1, 2013.

ADDRESSES: This final rule is available on the internet at *http://www.regulations.gov* and at the South Florida Ecological Services Field Office. Comments and materials we received, as well as supporting documentation we used in preparing this rule, are available for public inspection at *http://www.regulations.gov* and by appointment, during normal business hours at: U.S. Fish and Wildlife Service, South Florida Ecological Services Field Office, 1339 20th Street, Vero Beach, FL 32960–3559; telephone 772–562–3909; facsimile 772–562–4288.

FOR FURTHER INFORMATION CONTACT: Larry Williams, Field Supervisor, U.S. Fish and Wildlife Service, South Florida Ecological Services Field Office (see **ADDRESSES** section). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

This rule lists the Florida bonneted bat as an endangered species under the Endangered Species Act of 1973 (Act), as amended. We intend to publish a separate rule proposing designation of critical habitat for the Florida bonneted bat in the near future.

Why we need to publish a rule. Under the Act, a species or subspecies may warrant protection through listing if it is endangered or threatened throughout all or a significant portion of its range. Listing a species as endangered or threatened can only be completed by issuing a rule. On October 4, 2012, we published a proposed rule to list the Florida bonneted bat as an endangered species (77 FR 60750). After careful consideration of all public and peer reviewer comments we received, we are publishing this final rule to list the Florida bonneted bat as an endangered species.

The basis for our action. Under the Act, a species may be determined to be 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 have determined that the Florida bonneted bat is an endangered species based on three of these five factors (Factors A, D, and E). Specifically, habitat loss, degradation, and modification from human population growth and associated development and agriculture have impacted the Florida bonneted bat and are expected to further curtail its limited range (Factor A). The effects resulting from climate change, including sea-level rise and coastal squeeze, are expected to become severe in the future and result in additional habitat losses, including the loss of roost sites and foraging habitat (Factor A). The Florida bonneted bat is also facing threats from a wide array of natural and manmade factors (Factor E), including small population size, restricted range, few colonies, slow reproduction, low fecundity, and relative isolation. Existing regulatory mechanisms (Factor D) are inadequate to reduce these threats. Overall, impacts from increasing threats, operating singly or in combination, place the species at risk of extinction.

Peer review and public comment. We sought comments from independent specialists to ensure that our designation is based on scientifically sound data, assumptions, and analyses. We received responses from six peer reviewers. Peer reviewers generally concurred with the basis for listing the Florida bonneted bat and provided additional information, clarifications, and suggestions to improve this final listing determination. We considered all comments and information we received during the public comment period.

Previous Federal Actions

The Florida bonneted bat (*Eumops floridanus*) was previously known as the Florida mastiff bat (*Eumops glaucinus floridanus*).

Federal actions for the Florida bonneted bat prior to October 4, 2012, are outlined in our proposed rule (77 FR 60750), which was published on that date. Publication of the proposed rule (77 FR 60750) opened a 60-day comment period, which closed on December 3, 2012.

Our proposed rule also included a finding that designation of critical habitat was prudent, but that critical habitat was not determinable. Under the Act, the Service has 2 years from the date of the proposed listing to designate critical habitat. Accordingly, we intend to publish a separate rule proposing designation of critical habitat for the Florida bonneted bat in the near future.

Background

The Florida bonneted bat is a member of the Molossidae (free-tailed bats) family within the order Chiroptera. The species is the largest bat in Florida (Owre 1978, p. 43; Belwood 1992, p. 216; Florida Bat Conservancy [FBC] 2005, p. 1). Males and females are not significantly different in size, and there is no pattern of size-related geographic variation in this species (Timm and Genoways 2004, p. 857).

Members of the genus *Eumops* have large, rounded pinnae (ears), arising from a single point or joined medially on the forehead (Best *et al.* 1997, p. 1). The common name of ''bonneted bat'' originates from characteristic large broad ears, which project forward over the eyes (FBC 2005, p. 1). Ears are joined at the midline of the head. This feature, along with its large size, distinguishes the Florida bonneted bat from the smaller Brazilian (=Mexican) free-tailed bat (*Tadarida brasiliensis*).

Wings of the members of the genus *Eumops* are among the narrowest of all molossids (Freeman 1981, as cited in Best *et al.* 1997, p. 3) and are well-adapted for rapid, prolonged flight (Vaughan 1959 as cited in Best *et al.* 1997, p. 3). This wing structure is conducive to high-speed flight in open areas (Findley *et al.* 1972 as cited in Best *et al.* 1997, p. 3).

The Florida bonneted bat's fur is short and glossy, with hairs sharply bicolored with a white base (Belwood 1992, p. 216; Timm and Genoways 2004, p. 857). Like other molossids, color is highly variable, varying from black to brown to brownish-gray or cinnamon brown with ventral pelage (fur) paler than dorsal (Owre 1978, p. 43; Belwood 1992, p. 216; Timm and Genoways 2004, p. 857).

Additional details about the Florida bonneted bat can be found in the proposed listing rule (77 FR 60750).

Taxonomy

The Florida bonneted bat (*Eumops floridanus*) was previously known as Florida mastiff bat, Wagner's mastiff bat, and mastiff bat (*E. glaucinus floridanus*) (Owre 1978, p. 43; Belwood 1992, p. 216; Best *et al.* 1997, p. 1). While earlier literature found the Florida bonneted bat distinct at the subspecies level, the most current scientific information confirms that *E. floridanus* is a full species, and this taxonomic change has been accepted by the scientific community (Timm and Genoways 2004, pp. 852, 856, 861; McDonough *et al.* 2008, pp. 1306–1315; R. Timm, pers. comm. 2008, 2009; *in litt.* 2012; Baker *et al.* 2009, pp. 9–10). The International Union for Conservation of Nature and Natural Resources (Timm and Arroyo-Cabrales 2008, p. 1) and the Florida Natural Areas Inventory (FNAI) (FNAI 2013, p. 25) use the name *E. floridanus.* The Florida Fish and Wildlife Conservation Commission (FWC) (FWC 2011a, pp. 1–11; 2013, pp. 1–43) also recognizes the species as *E. floridanus,* but their current endangered and threatened list uses both names, Florida bonneted (mastiff) bat, *Eumops (=glaucinus) floridanus* (see also *Factor D* below).

Additional details about the Florida bonneted bat's taxonomy are provided in the proposed listing rule (77 FR 60750).

Life History

Relatively little is known about the Florida bonneted bat's life history. Lifespan is not known. Based upon the work of Wilkinson and South (2002, pp. 124–131), Gore *et al.* (2010, p. 1) inferred a lifespan of 10 to 20 years for the Florida bonneted bat, with an average generation time of 5 to 10 years.

The Florida bonneted bat has a fairly extensive breeding season during summer months (Timm and Genoways 2004, p. 859). The maternity season for most bat species in Florida occurs from mid-April through mid-August (Marks and Marks 2008a, p. 8). During the early portion of this period, females give birth and leave young in the roost while they make multiple foraging excursions to support lactation (Marks and Marks 2008a, pp. 8–9). During the latter portion of the season, young and females forage together until the young become sufficiently skilled to forage and survive on their own (Marks and Marks 2008a, p. 9). The Florida bonneted bat is a subtropical species, and pregnant females have been found in June through September (FBC 2005, p. 1; Marks and Marks 2008a, p. 9). Examination of limited data suggests that this species may be polyestrous (having more than one period of estrous in a year), with a second birthing season possibly in January and February (Timm and Genoways 2004, p. 859; FBC 2005, p. 1).

Information on reproduction and demography is sparse. The Florida bonneted bat has low fecundity; litter size is one (FBC 2005, p. 1; Timm and Arroyo-Cabrales 2008, p. 1). The colony studied by Belwood (1981, p. 412) consisted of eight adults and included five post-lactating females, one pregnant female with a single fetus, and one male with enlarged testicles; the other female escaped before examination. The pregnant female captured was the first record of a gestating Florida bonneted bat in September (Belwood 1981, p. 412). However, Belwood (1981, p. 412) noted that this finding is consistent with the reproductive chronology of bonneted bats in Cuba, which are polyestrous. Robson *et al.* (1989, p. 81) found an injured pregnant female in Coral Gables in late August 1988, which aborted its fetus in early September 1988. A landowner with an active colony in North Fort Myers reported that she has seen young bats appear in spring and summer, generally with only one or two births within the colony per year (S. Trokey, pers. comm. 2006a). However, four young were noted in 2004 (S. Trokey, pers. comm. 2006a). The capture of a juvenile male in a mist net at Picayune Strand State Forest (PSSF) on December 17, 2009, suggested that there was breeding in the area (Smith 2010, p. 1–2).

Based upon limited information, the species roosts singly or in colonies consisting of a male and several females (Belwood 1992, p. 221). G.T. Hubbell believed that individuals in Miami roosted singly (Belwood 1992, p. 221). However, Belwood (1981, p. 412) suggested that a colony, consisting of seven females and one male using a longleaf pine cavity as a roost site in Punta Gorda, was a harem group, based on its sex ratio. Belwood (1981, p. 412; 1992, p. 221) suggested that this behavior has been recorded in a few bat species and such social groupings may be facilitated by roosting in tree cavities, which can be defended from other males (Morrison 1979, pp. 11–15).

Information on roosting habits from artificial structures is also limited. The Florida bonneted bat colony using bat houses on private property in Lee County consisted of 8 to 25 individuals, including one albino (S. Trokey, pers. comm. 2006a, 2006b, 2008a, 2008b, 2012a, 2013). After prolonged cold temperatures killed and displaced several bats in early 2010, a total of 10 individuals remained by April 2010, with seven occupying one house and three occupying another (S. Trokey, pers. comm. 2010a, 2010b, 2010c). As of March 2013, there are 20 bats using two houses at this location (S. Trokey, pers. comm. 2013). Sex ratio is not known. Some movement between the houses has been observed; the albino individual has been observed to be in one house one day and the other house the next (S. Trokey, pers. comm. 2006a).

At the Fred C. Babcock/Cecil M. Webb Wildlife Management Area (Babcock-Webb WMA), 39 to 43 individuals have been found to use 3 to 5 separate roosts (all bat houses) during periodic simultaneous counts conducted on 4 occasions over the past year (FWC, *in litt.* 2012; Marks and Marks 2012, pp. 8, 12, A61; J. Myers, pers. comm. 2012a, 2012b, 2013). Simultaneous counts taken at emergence on April 2, 2013, at 4 roosts sites, documented 39 individuals with the number at each roost as follows: 37, 1, 1, and 0 (J. Myers, pers. comm. 2013). Periodic simultaneous counts taken at roosts over the course of a year suggest that use fluctuates among five roost sites (FWC, *in litt.* 2012; J. Myers, pers. comm. 2013). Apparent 'non-use' of a previous roost during monitoring may not be indicative of permanent abandonment (J. Myers, pers. comm. 2013). It is not known if there is movement between houses or among roost locations or between artificial and unknown natural roosts within Babcock-Webb WMA.

Understanding of roosting behavior and site selection is limited. However, there is a high probability that individuals tend towards high roost site fidelity (H. Ober, *in litt.* 2012). Lewis (1995, pp. 481–496) found that bats that roost in buildings tend to be more site-faithful than those that roost in trees. Among bats that roost in trees, those that use cavities in large trees tend to be more site-faithful than those that use smaller trees (Brigham 1991; Fenton and Rautenbach 1986; Fenton *et al.* 1993 as cited in Lewis 1995, p. 487; H. Ober, *in litt.* 2012). Given its size, the Florida bonneted bat is likely to select large trees (H. Ober, *in litt.* 2012). The large accumulation of guano (excrement) 1 meter (m) (3.3 feet (ft)) deep in one known natural roost felled in 1979 (see Belwood 1981, p. 412) suggests high roost fidelity, especially considering the small number of individuals per colony (H. Ober, *in litt.* 2012).

The Florida bonneted bat is active year-round and does not have periods of hibernation or torpor. The species is not

migratory, but there might be seasonal shifts in roosting sites (Timm and Genoways 2004, p. 860). Belwood (1992, pp. 216–217) reported that, prior to 1967, G.T. Hubbell routinely obtained several individuals per year collected during the winter from people's houses.

Precise foraging and roosting habits and long-term requirements are unknown (Belwood 1992, p. 219). Active year-round, the species is likely dependent upon a constant and sufficient food supply, consisting of insects, to maintain its generally high metabolism. The available information indicates Florida bonneted bats feed on flying insects of the following orders: Coleoptera (beetles), Diptera (flies), Hemiptera (true bugs), and Lepidoptera (moths) (Belwood 1981, p. 412; Belwood 1992, p. 220; FBC 2005, p. 1; Marks 2013, pp. 1–2). An analysis of bat guano (droppings) from the colony using the pine flatwoods in Punta Gorda indicated that the sample (by volume) contained coleopterans (55 percent), dipterans (15 percent), and hemipterans (10 percent) (Belwood 1981, p. 412; Belwood 1992, p. 220). More recent analyses of bat guano collected from occupied bat houses at Babcock-Webb WMA indicated that the samples contained high percentages of Lepidoptera and Coleoptera (Marks 2013, pp. 1–2). In one analysis of 50 fecal pellets (from approximately 35 individuals taken April 2013), samples (by volume) contained about 49 percent Lepidoptera, 35 percent Coleoptera, and 17 percent unknown (Marks 2013, p. 1). Analyses of samples taken in May 2011 (n=6) and June 2011 (n=6) at the same location also indicated that high percentages of Lepidoperta (74 percent, 49 percent) and Coleoptera (26 percent, 35 percent) were consumed (Marks 2013, pp. 1–2). Florida bonneted bats were found to feed on large insects at this location; however, specific prey could not be determined because the bats apparently culled parts of the insects such as heads, legs, antennae, elytra, and wings (Marks 2013, pp. 1–2).

Researchers are planning to conduct analyses of guano to determine dietary preferences and seasonal changes (Ridgley 2012, pp. 1–4; C. Marks, FBC, pers. comm. 2012a; S. Snow, Everglades National Park (ENP), pers. comm. 2012a; Marks 2013, p. 2). This species may prey upon larger insects, which may be less abundant than smaller prey items (S. Snow, pers. comm. 2012a). Since the species can take flight from the ground like other *Eumops* species, the Florida bonneted bat may also prey upon ground insect species (Ridgley 2012, pp. 1–2). Based upon recent analyses, Marks (2013, p. 2) recommended that natural habitats conducive to insect diversity be protected and that any pesticides be used with caution.

Molossids, in general, seem adapted to fast flight in open areas (Vaughan 1966, p. 249). Various morphological characteristics (e.g., narrow wings, high wing-aspect ratios (ratio of wing length to its breadth)) make *Eumops* species well-adapted for efficient, rapid, and prolonged flight in open areas (Findley *et al.* 1972, pp. 429–444; Freeman 1981, pp. 96–97; Norberg and Rayner 1987, pp. 399–400; Vaughan 1959 as cited in Best *et al.* 1997, p. 3). Barbour and Davis (1969, p. 234) noted that the species flies faster than smaller bats, but cannot maneuver as well in small spaces. Belwood (1992, p. 221) stated that *Eumops glaucinus* is ''capable of long, straight, and sustained flight,'' which should allow individuals to travel large distances. Norberg and Rayner (1987, p. 399) attributed long distance flights of Brazilian free-tailed bats to their high wing-aspect ratios, with that species capable of traveling 65 kilometers (km) (40 miles (mi)) from its roosting site to its foraging areas (Barbour and Davis 1969, p. 203). In one study that used radiotelemetry tracking in Arizona, Tibbitts *et al.* (2002, p. 11) found Underwood's mastiff bat (*Eumops underwoodi*) ranged up to 24 km (15 mi) or more during foraging bouts from its roost site. Tracked individuals (n=3) were found to commonly cover large areas in a single evening (Tibbitts *et al.* 2002, pp. 1–12). The largest single-night home range was 284.6 km^2 (109.9 mi^2), and all three bats commonly ranged over 100 km^2 (38.6 mi^2) on a typical night (Tibbitts *et al.* 2002, p. 12). Most bats on most nights traveled 20–30 km (12.4–18.6 mi) and often more in the range of 50–100 km (31.1–62.1 mi) as a minimum estimate (Tibbitts *et al.* 2002, p. 12).

Foraging and dispersal distances and home range sizes for the Florida bonneted bat are not known and have not been studied in detail (K. Gillies, *in litt.* 2012; G. Marks, pers. comm. 2012; H. Ober, *in litt.* 2012). Like other molossids, the species' morphological characteristics make it capable of dispersing large distances and generally adapted for low cost, swift, long distance travel from roost site to foraging areas (Norberg and Rayner 1987, pp. 399–400; K. Gillies, *in litt.* 2012; H. Ober, *in litt.* 2012). Given this, it seems likely that foraging areas may be located fairly long distances from roost sites (H. Ober, *in litt.* 2012). However, despite its capabilities, the species likely does not travel farther than necessary to acquire food needed for survival (G. Marks, pers. comm. 2012a).

Bonneted bats are ''fast hawking'' bats that rely on speed and agility to catch target insects in the absence of background clutter, such as dense vegetation (Simmons *et al.* 1979, pp. 16–21; Belwood 1992, p. 221; Best *et al.* 1997, p. 5). Foraging in open spaces, these bats use echolocation to detect prey at relatively long range, roughly 3 to 5 m (10 to 16 ft) (Belwood 1992, p. 221). Based upon information from G.T. Hubbell, Belwood (1992, p. 221) indicated that individuals leave roosts to forage after dark, seldom occur below 10 m (33 ft) in the air, and produce loud, audible calls when flying; calls are easily recognized by some humans (Belwood 1992, p. 221; Best *et al.* 1997, p. 5; Marks and Marks 2008a, p. 5). On the evening of April 19, 2012, Florida bonneted bats using bat houses at Babcock-Webb WMA emerged to forage at dusk; emergence began roughly 26 minutes after sunset and continued for approximately 20 minutes (P. Halupa, pers. obs. 2012; J. Myers, pers. comm. 2012c).

Habitat

Relatively little is known of the ecology of the Florida bonneted bat, and long-term habitat requirements are poorly understood (Robson 1989, p. 2; Robson *et al.* 1989, p. 81; Belwood 1992, p. 219; Timm and Genoways 2004, p. 859). Habitat for the Florida bonneted bat mainly consists of foraging areas and roosting sites, including artificial structures. At present, no active, natural roost sites are known, and only limited information on historical sites is available.

Recent information on habitat has been obtained largely through acoustical surveys, designed to detect and record bat echolocation calls (Marks and Marks 2008a, p. 5). Acoustical methods have generally been selected over mist netting as the primary survey methodology because this species flies and primarily forages at heights of 9 m (30 ft) or more (Marks and Marks 2008a, p. 3). The Florida bonneted bat has a unique and easily identifiable call. While most North American bats vocalize echolocation calls in the ultrasonic range that are inaudible to humans, the Florida bonneted bat echolocates at the higher end of the audible range, which can be heard by some humans as high–pitched calls (Marks and Marks 2008a, p. 5). Most surveys conducted using acoustical equipment can detect echolocation calls within a range of 30 m (100 ft); call sequences are analyzed using software that compares calls to a library of

signature calls (Marks and Marks 2008a, p. 5). Florida bonneted bat calls are relatively easy to identify because calls are issued at frequencies well below that of other Florida bat species (Marks and Marks 2008a, p. 5). However, most surveys conducted for the species to date have been somewhat limited in scope, with various methods used. Since bat activity can vary greatly at a single location both within and between nights (Hayes 1997, pp. 514–524; 2000, pp. 225–236), a lack of calls during a short listening period may not be indicative of lack of use within an area (H. Ober, *in litt.* 2012).

In general, open, fresh water and wetlands provide prime foraging areas for bats (Marks and Marks 2008c, p. 4). Bats will forage over ponds, streams, and wetlands and will drink when flying over open water (Marks and Marks 2008c, p. 4). During dry seasons, bats become more dependent on remaining ponds, streams, and wetland areas for foraging purposes (Marks and Marks 2008c, p. 4). The presence of roosting habitat is critical for day roosts, protection from predators, and the rearing of young (Marks and Marks 2008c, p. 4). For most bats, the availability of suitable roosts is an important, limiting factor (Humphrey 1975, pp. 341–343). Bats in south Florida roost primarily in trees and manmade structures (Marks and Marks 2008a, p. 8). Protective tree cover around bat roosts may be important for predator avoidance and allowing earlier emergence from the roost, thereby allowing bats to take advantage of the peak in insect activity at dusk and extend foraging time (Duverge *et al.* 2000, p. 39).

Available information on roosting sites for the Florida bonneted bat is extremely limited. Roosting and foraging areas appear varied, with the species occurring in forested, suburban, and urban areas (Timm and Arroyo-Cabrales 2008, p. 1). Data from acoustical surveys and other methods suggest that the species uses a wide variety of habitats (R. Arwood, Inside-Out Photography, Inc., pers. comm. 2008a, 2008b, 2012a, 2013a–d; Marks and Marks 2008a, pp. 13–14; 2008b, pp. 2–5; 2008c, pp. 1–28; 2012, pp. 1–22; Smith 2010, pp. 1–4; S. Snow, pers. comm. 2011a, 2011b, 2012b–h; *in litt.* 2012; M. Owen, pers. comm. 2012a, 2012b; R. Rau, pers. comm. 2012; Maehr 2013, pp. 1–13; S. Maehr, pers. comm. 2013a, 2013b; K. Relish, pers. comm. 2013; F. Ridgley, pers. comm. 2013a–c; B. Scofield, pers. comm. 2013a–f; K. Smith, pers. comm. 2013).

Attempts to locate natural roost sites (e.g., large cavity trees) in February 2013 using scent-detection dogs were inconclusive. No active natural roosts for Florida bonneted bats have been identified or confirmed to date. At this time, all known active roost sites are artificial structures (i.e., bat houses) (see *Use of Artificial Structures (Bat Houses)* below).

Use of Forests and Other Natural Areas

Bonneted bats are closely associated with forested areas because of their tree-roosting habits (Robson 1989, p. 2; Belwood 1992, p. 220; Eger 1999, p. 132), but specific information is limited. Belwood (1981, p. 412) found a small colony of Florida bonneted bats (seven females and one male, all adults) roosting in a longleaf pine (*Pinus palustris*) in a pine flatwoods community near Punta Gorda in 1979. The bats were roosting in a cavity 4.6 m (15.1 ft) high, which had been excavated by a red-cockaded woodpecker (*Picoides borealis*) and later enlarged by a pileated woodpecker (*Dryocopus pileatus*) (Belwood 1981, p. 412). Belwood (1981, p. 412) suggested that the bats were permanent residents of the tree due to the considerable accumulation of guano, approximately 1 m (3.3 ft) in depth. Eger (1999, p. 132) noted that in forested areas, old, mature trees are essential roosting sites for this species. The species also uses foliage of palm trees. Based upon information from G.T. Hubbell, specimens have been found in shafts of royal palms (*Roystonea regia*) (Belwood 1992, p. 219).

Similar roosting habitats have been reported for *E. g. glaucinus* in Cuba. Nine of 19 known *E. g. glaucinus* roost sites were located in tree cavities, including woodpecker holes and cavities in royal palms, ''degame'' trees (*Callycophyllum candidissimum*), and mastic trees (*Bursera simaruba*) (Silva-Taboada 1979 as cited in Robson 1989, p. 2 and Belwood 1992, p. 219). Another individual was found roosting in the foliage of the palm *Copernicia vespertilionum* (Silva-Taboada 1979 as cited in Belwood 1992, p. 219). Belwood (1992, pp. 219–220) noted that the majority of the approximately 80 specimens of *E. glaucinus* from Venezuela housed in the U.S. National Museum were collected from tree cavities in heavily forested areas.

More recent acoustical data and other information indicate that the Florida bonneted bat uses forests and a variety of other natural areas. Echolocation calls have been recorded in a wide array of habitat types: Pine flatwoods, pine rocklands, cypress, hardwood hammocks, mangroves, wetlands, rivers, lakes, ponds, canals, and so forth (see Table 1). Table 1 lists locations and habitat types where Florida bonneted bats were recorded or observed (2003 to present) (R. Arwood, pers. comm. 2008a, 2008b, 2012a, 2013a–d; Marks and Marks 2008a, pp. 13–14; 2008b, pp. 2–5; 2008c, pp. 1–28; 2012, pp. 1–22; Smith 2010, pp. 1–4; S. Snow, pers. comm. 2011a, 2011b, 2012b–h; *in litt.* 2012; M. Owen, pers. comm. 2012a, 2012b; R. Rau, pers. comm. 2012; Maehr 2013, pp. 1–13; S. Maehr, pers. comm. 2013a, 2013b; K. Relish, pers. comm. 2013; F. Ridgley, pers. comm. 2013a–c; B. Scofield, pers. comm. 2013a–f; K. Smith, pers. comm. 2013). Additional details on key sites are provided below Table 1.

TABLE 1—LOCATIONS AND HABITAT TYPES RECORDED OR OBSERVED FOR FLORIDA BONNETED BATS

[2003–2013]

Site	Ownership	County	Management	Habitat type
Everglades National Park (ENP) (coastal) (2 backcountry sites along Wilderness Waterway [Darwin's Place, Watson's Place]).	public	Monroe	National Park Service (NPS).	earth midden hammocks, mangroves.
ENP (mainland) (junction of Main Park Road and Long Pine Key).	public	Miami-Dade	NPS	pine rocklands, wet prairie, tropical hardwoods.
L–31N canal, proposed transmission line corridor, eastern boundary ENP.	public	Miami-Dade	NPS and SFWMD	canal, mixed.
Homestead, FL	private	Miami-Dade	None	residential, urban.
Fairchild Tropical Botanic Garden (FTBG) ...	private	Miami-Dade	FTBG	pine rockland, hardwood hammock, water, tropical garden, residential.

TABLE 1—LOCATIONS AND HABITAT TYPES RECORDED OR OBSERVED FOR FLORIDA BONNETED BATS—Continued
[2003–2013]

Site	Ownership	County	Management	Habitat type
Zoo Miami	public	Miami-Dade	Miami-Dade County	pine rocklands, disturbed nonnative areas, developed park lands, groves, artificial freshwater lakes.
Larry and Penny Thompson Park	public	Miami-Dade	Miami-Dade County	pine rocklands, developed park lands, groves, artificial freshwater lake.
Martinez Preserve	public	Miami-Dade	Miami-Dade County	pine rocklands, remnant transition glade.
Coral Gables (2 sites, including Granada Golf Course).	private	Miami-Dade	None	residential, urban.
Snapper Creek Park	public	Miami-Dade	Miami-Dade County	residential, urban.
Everglades City	private	Collier	None	residential, urban.
Naples	private	Collier	None	residential, urban.
Florida Panther NWR (multiple sites)	public	Collier	U.S. Fish and Wildlife Service.	pine flatwoods, wet prairie, lakes, artificial and ephemeral ponds bordered by royal palm hammock, cypress, pond apple, oak hammock.
Fakahatchee Strand Preserve State Park (FSPSP) (multiple sites).	public	Collier	Florida Department of Environmental Protection (FDEP).	lake, canal near hardwood hammock, pine flatwoods, strand swamp, royal palms.
Picayune Strand State Forest (PSSF) (multiple sites).	public	Collier	FFS	canal, wet prairie, pine flatwoods, cypress, hardwood hammock, exotics.
Big Cypress National Preserve (BCNP) (multiple sites).	public	Collier	NPS	pine flatwoods, palmetto, cypress, mixed and hardwood hammocks, mangroves, mixed shrubs, wet prairies, river, lake, campground.
North Fort Myers (2 sites, including bat houses).	private	Lee	None; private landowner.	residential, rural, urban; bat houses.
Babcock-Webb Wildlife Management Area (WMA) (multiple sites).	public	Charlotte	Florida Fish and Wildlife Conservation Commission (FWC).	pinelands (and near red-cockaded woodpecker clusters); bat houses.
Babcock Ranch Preserve (Telegraph Swamp).	public, private.	Charlotte	Private entities, FWC, FFS, and Lee County.	swamp.
KICCO WMA	public	Polk	SWFWMD and FWC	oxbow along Kissimmee River.
Avon Park Air Force Range (APAFR)	public	Polk	Air Force	scrubby flatwoods, next to open water lake/pond; wetland in scrub habitat.
Kissimmee River Public Use Area (Platt's Bluff).	public	Okeecho-bee	SWFWMD and FWC	boat ramp along Kissimmee River.

In 2006, the species was found at Babcock-Webb WMA in the general vicinity of the colony found by Belwood (1981, p. 412); this was the first documentation of the Florida bonneted bat at this location since 1979 (Marks and Marks 2008a, pp. 6, 11, 13). Major habitat types at Babcock-Webb WMA include dry prairie, freshwater marsh, wet prairie, and pine flatwoods; all calls were recorded in pinelands (Marks and Marks 2008a, pp. A7, B38–B39; 2012, pp. 8, A61, B43). The species was also recorded at an adjacent property, Babcock Ranch Preserve, in 2007; calls were recorded at Telegraph Swamp, but not in the pinelands surveyed (Marks and Marks 2008a, pp. A9, B55–B57).

The species has been found within the Fakahatchee Strand Preserve State Park (FSPSP), using this area throughout the year (D. Giardina, Florida Department of Environmental Protection (FDEP), pers. comm. 2006; C. Marks, pers. comm. 2006a, 2006b; M. Owen, FSPSP, pers. comm. 2012a, 2012b). In 2006, this species was found at a small lake and at a canal adjacent to tropical hardwood hammocks (Ballard Pond and Prairie Canal Bridge) in the FSPSP (Marks and Marks 2008a, pp. 11, A7–A9, B50–B51). Available data and observations indicate that the species was regularly heard at FSPSP from 2000 through 2012 at various locations, primarily in the main strand swamp and near royal palms (M. Owen, pers. comm. 2012a, 2012b; R. Rau, pers. comm. 2012). In November 2007, the species was observed along U.S. 41 at Collier-Seminole State Park in Collier County (S. Braem, FDEP, pers. comm. 2012). The FDEP also suggests that the species may occur at Charlotte Harbor Preserve State Park in Charlotte County and Delnor-Wiggins Pass State Park in Collier County (P. Small, FDEP, pers. comm. 2012).

The Florida bonneted bat has been found in various habitats within Big Cypress National Preserve (BCNP). During surveys conducted in a variety of habitats in 2006–2007, the majority consisting of cypress swamps and wetlands, only one Florida bonneted bat call sequence was recorded in BCNP in 16 nights of effort (stationary and roving surveys) (Marks and Marks 2008a, pp. 11, A12–A14). The call sequence was recorded at Deep Lake along the western edge of BCNP and the eastern side of the FSPSP; the lake was surrounded by cypress and hardwood hammocks similar to the habitat around Ballard Pond in the FSPSP (see above) (R. Arwood, pers. comm. 2008b). The species was recorded again in February 2012 at another location (Cal Stone's camp) in an area of pine and palmetto with cypress domes in the surrounding area (R. Arwood, pers. comm. 2012a; Marks and Marks 2012, p. 13). Data derived from recordings taken in 2003 and 2007 by a contractor and provided to the Service (S. Snow, pers. comm. 2012g) and available land use covers derived from a geographic information system also suggest that the species uses a wide array of habitats within BCNP. Additional call data obtained in late 2012 and early 2013 also suggest the use

of various habitat types, including forested areas, wetlands, and open water in BCNP (R. Arwood, pers. comm. 2013a–d).

Recent results from a study at Florida Panther NWR conducted in 2013 also show the species' use of forested areas, open water, and wetlands (Maehr 2013, pp. 1–13). Of the 13 locations examined, the highest detection of Florida bonneted bat calls occurred in areas with the largest amount of open water (Maehr 2013, p. 8). The area with the highest detection was an open water pond, surrounded primarily by pine flatwoods and oak hammock (S. Maehr, pers. comm. 2013a–c). That area has been regularly burned and contains a large amount of old snags that have been hollowed by woodpeckers (C. Maehr, pers. comm. 2013c).

As noted earlier, FWC biologists and volunteers caught a free–flying juvenile male Florida bonneted bat in 2009, using a mist net in the PSSF in Collier County (Smith 2010, p. 1). Habitat composition of PSSF includes wet prairie, cypress stands, and pine flatwoods in the lowlands and subtropical hardwood hammocks in the uplands, and the individual was captured in the net above the Faka-Union Canal (Smith 2010, p. 1). This was particularly notable because it may have been the first capture of a Florida bonneted bat in an area with no known roost site (Smith 2010, p. 1). The species has been detected at nine locations within PSSF (i.e., captured at one location, heard while mist netting at eight other locations), and each site was located near canals (K. Smith, pers. comm. 2013).

In 2000, the species was recorded within mangroves at Dismal Key within the Ten Thousand Islands (Timm and Genoways 2004, p. 861; Marks and Marks 2008a, pp. 6, A9, B53; 2012, p. 14). Subsequent surveys in 2000, 2006, and 2007 did not document any additional calls at this location (Marks and Marks 2008a, pp. 6, 11, 14). In 2007, the species was recorded at a backcountry campsite (Watson's Place) within ENP, comprised of mixed hardwoods (S. Snow, pers. comm. 2012h). In 2012, the species was found within mangroves and mixed hardwoods at another backcountry campsite (Darwin's Place) along the Wilderness Waterway (Ten Thousand Islands area), approximately 4.8 km (3 mi) east-southeast of Watson's Place within ENP (Marks and Marks 2012, pp. 8, 17, A53, B35, B38; C. Marks, pers. comm. 2012b; S. Snow, pers. comm. 2012h). However, the species was not located in similar habitats during 18 survey nights in 2012 (Marks and Marks 2012, p. 14).

In 2011–2012, the species was recorded in various natural habitats elsewhere in ENP and vicinity (S. Snow, pers. comm. 2011a, 2012c–f; S. Snow, *in litt.* 2012; Marks and Marks 2012, pp. 8, 14). It was recorded in wetlands, tropical hardwoods, and pinelands at the junction of the main park road and road to Long Pine Key (S. Snow, pers. comm. 2011a, 2012f; *in litt.* 2012; Marks and Marks 2012, p. 8, 14, 17), and also along the L–31N canal in a rural area, at the eastern boundary of ENP (Marks and Marks 2012, pp. 8, 14, 17, A59; S. Snow, pers. comm. 2012c–f; *in litt.* 2012). In March 2012, one suspect call sequence (presumed, but not confirmed) was also recorded on SR 9336 in an area of rural residential and agricultural habitat in Miami–Dade County (S. Snow, pers. comm. 2012f). In January 2012, another suspect call was recorded from the suburban streets of the village of Palmetto Bay in Miami-Dade (S. Snow, pers. comm. 2012f).

In 2008, the Florida bonneted bat was recorded at two locations along the Kissimmee River during a survey of public areas contracted by FWC (J. Morse, pers. comm. 2008, 2010; Marks and Marks 2008b, pp. 2–5; 2008c, pp. 1–28). One location was at an oxbow along the Kissimmee River in a pasture in KICCO WMA; the other was at Platt's Bluff boat ramp at a public park on the Kissimmee River (Marks and Marks 2008c, pp. 11, 17). No additional calls were detected in the Lake Kissimmee areas or along the Kissimmee River during subsequent surveys designed to more completely define the northern part of the Florida bonneted bat's range in 2010–2012 (C. Marks, pers. comm. 2012c; Marks and Marks 2012, pp. 3, 5, 8, 10). However, the Florida bonneted bat was detected elsewhere in the northern part of its range during surveys at APAFR in 2013 (B. Scofield, pers. comm. 2013a, 2013e) (see *Current Distribution*). Call sequences were recorded at two locations, including one in an area of scrubby flatwoods next to a natural open water lake/pond and near several cavity trees and snags and another near a wetland embedded in scrub habitat (B. Scofield, pers. comm. 2013b, 2013d, 2013e).

Use of Parks, Residential Areas, and Other Urban Areas

The Florida bonneted bat uses human structures and other nonnatural environments. In Coral Gables (Miami area), specimens have been found in the shafts of royal palm leaves (Belwood 1992, p. 219). Based upon observations from G.T. Hubbell, past sightings in Miami suggest that preferred diurnal roosts may be the shingles under Spanish tile roofs (Belwood 1992, p. 219). The species also roosts in buildings (e.g., in attics, rock or brick chimneys of fireplaces, and especially buildings dating from about 1920–1930) (Timm and Arroyo-Cabrales 2008, p. 1). One individual recently reported that a single Florida bonneted bat had come down the chimney and into his residence in Coral Gables in the fall about 5 years ago (D. Pearson, pers. comm. 2012). Belwood (1992, p. 220) suggested that urban bats would appear to benefit from using Spanish tile roofs on dwellings, since the human population in south Florida is growing, and Spanish tile roofs are likely more common now than in the past. However, it is important to recognize that bats using old or abandoned and new dwellings are at significant risk; bats are removed when structures are demolished or when they are no longer tolerated by humans (see Summary of Factors Affecting the Species, *Factor E*).

Discovery of an adult with a specimen tag indicating ''found under rocks when bull-dozing ground'' suggests this species may also roost in rocky crevices and outcrops on the ground (Timm and Genoways 2004, p. 860). A colony was found in a limestone outcropping on the north edge of the University of Miami campus in Coral Gables; the limestone contained a large number of flat, horizontal, eroded fissures in which the bats roosted (Timm and Genoways 2004, p. 860). It is not known to what extent such roost sites are suitable.

Recent acoustical surveys (2006, 2008, 2012) confirmed that the species continues to use a golf course in urban Coral Gables (Marks and Marks 2008a, pp. 6, 11, A4; 2008b, pp. 1–6; 2012, pp. 8, 14, 16, 19, A24, B16). Despite numerous efforts, attempts to locate the roost site have been unsuccessful.

Recordings taken continuously from a balcony from a fifth floor condominium also detected presence in Naples (R. Arwood, pers. comm. 2008a). Recordings taken from a house and at a boat dock along the Barron River in Everglades City also detected presence in this area (R. Arwood, pers. comm. 2008a).

The species has been documented at Zoo Miami within an urban public park within the Richmond Pinelands in Miami-Dade County (Marks and Marks 2012, pp. 8, 14, 16, A26; Ridgley 2012, p. 1; F. Ridgley, pers. comm. 2013a, 2013b). A dead specimen was found on Zoo Miami (then known as Miami Metrozoo) grounds at the Asian Elephant barn in 2004 (Marks and Marks 2008a, p. 6). Miami-Dade County

biologists observed seven bats similar in size to Florida bonneted bats and heard chatter at the correct frequency a few years ago, but were unable to obtain definitive recordings (S. Thompson, Miami-Dade Park and Recreation Department, pers. comm. 2010) until a single call was recorded by FBC outside the same enclosure in September 2011 (Marks and Marks 2012, pp. 8, 14, 16, A26; Ridgley 2012, p. 1).

Florida bonneted bats have been recorded more recently at the Zoo Miami, Larry and Penny Thompson Park, and the Martinez Preserve, with peak activity in areas of artificial freshwater lakes adjacent to intact pine rocklands (F. Ridgley, pers. comm. 2013a–c). Surrounding habitats include pine rocklands, disturbed natural areas with invasive plant species, freshwater lakes, developed area, open recreational areas, and horticulturally altered landscape, with a variety of manmade structures (J. Maguire, *in litt.* 2012; Ridgley 2012, p. 1; F. Ridgley, pers. comm. 2013b). Although there are five artificial lakes on the grounds of Zoo Miami and Larry and Penny Thompson Park, the Florida bonneted bat appears to utilize the two that have pine rockland adjacent to their shorelines (F. Ridgley, pers. comm. 2013b). Possible roosting sites that exist on the properties include manmade structures, pine snags, and limestone cavities (F. Ridgley, pers. comm. 2013b).

In 2011 and 2012, the species was recorded within tropical gardens at Fairchild Tropical Botanic Garden (FTBG) in Miami-Dade County (S. Snow, pers. comm. 2011b, 2012b, 2012f; Marks and Marks 2012, pp. 8, 13–14, 17, A35, A37).

Use of Artificial Structures (Bat Houses)

The Florida bonneted bat uses non-natural environments (see *Use of Parks, Residential Areas, and other Urban Areas,* above) and artificial structures, particularly bat houses (Marks and Marks 2008a, p. 8; Morse 2008, pp. 1–14; S. Trokey, pers. comm. 2012a, 2012b). In fact, all of the active known roosting sites for the species are bat houses (2 at a private landowner's house; 3 to 5 separate roosts at Babcock-Webb WMA).

The species occupies bat houses on private land in North Fort Myers, Lee County; until relatively recently, this was the only known location of an active colony roost anywhere (S. Trokey, pers. comm. 2006a, 2008b; Marks and Marks 2008a, pp. 7, 15). The Florida bonneted bat has used this property for over 9 years (S. Trokey, pers. comm. 2012a). The bat houses are located near a small pond, situated approximately 5 m (17 ft) above the ground with a south-by-southwest orientation (S. Trokey, pers. comm. 2012b). The relatively high height of the houses may allow the large bats to fall from the roosts before flying (S. Trokey, pers. comm. 2012b).

The species also occupies bat houses within pinelands at Babcock-Webb WMA in Punta Gorda, Charlotte County (Marks and Marks 2012, pp. 8, A61). In winter 2008, two colonies were found using bat houses (Morse 2008, p. 8; N. Douglass, FWC, pers. comm. 2009). In 2010, approximately 25 individuals were found at two additional bat houses, bringing the potential total at Babcock-Webb WMA to 58 individuals, occupying four houses (J. Birchfield, FWC, pers. comm. 2010; Marks and Marks 2012, pp. 12, A61). In 2012, 42 individuals were found to use four roost sites, consisting of a total of seven bat houses, situated approximately 5 m (17 ft) above the ground with north and south orientations (Marks and Marks 2012, pp. 12, 19, A61; J. Myers, pers. comm. 2012a). In September 2012, five bats were observed using two triple-chambered houses mounted back-to-back; this represented the fifth roost site found at Babcock-Webb WMA (FWC, *in litt.* 2012). In 2013, 39 individuals were using 3 roost sites (J. Myers, pers. comm. 2013). Roosts at Babcock-Webb WMA are mainly in hydric and mesic pine flatwoods with depression and basin marshes and other mixed habitat in the vicinity (J. Myers, pers. comm. 2012b).

Summary

In summary, relatively little is known of the species' habitat requirements. Based upon available data discussed above, it appears that the species can use a wide array of habitat types (see Table 1, above). The extremely limited available information on roosting sites is particularly problematic, as the availability of suitable roosts is an important limiting factor for most bat species. Existing roost sites need to be identified so that they can be preserved and protected (Marks and Marks 2008a, p. 15; K. Gillies, *in litt.* 2012). Uncertainty regarding the location of natural and artificial roost sites may contribute to the species' vulnerability (see Summary of Factors Affecting the Species, *Factors A* and *E,* below). As the locations of other potentially active roost sites are not known, inadvertent impacts to and losses of roosts may be more likely to occur. If roost sites are located, actions could be taken to avoid or minimize losses.

Historical Distribution

Records indicating historical range are limited. Information on the Florida bonneted bat's historical distribution is provided in the proposed listing rule (77 FR 60750). We did not receive any new information during the public comment period.

Current Distribution

Endemic to Florida, the Florida bonneted bat has one of the most restricted distributions of any species of bat in the New World (Belwood 1992, pp. 218–219; Timm and Genoways 2004, pp. 852, 856–858, 861–862). Although numerous acoustical surveys for the Florida bonneted bat have been conducted in the past decade by various parties, the best scientific information indicates that the species exists only within a very restricted range, largely confined to south and southwest Florida (Timm and Genoways 2004, pp. 852, 856–858, 861–862; Marks and Marks 2008a, p. 15; 2012, pp. 10–11).

The majority of information relating to current distribution comes from the following recent studies: (1) Rangewide surveys conducted in 2006–2007, funded by the Service, to determine the status of the Florida bonneted bat following the 2004 hurricane season, and follow-up surveys in 2008 (Marks and Marks 2008a, pp. 1–16 and appendices; 2008b, pp. 1–6); (2) surveys conducted in 2008 along the Kissimmee River and Lake Wales Ridge, funded by the FWC, as part of bat conservation and land management efforts (Marks and Marks 2008c, pp. 1–28; 2008d, pp. 1–21; Morse 2008, p. 2); (3) surveys conducted within BCNP in 2003 and 2007, funded by the NPS (S. Snow, pers. comm. 2012g), and surveys conducted in BCNP in 2012 and 2013 through volunteer efforts (R. Arwood, pers. comm. 2012a, 2012b, 2013a–d); (4) surveys conducted in 2011–2012 in ENP by NPS staff (S. Snow, pers. comm. 2012c–f; *in litt.* 2012); (5) surveys conducted in 2010–2012, funded by the Service, to fill past gaps and better define the northern and southern extent of the species' range (Marks and Marks 2012, pp. 1–22 and appendices); (6) recordings taken from proposed wind energy facilities in Glades and Palm Beach Counties (C. Coberly, Merlin Ecological, LLC., pers. comm. 2012; C. Newman, Normandeau Associates, Inc, pers. comm. 2012); and (7) surveys conducted as part of other isolated studies. Details relating to the bulk of these survey efforts and results were described in detail in the proposed listing rule (77 FR 60750). Only new information or relevant findings are provided below.

It is important to note that most surveys were limited in scope, and various methods and equipment were used. In many cases, relatively short listening intervals were employed (generally >1 hour in duration, often multiple hours). Only a few studies sampled the same areas on more than one occasion or for consecutive nights. More robust study designs would account for sources of temporal, spatial, and sampling variation and explicitly state underlying assumptions (Hayes 1997, pp. 514–524; 2000, pp. 225–236).

(1) Surveys in Big Cypress

Data from acoustical surveys conducted from December 7, 2012, through July 11, 2013, documented presence at seven sites within BCNP (R. Arwood, pers. comm. 2013a–d). In this effort, continuous recordings were taken from sundown to sunrise over multiple nights at each site survey site (R. Arwood, pers. comm. 2012b). As of July 11, 2013, a total of 747 Florida bonneted bat calls were recorded out of 36,441 total calls over 296 nights (R. Arwood, pers. comm. 2013c). The vast majority of Florida bonneted bat calls (721 of 747) were recorded at one pond in a remote area of BCNP, with activity found on 8 of 10 nights in May and June 2013 (R. Arwood, pers. comm. 2013c). It is noteworthy that in each of the seven locations, Florida bonneted bat calls were not detected on the first night of sampling. Had surveys not been conducted over multiple nights, presence would not have been detected.

(2) Surveys in the Everglades Region

Acoustical surveys conducted on 80 nights in the Everglades region from October 2011 to November 2012 by Skip Snow (pers. comm. 2012b, 2012c–f; *in litt.* 2012) documented presence at several locations within ENP and surrounding locations (see Table 1). These findings are significant because the importance of the Everglades region to the Florida bonneted bat had been previously in question.

(3) Other Isolated Studies

Avon Park Air Force Range (APAFR)—An acoustical survey was initiated at APAFR in January 2013. Surveys were conducted at 13 locations over 119 survey nights (sunset to sunrise) (B. Scofield, pers. comm. 2013f). As of August 2013, a total of 9 Florida bonneted bat call sequences (of 2,170 total bat call sequences) were recorded at two locations on APAFR in Polk County (B. Scofield, pers. comm. 2013a–f). At one location, presence was detected in scrubby flatwoods within a red–cockaded woodpecker colony next to a natural open water lake/pond (B. Scofield, pers. comm. 2013b). At the second location, presence was detected near a wetland embedded in scrub habitat about 4.0 km (2.5 mi) from the previous detection (B. Scofield, pers. comm. 2013e). These findings are significant because they provide additional evidence of current presence in the northern part of the species' range, where survey information is generally lacking. It is also noteworthy that at one location detected, Florida bonneted bats were not recorded for the first 3 weeks of sampling (B. Scofield, pers. comm. 2013d). Had surveys not been conducted over multiple weeks at the same location, presence may not have been detected.

Florida Panther NWR—An acoustical survey was conducted at Florida Panther NWR from February 28 to May 5, 2013. Surveys using multiple detectors were conducted at 13 locations on the refuge, primarily near water bodies, over 57 survey nights (Maehr 2013, pp. 5–7; C. Maehr, pers. comm. 2013b). The number of detection devices deployed at each location ranged from 4 to 9, depending upon size and access to open water (Maehr 2013, pp. 5–7). Recordings were taken for 3 to 4 consecutive nights at each location, with all frequencies recorded from dusk plus 7 hours (Maehr 2013, p. 5). Florida bonneted bats calls were recorded at 9 of 13 locations, primarily in areas of the largest open water and in the area of the Fakahatchee Strand that bisects the refuge (Maehr 2013, pp. 7–9).

This study confirms presence on the refuge and suggests that it is an important area for the species. Of additional significance was the simultaneous recordings of Florida bonneted bats at multiple locations (Maehr 2013, p. 9). These findings, along with detection shortly after sunset, suggest that Florida bonneted bats may be roosting on the refuge, in addition to using the area for foraging (Maehr 2013, p. 9). Additional data analyses are currently underway. Detections at numerous locations may be partly attributable to the comprehensive array of detectors deployed (e.g., saturation of specific sites), multiple nights sampled, and length of hours sampled (i.e., 7 hours or more each night).

Zoo Miami, Larry and Penny Thompson Park, and Martinez Preserve—An acoustical survey of the properties, totaling roughly ~526 ha (~1,300 ac), was conducted using a grid system and randomized sampling points (F. Ridgley, pers. comm. 2013a–c). As of June 2013, 137 nights of recordings have been conducted, with recordings taken from dusk to dawn and microphones elevated on a portable 5.2-m (17-ft) mast (F. Ridgley, pers. comm. 2013b). Results of the first quarter analysis yielded 154 Florida bonneted bat calls out of over 20,500 total bat call sequences (F. Ridgley, pers. comm. 2013b). The species was detected at 23 of the 50 sampling points; 10 of those points accounted for more than 80 percent of the calls (F. Ridgley, pers. comm. 2013b). Peak activity areas for the Florida bonneted bat within the study area are associated with artificial freshwater lakes adjacent to intact pine rockland (F. Ridgley, pers. comm. 2013b). Although no roosting sites have been identified to date, early emergence calls (within 15–20 minutes after sunset) have been repeatedly documented, and all early calls have been on the edge of a tract of intact pine rockland (F. Ridgley, pers. comm. 2013b).

In summary, the Florida bonneted bat appears to be largely restricted to south and southwest Florida. The core range may primarily consist of habitat within Charlotte, Lee, Collier, Monroe, and Miami-Dade Counties. Recent data also confirm use of portions of south-central Florida in Okeechobee and Polk Counties and suggest possible use of areas within Glades County. However, given limited available data, it is not clear to what extent areas outside of the core range may be used. It is possible that areas outside of the south and southwest Florida are used only seasonally or sporadically. Alternatively, these areas may be used consistently, but the species was not regularly located due to limited search efforts, imperfect survey methods, constraints of recording devices, and general difficulties in detecting the species.

Population Estimates and Status

Historical—Little information exists on historical population levels. Details are provided in the proposed listing rule (77 FR 60750).

Current—Based upon available data and information, the Florida bonneted bat occurs within a restricted range and in apparent low abundance (Marks and Marks 2008a, p. 15; 2012, pp. 9–15; Timm and Arroyo-Cabrales 2008, p. 1; FWC 2011a, pp. 3–4; FWC 2011b, pp. 3, 6; R. Timm, pers. comm. 2012, *in litt.* 2012). Actual population size is not known, and no population viability analyses are available (FWC 2011a, p. 4; 2013, p. 16; K. Bohn, *in litt.* 2012). However, population size is thought to be less than that needed for optimum viability (Timm and Arroyo-Cabrales 2008, p. 1; K. Bohn, *in litt.* 2012). As

part of their evaluation of listing criteria for the species, Gore *et al.* (2010, p. 2) found that the extent of occurrence appears to have decreased on the east coast of Florida, but trends on the west coast could not be inferred due to limited information.

In his independent review of the FWC's biological status report, Ted Fleming, Emeritus Professor of biology at University of Miami, noted that anecdotal evidence from the 1950s and 1960s suggests that this species was more common along Florida's southeast coast compared with the present (FWC 2011b, p. 3). Fleming stated that, ''There can be no doubt that *E. floridanus* is an uncommon bat throughout its very small range. Its audible echolocation calls are distinctive and easily recognized, making it relatively easy to survey in the field'' (FWC 2011b, p. 3). He also stated that he does not doubt that the total State population numbers ''in the hundreds or low thousands'' (FWC 2011b, p. 3).

Similarly, in response to a request for information as part of the Service's annual candidate notice of review, Robert Timm (pers. comm. 2012), Curator of Mammals at the Department of Ecology and Evolutionary Biology and Biodiversity Institute at the University of Kansas, indicated that numbers are low, in his view, as documented by survey attempts: ''*Eumops* are very obvious bats where they occur because of their large size and distinctive calls. Given the efforts to locate them throughout southern Florida, if they were there in any significant numbers, they would have been located'' (R. Timm, pers. comm. 2012).

Results of the 2006–2007 rangewide survey suggested that the Florida bonneted bat is a rare species with limited range and low abundance (Marks and Marks 2008a, p. 15). Based upon results of both the rangewide study and survey of select public lands, the species was found at 12 locations (Marks and Marks 2008b, p. 4), but the number and status of the bat at each location are unknown. Based upon the small number of locations where calls were recorded, the low numbers of calls recorded at each location, and the fact that the species forms small colonies, Marks and Marks (2008a, p. 15) stated that it is possible that the entire population of Florida bonneted bats may number less than a few hundred individuals.

Results of the 2010–2012 surveys and additional surveys by other researchers identified new occurrences within the established range (i.e., within Miami area, areas of ENP and BCNP) (S. Snow, pers. comm. 2011a, 2011b, 2012b–f; R. Arwood, pers. comm. 2012a, 2013a–c; Marks and Marks 2012, p. 8), however, not in sufficient numbers to alter previous population estimates. In their 2012 report on the status of the species, Marks and Marks (2012, p. 12) provided an updated estimation of population size, based upon 120 nights of surveys at 96 locations within peninsular Florida, results of other known surveys, and personal communications with others involved in Florida bonneted bat work. Based upon an average colony size of 11 and an estimated 26 colonies within the species' range, researchers estimated the total Florida bonneted bat population at 286 bats (Marks and Marks 2012, pp. 12–15). Researchers acknowledged that this was to be considered a rough estimate, intended as a starting point and a basis for future work (Marks and Marks 2012, p. 12).

In a vulnerability assessment, the FWC's biological status review team determined that the species met criteria or listing measures for geographic range, population size and trend, and population size and restricted area (Gore *et al.* 2010, pp. 1–2). For population size and trend, the review team estimated <100 individuals known in roosts, with an assumed total population of mature individuals being well below the criterion of fewer than 10,000 mature individuals. Similarly, for population size and restricted area, the review team estimated <100 individuals of all ages known in roost counts, inferring a total population to number fewer than 1,000 mature individuals, and potentially three subpopulations in south Florida. Detection of the species in the northern part of its range may be suggestive of an additional subpopulation in south-central Florida (see *Current Distribution,* above). In total, there may be three or four subpopulations.

Similarly, the 2012 IUCN Red List of Threatened Species lists the species as ''critically endangered'' because ''its population size is estimated to number fewer than 250 mature individuals, with no subpopulation greater than 50 individuals, and it is experiencing a continuing decline'' (Timm and Arroyo-Cabrales 2008, p. 1). The FNAI (2013, pp. 25, 29) also considers the global element rank of the Florida bonneted bat to be G1, meaning it is critically imperiled globally because of extreme rarity (5 or fewer occurrences, or fewer than 1,000 individuals) or because of extreme vulnerability to extinction due to some natural or manmade factor.

Estimates of population size are crude, relative, and largely based upon expert opinions and inferences from available data. Due to the numerous challenges associated with censusing bats (Kunz 2003, pp. 9–17), it will likely be difficult to accurately estimate the size of the Florida bonneted bat population (FWC 2013, p. 13). Alternative approaches, such as occupancy modeling and analysis of genetic diversity, may provide better estimates and more useful information about population size in the future (K. Gillies, *in litt.* 2012; FWC 2013, p. 16).

Acoustical Survey Efforts as Indicators of Rarity

A detailed discussion of acoustical survey effort and results can be found in the proposed listing rule (77 FR 60750). Only new information we received during the public comment period or relevant findings are provided below.

Results from acoustical surveys conducted in late 2012 through mid-2013 detected generally few Florida bonneted bat calls in BCNP, except for one location. In 296 nights of sampling, 747 Florida bonneted bat calls of 36,441 total bat calls were recorded on 17 nights at 7 of 44 sites surveyed (R. Arwood, pers. comm. 2013c). Most of the positive calls (721) were recorded at one location (R. Arwood, pers. comm. 2013c). Although it is difficult to compare studies, these results appear to confirm previous findings suggesting rarity, particularly because this study employed longer recording intervals (i.e., continuous recordings taken from sunset to sunrise) with multiple nights at each site survey site (R. Arwood, pers. comm. 2012b).

Acoustical surveys conducted at Zoo Miami and adjacent pinelands over 137 nights of sampling detected 154 Florida bonneted bat calls out of over 20,500 bat call sequences recorded (F. Ridgley, pers. comm. 2013). Although difficult to compare to other studies, it should be noted that this study also employed long recording intervals (i.e., continuous recordings taken from sunset to sunrise) taken from an elevated microphone to improve detection.

Available data and information (from previous efforts and those presented above) show comparatively few positive Florida bonneted bat calls recorded relative to other bat species with considerable survey effort expended. Although acoustical data suggest general rarity, it is not possible to estimate population size from this information, due to the limitations of the studies (e.g., large areas not surveyed, surveys primarily conducted on public lands, lack of randomization in selecting survey sites, short duration of many listening periods) and equipment (e.g., recording distance), and aspects of the

species' ecology (e.g., able to fly high and travel far distances).

Occupied and Potential Occupied Areas

The Florida bonneted bat has been recorded in various habitat types and locations in south and southwest Florida (see Table 1 and *Habitat,* above) (R. Arwood, pers. comm. 2008a, 2008b, 2012a, 2013a-d; Marks and Marks 2008a, pp. 13–14; 2008b, pp. 2–5; 2008c, pp. 1–28; 2012, pp. 1–22; Smith 2010, pp. 1–4; S. Snow, pers. comm. 2011a, 2011b, 2012b–h; *in litt.* 2012; M. Owen, pers. comm. 2012, 2012b; R. Rau, pers. comm. 2012; Maehr 2013, pp. 1–13; S. Maehr, pers. comm. 2013a–c; K. Relish, pers. comm. 2013; F. Ridgley, pers. comm. 2013a–c; B. Scofield, pers. comm. 2013a–f; K. Smith, pers. comm. 2013). Still, no actual colony locations or roost sites other than occupied bat houses are currently known, and large information gaps in the species' ecology currently exist. Roosting and foraging behavior and habitat are not fully understood. It is not known how far individuals travel from roosting locations to forage or to fulfill other needs. Dietary requirements, colony composition, movement between roosts or among colonies, and many other basic aspects of the species' life history are poorly understood. Despite these uncertainties, there is evidence that the species occupies at least portions of five south and southwest Florida counties (Charlotte, Lee, Collier, Monroe, and Miami-Dade Counties) within the core of its range as explained below. In addition, there is additional evidence that the species occupies portions of south-central Florida (Polk and Okeechobee Counties) (Marks and Marks 2008b, pp. 2, 5; 2008c, pp. 11, 17; B. Scofield, pers. comm. 2013a–f). Areas adjacent to or near these locations may also be occupied.

Core Areas

Charlotte County

Babcock-Webb WMA—Florida bonneted bats have consistently used this area since 2008 (J. Myers, pers. comm. 2013). The colonies at Babcock-Webb WMA are the only known roosts on public lands and effectively tripled the number of known active colonies (N. Douglass, pers. comm. 2009). The 33 individuals recorded in 2009 appeared to be the largest single discovery of the species recorded in recent years (N. Douglass, pers. comm. 2009). In 2010, monitoring by FWC indicated approximately 25 individuals at 2 additional bat houses, bringing the potential total at Babcock-Webb WMA to 58 individuals, occupying 4 roosts (J. Birchfield, pers. comm. 2010). In 2012–2013, periodic simultaneous counts conducted on 4 occasions showed 39 to 43 individuals using 3 to 5 separate roosts (all bat houses) (J. Myers, pers. comm. 2013). In addition, FWC biologists report also hearing Florida bonneted bat calls in the vicinity of red-cockaded woodpecker cavity trees on site (J. Myers, pers. comm. 2012a). The species is likely also using natural roosts sites within the area (Marks and Marks 2012, pp. 13, 15; P. Halupa, pers. obs. 2013; M. Knight, pers. comm. 2013).

Babcock Ranch Preserve—Florida bonneted bat calls recorded at Telegraph Swamp at Babcock Ranch Preserve in 2007 are believed to represent separate colonies from those at Babcock–Webb WMA (Marks and Marks 2008a, p. A9; 2012, p. 13).

Other Potential Areas—The FDEP also suggested that the species may occur at Charlotte Harbor Preserve State Park (P. Small, pers. comm. 2012).

Lee County

North Fort Myers—Florida bonneted bats have continually used bat houses on one private property since December 2002 (S. Trokey, pers. comm. 2006a, 2012a, 2013; Marks and Marks 2008a, p. 7). This was the first record of this species using a bat house as a roost and the only known location of an active colony roost located on private land (S. Trokey, pers. comm. 2006a; Marks and Marks 2008a, pp. 7–15). The colony had included approximately 20 to 24 individuals in 2 houses (S. Trokey, pers. comm. 2008a, 2008b), but only 10 remained by April 2010, after the prolonged cold temperatures in January and February 2010 (S. Trokey, pers. comm. 2010a–c) (see also Summary of Factors Affecting the Species, Factor E, below). In May 2011, 20 Florida bonneted bats were found using this site (S. Trokey, pers. comm. 2011). In February 2012, 18 individuals were found (S. Trokey, pers. comm. 2012a), and in March 2013, 20 individuals were found (S. Trokey, pers. comm. 2013).

Other Potential Areas—Florida bonneted bat calls have also been heard elsewhere in the rural North Fort Myers area, approximately 6 to 8 km (4 to 5 mi) south of Babcock-Webb WMA (S. Trokey, pers. comm. 2013).

Collier County

Naples—Available data from a single fixed site suggest that the species is present in the area (R. Arwood, pers. comm. 2008a; Marks and Marks 2008a, p. 11; 2012, p. 13).

Florida Panther NWR—In 2013, Florida bonneted bats calls were recorded at 9 of 13 locations, primarily in areas of the largest open water and in the area of the Fakahatchee Strand that bisects the refuge (Maehr 2013, pp. 7–9; S. Maehr, pers. comm. 2013a–c).

FSPSP—Florida bonneted bat calls have been heard and recorded throughout the year from several locations and habitat types within the FSPSP from 2000 to present (Marks and Marks 2008a, pp. 6, 11; M. Owen, pers. comm. 2012a, 2012b; R. Rau, pers. comm. 2012; K. Relish, pers. comm. 2013).

PSSF—Florida bonneted bats have been detected at nine locations within PSSF (K. Smith, pers. comm. 2013). A juvenile male was captured in a mist net above a canal in PSSF in 2009, but no other Florida bonneted bats were captured during additional trapping efforts (14 trap nights) (K. Smith, pers. comm. 2010; Smith 2010, p. 1). In addition to the captured individual, the species was heard while mist netting at eight other locations (K. Smith, pers. comm. 2013).

BCNP—Calls have been recorded at various locations by multiple parties (R. Arwood, pers. comm. 2008b, 2012a, 2013a–d; Marks and Marks 2008a, pp. 11, A12–A14; 2012, pp. 13–14; S. Snow, pers. comm. 2012g). Survey efforts from 2003 and 2007 by one contractor recorded presence at several locations (S. Snow, pers. comm. 2012g). However, results of the rangewide survey in 2006–2007 recorded only one call at Deep Lake in 12 nights of surveys (R. Arwood, pers. comm. 2008b; Marks and Marks 2008a, pp. 11, A12–A14). In 2012, five calls were recorded at Cal Stone's camp during 2 nights of surveys (R. Arwood, pers. comm. 2012a; Marks and Marks 2012, pp. 13–14). Presence was also recorded at seven locations within BCNP in late 2012 through mid-2013 (R. Arwood, pers. comm. 2013a–d). This latter study employed longer listening intervals and multiple survey nights at each site (R. Arwood, pers. comm. 2012b).

Everglades City—Available data suggest that the species is present in the area (R. Arwood, pers. comm. 2008a; Marks and Marks 2012, p. 14).

Ten Thousand Islands area—The Florida bonneted bat was detected at Dismal Key in Ten Thousand Islands NWR in 2000 (Timm and Genoways 2004, p. 861; B. Nottingham, pers. comm. 2006; T. Doyle, pers. comm. 2006; C. Marks, pers. comm. 2006c; Marks and Marks 2008a, p. 6). Calls were not recorded during the 2006–2007 survey in areas searched by boat from Dismal Key to Port of the Islands (Marks and Marks 2008a, pp. 11, 14, A9). However, Florida bonneted bat calls

were reportedly heard by a volunteer at Port of the Islands (R. Arwood, pers. comm. 2012b).

Other Potential Areas—In November 2007, the species was observed along U.S. 41 at Collier–Seminole State Park (S. Braem, pers. comm. 2012). The FDEP also suggested that the species may occur at Delnor–Wiggins Pass State Park (P. Small, pers. comm. 2012).

Monroe County

ENP (coastal)—In 2012, only one Florida bonneted bat call was recorded at Darwin's Place in ENP in 18 survey nights in areas searched from Flamingo to Everglades City (Marks and Marks 2012, pp. 8, 14, A50). Darwin's Place is approximately 4.8 km (3 mi) from Watson's Place, where another researcher (Laura Finn, Fly-By-Night) had recorded 10 Florida bonneted bat calls in 2007 (Marks and Marks 2012, p. 14; S. Snow, pers. comm. 2012h).

Other Potential Areas—Other coastal and remote areas within ENP may support the species; however, additional surveys are needed.

Miami-Dade County

ENP (mainland)—Acoustical surveys conducted on 80 nights from October 2011 to November 2012 by Skip Snow (pers. comm. 2012b–f; *in litt.* 2012) documented presence at several locations within ENP and surrounding locations (see Table 1). Results of the 2006–2008 survey did not detect Florida bonneted bat calls in the Long Pine Key area, which was thought to be the most likely location for the species (Marks and Marks 2008a, p. 10; 2012, p. 14). However, the species was subsequently recorded in the Long Pine Key area in 2011 and 2012 (S. Snow, pers. comm. 2011a, 2012f; *in litt.* 2012; Marks and Marks 2012, pp. 8, 14, 17).

Homestead area—Calls recorded in the Homestead area in 2006 and in 2008 suggest that one colony exists, possibly located east of U.S. 1 (Marks and Marks 2008a, pp. 11, A6–A7; 2008b, p. 5; 2012, p. 14).

Coral Gables and Miami area—Florida bonneted bat calls have been consistently recorded in acoustical surveys at the Granada Golf Course in Coral Gables, but not elsewhere in the vicinity (Marks and Marks 2008a, p. 6, A4; 2008b, pp. 1–6; 2012, p. 14). Since calls were recorded so shortly after sunset, the species may be roosting on or adjacent to the golf course (Marks and Marks 2012, p. 14). Calls recorded at Snapper Creek Park in south Miami in 2008, Zoo Miami in 2011–2013, Larry and Penny Thompson Park and Martinez Preserve in 2012 and 2013, FTBG in 2011 and 2012, and the L31–N canal in 2012 suggest that colonies are at or near these locations (Marks and Marks 2008b, pp. 1–2; 2012, pp. 1–22 and appendices; S. Snow, pers. comm. 2011b, 2012b–f; Ridgley 2012, p. 1; F. Ridgley, pers. comm. 2013a–c). At Zoo Miami and Larry and Penny Thompson Park, all early evening calls have been recorded at the edge of a tract of intact pine rockland (F. Ridgley, pers. comm. 2013b).

Other Potential Areas—Other undeveloped areas within the Richmond Pinelands likely also provide habitat (J. Maguire, *in litt.* 2012). These may include Federal land holdings (i.e., owned by the U.S. Coast Guard, the U.S. Army, and General Services Administration), large parcels owned by the University of Miami, or other areas (J. Maguire, *in litt.* 2012).

Non-Core Areas

Polk County

KICCO WMA—Florida bonneted bat calls were recorded along the Kissimmee River in in May 2008 (Marks and Marks 2008b, p. 2; 2008c, pp. 11, 17). Documented presence along the Kissimmee River was significant as this was the first time the species had been detected north of Lake Okeechobee, except in fossil records, and effectively extended the known range 80 km (50 mi) north (Marks and Marks 2008b, pp. 2, 5; 2008c, pp. 1–28).

APAFR—Florida bonneted bat calls were recorded at two of 13 locations on APAFR in 2013 (B. Scofield, pers. comm. 2013a-f). These findings are significant because they provide additional evidence of current presence in the northern part of the species' range, where survey information is generally lacking.

Other Potential Areas—Areas along the Kissimmee or other areas within Polk County (and possibly adjacent counties) may support the species; however, additional surveys are needed.

Okeechobee County

Kissimmee River Public Use Area—Florida bonneted bat calls were recorded at Platt's Bluff along the Kissimmee River in Okeechobee County in May 2008 (Marks and Marks 2008b, p. 2; 2008c, pp. 11, 17).

Other Potential Areas—Areas along the Kissimmee River or other areas within Okeechobee County (and possibly adjacent counties) may support the species; however, additional surveys are needed.

Summary of Comments and Recommendations

In the proposed rule published on October 4, 2012 (77 FR 60750), we requested that all interested parties submit written comments on the proposal by December 3, 2012. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. Notices inviting general public comment were published in the following Florida newspapers: The Miami Herald, Naples Daily News, Orlando Sentinel, The Palm Beach Post, The News–Press (based in Fort Myers), Charlotte Sun and Englewood Sun (based in Charlotte County), and The Ledger (based in Lakeland) on Sunday, October 14, 2012. We did not receive any requests for a public hearing.

During the comment period for the proposed rule, we received 37 comment letters (from 39 entities) directly addressing the proposed listing of the Florida bonneted bat as an endangered species, including the finding that critical habitat was prudent, but not determinable. With regard to listing the Florida bonneted bat as an endangered species, 28 comments were in support, four were in opposition, and five were neutral. With regard to critical habitat, five comment letters expressed opinions. Of these, three peer reviewers stated that more information was needed to determine critical habitat, and two environmental groups indicated that such designation should be a timely goal or completed promptly. All substantive information provided during the comment period has either been incorporated directly into this final determination or is addressed below.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from 10 individuals with recognized expertise on bats, particularly molossids, as well as general expertise on bat ecology and conservation. We received responses from six of the peer reviewers.

We reviewed all comments we received from peer reviewers for substantive and new information regarding the listing of the Florida bonneted bat as an endangered species. The peer reviewers generally concurred with our methods and conclusions, and provided additional information, clarifications, and suggestions to improve the final rule. Of the six reviews we received, three reviewers commented on critical habitat and agreed that additional information was needed to help define critical habitat. Peer reviewer comments are addressed in the following summary and

incorporated into the final rule as appropriate.

Peer Reviewer Comments

This section focuses on comments from peer reviewers and our responses to them. However, we have also included other public comments in this section (referred to as ''other commenters'' or ''commenters'') if those comments were related in topic to peer reviewer comments.

Comments Related to the Species and Its Ecology

(1) *Comment:* One peer reviewer, who first recognized the unique morphological and genetic population of bonneted bats in southern and southwestern Florida merited recognition as a full species rather than a subspecies, reconfirmed the information summarized in the proposed rule as it related to taxonomy and stated that the Florida bonneted bat is clearly a ''distinctive'' species. He indicated that he has personally examined all of the specimens of the species deposited in the world's scientific collections, and that he and his colleagues have conducted the morphological and genetic studies comparing and contrasting this species to other species of *Eumops* and other molossids.

Another reviewer with expertise in systematics and evolutionary biology related to mammals, who has published articles on the evolutionary relationships of various *Eumops* species, also agreed with the interpretation of literature regarding systematics, evolution, and fossil data. She indicated that although nuclear (AFLP) and mitochondrial data do not demonstrate a distinct genetic signature when compared to *Eumops* from the Caribbean, the cranial and bacular (penile bone) morphology indicate that *Eumops* from Florida are unique and therefore merit specific status. She further suggested that genetic distances indicate that *E. floridanus* is a recent species, and this is confirmed by fossil evidence from the Pleistocene.

This reviewer also provided a Master's thesis (Bartlett 2012, pp. 1–33), which examined additional mitochondrial and nuclear data for the genus, but did not include additional nuclear data for *E. floridanus.* She indicated that the mitochondrial data in this thesis demonstrated the same results as those found in McDonough *et al.* 2008 that support *E. floridanus* having a similar mitochondrial DNA sequence signature as those from the Caribbean. In her view, the signature was likely a result of incomplete lineage sorting in the mitochondrial genomes of *Eumops* from the region and represented recently diverged taxa.

Eight other commenters also indicated that the species is ''evolutionarily distinct'' and ''unique enough to be considered a separate species.''

Our Response: We appreciate the reviewers' confirmation that *Eumops floridanus* is unique and continue to affirm that the taxon is distinct at the species level, based upon the best scientific information available and peer review of that information. We acknowledge the recent thesis (Bartlett 2012, pp. 1–33) and subsequent paper (Bartlett *et al.* 2013, pp. 867–880), but they do not alter our conclusions. Bartlett (2012, p. 13) and Bartlett *et al.* (2013, pp. 875–876) acknowledged that *E. floridanus* is distinguished from other members of the *E. glaucinus* complex based upon several features as described by Timm and Genoways (2004). However, based upon examination of the cytochrome-b dataset, researchers found a low level of sequence divergence among and between *E. ferox* and *E. floridanus* and incomplete separation of the two species; therefore, researchers suggested reevaluation of *E. floridanus* as a valid species. Additional morphological and genetic studies comparing and contrasting *E. floridanus* to other species of *Eumops* and other molossids will provide further insights into their relationships and phylogenies.

(2) *Comment:* One reviewer stated that the Florida bonneted bat's life history is very poorly understood and emphasized that a critical factor to understand is reproductive approach. The reviewer stated that it is imperative to determine if the species is indeed polyestrous, as speculated. She also underscored the need to determine other metrics, such as genetic diversity and roosting ecology, in order to prioritize conservation measures in a recovery plan.

Another reviewer stated that low reproductive rate and other factors (discussed below) make extinction highly probable. Nine commenters also expressed concern over low fecundity or slow population growth.

Our Response: We agree that the life history of the species is poorly understood, and that determining the species' reproductive approach and other aspects of its life history and ecology (e.g., longevity, colony sizes, foraging and roosting preferences) will be essential to minimizing threats and conserving the species and its habitat. The FWC recently funded a large multi-year study that is expected to close some of the data gaps for the Florida bonneted bat. The ultimate goal of the study is to gain a better understanding of aspects of the Florida bonneted bat's biology to enable the development of recommendations for additional conservation measures for the species (Ober and McCleery 2012, p. 2). We believe this new study and other research will provide important data and insights and greatly aid in conservation of the species and its habitat.

(3) *Comment:* Three reviewers and 11 commenters in support of the listing expressed concern over the species' restricted geographic range as a factor contributing to its imperilment. One reviewer stated that the Florida bonneted bat has the most restrictive range of any bat in the United States and suggested that a single storm (such as Hurricane Sandy) could kill most of the individuals over a fairly broad area. Another reviewer acknowledged the species' extremely restricted range, but disagreed with the statement that the Florida bonneted bat has the most restricted range of any Florida mammal.

One reviewer stated that our understanding of the distribution of the species is extremely limited due to shortcomings of the surveys conducted to date and the high degree of variability in the temporal component of the survey effort. In her view, our proposed rule suggested that it is easy to survey through acoustical means; she emphasized that although the calls are distinctive, the short-duration listening intervals of many surveys may erroneously conclude that an area is not being used. Since bat activity can vary greatly at a single location both within and between nights (Hayes 1997, pp. 514–524; 2000, pp. 225–236), a lack of calls during a short listening period may not be indicative of lack of use. The variable duration of the listening periods of past surveys makes it difficult to make conclusions about changes in occupancy or activity levels over time and space.

Another reviewer emphasized that the extent of the species' range must be determined to mitigate potential impacts from land use activities and to identify areas for priority conservation.

Eight commenters in support of the proposed listing also noted that the species is ''geographically isolated.''

Some in opposition to the proposed listing offered other views. One commenter noted that the recent surveys have documented the species in at least seven Florida counties, suggesting a range expansion. Another commenter indicated that the species' range is larger than previously understood and suggested additional surveys. The same commenter suggested

that range ''be properly defined'' through additional surveys in rural areas containing habitat similar to those areas where sightings have been recorded and that surveys be conducted over as many as 10 nights per survey region. The same commenter also suggested that a survey using Florida bonneted bat-optimized bat houses erected in strategic locations could also provide data related to the range east and west of the Kissimmee River basin. Another commenter did not think there was enough survey information available to establish range.

One commenter, who did not express an opinion on the listing action, recommended that the Service design an echolocation survey protocol based on the best scientific data that defines survey seasons, duration of surveys, methodology, number of survey periods, and types of data to be collected. He recommended that the Service require surveys to be conducted in the core range prior to construction in natural habitats. In his view, additional echolocation data would provide evidence of presence/absence and that continued surveys over time in different locations would provide additional information on the species' distribution and habitat utilization. Mist netting was also suggested in combination with echolocation surveys.

Our Response: Our understanding of the species' distribution, as well as its abundance, biology, and habitat preferences, would benefit from additional survey information and research. We acknowledge that the surveys conducted to date have been limited in scope and inconsistent in methods used. More robust study designs would account for sources of temporal, spatial, and sampling variation (Hayes 2000, pp. 225–236). Longer surveys at more locations over additional nights and seasons using more consistent methods would undoubtedly contribute to increasing understanding. Surveys that are longer in duration (e.g., conducted throughout the entire night) and repeated over several nights would help add confidence regarding potential use of an area. We note that some of the most recent studies (see *Other Isolated Studies,* above) are employing or have used such methods. Additional surveys along peripheral portions of the range could help to better define occupancy. See also Comment 4 and our response, below.

In an effort to acquire more information, the Service purchased five acoustical recording devices in 2012, and we are working with numerous partners (BCNP, ENP, APAFR, FSPSP, FWC, Miami Zoo, FBC) to obtain and analyze additional data. For example, we are attempting to collect additional data along the northern extent of the species' known range; this could help determine if portions of Polk and Okeechobee Counties should also be considered part of the species' core range. Additional data from this area are key to determining if this is an apparent expansion of the species' known range. Recording devices are also being used in more places for longer periods of time over multiple nights in BCNP (see above, R. Arwood, pers. comm. 2013a-d). A new acoustical study was also conducted at the Florida Panther NWR, with the help and support of other NWRs in the southeast. We believe the additional data from multiple sources will be useful in better defining range and key to better understanding the species' biology, relative abundance, and habitat preferences.

Although previous surveys have limitations, there is ample scientific evidence to indicate that the Florida bonneted bat has a very restricted range, perhaps one of the most restricted of any bat in the United States. We have made clarifications to the text regarding range and have more thoroughly discussed the limitations of surveys accordingly. The data indicate that the species' limited range contributes to its imperilment; some threats (e.g., hurricanes, climate change) have the potential to have severe consequences on the species and its habitat in a single widespread or regional event.

We agree that an acoustical survey protocol or broader survey guidelines for the Florida bonneted bat should be established, and we intend to work towards that in cooperation with partners. A well-defined protocol with consistent and repeated surveys, in combination with other studies, would help to better understand distribution, relative abundance, biology, and habitat preferences. See also Comment 4 and our response, below.

(4) *Comment:* Three peer reviewers and 13 commenters in support of the listing expressed concern over the apparent rarity or small population size as a factor contributing to its imperilment. Although the minimum viable population size is not known, one reviewer predicted a ''strong Allee effect'' (decline in individual fitness) at low population sizes due to at least two factors. First, offspring survival in bats is usually highly correlated with maternity colony size due to thermoregulation, and colony sizes for this species are relatively small. Thus, low survival is expected if females are roosting solitarily or in numbers fewer than 10 individuals. Second, roost sites function as information centers for many species of bats (e.g., the velvety free-tailed bat (*Molossus molossus*), see Dechmann *et al.* 2010). The reviewer's observations of one Florida bonneted bat colony suggested that the species is highly social, much like Brazilian free-tailed bats (Bohn *et al.* 2008, pp. 1838–1848), which may have an effect on viability at low population sizes.

One reviewer acknowledged that the Service and its partners may be unable to confidently estimate a population size for the Florida bonneted bat and noted that challenges arise when trying to estimate population size for organisms that are ''cryptic, volant, elusive, rare, and highly mobile.'' She suggested that when detection probabilities are exceptionally low, erroneous population estimates and trends may result. Her recommendation was to use alternate approaches, including patch occupancy models, which are more appropriate tools for estimating distribution trends.

Another reviewer did not believe that population estimates could be derived from available data. In her view, there is no way to extrapolate from surveys conducted along roads to areas without roads that were not surveyed or from conservation areas that were surveyed to private agricultural areas that were not surveyed. She specifically indicated that due to the immense areas that were not surveyed, the short duration of many listening periods, and the lack of randomization when selecting survey sites, it could not be said that ''it is not likely that abundance is appreciably larger than the current available population estimates given.''

Other commenters in opposition to the proposed listing offered different views. One commenter objected to listing the species as endangered due to the lack of good population studies. He argued that with no known roosting areas and just a few known sightings, there was not enough evidence to declare the bat endangered. One commenter indicated that it is difficult to have a reliable estimate of current population, given the limitations of sampling, including limitations in detection from ultrasonic devices and the high–flying habits of the species. This commenter endorsed the suggestion provided by another commenter who had recommended that the Service design an echolocation survey protocol. Another commenter stated that the surveys cannot be used to establish abundance or range, due to so few surveys being conducted, surveys mainly being conducted in open areas,

and the vast areas of potential habitat that have not been surveyed.

Another commenter indicated that the population size for the Florida bonneted bat is much larger than originally estimated based upon 12 new sightings since 2008. The same commenter used the new information to negate criteria used within the State's biological status review, suggesting that data were ignored. This commenter suggested that the survey intensity for many parts of Florida were insufficient, and that every time a survey has been performed additional sightings have been recorded in new locations.

Our Response: We acknowledge that the survey information available to date is limited in many regards, and that it is not possible to estimate population size on this information alone. We have added clarifications regarding the limitations and short-comings of the acoustical surveys and have re-examined how we use this information. It was not our intent to imply that population estimates were derived purely or directly from acoustical surveys. We have made adjustments to the text and tried to more clearly articulate that the population estimates are only relative numbers of abundance, largely based upon expert opinions and inferences from available data. We are unable to confidently estimate population size for this species at this time.

Our understanding of the species' abundance, as well as its distribution, biology, and habitat preferences, would benefit from additional survey information and research (see Comment 3 and our response, above). We agree that it would be beneficial to use patch occupancy models and other approaches to estimating distribution trends. We agree that it would be helpful to have more randomized surveys, longer listening periods, more areas surveyed, and repeated surveys. We intend to work with our partners on an acoustical survey protocol design, which if employed consistently, could improve the quality of information obtained in the future.

The best available scientific information and the majority of expert opinions indicate that the Florida bonneted bat population is relatively small (see *Population Estimates and Status* and *Acoustical Survey Efforts as Indicators of Rarity,* above) and the species' apparent low abundance is a major factor in its overall imperilment (see *Factor E, Effects of Small Population Size, Isolation, and Other Factors,* below). We have revised the above sections to clarify and better explain uncertainty and limitations of available information.

(5) *Comment:* One reviewer acknowledged that the foraging behavior of the Florida bonneted bat has not been studied in detail and provided insights into probable foraging behavior based upon its morphology. She stated that molossids are highly adapted for hawking high-flying insects (Norberg and Rayner 1987) and are characterized by high aspect ratios, high wing loadings, long pointed wingtips, and use of low frequency narrowband echolocation calls, which collectively make them well-suited for fast flight at high altitudes and prey detection at long distances, relative to other bats. The reviewer pointed out that species with these morphological features are considered to be adapted for low cost, swift, long distance travel from roost sites to foraging areas. In her view, these morphological characteristics and echolocation call structure likely preclude their ability to maneuver or detect prey at short range in cluttered conditions, given their large turning radius and the limited information obtained through the use of low frequency, narrowband echolocation calls. Therefore, she surmised that it seems likely that foraging areas may be located fairly long distances from roost sites, and that foraging likely occurs either at high altitudes or in fairly open habitat.

Another reviewer noted that the Florida bonneted bat is a molossid, which ''consists of high flying bats capable of dispersing great distances''. She recommended a study that identifies home ranges and habitat affinities to determine the physical and biological features essential to the conservation of the species.

The NPS (ENP) commented on an effort to better understand foraging behavior and foraging habitat. A biologist from ENP reviewed all acoustic files available, from 2000 to present, which were identified as belonging to the Florida bonneted bat to better understand foraging habitat. Review of these files did not reveal any definitive ''feeding buzzes'', a feature presumed indicative of successful foraging in other bats. Biologists in south Florida conducting acoustical surveys were also queried by ENP, and they confirmed that they had yet to identify a feeding buzz attributable to the Florida bonneted bat. In this view, the ecomorphology of the Florida bonneted bat, and *Eumops* spp. in general, suggests a bat that flies high, relatively fast, and quite possibly far. Those characteristics confound acoustic detection, including capturing feeding events as indicated by the ''feeding buzz.'' ENP believes that it is not unreasonable to consider that the Florida bonneted bat may forage some of the time and perhaps frequently at altitudes beyond the range of detection by acoustic survey equipment.

Another commenter argued that since the species forages at heights of 10 m (33 ft) or more, it is possible that the species forages above canopied areas. This commenter contended that there was no information or extensive surveys from canopied areas and that actual foraging sites have not been scientifically determined.

Our Response: We acknowledge that the Florida bonneted bat's dispersal capabilities, foraging behavior, habitat affinities, and home ranges are not clearly understood. We agree that the Florida bonneted bat is likely capable of dispersing large distances and believe it may have considerable home ranges. For comparison, in one study in Arizona, Underwood's mastiff bat was found to range up to 24 km (15 mi) or more on foraging bouts from its roost site, suggesting that roost sites do not need to be available in close proximity to foraging areas (Tibbitts *et al.* 2002, p. 11). We have clarified the text accordingly (see Background, above).

We agree that the species' morphological characteristics make it reasonable to assume that foraging areas may be located fairly long distances from roosts sites, and that foraging likely occurs either at high altitudes or in fairly open habitat. We do not dismiss the idea that foraging habitat may include canopied areas; the species may forage above, within, or adjacent to canopied areas. We agree that the lack of or limited number of ''feeding buzzes'' recorded to date may further suggest that the species forages at altitudes beyond the range of detection of acoustic survey equipment. The only set of ''feeding buzzes'' for the species that we are aware of were recorded at the Granada Golf Course in Coral Gables in late February 2013 (C. Marks, pers. comm. 2013).

Additional studies are needed to more completely understand foraging behavior and habitat preferences. In future acoustical studies, it may be beneficial to sample vertical strata where possible, to determine activity and obtain additional insights into habitat use (Hayes 2000, p. 229). Placing recording devices at higher positions in the landscape (e.g., fire towers) may be helpful in determining if foraging is occurring at higher altitudes. Longer recording intervals, more survey locations, and additional analysis of echolocation data may be helpful in

identification of more ''feeding buzzes'' and improved understanding. The use of tracking devices such as transmitters, if tolerated by this species, may be extremely helpful to understanding movements, including insights into foraging distances and behavior. We note that the FWC recently funded a large multi-year study that is expected to close some of the data gaps for the Florida bonneted bat, including, in part, habitat selection. This study is expected to begin in January 2014 (H. Ober, pers. comm. 2013). Analysis of guano will be helpful in identifying prey items, assessing the availability of prey, and understanding foraging habitat. At this time, we are working with researchers and partners to conduct limited dietary analysis.

(6) *Comment:* One reviewer commented extensively on roost site selection, stating that there is a high probability that Florida bonneted bat individuals would tend towards high roost site fidelity. She pointed to the work of Lewis (1995), who in her review, found that bats that roost in buildings tend to be more site-faithful than those that roost in trees, and that among the bats that roost in trees, those that use cavities in large trees tend to more site-faithful than those using smaller trees. Given its large size, this reviewer surmised that the Florida bonneted bat is likely to select large trees. She noted the large accumulation of guano in one known historical natural roost (1 m [3.3 ft] deep) provided further evidence of high roost fidelity, especially given the small number of individuals per colony. Although it is not known if the species more commonly uses tree cavities or buildings, the reviewer stated that the loss of a roost site is likely to cause a greater hardship to the species than the loss of a roost site for other, more labile (readily open to change) species. In her view, the threat imposed by the loss of individual roost sites was understated in the proposed rule.

The same reviewer noted that larger roosts tend to have greater microclimatic variability within a roost than do smaller spaces, which could increase the relative importance of manmade roosts to the species as climate variability increases in the future. For example, she suggested that bats roosting in tree cavities may need to switch roosts in response to a cold spell, making them vulnerable to exposure, predation, or other threats, whereas individuals using larger buildings may be able to simply change locations within their roost. She pointed out that the species' use of anthropogenic structures may confer an adaptive advantage in the future and allows for the possibility of future habitat enhancement through the creation of additional artificial roosts with suitable characteristics, once determined.

One reviewer indicated that since so little is known about this species' roosting habits, it is possible that palm fronds are used for roosting. In her view, it is imperative to determine roosting ecology and other metrics to prioritize conservation measures in a recovery plan. Another reviewer indicated that roost sites function as information centers for many species of bats, including the molossid, the velvety free-tailed bat (Dechmann *et al.* 2010).

With regard to roosting sites, the FWC suggested clarification for the term ''key roosting sites'' or using simply using the term ''roosting sites'' instead, indicating that there was no information to suggest that some roosting sites may be more critical than others.

Eleven commenters in support of the listing also mentioned lack of roosting information. Several suggested that we know less about this species than when it was first considered for protection.

Commenters in opposition to the proposed listing offered different views. Two commenters stated that there is not enough evidence to declare the bat endangered when we have such limited information regarding roosting areas or preferred roosting habitat. Another commenter believed the species' adaptability to human structures is a positive and questioned if the species has more roosting opportunities now than it did historically due to development.

Our Response: We agree with views regarding roosting habits and believe that finding natural roosting sites and better understanding preferences is crucial to conserving the species. The Florida bonneted bat may indeed have high roost site fidelity, as one reviewer suggested, and the loss of any roost site for this species may have profound consequences. We agree that it is likely that all roost sites are important and clarified the importance of roosting sites accordingly. See also Comment 4 and our response, above.

We agree that the species' ability to adapt to artificial structures can be beneficial in some regards. For example, artificial structures may provide potential suitable roost sites in areas where natural roost sites are lacking, limited, or inadequate. However, we caution against the mindset that artificial structures can equally replace natural roosts. More research on the role of bat houses in the conservation of the species is needed (FWC 2013, pp. 10–11). Artificial structures may be more likely to be disturbed, may be more prone to vandalism, and may or may not be maintained.

We disagree with the views opposing the listing due to lack of information on preferred roosting habitats. Listing decisions are based upon all available data and information and threats (see Background, above, and Summary of Factors Affecting the Species and Determination of Status, below). While there may be more artificial roosting opportunities available now due to development, we do not have data that indicate the species has more suitable roosting sites overall. Natural roost sites have undoubtedly been lost due to changes in land use (see Summary of Factors Affecting the Species, *Factor A*), and competition for tree cavities has increased (see Summary of Factors Affecting the Species, *Factor E, Competition for Tree Cavities,* and Comment 9 and our response, below). Additionally, changes in building codes may have reduced opportunities in some artificial structures (see Comment 11 and our response, below).

We acknowledge that we do not fully understand roosting habitat preferences, but we are working with partners to locate roosts and better understand the ecology of the species. Additional acoustical data are being collected from more sites for longer periods of time. In February 2013, we worked with Auburn University and numerous land managers and partners across south Florida to use trained scent detection dogs in an effort to identify and locate potential natural roosts. The dogs showed interest in several large cavity trees and snags. Follow-up work (e.g., acoustical surveys, infrared cameras, cavity inspection, guano collection) is being conducted to determine if Florida bonneted bats or other bat species are using these trees and snags as roosts. To date, no active, natural roosts for the Florida bonneted bat have been confirmed.

Comments Relating to Threats

(7) *Comment:* Three reviewers and 11 commenters in support of the listing remarked on habitat loss, modification, or curtailment of range. One reviewer stated that loss of habitat, especially forested areas, is among the most important threats. Another reviewer stated that the loss of individual roost sites (from exclusion, demolition, tree harvest, or other factors) was understated in the proposed rule because of suspected high roost fidelity. Another reviewer stated that habitat loss, degradation, alteration, and fragmentation are significant threats; in

order to mitigate potential impacts from land use activities and to identify areas for priority conservation actions, the extent of the species' range must be determined.

One commenter, writing on behalf of an environmental group with more than 4,000 members with a focus in southwest Florida, stated that the species faces continued threats from habitat loss and specifically from several proposed large-scale developments, mines, and transportation projects. The group highlighted proposed projects in their five-county area of focus (i.e., Lee, Collier, Hendry, Glades, and Charlotte), stating that thousands of acres of impacts are expected in a variety of habitat types. In Charlotte County, the group specifically noted the Babcock Ranch Community (encompassing over 17,000 acres (ac)) and the Burnt Store Area Plan near Punta Gorda would allow mixed use development within an area thousands of acres in size. In Hendry County, it noted the Rodina sector plan (encompassing 26,000 ac), the King's Ranch/Consolidated Citrus sector plan (at least 15,000 ac), and the Hendry County Clean Energy Center (more than 3,000 ac). In Lee and Collier Counties, it referenced pending and potential mines totaling tens of thousands of acres. In this group's view, the most significant action was the Eastern Collier Multispecies Habitat Conservation Plan (HCP), which it stated, if permitted as proposed, would authorize 45,000 ac of residential and commercial development. Additionally, the group contended that an ''untold number of acres of potential bat habitat would be lost'' to multiple land uses, including mining, oil and gas exploration/production, agriculture, infrastructure, transportation, and active and passive recreation. It also noted that the Collier County Rural Lands Stewardship Program is voluntary and does not protect some areas that may be important to bats.

With regard to issuing permits, the same group contended that since the Service cannot effectively determine the conservation measures needed to conserve the species and protect it from no net loss, the agency should not issue a take permit. Rather, it recommended that the Service and its partners focus efforts on collecting additional information to map essential habitat areas for this species. In this view, only with this information could the Service properly assess jeopardy under section 10 or section 7 of the Act. In conclusion, the group fears ''the species is routinely placed in jeopardy''.

Another commenter, writing on behalf of its organization with more than 450,000 members and activists, provided extensive comments on climate change and contended that the Florida bonneted bat faces significant risks from coastal squeeze, which occurs when habitat is pressed between rising sea levels and coastal development that prevents landward movement (Scavia *et al.* 2002; FitzGerald *et al.* 2008; Defeo *et al.* 2009; LeDee *et al.* 2010; Menon *et al.* 2010; Noss 2011). The group contended that human responses to sea level rise (e.g., coastal armoring and landward migration) (Defeo *et al.* 2009, pp. 6–8) also pose significant risk to bat habitat, and projected human population growth and development in Florida threaten urban roosting sites with coastal squeeze, particularly in North Fort Myers, Naples, Homestead, and Coral Gables/Miami (Zwick and Carr 2006).

One commenter, who did not express support or opposition to the proposed listing action, suggested that habitat development continues in the species' range and the Service should require that surveys be conducted in the core range before construction in natural habitat is undertaken.

Our Response: We agree that habitat loss, modification, and fragmentation are serious threats. The loss of forested habitat is particularly concerning due to the species' forest–dwelling habits. We agree that the loss of individual roosts may have been understated in the proposed rule and have clarified the text accordingly (see also Comment 6 and our response, above). We also acknowledge that we need to work with partners to more fully understand the species' range for more meaningful conservation.

Large-scale habitat losses in the core of the species' range are particularly concerning. Land use changes at smaller scales may also have individual or cumulative adverse impacts to the species. With this final rule, the Federal protections provided by the Act for this species (see Available Conservation Measures, below) are implemented. This includes evaluation of the impacts of activities and consultation under section 7 of the Act, prohibition of unauthorized take under section 9 of the Act, and allowances for incidental take with habitat conservation plans through the section 10 process. With this final listing, proposed actions will be thoroughly evaluated through the section 7 or section 10 process. With regard to the Eastern Collier Multispecies HCP, as of July 2013, the applicants have submitted incidental take permit applications, but remain in the process of developing a draft HCP. The Service has awarded grant funding through its Cooperative Endangered Species Conservation Fund to assist in the development of the HCP. This proposed project, like others within the species' current range, will be evaluated through the regulatory framework provided by the Act.

We agree that coastal squeeze is a major problem, which will accelerate in the future. We have revised the text to more fully describe anticipated impacts (see Summary of Factors Affecting the Species, *Factor A, Alternative Future Landscape Models and Coastal Squeeze,* below, and Comments 8, 11, 16, and 20, and our responses to them, below).

We agree that surveys for the species should be conducted prior to large-scale land use changes within key natural habitats (e.g., forests or water bodies) within the core range. We intend on working on an acoustical survey protocol and broader survey guidelines, as indicated above (see Comments 3 and 4, and our responses to them, above). However, due to the difficulties in detection of this species, repeated acoustical surveys for long periods of time may be needed. Acoustical surveys, in combination with visual and other inspection of potential roosting locations, may be helpful to avoid or minimize some impacts to suspected roost sites. In some cases, bat activity and potential roosts can be recognized (e.g., observation at emergence, vocalizations (roost chatter), presence of ''ammonia''-like smell or guano). In cases where acoustical surveys and other methods are not feasible, applicants and agencies may need to assume presence prior to assessing impacts for proposed projects and incorporate safeguards into their project designs.

(8) *Comment:* With regard to foraging habitat and climate change, one reviewer indicated that our assessment understated the negative impact of climate change on prey availability. She indicated that plant water stress would impact vegetation community structure, which would likely affect insect availability for foraging bats. She also stated that plant water stress would also affect the actual chemical composition of plants, which also would impact the phenology of phytophagous insects (i.e., those that feed on plants) and therefore the timing of insect availability to foraging bats. She provided a reference showing responses by plants and insects from experimentally induced water deficits (Huberty and Denno 2004) and another that showed that climate change is affecting the timing of seasonal flowering in Florida (Von Holle *et al.* 2010). The reviewer stated that climate

change will alter prey availability to foraging bats.

Our Response: With regard to water deficits caused by climate change, we acknowledge that we did not specifically evaluate the responses by plants and potential impacts to insects and ramifications to foraging bats in any detail. However, we briefly discussed the species' susceptibility to changes in prey availability and possible changes from climate change (see Summary of Factors Affecting the Species, *Factor E, Aspects of the Species' Life History and Climate Change Implications,* below). Since the reviewer's comments relate to changes to foraging habitat, we have expanded the section (see Summary of Factors Affecting the Species, *Factor A, Climate Change and Sea Level Rise,* below) to more fully evaluate this threat. The potential negative impact of climate change on prey availability is now more fully described in this final rule. Additional comments relating to climate change are provided below (see Comments 11 and 16, and our responses to them, below).

(9) *Comment:* One reviewer indicated that the Florida bonneted bat faces competition for tree cavities from native birds and mammals (Belwood 1992, p. 220) and now dozens of introduced species, which also use cavities (e.g., European starlings (*Sturnus vulgaris*), various parrot species, black rats (*Rattus rattus*), and Africanized honey bees (*Apis mellifera scutellata*)). He also suggested that the Florida bonneted bat populations may also be impacted by the decline of red–cockaded woodpeckers, which create cavities in living longleaf pine trees.

One commenter suggested that the species' roosting habits were ''more precarious'' than its small range. He noted the limited supply of woodpecker nest cavities and indicated that invasive species have a significant impact on the Florida bonneted bat by competing for limited roosting locations. In his view, introduced parrots are serious competitors for natural and manmade cavities, as most of the more than 30 species of parrots and 2 to 3 species of mynahs observed in the wild in south Florida use cavities. He indicated that Africanized honey bee hybrids, established in Florida in 2005, are having significant impacts on cavity-nesting wildlife throughout their expanding range (in Central America, South America, the Caribbean, and southeastern United States). He stated that Africanized honey bee hybrids occupy the entire range of the Florida bonneted bat. The commenter suggested that research to develop methods of reducing honey bee competition for cavities with barn owls and parrots was underway, and that techniques may be transferable to Florida bonneted bat roosting structures.

Our Response: We agree that tree cavities in south Florida are likely limited and that competition for natural or artificial roosting structures may be greater now than previously, due to a variety of factors. Introduced species are becoming more abundant and widespread in Florida, and some are likely contributing to increased competition for a limited amount of suitable cavities or other roost sites. We have added a new section entitled *Competition for Tree Cavities* (see Summary of Factors Affecting the Species, *Factor E,* below).

We do not have information to support or refute the view that the decline of red-cockaded woodpeckers (or other woodpeckers) may be affecting Florida bonneted bat populations. One colony of Florida bonneted bats was discovered in a longleaf pine tree cavity that had been excavated by a red-cockaded woodpecker and later enlarged by a pileated woodpecker (Belwood 1981, p. 412). In general, insufficient numbers of cavities and continuing net loss of cavity trees are also identified threats to the red-cockaded woodpecker (Service 2006, p. 7).

To help conserve the Florida bonneted bat, efforts should be made to retain large cavity trees and snags wherever possible to reduce competition for suitable roosts within the species' known range. The use of artificial structures for the Florida bonneted bat may also be beneficial in some locations. More research on the role of bat houses in Florida bonneted bat conservation is needed (FWC 2013, pp. 10, 15). The FWC plans on working with stakeholders to develop and implement guidelines for building, installing, and monitoring bat houses for Florida bonneted bats (FWC 2013, pp. 10–11).

(10) *Comment:* One reviewer noted that since the species may use palm fronds for roosting, the trimming of palm fronds and removal of mature palms for landscaping purposes may cause negative impacts. In her view, these activities should be considered as potential threats.

Our Response: We agree and have clarified the text accordingly (see Summary of Factors Affecting the Species, *Factor E, Inadvertent and Purposeful Impacts from Humans,* below).

(11) *Comment:* Three reviewers and four commenters indicated that hurricanes, storms, or other stochastic events are threats to the species and its habitat. One reviewer emphasized the threat of hurricanes as direct killing of bats and impacts to larger hollow trees and bat houses. He noted the intensity and increasing damage of tropical storms and contended that one large, intense storm (similar to Hurricane Sandy in the northeast) could kill most of the Florida bonneted bats over a broad area.

Another reviewer indicated that hurricanes may become more frequent and intense with climate change. She suggested that the species may occupy large snags with cavities, and that these trees and artificial structures are likely to be damaged or destroyed during serious storm events. She recommended that bat house structures be reinforced and duplicated to prevent loss.

One group cited additional studies that show that the frequency of high-severity hurricanes is increasing in the Atlantic (Elsner *et al.* 2008; Bender *et al.* 2010; Kishtawal *et al.* 2012), along with an increased frequency of hurricane–generated large surge events (Grinsted *et al.* 2012) and wave heights (Komar and Allan 2008). The group contended that high winds, waves, and storm surge can cause significant damage to the species' coastal habitat, noting that when storm surges coincide with high tides, the chances for damage are greatly increased (Cayan *et al.* 2008). Examples and additional references regarding sea level rise, storm surge, and flooding were also provided. This group stated that the Service must take into account the added impacts from more severe hurricanes and increasing storm surge and coastal flooding on the species' habitat. Another commenter also noted that severe hurricanes can cause wetland degradation.

One commenter indicated that the limited supply of woodpecker nest cavities has been compounded by the loss of snags due to hurricanes (e.g., Hurricane Andrew 1994, hurricanes of 2004 and 2005). He added there has also been a ''secondary hurricane effect with significant changes to the South Florida Building Codes post Hurricane Andrew that reduces roosting locations under tile roofs.''

Our Response: We agree that the species and its habitat appear highly vulnerable to hurricanes and storms. Intense events could kill or injure individual bats and destroy limited roosting habitat (see Summary of Factors Affecting the Species, *Factor E, Environmental Stochasticity,* below). Even one event can have devastating impacts due to the species' restricted range. Increased frequency and intensity of hurricanes, storm surges, and

flooding events are also expected with climate change. We have revised portions of our assessment accordingly (see Summary of Factors Affecting the Species, *Factors A* and *E* below). See also detailed comments on climate change in Comment 16 and our response, below.

We believe that natural roost sites are limiting and that the use of artificial structures can play an important role in conserving the species. We concur with the suggestion that bat houses be reinforced and duplicated to prevent loss.

We do not dispute the claim that changes to the South Florida Building Codes after Hurricane Andrew reduced potential roosting locations under tile roofs. However, it is not known the extent to which the species uses such structures. It is possible that changes in building codes affected roosting opportunities in residential and urban areas.

(12) *Comment:* Two reviewers and the FWC remarked on predation as a threat to the species. One reviewer suggested that the loss of bats to snake predation is under appreciated, especially with the increasing numbers of introduced snakes, and recommended that additional measures be taken to protect bats and other native species. He also emphasized the fragile nature of the Florida bonneted bat populations, noting that although some are located on protected lands, these populations are still quite exposed to severe threats. Another reviewer noted that the species presumably experiences some level of predation from native wildlife (e.g., hawks, owls, raccoons, rat snakes), but that introduced reptiles (e.g., young Burmese pythons *(Python molurus bivittatus*) and boa constrictors (*Boa constrictor*)) may also have or will have an impact on the Florida bonneted bat population.

The FWC questioned our conclusion that predation is not impacting the species and offered that a more conservative approach is that too little information exists to draw any conclusions about the impacts of predation.

Our Response: We generally agree with the comments we received regarding predation and have adjusted the text accordingly (see Summary of Factors Affecting the Species, *Factor C. Disease or Predation,* below).

(13) *Comment:* One reviewer commented on white-nose syndrome (WNS) and noted that very little is known about the fungus, *Geomyces destructans,* and the disease. She suggested that the Florida bonneted bat may not be impacted by the disease, since it does not hibernate and the disease has only impacted hibernating species to date. However, she also cautioned that since the fungus is new to science and North America, how it may evolve and change is unknown. She urged that the Service be cautious and not assume that impacts will not occur in the future.

Our Response: We agree and have updated the text of this final rule accordingly.

(14) *Comment:* One reviewer stated that although the death of bats at wind energy facilities is fairly well documented, the numbers of bats killed is still considerably underappreciated. He stated that bats die in considerable numbers at wind turbines, and with the current push to develop greener energy sources, the loss of bats at wind turbines will increase.

Our Response: We acknowledge that the number of bats killed at wind energy facilities is not known, and that the extent of mortality, in some locations, may not be fully understood. Although increases in the number of wind energy facilities are likely to cause increases in bat mortality, numerous factors are involved (see Summary of Factors Affecting the Species, *Factor E, Proposed Wind Energy Facilities,* below). In some cases, impacts may be avoided and minimized. Available guidelines, if implemented, can help reduce bird and bat mortalities. We agree that this threat is likely to increase as demand increases, and we revised the text of this final rule accordingly.

(15) *Comment:* One reviewer stated that ''the lack of regulatory mechanisms particularly when in contact with humans'' was among the most important potential threats to the species, emphasizing that public education about bats is crucial.

The Florida Department of Agriculture and Consumer Services (FDACS), expressing neither support of nor opposition to the proposed listing, indicated that there may be opportunity to provide education and outreach to professional wildlife trappers and pest control operators ''to limit take of this imperiled species.'' FDACS offered to develop, with the help of FWC and the Service, an informational bulletin, which could be distributed to pest control operators either during training for certification or renewal. Additionally, information relating to the bat, including identification, could be incorporated as a component of training and exams for limited certification for commensal rodent control. The FDACS also expressed willingness to meet with the FWC and the Service to discuss training and outreach opportunities to educate wildlife trappers, law enforcement, county health departments, and local animal control on rules and regulations that are required to protect the Florida bonneted bat and other bat species.

One commenter, in opposition to the proposed listing, suggested that development of educational programs and materials may be the most important conservation measure, citing Robson (1989). The same commenter recommended that the species not be listed and instead suggested that public education on the value and importance of bats be stressed. This commenter specifically recommended further education on appropriate bat house designs and the use of environmentally friendly lighting practices.

Our Response: We believe that regulatory (see Summary of Factors Affecting the Species, *Factor D,* below) and other mechanisms to deal with bat and human interactions can be improved. We agree that education for the public and various groups is imperative, and that this should be an integral part of conservation efforts for the Florida bonneted bat. We appreciate both suggestions from the FDACS on ways to reduce the taking of this species during wildlife removal and pest control operations and their willingness to help raise awareness, improve training, and expand education. We look forward to working with partners on this.

While expanded education and outreach programs are important components of conservation, the species meets the definition of an endangered species and faces numerous significant threats (see Determination of Status, below), many of which could not be alleviated through education alone. We are hopeful that improved awareness and education, along with the protections afforded to the species and habitat (see Available Conservation Measures, below), will allow the species to continue to persist and recover. See also Comment 32 and our response, below.

(16) *Comment:* With regard to climate change, two reviewers provided specific comments. One reviewer felt that climate change has the potential to negatively impact the species, especially in the context of impacts from altered storm frequency and intensity. Another reviewer appeared to generally agree with our assessment of anticipated impacts from climate change, but indicated that the negative impact of climate change on prey availability had been understated.

One group provided extensive comments and references. The group's main points included the following: (a)

Global sea-level rise is accelerating in pace and is likely to increase by one to two meters within the century; (b) sea-level rise of 1 to 2 meters in south Florida is highly likely within this century; (c) storms and storm surges are increasing in intensity; (d) coastal squeeze threatens the species' habitat; (e) climate change threats should be analyzed through the year 2100 at minimum; and (f) sea-level rise will have significant impacts on Florida bonneted bat roost sites.

More specifically, the group asserted that the Service analyze the impacts of sea-level rise of up to 2 meters on the Florida bonneted bat's habitat since this falls within the range of likely scenarios and since sea-level rise will be exacerbated by increasing storm surge. With regard to roost sites, the group estimated impacts to roost site locations from climate change, based upon the colony numbers and locations provided in the proposed rule and using NOAA's sea level rise and coastal flooding impacts viewer. Based upon this tool, the group suggested that 9 of 11 roost locations would either be fully or partly inundated with sea-level rises ranging from 30 centimeters (11.8 inches) to 1.8 m (5.9 ft). This analysis highlights the ''extreme vulnerability'' of bonneted bat roosting habitat to sea-level rise.

The group also provided additional comments with regard to critical habitat and climate change.

Our Response: With regard to climate change, we agree with the general comments provided. The additional literature on climate change provided by one group largely reinforces our assessment of the threat of climate change to the Florida bonneted bat and its habitat. We appreciate the references provided and have revised our assessment accordingly.

With regard to specific comments, we agree with the view that sea-level rise is likely to have significant impacts on Florida bonneted bat roosts. However, the locations of natural roost sites and colony locations are not known (see also Comment 21 and our response, and Summary of Changes from Proposed Rule, below). Given the limited available information, it is not possible to quantify the number of roosting locations that will be impacted by sea-level rise. Still, we anticipate significant losses of occupied and potential occupied habitat in coastal areas due to climate change (see Summary of Factors Affecting the Species, *Factor A, Climate Change and Sea Level Rise* and *Alternative Future Landscape Models and Coastal Squeeze,* and *Factor E, Aspects of the Species' Life History and Climate Change Implications,* below). Portions of the species' roosting habitat are vulnerable to sea-level rise, and impacts to foraging habitat may also occur with climate change (see also Comment 8 and our response, above).

Detailed comments related to storms and storm surges are provided and addressed above (see Comment 11 and our response, above). Detailed comments related to coastal squeeze are provided and addressed above (see Comment 7 and our response, above). We have revised portions of our assessment accordingly (see Summary of Factors Affecting the Species, *Factors A* and *E,* below).

Comments regarding climate change in relation to critical habitat are provided below (see Comment 20 and our response, below).

(17) *Comment:* One reviewer stated that the species was not a widely distributed species prior to development in southern Florida in the past century, but the ''increased and indiscriminate use of pesticides in the 1950s–1960s no doubt started the species in decline.'' Other commenters offered alternate and more detailed views about pesticides.

Our Response: We agree that the species appears to not have been widely distributed during the past century, based upon available information. However, we have no evidence indicating that the use of pesticides led to the species' decline (see *Comments Relating to Pesticides,* below).

(18) *Comment:* One reviewer explicitly stated that listing the Florida bonneted bat as an endangered species will provide several benefits that will aid in the protection and possible recovery of the species. He pointed to conservation actions taken at Florida Caverns State Park in the 1990s for the endangered gray bat (*Myotis grisescens*), which would not have been implemented had it not been for Service funding made available through the Act.

Our Response: We agree that listing provides many benefits for species and their habitats (see Available Conservation Measures, below).

Comments Relating to Critical Habitat

(19) *Comment:* With regard to timing, three peer reviewers agreed with our finding that critical habitat was not determinable due to lack of knowledge or the need for more information. One reviewer stated that a study that identifies home ranges and habitat affinities is imperative to determining the physical and biological features essential to the conservation of the species. In her view, designation of critical habitat is appropriate, but for it to be meaningful and effective, the extent of the species' range and the species' roosting affinities should be defined prior to designation. She indicated that if that was not possible, then additional future information that informs habitat use should be used to modify any critical habitat designation.

Two commenters, both representing environmental groups, indicated that critical habitat designation should be a timely goal or completed promptly. One group specifically stated that the Service should seek the scientific information necessary to propose critical habitat promptly, and that until critical habitat can be identified and designated, the Eastern Collier Multispecies HCP should not move forward.

Another group reminded the Service of its responsibilities under the Act, stating that a ''not determinable'' finding allows the Service to extend the time for designating critical habitat. Under the Act, the Service has 2 years from the date of the proposed listing decision (or, in this case, 1 year from the date of the final listing decision) to designate critical habitat. The group cited case law and stated that the deadlines apply even if longer deliberation would produce a ''better'' critical habitat designation. In this view, ''not determinable'' findings should rarely be made, and the Service should make ''the strongest attempt possible'' to determine critical habitat. The group further stated that the Service is to use the best available science, and that ''optimal conditions'' are unknown is not a barrier to designating critical habitat. The group stated that it is not the Service's task to understand what features of occupied habitat are lacking, but to synthesize information about what is known about the species and its habitat needs.

Our Response: The Service continues to work with researchers, other agencies, and stakeholders on filling large information gaps regarding the species and its habitat needs and preferences. We intend to publish a proposed critical habitat designation for the Florida bonneted bat in a separate rule within our statutory timeframe and have continued to fund research and study the habitat requirements of the bat.

With this final listing determination, the species will now receive regulatory consideration under sections 7 and 10 of the Act and will benefit from other protections (see Available Conservation Measures, below). Potential impacts from proposed projects within the species' current range will be evaluated under these regulatory frameworks.

(20) *Comment:* One peer reviewer stated that properties occupied by extant and active colonies are clearly

essential to the conservation of the species. She suggested that the roost and surrounding habitats in both Lee County and at Babcock-Webb WMA provide elements essential to the conservation of the colonies and should be designated as such. She recommended that conservation easements for the private property in Lee County be pursued and that conservation of Florida bonneted bats and their roosts be prioritized in the long-term management of Babcock-Webb WMA.

One group requested that the proposed critical habitat designation account for seasonal shifts in roosting sites. In addition, the group requested that the Service consider, ''specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.''

Another group provided extensive comments relating to how a critical habitat designation must buffer the species from climate change threats. This group provided new literature related to climate change and contended that coastal Florida is particularly vulnerable to habitat losses caused by climate change (e.g., Cameron Devitt *et al.* 2012). It argued that unoccupied inland habitat area that can provide roosting and foraging habitat should be identified and designated as critical habitat for the species. It also contended that as species and habitats shift in response to climate change, it will be important to protect habitat areas outside of the current range, including ''stepping stone patches'' and corridors. In the group's estimation, 9 of 11 roosting locations are highly vulnerable to inundation by sea-level rise; therefore, proactive protection of suitable inland areas for future roosting and foraging habitat is necessary. The group also provided examples of the Service's designation of unoccupied habitat as critical habitat to buffer six species from climate change impacts. It stated that there was ''ample precedent, legal authority, and conservation imperative'' for the Service to similarly identify and designate unoccupied inland habitat for the Florida bonneted bat to buffer it from the effects of sea level-rise and increasing storm surge.

Our Response: The Service will fully consider these comments and all available information during the process of identifying areas essential to the conservation of the species and in its proposal to designate critical habitat.

Comments From the State

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.'' Comments we received from the State of Florida are addressed below.

(21) *Comment:* The FWC provided additional information regarding a new roost documented at Babcock-Webb WMA, suggested alternatives for characterizing roosting sites and colonies, offered clarifications relating to threats, and suggested other minor clarifications and corrections.

With regard to colonies, the FWC suggested a more conservative approach may be to identify an area as occupied, without attempting to estimate the number of colonies. The FWC noted that much of the information for estimation of colony size, number of colonies, and locations was based on acoustical data and inferences, and that since so little is known about roosting and foraging ecology, it is difficult to correlate bat calls to colonies. In this view, even at sites with roosts identified (e.g., Babcock-Webb WMA), determining the number of colonies present is difficult because of the composition of colonies (e.g., harem, maternity, bachelor, and potential seasonal changes) is not well understood, and the movement between roost sites by a colony has not been studied.

The FWC also confirmed that it is currently developing a management plan that is similar in scope to a Federal recovery plan and stated that the objectives of the State plan will be to reverse threats causing the decline of the species. The FWC expressed desire to continue coordination with the Service in the development of both the State management plan and the Federal recovery plan.

Our Response: We have incorporated the new information and have clarified portions of the text accordingly. We agree that it is better to identify areas as occupied rather than attempting to estimate the number of colonies and their locations. Therefore, we have substantially revised our discussion of colonies, replacing it with a more general discussion (see Background, above) based upon comments from the FWC, peer reviewers, and other commenters. See also Comment 6 and our response, above, and Summary of Factors Affecting the Species, *Factors C, D, and E,* below.

We intend to draw upon the State's management plan and all other relevant sources during recovery planning and implementation efforts. We will be soliciting input from the State and other stakeholders, who are integral in the conservation of the species, during recovery planning.

(22) *Comment:* The FDACS stated that the protective provisions under Florida Administrative Code (F.A.C.) chapter 68A–27 and chapter 68A–9.010 are important for the Florida bonneted bat since professional wildlife trappers and pesticide control operators may not be able to identify the species of bat they are attempting to exclude and may not be aware of the take prohibitions for listed species. The FDACS also indicated that the State's Structural Pest Control Act (Florida Statutes, chapter 482) does consider bats to be pests under certain situations and includes bats in the definition of ''rodent,'' even though bats are in the order Chiroptera. Despite the definition, however, the FDACS does not regulate commercial trapping or removal of bats, as they are protected under F.A.C. chapter 68A–9.010. The FDACS does regulate control of ''commensal rodents'' (i.e., rats and mice) in or near structures and the use of pesticides, including pesticides to control nuisance wildlife (i.e., poisons and repellants).

The FDACS also stated that limited certification does not authorize the use of any ''pesticide or chemical substances, other than adhesive materials, to control rodents or other nuisance wildlife in, on, or under structures.'' For bats, only exclusion devices or registered chemical repellents can be used as specified under F.A.C. chapter 68A–9.010. Currently, only naphthalene (e.g., Bat-A-Way) is registered as a bat repellent in Florida. Since this product is a pesticide, a professional applicator would need to possess a full pest control operator's license.

The FDACS stated that all bat species in Florida are protected under F.A.C. chapter 68A–9.010, but unlisted bats can be taken (federally listed or State-listed species require an incidental take permit) if located within a structure through the use of an exclusion device or a registered repellant if used from August 15 to April 15. The use of a repellent by professional pest control or wildlife management personnel to remove bats from within a structure requires a pest control operator's license. The use of poisons on bats is not permitted.

Our Response: We appreciate the clarifications provided and have adjusted the text accordingly (see Summary of Factors Affecting the Species, *Factor D,* below). We maintain that existing regulatory measures, due to a variety of constraints, do not provide adequate protection (see *Factor D*). The species also remains at risk due to the effects of a wide array of threats (see

Summary of Factors Affecting the Species, *Factors A* and *E,* below).

Comments Relating to Pesticides

(23) *Comment:* The FDACS explained the role that it assumes during the registration and regulation of pesticide products in Florida under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The FDACS also confirmed that organophosphate (OP) pesticides are highly toxic to mammals and that pyrethroids are generally of low toxicity to mammals. It also noted the marked decrease in OP pesticides in residential and urban areas in recent years and replacement with synthetic pyrethroids, which are much less toxic to birds and mammals.

Naled, an OP pesticide, has reportedly been used for decades for both mosquito control and agriculture, but no incidents concerning direct impacts to bats have been reported to the U.S. Environmental Protection Agency (EPA) (EPA 2008). In this view, it is possible that Florida bonneted bats are exposed to OP insecticides used in agriculture, but their habits of flying at heights of 9 m (30 ft) or more would likely minimize exposure to OP pesticide residues, which tend to kill insects quickly at crop level. The FDACS also indicated that it is not aware of data that document significant reductions in larger insect species (coleopterans, dipterans, and hemipterans) that are primarily consumed by bats in areas that receive mosquito control. The FDACS also noted that without scientific evidence, claims that mosquito control has reduced the Florida bonneted bat's food supply should be considered anecdotal.

Two commenters contended that listing of the Florida bonneted bat may limit mosquito control activities, leading to an increase in the public's risk of exposure to West Nile virus, dengue fever, Saint Louis encephalitis, eastern equine encephalitis, and other diseases transmitted by mosquitoes. Concerns that quality of life for residents and visitors would be reduced, tourism would be hindered, and the economy would suffer if mosquito control operations were limited were also expressed. The commenters also noted that a location in North Fort Myers that regularly receives aerial mosquito control application has continued to support a Florida bonneted bat population, which has increased in recent years. It was also stated that the species' densest populations occur where mosquito control has existed for 30 years. Both commenters stated that the proposed rule suggested that mosquito control activities have either impacted the bat directly or reduced insect populations that serve as the food source for the Florida bonneted bat without providing scientific evidence in support of such claims. One commenter suggested that the entire *Pesticides and Contaminants* section be removed from the text, and if not removed, revised to indicate that mosquito control pesticides are not a threat.

Our Response: We appreciate the explanations provided by FDACS and have made adjustments to the text, where applicable. We agree with the commenters' assertion that no direct scientific evidence exists that links mosquito control activities (or pesticides) with impacts to the Florida bonneted bat, either directly or through a reduction in prey base. Although dietary studies are underway, information on the species' prey base and prey availability are generally lacking. Studies to assess the availability of prey in portions of the species' range using various methods (e.g., emergence traps, radar and remote sensing) could help better assess habitat needs and potential threats.

We do not agree with the assertion that mosquito control activities are implicated as having an adverse impact on the Florida bonneted bat. Impacts from mosquito control activities are not the basis for the listing of the Florida bonneted bat. The suggestions by the commenters that mosquito control operations would cease or be severely limited, and thus impact tourism and the economy, if the Florida bonneted bat is listed are not accurate. Such actions have not been recommended by the Service.

We do not have evidence to substantiate the commenters' characterizations of Florida bonneted bat population increases in the North Fort Myers area or that the densest populations of Florida bonneted bats occur in areas that have been treated with mosquito control pesticides for 30 years. In fact, the size of the colony in North Fort Myers has remained relatively constant since 2008, except for the mortality observed after a prolonged cold event in 2010 (S. Trokey, pers. comm. 2008a–b; 2010a–c; 2011, 2012a, 2013). We have no information on population density for any areas.

Content in the *Pesticides and Contaminants* section (see Summary of Factors Affecting the Species, *Factor E,* below) is meant to be an assessment of the current state of knowledge regarding contaminant impacts to the Florida bonneted bat. Such an assessment involves characterizing an organism's known or potential field exposure to contaminants, as well as characterizing the biological effects related to such exposure scenarios. While assessing exposure, we maintain that there is a possibility that the Florida bonneted bat may be exposed to pesticides, including mosquito control chemicals. We also acknowledge that such exposures, while possible, have not been quantified. A risk estimate presented in the Interim Reregistration Eligibility Decision for Naled (EPA 2002, pp. 36, 38) indicates that a conservative endangered species level of concern is exceeded for insectivorous mammals when considering mosquito control usages. While this conservative estimate does not indicate imminent adverse impacts, it does suggest that potential mosquito control impacts should be evaluated. We plan to conduct limited analysis as a first step toward understanding possible pathways of exposure and hope to expand studies, if possible.

The same type of assessment was conducted for invertebrates that the Florida bonneted bat may prey upon. We maintain that it is possible that non-target invertebrates, some of which may be prey for the Florida bonneted bat, are exposed to mosquito control chemicals. We also acknowledge that such an exposure, while possible, has not been quantified. Without quantifiable exposure scenarios, environmentally relevant biological effects on the Florida bonneted bat or its prey base cannot be attributed to mosquito control activities. The fact that quantifiable exposure and effects data are not available does not preclude an examination of potential impacts and an acknowledgement of what is known and unknown. We have clarified this section accordingly (see Summary of Factors Affecting the Species, *Factor E, Pesticides and Contaminants,* below).

(24) *Comment:* The FDACS indicated that in an agricultural setting OP pesticides are expected to quickly kill insects at crop level, well below the expected foraging height of the Florida bonneted bat.

Another commenter stated that insecticides used against flying insects quickly impair their nervous systems and render them unable to fly, thus avoiding a scenario where pesticide-laden flying insects would be consumed by the Florida bonneted bat. The commenter stated that most of the spray cloud of mosquito adulticide following truck application remains below 10 m (33 ft), which is lower than the Florida bonneted bat is expected to forage. It was also stated that mosquitoes are small-bodied insects that make up less than 1 percent of a bat's diet and that higher application rates than what are

currently used would be needed to kill larger bodied insects. Similarly, another commenter stated that for the Florida bonneted bat to use mosquitos as a food source would be highly inefficient energetically.

Our Response: We agree that mosquitoes and other small-bodied insects are not likely to be consumed by the Florida bonneted bat, which is thought to prey upon larger insects (see Background, *Life History,* above). Small-bodied insects that have been exposed to mosquito control chemicals or agricultural pesticides through ground applications may also die quickly near ground level, as one commenter purports. The likelihood of larger-bodied insects that are exposed to sublethal concentrations of pesticides being consumed by the Florida bonneted bat remains unknown, but warrants further investigation. Although foraging likely occurs either at high altitudes or in fairly open habitat (H. Ober, *in litt.* 2012), the Florida bonneted bat may also prey upon ground insect species because it can take flight from the ground like other *Eumops* spp. (Ridgley 2012, pp. 1–2). Dietary preferences and foraging behavior remain poorly understood. The Service is working with researchers and partners to fill information gaps to better understand and conserve the species and its habitat.

(25) *Comment:* The FDACS suggested that characterizing pesticide exposure should be given lower priority than obtaining more information regarding the basic life history of the Florida bonneted bat. It also suggested that future considerations for researching the potential impacts of mosquito control practices on the Florida bonneted bat should be discussed at a meeting of the Florida Coordinating Council for Mosquito Control's Subcommittee for Imperiled Species.

Our Response: We believe that obtaining additional information on the species' life history should be a high priority. We agree that the aforementioned subcommittee is a good venue to discuss pesticide risk and exposure with other agencies and mosquito control personnel. We look forward to working with researchers and partners on better understanding and reducing threats to the species.

Federal Agency Comments

(26) *Comment:* The NPS (ENP) provided additional data from 39 acoustical surveys in and around ENP from June 2012 to November 2012; the species was detected during 4 surveys. ENP also provided results from searches for ''feeding buzzes'' and queried biologists to gain insight into foraging habitat. A correction was suggested for Table 1.

Our Response: We have incorporated the new data and information and have clarified portions of the table and text accordingly. See also Comment 5 and our response, above.

Public Comments

(27) *Comment:* One commenter indicated that the Florida bonneted bat may be found in the following counties: Charlotte, Lee, Collier, Monroe, Miami–Dade, Okeechobee, Polk, and Glades.

Our Response: We agree that the Florida bonneted bat occurs in most of the aforementioned counties. Available data indicate presence of the Florida bonneted bat in portions of Charlotte, Lee, Collier, Monroe, Miami-Dade, Okeechobee, and Polk Counties (see Table 1 and *Occupied and Potential Occupied Areas,* above). Range maps also include fractions of Glades, Hendry, and Broward Counties (Marks and Marks 2008a, p. 11; 2012, p. 11); however, current presence in these counties is uncertain.

(28) *Comment:* One commenter requested clarification to the place referred to as ''Snapper Creek Park'' in Table 1, indicating that it is not known by that name, adding that Snapper Creek is a water management canal that is lined by a number of small parks and also linear bikeways.

The commenter also provided additional information for the area surrounding the Zoo Miami, known as Richmond Pinelands. This commenter stated that the 10–km^2 (4– mi^2) area contains 344 hectares (ha) (850 ac) of pine rockland forest and that Miami-Dade Parks manages 223 ha (550 ac). It was also noted that the Federal Government and University of Miami hold large parcels in this area. In this view, undeveloped open spaces owned by Miami-Dade County, the Federal Government, and the University of Miami likely provide habitat for the Florida bonneted bat.

Our Response: We have verified that ''Snapper Creek Park'' is the correct name for the place where the Florida bonneted bat was recorded. It is a small park located near a canal; signage indicates that the property is owned by Miami-Dade County (C. Marks, pers. comm. 2013). We agree that the Richmond Pinelands area may also provide habitat for the species and have clarified portions of the text of this final rule.

(29) *Comment:* Seven commenters stated that bats are crucial parts of ecosystems, providing benefits such as consuming insects, reducing the need to use pesticides, dispersing seeds, and pollinating plants. Another commenter provided a reference (Kunz *et al.* 2011, pp. 1–38), which discusses the ecosystem services provided by bats.

Our Response: We agree and acknowledge that bats are vital components of ecosystems and provide enormous benefits. However, the role of bats in the ecosystem and their contributions are beyond the purpose of our assessment and not part of our determination.

(30) *Comment:* One commenter in opposition to the proposed listing argued that survey information was inadequate and actual forage sites have not been scientifically determined. In this view, the use of this type of information to indicate level of threat to the species' foraging habitat is not valid.

Our Response: Although we agree that foraging habitat is not fully known, we disagree that our assessment is not valid. As directed by the Act, we have used the best available scientific information to identify and assess threats to the Florida bonneted bat and make our listing determination. Uncertainties are also explained for individual threats (see Summary of Factors Affecting the Species, below). More information on the species, its habitat, and threats will undoubtedly improve understanding and enhance conservation efforts in the future.

(31) *Comment:* One commenter questioned our use of unpublished data from a 1982 survey of pest control operators showing a dramatic decrease in requests for nuisance bat removal beginning in the 1960s as being indicative of reduced bat abundance. The commenter stated that this only indicated that fewer people had bats in their buildings, which may be attributed to a change in building techniques to conserve energy and provide better bat exclusion. In this view, this survey cannot be used to justify listing the Florida bonneted bat.

Our Response: We do not have information to support or refute the commenter's claim as to the cause for the decrease in requests for bat removal. Taken alone, results of the survey (provided in Belwood (1992, p. 217)) would not be enough to justify a listing action. However, we assessed this information and all other available data and information (see Background, above, and Summary of Factors Affecting the Species, below) in making our determination (see Determination of Status, below).

(32) *Comment:* One commenter in opposition to the proposed listing suggested that artificial night lighting is affecting the prey base of bats. The

commenter cited Rich and Longcore (2006) who stated that artificial lighting is extremely detrimental to many insect populations and can change the diversity of insects in some locations. It was also noted that night lighting is widespread, is unregulated, and kills insects every night. The commenter suggested that night lighting may be contributing to the loss of habitat, noting that some bats use streetlights as hunting opportunities, while others avoid the lights. The commenter recommended that bat houses be placed away from night lighting and that the use of environmentally friendly lighting practices be promoted.

Our Response: We agree that artificial lighting can have negative impacts on wildlife and may be affecting insect abundance and diversity in some locations. How artificial lighting affects the Florida bonneted bat's activities and prey base needs further investigation. We have added a section to our threats analysis (see Summary of Factors Affecting the Species, *Factor E, Ecological Light Pollution,* below). Where lighting is necessary, we encourage the use of environmentally friendly lighting practices to minimize impacts to wildlife.

Summary of Changes From Proposed Rule

We made changes to the final listing rule, after consideration of the comments we received during the public comment period (see above) and new information we received since publication of the proposed rule. Many small, nonsubstantive changes and corrections, not affecting the determination (e.g., updating the Background section in response to comments, and to make minor clarifications) were made throughout the document. The more substantial changes are:

(1) We revised our discussion of colonies, removed the section entitled *Estimating Colony Sizes and Locations,* and added a more general section entitled *Occupied and Potential Occupied Areas* (see Background, above).

(2) We assessed the potential effects of artificial night lighting in a new section entitled *Ecological Light Pollution* (see Summary of Factors Affecting the Species, *Factor E,* below).

(3) We revised our assessment of climate change and more fully included potential impacts to prey availability and foraging habitat from climate change (see Summary of Factors Affecting the Species, *Factors A* and *E,* below).

(4) We assessed the potential effects of competition for limited roost sites in a new section entitled *Competition for Tree Cavities* (see Summary of Factors Affecting the Species, *Factor E,* below).

(5) We revised our assessment of predation to more fully consider the potential impacts from native wildlife and nonnative snakes (see Summary of Factors Affecting the Species, *Factor C,* below).

(6) We incorporated data from new and ongoing studies (see Background, above).

The new additions and modifications summarized above did not change our determination.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on any of the following 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; and (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. Each of these factors is discussed below.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Habitat loss and alteration in forested and urban areas are major threats to the Florida bonneted bat (Belwood 1992, p. 220; Timm and Arroyo-Cabrales 2008, p. 1). In natural areas, this species may be impacted when forests are converted to other uses or when old trees with cavities are removed (Belwood 1992, p. 220; Timm and Arroyo-Cabrales 2008, p. 1). In urban settings, this species may be impacted when buildings with suitable roosts are demolished (Robson 1989, p. 15; Timm and Arroyo-Cabrales 2008, p. 1) or when structures are modified to exclude bats. Although the species' habitat preferences and extent of range are not well understood, significant land use changes have occurred in south Florida and additional habitat losses are expected in the future, placing the species at risk. Uncertainty regarding the species' specific habitat needs and requirements arguably contributes to the degree of this threat. Without more information on roosting sites and important foraging areas, inadvertent impacts to and losses of habitat may be more likely to occur through various sources and stressors (see below), and habitat losses will likely be more difficult to avoid. Since the Florida bonneted bat is suspected to have high roost site fidelity, the loss of a roost site may cause greater hardship to the species than the loss of a roost site for other, more labile species (H. Ober, *in litt.* 2012).

Land Use Changes and Human Population Growth

Significant land use changes have occurred through time in south Florida, including major portions of the species' historical and current range. In his examination of Florida's land use history, Solecki (2001, p. 350) stated that tremendous land use changes took place from the early 1950s to the early and mid-1970s. During this time, ''an almost continuous strip of urban development became present along the Atlantic coast'' and urban land uses became well established in the extreme southeastern portion of the region, particularly around the cities of Miami and Fort Lauderdale and along the entire coastline northward to West Palm Beach (Solecki 2001, p. 350). Similarly, Solecki (2001, p. 345) found tremendous urban expansion within the Gulf coast region, particularly near Ft. Myers since the 1970s, with the rate of urban land conversion superseding the rate of agricultural conversion in recent decades.

In another examination, the extent of land use conversions for southwest Florida (Collier, Lee, Hendry, Charlotte, and Glades Counties) between 1986 and 1996 was estimated using a change detection analysis performed by Beth Stys (FWC, unpublished data) (Service 2008, p. 37). The area of disturbed lands increased 31 percent in these five counties between 1986 and 1996, with the greatest increases in disturbed lands occurring in Hendry and Glades Counties. Most (66 percent) of the land use change over the 10-year period was due to conversion to agricultural uses. Forest cover types accounted for 42 percent of land use conversions, dry prairies accounted for 37 percent, freshwater marsh accounted for 9 percent, and shrub and brush lands accounted for 8 percent.

In another analysis, Stys calculated the extent of seminatural and natural lands that were converted to agricultural and urban or developed areas in Florida between 1985–1989 and 2003 (B. Stys, pers. comm. 2005; Service 2008, p. 38). Based upon this analysis, approximately

1,476 km² (570 mi²) of natural and seminatural lands in Glades, Hendry, Lee, Collier, Broward, Monroe, and Miami-Dade Counties were converted during this time period (FWC, unpublished data). Of these, approximately 880 km² (340 mi²) were conversions to agricultural uses and 596 km² (230 mi²) to urban uses. In Charlotte County, 26,940 ac (10,902 ha) (9.6 percent of the county) were converted to agriculture, and 21,712 ac (8,787 ha) (7.8 percent) were converted to urban uses in the time period examined. In Lee County, 16,705 ac (6,760 ha) (6.3 percent) were converted to agriculture, and 44,734 ac (18,103 ha) (16.8 percent) were developed. In Collier County, 34,842 ac (14,100 ha) (3.1 percent) were converted to agriculture, and 38,331 ac (15,512 ha) (3.4 percent) were developed. Several large-scale developments, mines, and transportation projects, totaling thousands of acres, are being planned, have been reportedly proposed, or are pending in portions of south and southwest Florida occupied by the species (A. Crooks, *in litt.* 2012).

Habitat loss and human population growth in south Florida are continuing. The human population in south Florida has increased from fewer than 20,000 people in 1920, to more than 4.6 million by 1990 (Solecki 2001, p. 345). The population of Miami-Dade County, one area where the Florida bonneted bat was historically common, increased from fewer than 500,000 people in 1950, to nearly 2.6 million in 2012 (*http://quickfacts.census.gov*). In one projection, all counties with current Florida bonneted bat occurrences were forecasted to increase in human population density, with most counties expected to grow by more than 750 people per square mile by 2060 (Wear and Greis 2011, pp. 26–27).

In another model, three counties with current known occurrences of the Florida bonneted bat—Charlotte, Lee, and Collier—are expected to reach buildout (fully develop) before 2060 (Zwick and Carr 2006, pp. 12–13, 16). For the period between 2040 and 2060, the population of Lee and Collier Counties is projected to exceed the available vacant land area, so the population was modeled to allow spillover into adjacent counties (Zwick and Carr 2006, p. 13). According to human population distribution models, south Florida is expected to become mostly urbanized, with the exception of some of the agricultural lands north and south of Lake Okeechobee (Zwick and Carr 2006, p. 2). Even the central Florida region, at what would be the northern limit of this species' distribution, will be almost entirely urbanized (Zwick and Carr 2006, p. 2). In an independent review of the FWC's biological status report for the species, Fleming stated, ''Continued urbanization of south Florida will undoubtedly have a negative impact on this bat'' (FWC 2011b, p. 3).

Loss of Forested Habitat

Loss of native forested habitat and roost sites are major threats to the Florida bonneted bat. A highway construction project in Punta Gorda in 1979 destroyed a roost tree (Belwood 1981, p. 412; 1992, p. 220). One museum specimen was originally discovered under a rock that was turned over by a bulldozer clearing land (Robson 1989, p. 9). Robson (1989, pp. 1–18) attributed the loss of native forested habitat, reduced insect abundance (see *Factor E*), and the ''active persecution of bats by humans'' (see *Factor E*) as the likely major impacts on the Florida bonneted bat in Miami-Dade County. Similarly, Belwood (1992, pp. 217, 220) indicated that bats in south Florida, including this species, appear to have declined drastically in numbers in recent years due to loss of roosting sites and effects of pesticides (see *Factor E*). More recently, Timm and Genoways (2004, p. 861) stated that habitat loss from development, in combination with other threats (i.e., pesticides and hurricanes, see *Factor E*), may have had a significant impact upon the already low numbers of Florida bonneted bats.

Belwood (1992, p. 220) stated that forested areas are becoming rare as a result of human encroachment and that this will severely affect the forest occurrences of this species. Similarly, Robson (1989, p. 15) indicated that pine rockland, live oak, and tropical hardwood hammocks constituted most of the remaining, natural forest in the Miami area and that these communities are essential to this species' survival. Belwood (1992, p. 220) argued that tree cavities are rare in southern Florida and competition for available cavities (e.g., southern flying squirrel [*Glaucomys volans*], red-headed woodpecker [*Melanerpes erythrocephalus*], corn snake [*Elaphe guttata guttata*]) is intense. She suggested that nonurban natural areas such as ENP, Big Cypress/Fakahatchee areas, and State WMAs may be the only areas where this species may be found in the future, provided old trees with hollows and cavities are retained (Belwood 1992, p. 220) (see *Land Management Practices,* below).

Approximately 90 percent of the forested habitats in Florida have been altered or eliminated, and losses are expected to continue (Wear and Greis 2002, p. 56). In the Southern Forest Resource Assessment, Florida was identified as one of the areas expected to experience substantial losses of forest in response to human population and changes in income (Wear and Greis 2002, p. 164). In the Southern Forest Futures Project, peninsular Florida is forecasted to lose the most forest land (34 percent) of any of the 21 sections analyzed in the southern United States (Wear and Greis 2011, p. 35).

Land Management Practices

Although species occurrences on conservation lands are inherently more protected than those on private lands, habitat alteration during management practices may impact natural roosting sites because the locations of such sites are unknown. For example, removal of old or live trees with cavities during activities associated with forest management (e.g., thinning, pruning), prescribed fire, exotic species treatment, or trail maintenance may inadvertently remove roost sites, if such sites are not known. Loss of an active roost or removal during critical life-history stages (e.g., when females are pregnant or rearing young) can have severe ramifications, considering the species' small population size and low fecundity (see *Factor E*).

Overall, occupied and potential habitat for the Florida bonneted bat on forested or wooded lands, both private and public, continues to be at risk due to habitat loss, degradation, and fragmentation from a variety of sources. Additional searches for potential roosting sites in forested and other natural areas are especially needed.

Loss of Artificial Structures

Since the Florida bonneted bat will use human dwellings and other artificial structures, it is also vulnerable to habitat loss and alteration in urban environments (Belwood 1992, p. 220; Timm and Arroyo-Cabrales 2008, p. 1). Owre (1978, p. 43) stated that all recent specimens had been collected within the suburbs of greater Miami from structures built in the 1920s and 1930s. Owre (1978, p. 43) indicated that three specimens were taken on the ground, one in a rocky field that was being bulldozed, one next to sewer conduits piled near freshly dug excavations, and one on a lawn near a university building in which the bats roosted. Removal of buildings with spaces suitable for roosting is a threat to this species (Timm and Arroyo-Cabrales 2008, p. 1). Robson (1989, p. 15) stated that seemingly innocuous activities like destroying abandoned buildings and sealing barrel-

tile roof shingles may have a severe impact on remaining populations in urban areas. Cyndi and George Marks (pers. comm. 2008) stated that Florida bonneted bats can move into new buildings as well and ''the fact that they adapt well to manmade structures has most likely been a large factor in their decline'' (see *Factor E*). The use of buildings or other structures inhabited by or near humans places bats at risk of inadvertent or purposeful removal and displacement (see *Factor E*).

Climate Change and Sea Level Rise

Our analyses under the Act include consideration of ongoing and projected changes in climate. The terms ''climate'' and ''climate change'' are 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 2007, p. 78). The term ''climate change'' thus refers to a change in the mean or variability of one or more measures of climate (e.g., temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007, p. 78).

Scientific measurements spanning several decades demonstrate that changes in climate are occurring, and that the rate of change has been faster since the 1950s. Examples include warming of the global climate system, and substantial increases in precipitation in some regions of the world and decreases in other regions (for these and other examples, see IPCC 2007, p. 30; and Solomon *et al.* 2007, pp. 35–54, 82–85).

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 (GHG) emissions, to evaluate the causes of changes already observed and to project future changes in temperature and other climate conditions (e.g., Meehl *et al.* 2007, entire; Ganguly *et al.* 2009, pp. 11555, 15558; Prinn *et al.* 2011, pp. 527, 529). Although projections of the magnitude and rate of warming differ after about 2030, the overall trajectory of all the projections is one of increased global warming through the end of this century, even for the projections based on scenarios that assume that GHG emissions will stabilize or decline. Thus, 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 the extent of GHG emissions (IPCC 2007, pp. 44–45; Meehl *et al.* 2007, pp. 760–764 and 797–811; Ganguly *et al.* 2009, pp. 15555–15558; Prinn *et al.* 2011, pp. 527, 529).

Various changes in climate may have direct or indirect effects on species. These effects may be positive, neutral, or negative, and they may change over time, depending on the species and other relevant considerations, such as interactions of climate with other variables (e.g., habitat fragmentation) (IPCC 2007, pp. 8–14, 18–19).

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). With regard to our analysis for the Florida bonneted bat, downscaled projections suggest that sea-level rise is the largest climate-driven challenge to low-lying coastal areas and refuges in the subtropical ecoregion of southern Florida (U.S. Climate Change Science Program (CCSP) 2008, pp. 5–31, 5–32). Although not strictly tied to coastal areas, the Florida bonneted bat uses, in part, forests and other habitats near sea level in areas of south Florida where considerable habitat is projected to be lost to sea level rise by 2100 (Saha *et al.* 2011, pp. 81–108). Three subpopulations of the Florida bonneted bat occur in at-risk coastal locations (Gore *et al.* 2010, pp. 1–2), and the effects of sea level rise are expected to be a continual problem for species using coastal habitats (Saha *et al.* 2011, p. 81).

Subsequent to the 2007 IPCC Report, the scientific community has continued to model sea level rise. Recent peer reviewed publications suggest increased acceleration of sea level rise. Observed sea level rise rates are already trending along the higher end of the 2007 IPCC estimates, and it is now widely predicted that sea level rise will exceed the levels projected by the IPCC (Grinsted *et al.* 2010, p. 470; Rahmstorf *et al.* 2012, p.1). Taken together, these studies support the use of higher end estimates now prevalent in the scientific literature. Recent studies have estimated a mean global sea level rise of 1 to 2 m (3.3 to 6.6 ft) by 2100, based upon individual projections as follows: 0.75 m to 1.90 m (2.5 to–6.2 ft; Vermeer and Rahmstorf 2009), 0.8 m to 2.0 m (2.6 to 6.6 ft; Pfeffer *et al.* 2008), 0.9 m to 1.3 m (3 to 4.3 ft; Grinsted *et al.* 2010), 0.6 m to 1.6 m (2.0 to 5.2 ft; Jevrejeva *et al.* 2010), and 0.5 m to 1.40 m (1.6 to 4.6 ft; The National Academy of Sciences 2012).

When analyzed using NOAA's Sea Level Rise and Coastal Impacts viewer (*http://www.csc.noaa.gov/slr/viewer/#*), we can generalize as to the impact of a 1.8-m (5.9-ft) sea level rise (the maximum available using this tool) on the areas currently used by the Florida bonneted bat. This approach is a gross estimation, confounded by the fact that no natural active roost sites are known and individuals are capable of traveling large distances and likely have large home ranges. In addition, it is a conservative estimate since large portions of the species' occupied range fell into the category of ''area not mapped'' using this tool. A 1.8-m (5.9-ft) rise would inundate roughly half of the locations where the species has been recorded or observed (see Table 1, above), but not necessarily the entirety of each site. Within the species' range, low-lying areas in Collier, Lee, Miami-Dade, and Monroe Counties appear most vulnerable to inundation. In Collier County, portions of FSPSP, PSSF, BCNP, Everglades City, and Naples will likely be partially inundated. In Lee County, areas near the occupied bat houses in North Fort Myers may be partially inundated. In Miami-Dade County, three sites will likely be inundated and others in low-lying areas are vulnerable. In Monroe County, coastal areas within ENP will be impacted. In this analysis, it appears that occupied areas of Charlotte, Polk, and Okeechobee Counties are the most secure, in terms of remaining unaffected from inundation. In summary, much of low-lying, coastal south Florida ''will be underwater or inundated with saltwater in the coming century'' (CCSP 2008, p. 5–31). This means that large portions of occupied, suitable, and potential roosting and foraging habitat for the Florida bonneted bat in low-lying areas will likely be either submerged or affected by increased flooding.

Climate change is likely to increase the occurrence of saltwater intrusion as sea level rises (IPCC 2008, pp. 87, 103)). Since the 1930s, increased salinity of coastal waters contributed to the decline of cabbage palm forests on the west coast of Florida (Williams *et al.* 1999, pp. 2056–2059), expansion of mangroves into adjacent marshes in the Everglades (Ross *et al.* 2000, pp. 108, 110–111), and loss of pine rockland in the Keys (Ross *et al.* 1994, pp. 144, 151–155). Saha *et al.* 2011 (pp. 81, 105) predicted changes in plant species composition and a decline in the extent of coastal hardwood hammocks and buttonwood forests in ENP before the

onset of inundation, based upon tolerance to salinity and drought. Such changes in vegetation will likely impact the Florida bonneted bat, since the species uses forested areas and coastal habitats.

Hydrology has a strong influence on plant distribution in these and other coastal areas (IPCC 2008, p. 57). Such communities typically grade from salt to brackish to freshwater species. Human developments will also likely be significant factors influencing whether natural communities can move and persist (IPCC 2008, p. 57; CCSP 2008, p. 7–6). Climate change, human population growth, forest management, and land use changes are also expected to increase water stress (water demand exceeding availability) within areas of the south, and south Florida is considered a hot spot for future water stress (Wear and Greis 2011, pp. 46–50). For the Florida bonneted bat, this means that some habitat in coastal areas will likely change as vegetation changes and additional human developments encroach. Any deleterious changes to important roosting sites or foraging areas could further diminish the likelihood of the species' survival and recovery.

In the southeastern United States, drier conditions and increased variability in precipitation associated with climate change are expected to hamper successful regeneration of forests and cause shifts in vegetation types through time (Wear and Greis 2011, p. 58). In their study on the impact and implications of climate change on bats, Sherwin *et al.* (2012, p. 8) suggested that bats specialized in individual roost sites (i.e., cave and tree roosts) at distinct life-history stages are at great risk from changing vegetation and climatic conditions. Rebelo *et al.* (2010, pp. 561–576) found that tree-roosting bats in Europe may face a reduction in suitable roosts if the rate of climate change is too rapid to allow the development of equivalent areas of mature broadleaf forests in new 'climatically suitable areas' as their range extends northward. Decreases in forest regeneration may further limit available roosting sites for the Florida bonneted bat or increase competition for them.

Drier conditions and increased variability in precipitation are also expected to increase the severity of wildfire events. Climate changes are forecasted to extend fire seasons and the frequency of large fire events throughout the Coastal Plain (Wear and Greis 2011, p. 65). Increases in the scale, frequency, or severity of wildfires could also have severe ramifications on the Florida bonneted bat, considering its forest-dwelling nature and general vulnerability due to its small population size, restricted range, few colonies, low fecundity, and relative isolation (see *Factor E*).

Climate changes may also affect foraging habitat and prey availability. Increased plant water stress is likely to impact vegetation community composition and chemical composition of plants, which would likely affect insect availability and the timing of insect availability to foraging bats (H. Ober, *in litt.* 2012). In one study, Huberty and Denno (2004, pp. 1383–1398) examined water stress on plants (e.g., changes in nitrogen, allelochemistry) and consequences for herbivorous insects, examining parameters such as survivorship, density, fecundity, and relative growth rate. Water stress in plants was found to affect the population dynamics of herbivorous insects, with varying effects depending upon insect guild (Huberty and Denno 2004, pp. 1383–1398). In another study, Von Holle *et al.* (2010, pp. 1–10) found that climatic variability is leading to later seasonal flowering of plants in Florida. Although the dietary needs of the Florida bonneted bat are not understood, climate changes may affect foraging habitat and insect availability in ways not readily apparent.

Alternative Future Landscape Models and Coastal Squeeze

The Florida bonneted bat is anticipated to face major risks from coastal squeeze, which occurs when habitat is pressed between rising sea levels and coastal development that prevents landward movement (Scavia *et al.* 2002; FitzGerald *et al.* 2008; Defeo *et al.* 2009; LeDee *et al.* 2010; Menon *et al.* 2010; Noss 2011). Habitats in coastal areas (i.e., Charlotte, Lee, Collier, Monroe, Miami-Dade Counties) are likely the most vulnerable. Although it is difficult to quantify impacts due to uncertainties involved, coastal squeeze will likely result in losses in roosting and foraging habitat for the Florida bonneted bat in several areas.

Various model scenarios developed at the Massachusetts Institute of Technology (MIT) have projected possible trajectories of future transformation of the south Florida landscape by 2060 based upon four main drivers: climate change, shifts in planning approaches and regulations, human population change, and variations in financial resources for conservation (Vargas-Moreno and Flaxman 2010, pp. 1–6). The Service used various MIT scenarios in combination with available acoustical data to project what may occur to occupied Florida bonneted bat habitat in the future, assuming that all occupied areas are known, that acoustical data represented approximate locations of colonies in the future, and that projected impacts to colonies are solely tied to roosting habitat. Potential impacts to foraging habitat were expected but not analyzed, since foraging distances are not known. We acknowledge that this analysis was crude and conservative (e.g., foraging habitat not analyzed; effects analyzed only up to 2060, the maximum time period of the model scenarios). Actual outcomes may substantially differ from that projected depending upon deviations in the assumptions or estimated variables.

In the best-case scenario, which assumes low sea level rise, high financial resources, proactive planning, and only trending population growth, analyses suggest that four broad occupied areas may be lost. Based upon the above assumptions, occupied areas in North Fort Myers, the Ten Thousand Islands area, coastal portions of ENP (multiple sites), and the Miami area (multiple sites) appear to be most susceptible to future losses, with losses attributed to increases in sea level and human population. In the worst-case scenario, which assumes high sea level rise, low financial resources, a 'business as usual' approach to planning, and a doubling of human population, 10 broad occupied areas may be lost—the areas noted in the best-case scenario above as well as some in BCNP (multiple sites), Naples, Everglades City, mainland portions of ENP (multiple sites), Homestead, and Coral Gables. Actual impacts may be greater or less than anticipated based upon high variability of factors involved (e.g., sea level rise, human population growth) and assumptions made.

Summary of Factor A

We have identified a number of threats to the habitat of the Florida bonneted bat which have occurred in the past, are impacting the species now, and will continue to impact the species in the future. Habitat loss, fragmentation, and degradation, and associated pressures from increased human population are major threats; these threats are expected to continue, placing the species at greater risk. The species' use of conservation areas tempers some impacts, yet the threats of major losses of habitat remains. In natural or undeveloped areas, the Florida bonneted bat may be impacted when forests are converted to other uses

or when old trees with cavities are removed. Routine land management activities (e.g., thinning, prescribed fire) may also impact unknown roost sites. In urban areas, suitable roost sites may also be lost when buildings are demolished or when structures are modified to exclude bats. Uncertainty regarding the species' specific habitat needs and requirements (i.e., location of roost sites) arguably contributes to these threats, by increasing the likelihood of inadvertent impacts to and losses of habitat. The effects resulting from climatic change, including sea level rise and coastal squeeze, are expected to become severe in the future and result in additional habitat losses, including the loss of roost sites and foraging habitat. Although efforts are being made to conserve natural areas and, in some cases, retain cavity trees, the long-term effects of large-scale and wide-ranging habitat modification, destruction, and curtailment will last into the future. Therefore, based on our analysis of the best available information, present and future loss and modification of the species' habitat is a threat to the Florida bonneted bat throughout all of its range.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Key features of the basic life history, ecology, reproductive biology, and habitat requirements of many bats, including the Florida bonneted bat, are unknown. Species-specific ecological requirements have not been determined (e.g., natural roost sites, seasonal changes in roosting habitat, dietary needs, seasonal changes in diet, prime foraging habitat). The majority of information comes from examination of dead specimens, chemical analyses of samples taken from dead specimens, analysis of guano, and collection and analysis of nonintrusive acoustical recordings. To our knowledge, those individuals who have studied or are actively studying the Florida bonneted bat are sensitive to its rarity and endemism (restricted range). Consequently, collection for scientific and educational purposes is extremely limited. We are not aware of any known commercial or recreational uses for the species. For these reasons, we find that overutilization for commercial, recreational, scientific, or educational purposes does not currently pose a threat to the species, nor is it likely to do so in the future.

Factor C. Disease or Predation

The effects of disease or predation are not well known. Given the Florida bonneted bat's overall vulnerability, both disease and predation could pose threats to its survival.

Disease

White-nose syndrome (WNS) is an emerging infectious disease affecting insectivorous, cave-dwelling bats. It was first documented in 2006, in caves west of Albany, New York. Since its discovery, WNS has spread rapidly throughout the eastern and central United States and southeastern Canada, killing millions of bats. It is expected to continue spreading westward and southward. By June 2012, WNS had been confirmed in well over 200 caves and mines within 20 States and 4 Canadian provinces (J. Coleman, pers. comm. 2012). As of June 2013, the number of affected sites is rapidly changing, and bats with WNS have now been confirmed in 22 States and 5 Canadian provinces (*http://www.whitenosesyndrome.org/about/where-is-it-now*). It has not yet been documented in Florida.

WNS is caused by the cold-loving fungus, *Geomyces destructans,* a newly described fungus, and is named after the white fungal growth that often occurs on the muzzle of affected bats (Gargas *et al.* 2009, pp. 147–154; Lorch *et al.* 2011, pp. 376–379). In North America, *G. destructans* appears to infect bats only during winter hibernation. Mortality rates have been observed to vary by species and site, but have been as high as 100 percent at some hibernacula (winter bat roosts).

WNS has been recorded in seven North American bat species, all of which are known to hibernate in caves and mines. WNS and *G. destructans* have not been detected in bats that typically live outside of caves, such as eastern red-bats (*Lasiurus borealis*), and the fungus is believed to need the cave environment to survive. Because the Florida bonneted bat spends its entire life cycle outside of caves and mines and in subtropical environments where no torpor or hibernation is required, we do not anticipate that it will be adversely affected by WNS. However, since the fungus is new to science and North America, it is not known how it may evolve or change in the future.

Prior to the discovery of WNS, infectious diseases had rarely been documented as a large-scale cause of mortality in bat populations and had not been considered a major issue (Messenger *et al.* 2003 as cited in Jones *et al.* 2009, p. 108). Jones *et al.* (2009, pp. 108–109) contended that because increased environmental stress can suppress the immune systems of bats and other animals, increased prevalence of diseases may be a consequence of altered environments (i.e., bats may be more susceptible to disease if they are stressed by other threats). These authors contended that bats are excellent potential bioindicators because they are reservoirs of a wide range of emerging infectious diseases whose epidemiology may reflect environmental stress. Jones *et al.* (2009, p. 109) suggested that an increased incidence of disease in bats may be an important bioindicator of habitat degradation in general. Sherwin *et al.* (2012, p. 14) suggest that warming temperatures associated with climate change may increase the spread of disease (along with other impacts; see *Factor E*), which could cause significant mortalities to bat populations in general.

At this time, it is difficult to assess whether disease is currently or likely to become a threat to the Florida bonneted bat. With anticipated climatic changes and increased environmental stress, it is possible that disease will have a greater impact on the Florida bonneted bat in the future.

Predation

In general, animals such as owls, hawks, raccoons, skunks, and snakes prey upon bats (Harvey *et al.* 1999, p. 13). However, few animals consume bats as a regular part of their diet (Harvey *et al.* 1999, p. 13). There is only one record of natural predation on the Florida bonneted bat (Timm and Genoways 2004, p. 860). A skull of one specimen was found in a regurgitated owl pellet at the FSPSP in June 2000 (Timm and Genoways 2004, pp. 860–861; C. Marks, pers. comm. 2006a; Marks and Marks 2008a, p. 6; M. Owen, pers. comm. 2012a, 2012b).

Although evidence of predation is lacking, the species is presumably affected by some level of predation from native wildlife (e.g., hawks, owls, raccoons, rat snakes) and the large number of introduced and nonnative reptiles (e.g., young Burmese pythons, boa constrictors) (Krysko *et al.* 2011; M. Ludlow, *in litt.* 2012; R. Timm, *in litt.* 2012). Several species of nonnative, giant constrictor snakes have become established in Florida, causing major ecological impacts (*http://www.fort.usgs.gov/FLConstrictors/* 77 FR 3330, January 23, 2012). Giant constrictors are habitat generalists, can grow and reproduce rapidly, and are arboreal when young, placing birds and arboreal mammals, such as bats, at risk (*http://www.fort.usgs.gov/FLConstrictors/*). Given the small population of the Florida bonneted bat, it is possible that the loss to snake predation is under appreciated now or this may become more of a threat in the future (M. Ludlow, *in litt.* 2012; R.

Timm, *in litt.* 2012). Some efforts to control nonnative snakes and other species are being made on some conservation lands (e.g., ENP; Harvey *et al.* 2013; *http://www.fort.usgs.gov/FL Constrictors*), but we do not have data on how these efforts may be impacting the Florida bonneted bat.

Due to limited information, we are not able to determine the extent to which predation may be impacting the Florida bonneted bat at this time. However, given the species' apparent small population size and overall vulnerability, it is reasonable to assume that predation is a potential threat, which may increase in the future.

Summary of Factor C

Disease and predation have the potential to impact the Florida bonneted bat's continued survival, given its few occupied areas, apparent low abundance, restricted range, and overall vulnerability. At this time, we do not have evidence to suggest that disease or predation is currently having species-level impacts on the Florida bonneted bat. However, given the uncertainties (e.g., evolving disease) and factors involved (e.g., more introduced predators), coupled with the general vulnerability of the species, we consider both disease and predation to be potential threats to the Florida bonneted bat.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

Despite the fact that regulatory mechanisms provide several protections for the Florida bonneted bat, Federal, State, and local laws have not been sufficient to prevent past and ongoing impacts to the species and its habitat within its current and historical range.

The taxon was originally listed as endangered in the State of Florida as the Florida mastiff bat (*Eumops glaucinus floridanus*) (F.A.C., chapter 68). As such, it is afforded protective provisions specified in F.A.C. chapter 68A–27 (68A–27.0011 and 68A–27.003). This designation prohibits any person from pursuing, molesting, harming, harassing, capturing, possessing, or selling this species, or parts thereof, except as authorized by specific permit, with permits being issued only when the permitted activity will clearly enhance the survival potential of the species. The protection afforded the Florida bonneted bat by the State of Florida primarily prohibits direct take of individuals (J. Gore, pers. comm. 2009). However, there is no substantive protection of habitat or protection of potentially suitable habitat at this time.

As a consequence of the revision of the FWC's listing classification system, the former classification levels of Florida's endangered and threatened species were re–classified as a single level, named ''State-designated Threatened,'' and include any species that met the FWC criteria based on the IUCN criteria for a vulnerable species. All species formerly listed as endangered and reclassified as State-designated Threatened maintain the protections of the former endangered classification. Hence, the Florida bonneted bat's status technically changed on November 8, 2010, but the species' original protective measures remained in place (F.A.C. chapter 68A–27.003, amended). As part of the FWC's revision of its classification system, biological status review reports were prepared for numerous imperiled species in Florida, including the Florida bonneted bat. Based upon a literature review and the biological review group's findings, FWC staff recommended that the Florida bonneted bat remain listed as a threatened species (FWC 2011a, p. 5). The biological status review recognized the taxon as the Florida bonneted bat, and the State's current threatened and endangered list uses both names, Florida bonneted (mastiff) bat, *Eumops (=glaucinus) floridanus.* The FWC's draft Species Action Plan for the species uses the name *E. floridanus* (FWC 2013, pp. 1–43).

As part of the FWC's revision to Florida's imperiled species rule, management plans will be developed for all species (F.A.C. chapter 68A–27), including the Florida bonneted bat. One component of these management plans is to include needed regulations and protections that are not provided in the current rule (M. Tucker, *in litt.* 2012). A first draft for the Florida bonneted bat management plan is in development (J. Myers, pers. comm. 2012c; M. Tucker, *in litt.* 2012). When completed, the management plan should allow for tailored protections for the species, which may improve the ability of FWC to address habitat issues in addition to take of individuals (M. Tucker, *in litt.* 2012). Objectives of the State plan will be to reverse threats causing the decline of the species (FWC, *in litt.* 2012).

Humans often considered bats to be ''nuisance'' species when they occur in or around human dwellings or infrastructure (see *Factor E,* below). The rules for taking of nuisance wildlife are provided under F.A.C. chapter 68A–9.010. Under these rules, property owners can take nuisance wildlife or may authorize another person to take nuisance wildlife on their behalf. Although these rules do not authorize the taking of species listed under F.A.C. chapter 68A–27 (without an incidental take permit from the State), these rules do allow other bat species to be taken under certain circumstances. These include when: (1) The take is incidental to the use of an exclusion device, a device which allows escape from and blocks reentry into a roost site located within a structure, or incidental to the use of a registered chemical repellant, at any time from August 15 to April 15; or (2) the take is incidental to permanent repairs that prohibit the egress of bats from a roost site located within a structure, provided an exclusion device is used as above for a minimum of four consecutive days or nights for which the low temperature is forecasted to remain above 10 °C (50 °F) prior to repairs and during the time period specified. F.A.C. chapter 68A–9.010 provides the methods that may not be used to take nuisance wildlife, including any method prohibited pursuant to section 828.12 of the Florida Statutes (Florida Cruelty to Animals Statutes).

Use of bat exclusion devices or any other intentional device or materials at a roost site that may prevent or inhibit the free ingress or egress of bats is prohibited from April 16 through August 14. While these restrictions help to limit potential impacts during the maternity season for many bat species in Florida, regulations do not require definitive identification of the bat species to be excluded prior to the use of the device. In addition, it is not clear if this time period is broad enough to prevent potential impacts to the Florida bonneted bat, which is possibly polyestrous and more tropical in nature, with a potentially prolonged sensitive time window where females and young are especially vulnerable. Pregnant Florida bonneted bats have been found in June through September (Marks and Marks 2008a, p. 9), and a second birthing season can occur possibly in January–February (Timm and Genoways 2004, p. 859; FBC 2005, p. 1). During the early portion of the maternal period, females may give birth to young and leave them in the roost while making multiple foraging excursions to support lactation (Marks and Marks 2008a, pp. 8–9). Therefore, despite regulations restricting the use of exclusion devices, it is still possible that use of such devices can affect the species during sensitive time periods, including possible impacts to pregnant females, newborns, or juvenile pups.

The FWC, FBC, Bat Conservation International, and other groups maintain a list of qualified exclusion devices, but it is not clear how often work is performed by recommended personnel

or if it is in accordance with State regulations. It is also not clear if those who install exclusion devices can readily distinguish between Florida bonneted bats and other bat species in Florida (M. Tucker, pers. comm. 2012). Despite regulations, in some cases, nuisance bats are likely being removed by nuisance wildlife trappers through methods that are not approved (e.g., removed from roosts with vacuum cleaner-like apparatuses) or excluded during time periods that are not permitted (e.g., inside the maternity season) (A. Kropp, FWC, pers. comm. 2009). Pest control companies unaware of or not complying with the regulations that apply to bats have been known to remove them through methods other than legal exclusions (FWC 2013, p. 9). Private landowners and individual property owners may also be unaware of regulations.

In addition, there are discrepancies between legislation passed by the FDACS, which classifies bats as rodents, and the current FWC nuisance wildlife regulations above (Florida Bat Working Group [FBWG] 2009, p. 3). According to the State's Structural Pest Control Act (Florida Statutes, chapter 482) bats may be considered pests, and pest control including methods to prevent, destroy, control, or eradicate pests in, on, or under a structure, lawn, or ornamental are allowable under certain rules and provisions (FDACS, *in litt.* 2012). The FDACS regulates the control of ''commensal rodents'' (rats and mice) in or near structures and the use of pesticides, including the pesticides used for the control of nuisance wildlife (i.e., poisons and repellents) (FDACS, *in litt.* 2012). However, FDACS does not regulate commercial trapping or removal of wildlife, including bats, as these are protected under F.A.C. chapter 68A–9.010 (FDACS, *in litt.* 2012). The use of poisons on bats is not permitted. The use of a repellant (e.g., naphthalene) by professional pest control or wildlife management personnel to remove bats from a structure requires a pest control operator's license (FDACS, *in litt.* 2012).

Bat advocacy groups and others are concerned over the lack of awareness of the regulations among people paid to perform exclusions (FBWG 2009, p. 3; FWC 2013, p. 21). Education is needed about the dates during which exclusion is prohibited for nuisance wildlife trappers, pest control companies, law enforcement, county health departments, and local animal control (FBWG 2010, p. 3). The FDACS is currently developing a limited license for those individuals or companies that conduct wildlife removal services in or near structures (M. Tucker, *in litt.* 2012). To obtain this license, operators will be required to complete an educational program and pass a test based on a training manual in development by staff with the University of Florida–Institute of Food and Agricultural Sciences (M. Tucker, *in litt.* 2012). The manual will include information on proper exclusion techniques and existing regulations protecting bats during the maternity season (M. Tucker, *in litt.* 2012). The FDACS, with assistance from other agencies, offered to develop an informational bulletin on the Florida bonneted bat that can be distributed to pest control operators directly or during training for certification or renewal (FDACS, *in litt.* 2012).

Additional educational efforts are underway. To better address violations of the maternity season and exclusion rule, FWC is training law enforcement officers (M. Tucker, *in litt.* 2012). Training on the importance of bats and the rules relating to exclusions has been provided to some officers in the northern part of the State, and an online training module is being developed as part of the FWC law enforcement educational curriculum that all officers must complete (M. Tucker, *in litt.* 2012). The FWC, FDACS, Service, and other partners are also planning to increase awareness among land managers, environmental professionals, pest control operators, wildlife trappers, county health departments, local animal control, and others who may be in a position to have an impact on bat habitat or bat roosts (FDACS, *in litt.* 2012). It is not clear to what extent training programs will be supported in the future or how effective efforts to raise awareness will be in reducing violations.

With regard to Federal lands, the NPS manages the natural resources on its lands (e.g., BCNP, ENP) in accordance with NPS-specific statutes, including the NPS Organic Act (16 U.S.C. 1 *et seq.*), as well as other general environmental laws and applicable regulations. The Florida Panther NWR operates under the Fish and Wildlife Act of 1956 (16 U.S.C. 742a *et seq.*), the Endangered Species Act, and the Refuge Administration Act (16 U.S.C. 668dd-668ee). With regard to State lands, all property and resources owned by FDEP are generally protected from harm in chapter 62D–2.013(2), and animals are specifically protected from unauthorized collection in chapter 62D–2.013(5), of the Florida Statutes. At Babcock-Webb WMA, the FWC is the lead managing agency, with FFS as a cooperating agency, and is responsible for operation through a lease agreement; management is derived under article IV, section 9 of the Florida Constitution, and guidance and directives under the Florida Statutes (FWC 2003, p. 4). At PSSF, the FFS manages the forest using the multiple-use concept, providing a balance for recreational, environmental, and resource use needs, including forest and wildlife management. Miami-Dade County Park lands are fragmented, heavily used, and also try to balance recreational, natural, and cultural uses.

The Florida bonneted bat's presence on Federal, State, and county lands provides some protection, but does not insulate it from many threats (see *Factor A* and *Factor E*). These lands provide clear conservation benefits to the species, but protections may be limited in extent (e.g., within the boundaries of the parcel). In some cases, conservation benefits for the Florida bonneted bat may not be fully realized on conservation lands due to various missions of individual parcels and the demands of balancing the management of other wildlife and habitats or multiple purposes and uses (e.g., recreation). Even where wildlife conservation is the primary purpose, routine land management practices (e.g., prescribed fire) can cause the loss of roost sites, especially since locations of natural roosts are unknown (see *Factor A*). Human use can cause disturbance and the use of pesticides may increase the likelihood of direct exposure or may impact the prey base (see *Factor E*).

Collecting permits can be issued ''for scientific or educational purposes.'' Permits are required from the FWC for scientific research on the Florida bonneted bat. For work on Federal lands (e.g., ENP, BCNP), permits are required from the NPS or the Service, if work is on NWRs. For work on State lands, permits are required from FDEP, FFS, FWC, or Water Management District, depending upon ownership and management. Permits are also required for work on county-owned lands.

Summary of Factor D

Despite existing regulatory mechanisms, the Florida bonneted bat remains at risk due to the effects of a wide array of threats (see *Factors A* and *E*). Based on our analysis of the best available information, we find that existing regulatory measures, due to a variety of constraints, do not provide adequate protection, and, in some instances, may be harmful (i.e., taking of bats as ''nuisance'' wildlife). Educational efforts and training should help to raise awareness and address some violations of existing regulations. When finalized, the FWC's Florida bonneted bat management plan may

contain additional measures that can help protect habitat. However, we do not have information to indicate that the aforementioned regulations and programs, which currently do not offer adequate protection to the Florida bonneted bat, will be revised and sufficiently supported, so that they would be adequate to provide protection for the species in the future. Therefore, we find that the existing regulatory mechanisms are inadequate to address threats to the species throughout all of its range.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

In general, bat populations are in decline due to their sensitivity to environmental stresses and other factors, such as slow reproductive rates (Jones *et al.* 2009, pp. 93–115). The Florida bonneted bat is likely affected by a wide array of natural and anthropogenic threats, operating singly or synergistically, and in varying immediacy, severity, and scope.

Inadvertent and Purposeful Impacts From Humans

In general, bats using old or abandoned and new dwellings are at significant risk. Bats are often removed when they are no longer tolerated by humans or inadvertently killed or displaced when structures are demolished. Adverse human impacts on bats involve direct killing, persecution, vandalism, and disturbance of hibernating and maternity colonies (Harvey *et al.* 1999, p. 13). Belwood (1992, p. 217) indicated that bats in south Florida appeared to decline drastically in years just prior to that publication. Unpublished data by Belwood from a 1982 survey of 100 pest control companies on the southeastern coast of Florida showed that requests to remove ''nuisance'' bats from this area all but ceased in the 20 years prior to that publication (Belwood 1992, p. 217). Homeowners and professionals use a variety of methods to remove bats, including lethal means (C. Marks and G. Marks, pers. comm. 2008). Even when attempts are made to remove bats humanely, bats may be sealed into buildings (C. Marks and G. Marks, pers. comm. 2008). Despite regulations and efforts to raise awareness (see *Factor D,* above), in some situations, bats are still likely removed through inhumane and prohibited methods (e.g., removed from roosts with vacuum cleaner–like apparatuses) and excluded from artificial roost sites during sensitive time periods (e.g., inside the maternity season before young are volant (capable of flying)) (A. Kropp, pers. comm. 2009). Pest control companies unaware of or not in compliance with the regulations that apply to bats have been known to remove them through methods other than legal exclusions (FWC 2013, p. 9). Such activities can result in direct mortality or injury of adults, juveniles, dependent newborn pups, or fetuses, if pregnant females are affected. In some cases, excluded individuals may not be able to readily locate other suitable roosts (due to competition with other species, lack of availability, or other factors). Since the breeding season of the Florida bonneted bat is uncertain and adults may have young outside of the typical maternity season, the FWC's draft species action plan recommends that individuals consult with the FWC before excluding Florida bonneted bats from a roost at any time of the year (FWC 2013, p. 10).

In his dissertation on the ecological distribution of bats in Florida, Jennings (1958, p. 102) stated that Florida bonneted bats are encountered more often by humans than other bat species known to frequent the Miami area. He attributed this to the species' habits, which make it more conducive to discovery by humans. Jennings (1958, p. 102) noted, ''Some individuals were taken in shrubbery by gardners [sic], some flew into houses at dusk and other isolated individuals were taken under conditions indicating injury of some kind.'' The Florida bonneted bat's ability to adapt well to manmade structures contributes to its vulnerability and has likely been a factor in its decline (C. Marks and G. Marks, pers. comm. 2008). Since roosting sites are largely unknown, the potential to remove and exclude Florida bonneted bats from human dwellings and artificial structures, either inadvertently or accidentally, is high. Despite regulatory protections provided under Florida law (see *Factor D,* above), direct and indirect threats from humans continue, especially in urban, suburban, and residential areas.

Similarly, Robson (1989, p. 15) stated that urban development has resulted in the persecution of bats wherever they come in contact with humans: ''Seemingly innocuous activities like removing dead pine or royal palm trees, pruning landscape trees (especially cabbage palms), sealing barrel-tile roof shingles with mortar, destroying abandoned buildings, and clearing small lots of native vegetation cumulatively may have a severe impact on remaining populations in urban areas'' (Robson 1989, p. 15). As the species may also use palm fronds for roosting, the trimming of fronds and removal of mature palm trees for landscaping may negatively impact individuals (K. Gillies, *in litt.* 2012). Harvey *et al.* (1999, p. 13) indicated that disturbance to summer maternity colonies of bats is extremely detrimental. In general, maternity colonies of bats do not tolerate disturbance, especially when flightless newborns are present (Harvey *et al.* 1999, p. 13). Newborns or immature bats may be dropped or abandoned by adults if disturbed (Harvey *et al.* 1999, p. 13). Disturbance to maternity colonies of the Florida bonneted bat may be particularly damaging because of this species' low fecundity and low abundance. In short, wherever this species occurs in or near human dwellings or structures, it is at risk of inadvertent or purposeful removal, displacement, and disturbance.

Routine maintenance and repair of bridges and overpasses is a potential threat. Bats can use highway structures either as day or night roosts (Keeley and Tuttle 1999, p. 1). An estimated 24 of the 45 species of bats in the United States have been documented to use bridges or culverts as roosts, and 13 other bat species are likely to use such structures based upon their known roosting preferences (Keeley and Tuttle 1999, p. 1). To date, the Florida bonneted bat has not been documented to use these structures. However, a large colony of Brazilian free-tailed bats was documented using the I–75 overpass at the entrance of Babcock–Webb WMA, and a single Florida bonneted bat call was recorded within 1.6 km (1.0 mi) of this overpass (S. Trokey, pers. comm. 2008c). Given the species' flight capabilities and roosting behaviors, the Florida bonneted bat could use this overpass or other such structures (C. Marks and G. Marks, pers. comm. 2008; S. Trokey, pers. comm. 2008c). The colony of Brazilian free-tailed bats was excluded from the overpass in October 2011, prior to a widening project on I–75, after the Florida Department of Transportation (FDOT) coordinated the exclusion with FWC and the FBC (FWC, *in litt.* 2012). The FWC had also constructed a community bat house near the overpass in 2009, to provide an alternate roost site (J. Morse, pers. comm. 2010). Although it is not known if Florida bonneted bats will use community bat houses, space was included to accommodate larger-bodied bats in that structure (J. Morse, pers. comm. 2010). To date, the species has not been found in the large community bat house at this site.

Maintenance and repair of bridges and overpasses or other infrastructure may impact this species. For example, when bridges and overpasses are

cleaned, bats may be subjected to high water pressure from hoses, which likely results in injury or death (C. Marks, pers. comm. 2007). Incidences involving high pressure water hoses have reportedly decreased in Florida, and the FDOT is working with FWC to increase their efforts to protect bats during maintenance and repair activities at bridge sites with bats (FWC, *in litt.* 2012).

Competition for Tree Cavities

Suitable natural roost sites in south Florida appear limited, and competition for available tree cavities may be greater now than historically. In 1992, Belwood (1992, p. 220) stated that tree cavities are rare in southern Florida and that competition for available cavities from native wildlife (e.g., southern flying squirrel, red-headed woodpecker, corn snake) was intense. Competition for cavities since that time has presumably increased, due largely to continued loss of cavity trees and habitat (see *Factor A,* above) and the influx of nonnative or introduced species, which vie for available roosting or nesting locations. Native wildlife and dozens of other nonnative or introduced species (e.g., European starlings, black rats, Africanized honey bees) in south Florida also now compete for tree cavities for nesting, roosting, or other uses (W. Kern, Jr., *in litt.* 2012; M. Ludlow, *in litt.* 2012).

In addition, numerous species of nonnative birds now occur in Florida, and many are cavity nesters. More than 30 species of parrots and 2 to 3 species of mynahs observed in the wild in south Florida use cavities, and some may be competing with the Florida bonneted bat and other native wildlife, for available natural or artificial structures (W. Kern, Jr., *in litt.* 2012; *http://myfwc.com/wildlifehabitats/nonnatives/birds/*). Africanized honey bee hybrids, established in Florida in 2005, are having significant impacts on cavity-nesting wildlife throughout their expanding range in Central America, South America, the Caribbean, and southeastern United States (Kern, Jr. 2011, pp. 1–4; W. Kern, Jr., *in litt.* 2012). Africanized honey bee hybrids now occupy the entire range of the Florida bonneted bat (W. Kern, Jr., *in litt.* 2012).

In summary, the extent of competition for cavity trees in south Florida is not well understood. It appears that cavity trees are limited and competition is greater now than historically. Despite the lack of data, the possibility certainly exists for the Florida bonneted bat to be impacted by competition for tree cavities from native or nonnative wildlife.

Proposed Wind Energy Facilities

Wind power is one of the fastest growing sectors of the energy industry (Horn *et al.* 2008, p. 123; Cryan and Barclay 2009, p. 1330), and the development of wind energy facilities in Florida may be of particular concern for the Florida bonneted bat as demand increases.

Migratory, tree-dwelling, and insectivorous bat species are being killed at wind turbines in large numbers across North America (Kunz *et al.* 2007, pp. 317–320; Cryan and Barclay 2009, pp. 1330–1340). Although it is not clear why such species are particularly susceptible (Boyles *et al.* 2011, p. 41), Kunz *et al.* (2007, pp. 315–324) proposed 11 hypotheses for the large numbers of fatalities at wind energy facilities. Some of these include attraction to tall structures as potential roost sites, attraction to enhanced foraging opportunities (e.g., insects attracted to heat of turbines), echolocation failure, electromagnetic field disorientation, and decompression (rapid pressure changes causing internal injuries or disorientation of bats while foraging). Similarly, Cryan and Barclay (2009, pp. 1330–1340) categorized the causes of fatalities into two categories: proximate, which explain the direct means by which bats die, and ultimate, which explain why bats come close to turbines.

Based upon data modified from Johnson (2005 as cited in Arnett *et al.* 2008, p. 64), researchers found that the Brazilian free-tailed bat comprised 85.6 percent of bat mortalities noted at a wind energy facility in Woodward, Oklahoma, and 41.3 percent of bat mortalities at a High Wind, California, wind energy facility. Since the Florida bonneted bat is also a free-tailed bat, it may demonstrate some similar behaviors that place it at risk when encountering wind energy facilities.

Bat mortalities at wind energy facilities may be seasonal in nature (Johnson 2005, as cited in Kunz *et al.* 2007, p. 317). Most documented mortalities in North America occurred between late summer and early fall (Johnson 2005, as cited in Arnett *et al.* 2008, p. 66); Kunz *et al.* 2007, p. 317; Arnett *et al.* 2008, pp. 65–66). Taller turbines with greater rotor-swept areas may be responsible for more bat mortalities than shorter turbines with smaller rotor-swept areas (Arnett *et al.* 2008, p. 68). Bat mortalities are absent where turbines are not spinning, indicating that bats do not strike stationary blades or towers (Kerns *et al.* 2005, p. 91). Fatalities at wind energy facilities tend to occur when wind speeds are <6m/second (19.7 ft/second) (Kerns *et al.* 2005, p. 76). Bat mortalities were also negatively correlated with rain (Kerns *et al.* 2005 p. 76). It should be noted, however, that mortality monitoring at wind energy facilities is not standardized, and there is a paucity of data for analysis. Most studies include less than a full field season and may miss significant bat mortality events. Differences between sites including scavenging rates, carcass detection, and observer bias may all contribute to variations in bat mortality records (Arnett *et al.* 2008, pp. 71–72).

The cause of bat mortality at wind energy facilities is not a simple one of direct contact with blades or towers. Baerwald *et al.* (2008, pp. 695–696) found that barotrauma is the cause of death in a high proportion of bats found at wind energy facilities. Barotrauma involves tissue damage to air–containing structures (such as lungs) caused by rapid or excessive pressure change; wind turbine blades may create zones of low pressure as air flows over them. In their examination, Baerwald *et al.* (2008, pp. 695–696) found 90 percent of the bat fatalities involved internal hemorrhaging consistent with barotrauma, suggesting that even if echolocation allows for bats to detect and avoid turbine blades, they may be incapacitated or killed by internal injuries caused by rapid pressure reductions that they cannot detect. Baerwald *et al.* (2008, pp. 695–696) suggested that the differences in respiratory anatomy between bats and birds may explain the higher incidence of bat fatalities from wind energy facilities (see also Barclay *et al.* 2007, pp. 381–387). In short, the large pliable lungs of bats expand when exposed to sudden drop in pressure, causing tissue damage, whereas birds' compact, rigid lungs do not respond in the same manner (Baerwald *et al.* 2008, pp. 695–696).

Wind turbine facilities are being planned for sites east and west of Lake Okeechobee, and these may have an impact on the Florida bonneted bat (M. Tucker, *in litt.* 2012). One proposed facility in Glades County is roughly 14.5 km (9 mi) south of locations where the species was recorded on the Kissimmee River in 2008 (M. Tucker, *in litt.* 2012). In 2011, ''possible'' Florida bonneted bat calls were also recorded on the proposed project site (C. Coberly, pers. comm. 2012). Potential impacts from this proposed facility cannot be accurately assessed at this time because it is not clear that the species uses the site (i.e., occurs on site or moves to it during activities such as foraging). The other proposed facility in Palm Beach

County has not recorded Florida bonneted bat calls on site (C. Newman, pers. comm. 2012), and this county is not part of the species' known historical or current range. Both wind energy development companies have indicated that areas around Lake Okeechobee are the most suitable sites in Florida for wind development, and if successfully developed, additional sites could be proposed, increasing the risk of impacts from wind energy to the Florida bonneted bat (M. Tucker, *in litt.* 2012).

While bat fatalities from wind energy facilities are well documented, potential impacts to the Florida bonneted bat are difficult to evaluate at this time, partly due to the uncertainty involving many factors (e.g., location of facilities, operations, foraging distance). Certain aspects of the species' status and life history may increase vulnerability to impacts from wind energy facilities. The species' small population and low fecundity make any additional potential sources of mortality cause for concern. The species' high and strong flight capabilities and fast-hawking foraging behavior may increase risk. Conversely, as the species is nonmigratory, potential impacts from wind energy facilities may not be as great in magnitude as perhaps other bat species that are migratory. Implementation of the Service's new land–based wind energy guidelines may also help to avoid and minimize some impacts (Service 2012, pp. 1–71).

Pesticides and Contaminants

The impacts of pesticides and other environmental contaminants on bat species are largely unstudied, particularly in the case of the Florida bonneted bat. The life history of the Florida bonneted bat may make it susceptible to pesticide exposure from a variety of sources. Mosquito control spraying activities commonly begin at dusk when mosquitoes are most active (http://www.miamidade.gov/publicworks/mosquito-spraying.asp). Because the Florida bonneted bat forages at dusk and after dark, the possibility exists for individuals to be directly exposed to airborne mosquito control chemicals or to consume invertebrates containing pesticide residues from recent applications. Additionally, because the Florida bonneted bat has been documented to roost in residential areas (Belwood 1992, pp. 219–220), it is possible for individuals to be exposed, either directly or through diet, to a variety of undocumented, localized pesticide applications conducted by homeowners. The potential exposure to or impacts of agricultural chemical application on the Florida bonneted bat in Florida are largely unknown.

Organochlorine (OC) pesticides have been linked to lethal effects in bats (Clark *et al.* 1978, p. 1358; Clark *et al.* 1983, pp. 215–216; O'Shea and Clark 2002, p. 239). Such pesticides have not been registered for use in the United States for several decades, but due to the extreme ability of OCs to persist in the environment, residues are still detectable in soil and sediment in some locations in south Florida. The possibility exists that the Florida bonneted bat may consume invertebrates with elevated OC concentrations in areas with substantial OC environmental concentrations, though this scenario would be limited to specific sites and would not be expected to be a widespread threat. No studies have been conducted that attempt to assess the historical impact of OC pesticides on the Florida bonneted bat.

Currently, OC pesticides have largely been replaced with OP, carbamate, and pyrethroid pesticides. Carbamate and OP pesticides act as cholinesterase inhibitors and are generally more toxic to mammals than OC pesticides. However, they are not as persistent in the environment and do not tend to bioaccumulate in organisms. Despite this lack of persistence, Sparks (2006, pp. 3–4, 6–7) still found OP residues in both bats and guano in Indiana and suspected that the residues originated from consuming contaminated insects. Pyrethroids, one of which is permethrin, are commonly used mosquito control pesticides in south Florida that display greater persistence than OP and carbamate pesticides, but still degrade much more rapidly than OC pesticides and are believed to exhibit low toxicity to mammals.

Grue *et al.* (1997, pp. 369–388) reviewed the sublethal effects of OPs and carbamates on captive small mammals and birds and found impaired thermoregulation, reduced food consumption, and reproductive alterations. Clark (1986, p. 193) observed a depression in cholinesterase activity in little brown bats following both oral and dermal application of the OP pesticide methyl parathion. Bats with reduced cholinesterase activity may suffer loss of coordination, impaired echolocation, and elongated response time. Alteration of thermoregulation could have serious ramifications to bats, given their high metabolic and energy demands (Sparks 2006, pp. 1–2). Reduced reproductive success would be of concern because the Florida bonneted bat already displays a low reproductive rate (Sparks 2006, p. 2). In order to accurately evaluate the impact of such pesticides on the Florida bonneted bat, additional work characterizing both pesticide exposure and effects in bats is needed.

A reduction in the number of flying insects is a potential secondary effect to consider when evaluating the impact of pesticides on the Florida bonneted bat. In his status survey for the Florida bonneted bat, Robson (1989, p. 15) suggested that mosquito control programs are contributing to reduced food supplies for bats. Robson (1989, p. 14) attributed the general reduced activity of bats along the southeastern coastal ridge to the reduction of forested habitat and reduced insect abundance. Although insect activity was not measured, Robson (1989, p. 14) noted that the ''lack of insects on the southeastern coastal ridge was striking when contrasted to all other areas.'' While it is reasonable to suggest that reduced food supply or increased exposure to pesticides may have led to the decline of the population in the Miami area, this link is only speculative because no rigorous scientific studies or direct evidence exists. Timm and Genoways (2004, p. 861) indicated that the extant, although small, population of the bat in the Fakahatchee-Big Cypress area of southwest Florida is located in one of the few areas of south Florida that has not been sprayed with pesticides. Marks and Marks (2008a, p. 15) contended that if the species' rarity and vulnerability are due to a dependence on a limited food source or habitat, then the protection of that food source or habitat is critical. Marks (2013, p. 2) also recommended that natural habitats conducive to insect diversity be protected and that any pesticides be used with caution. At this time, however, it is not known what food source or habitat is most important to the Florida bonneted bat.

In addition to pesticide exposure, mercury represents another potential threat to the Florida bonneted bat that has not been investigated. According to the National Atmospheric Deposition Program, the mercury deposition rate in south Florida is among the highest in the United States (*http://nadp.isws.illinois.edu*). The movement of mercury through the aquatic system and into the terrestrial food web through emergent invertebrates has been documented in other areas (Cristol *et al.* 2008, p. 335; Konkler and Hammerschmidt 2012, p. 1659). Assuming that a similar mechanism is occurring in south Florida coupled with high mercury deposition rates, the consumption of such invertebrates may constitute a pathway for the Florida bonneted bat to be exposed to mercury.

Nam *et al.* (2012, pp. 1096–1098) documented mercury concentrations in brain, liver, and fur in little brown bats near a mercury–contaminated site in Virginia that were significantly greater than mercury concentrations in the same tissues of little brown bats at a reference site, indicating the potential for bats to be exposed to and accumulate mercury near mercury–impacted systems. It is likely that the Florida bonneted bat experiences some degree of mercury exposure when foraging to a large extent above mercury–impacted water bodies. While no known studies have attempted to evaluate the impact of mercury on bat populations in south Florida, the neurotoxic effects of mercury on mammals in general have been well characterized in the scientific literature.

In 2012–2013, the Service worked with FDEP, UF, and other partners to analyze available Florida bonneted bat fur samples for total mercury in an attempt to assess mercury exposure. Nine fur samples were obtained from frozen specimens collected from a bat house in North Fort Myers in 2010, following a cold temperature event. An additional six fur samples were obtained from available specimens from UF's Natural History Museum. Three of the museum specimens were collected in Miami, Florida, in the 1950s. The remaining three museum specimens were collected from Babcock-Webb WMA in 1979. Results of the mercury analysis revealed an overall mean of 24.69 milligram (mg) Hg (mercury)/kg (kilogram) fur (FDEP 2013, pp. 1–7; A. Sowers, pers. comm. 2013). A wide range of variability was observed between the samples as the measured values ranged from 5.7 to 57 mg Hg/kg fur (FDEP 2013, pp. 1–7; A. Sowers, pers. comm. 2013). For reference, Evers *et al.* (2012, p. 9) provided mercury fur concentrations in 802 bats spread across 13 species from the northeastern United States. Based upon limited data, the mean mercury concentrations of the Florida bonneted bat samples (24.69 mg Hg/kg fur) were higher than the means reported for any of the 13 species (Evers *et al.* 2012, p. 9). None of the mean mercury concentrations of the northeastern bat species exceeded 20 mg Hg/kg fur (Evers *et al.* 2012, p. 9). It should be noted, however, that some of the maximum mercury values reported by Evers *et al.* (2012, p. 9) did exceed what was observed as maximum values in the Florida bonneted bats. The results from the Florida bonneted bat analysis, compared with those of other bat species across the northeast, suggest that exposure to mercury is of concern. Further research is needed to determine if such mercury exposure is having an adverse impact on the Florida bonneted bat.

In summary, the effects of pesticides and contaminants on bat populations in general have not been studied thoroughly. In the case of the Florida bonneted bat, data concerning the effects of pesticides and other contaminants are virtually nonexistent. Despite this lack of data, the possibility exists for the Florida bonneted bat to be exposed to a variety of compounds through multiple routes of exposure. Additionally, areas with intensive pesticide activity may not support an adequate food base for the species. Further study is required to more fully assess the risk that pesticides and contaminants pose to the Florida bonneted bat.

Ecological Light Pollution

Ecological light pollution is described as artificial light that alters the natural patterns of light and dark in ecosystems (Longcore and Rich 2004, p. 191). It includes ''direct glare, chronically increased illumination, and temporary, unexpected fluctuations in lighting,'' and many sources (e.g., streetlights, lighted buildings and towers, sky glow) contribute to the phenomenon (Longcore and Rich 2004, pp. 191–192). Depending upon scale and extent, ecological light pollution can have demonstrable effects on behavioral and population ecology of organisms, by disrupting orientation (or causing disorientation), affecting movements (attraction or repulsion), altering reproductive behaviors, and influencing communication (Longcore and Rich 2004, pp. 193–195). Behaviors exhibited by individuals in response to artificial lighting can affect community interactions (e.g., competition and predation), and cumulative effects have the potential to disrupt key ecosystem functions (Longcore and Rich 2004, pp. 195–196).

The effects of artificial lighting on bats and their prey have been partially studied. A wide array of insects have been found to be attracted to lights (Frank 1988, pp. 63–93; Eisenbeis and Hassel 2000, Kolligs 2000 as cited in Longcore and Rich 2004, p. 194). For example, Frank (1988, pp. 63–93) examined the impact of outdoor lighting on moths and found that it disturbs many necessary functions and may affect some moth populations. Although the primary prey items for the Florida bonneted bat are not known, it is possible that artificial lighting may be affecting insect abundance or availability and prey base in some locations.

Some species of bats are attracted to artificial lights to exploit accumulations of insects that congregate at light sources (Griffin 1958; Bell 1980; Belwood and Fullard 1984; Haffner and Stutz 1985/86; Baagee 1986; Schnitzler *et al.* 1987; Barak and Yom-Tov 1989 as cited in Rydell 1991, p. 206; Frank 1988, pp. 63, 76). In one study examining seasonal use of illuminated areas in Sweden, Rydell (1991, p. 206) found significant concentrations of foraging northern bats (*Eptesicus nilssoni*) only in villages illuminated by streetlights, supporting the hypothesis that northern bats were attracted to the villages by lights and not houses. Artificial lights appeared to provide local patches of food for some bat species during periods that may be critical for survival (Rydell 1991, pp. 203–207). In another study, Rydell (1992, pp. 744–750) examined the exploitation of insects around streetlamps by bats in Sweden and found that only the fast–flying species that use long–range echolocation systems regularly foraged around streetlamps, but others did not. Longcore and Rich (2004, p. 195) suggested that the increased food concentration at artificial light sources may be a positive effect for those species that can exploit such sources, but it also could result in altered community structure.

The Florida bonneted bat's behavioral response to ecological light pollution has not been examined, and effects are not known. The species' fast-flight and long range flight capabilities may make it more able to exploit insects congregated at artificial light sources or more susceptible to risks associated with such responses (e.g., increased predation or harm from humans). Alternatively, artificial lighting may not be influencing the species' foraging or other behaviors. Research on the effects of artificial lighting on the Florida bonneted bat and its prey would be beneficial.

Effects of Small Population Size, Isolation, and Other Factors

The Florida bonneted bat is vulnerable to extinction due to its small population size, restricted range, few occupied areas, low fecundity, and relative isolation. The Florida bonneted bat only occurs in south Florida and only in limited numbers (Timm and Genoways 2004, pp. 861–862; Marks and Marks 2008a, pp. 11, 15; 2008b, p. 4; 2012, pp. 12–15). Based on the small number of locations where calls were recorded, the low numbers of calls recorded at each location, and the fact

that the species forms small colonies, Marks and Marks (2008a, p. 15) stated that it is possible that the entire population of Florida bonneted bats may number less than a few hundred individuals. Other experts suggested the population may be ''in the hundreds or low thousands'' (FWC 2011b, p. 3). Due to its small population size and restricted range, the species is considered to be one of the ''most critically endangered'' mammals in North America (Timm and Genoways 2004, p. 861). In general, species with restricted ranges are often characterized by small population sizes and high habitat specialization and are, therefore, more vulnerable to stochastic, demographic, and environmental processes (Lande *et al.* 2003 as cited in Lee and Jetz 2011, p. 1333).

In a vulnerability assessment, the FWC's biological status review team determined that the species met criteria or listing measures for geographic range, population size and trend, and population size and restricted area (Gore *et al.* 2010, pp. 1–2). For geographic range, the review team estimated that the species occurs in a combined area of roughly 17,632 km^2 (6,808 mi^2), well below the criterion of <20,000 km^2 (7,722 mi^2). The review team also inferred a severely fragmented range, with three subpopulations, all of which occur in coastal locations susceptible to hurricanes and other losses in habitat (see *Climate Change and Sea Level Rise* and *Land Use Changes and Human Population Growth,* above). The review team also inferred continuing decline in both extent of occurrence and area, extent, or quality of habitat. For population size and trend, the review team estimated <100 individuals known in roosts, with an assumed total population of mature individuals being well below the criterion of fewer than 10,000 mature individuals. Similarly, for population size and restricted area, the review team estimated <100 individuals of all ages known in roost counts, inferring a total population to number fewer than 1,000 mature individuals, and three subpopulations were located in at-risk coastal zones.

Slow reproduction and low fecundity are also serious concerns because this species produces only one young at a time and roosts singly or in small groups (FBC 2005, p. 1; Timm and Arroyo-Cabrales 2008, p. 1). Assuming a lifespan of 10 to 20 years for bats of this size (Wilkinson and South 2002, pp. 124–131), the average generation time is estimated to be 5 to 10 years (Gore *et al.* 2010, p. 7). The small numbers within localized areas may also make the Florida bonneted bat vulnerable to extinction due to genetic drift (loss of unique genes through time), inbreeding depression (reduced fitness or survival due to low genetic diversity), extreme weather events (e.g., hurricanes), and random or chance changes to the environment (Lande 1988, pp. 1455–1459; Smith 1990, pp. 310–321) that can significantly impact its habitat (see *Environmental Stochasticity,* below). Information on the extent of genetic diversity in historical or current populations is lacking.

In general, isolation, whether caused by geographic distance, ecological factors, or reproductive strategy, will likely prevent the influx of new genetic material and can result in low diversity, which may impact viability and fecundity (Chesser 1983, pp. 66–77). Distance between subpopulations or colonies, the small sizes of colonies, and the general low number of bats may make recolonization unlikely if any site is extirpated. Isolation of habitat can prevent recolonization from other sites and potentially result in extinction. The probability of extinction increases with decreasing habitat availability (Pimm *et al.* 1988, pp. 758–762, 776; Noss and Cooperrider 1994, pp. 162–165; Thomas 1994, pp. 373–378; Kale 1996, pp. 7–11). Although changes in the environment may cause populations to fluctuate naturally, small and low-density populations are more likely to fluctuate below a minimum viable population (i.e., the minimum or threshold number of individuals needed in a population to persist in a viable state for a given interval) (Shaffer 1981, pp. 131–134; Shaffer and Samson 1985, pp. 146–151; Gilpin and Soulé 1986, pp. 19–34). If populations become fragmented, genetic diversity will be lost as smaller populations become more isolated (Rossiter *et al.* 2000, pp. 1131–1135). Fragmentation and aspects of the species' natural history (e.g., reliance on availability of suitable roost sites, constant supply of insects) can contribute to and exacerbate other threats facing the species.

Overall, the Florida bonneted bat is vulnerable to a wide array of factors, including apparent small population size, restricted range, few occurrences, low fecundity, and relative isolation. These threats are significant and expected to continue or possibly increase.

Environmental Stochasticity

Natural events such as severe hurricanes may cause the loss of old trees with roosting cavities (Timm and Genoways 2004, p. 861). In August 1992, Hurricane Andrew, a category 5 hurricane, struck southern Miami–Dade County with sustained surface windspeeds of more than 145 mph and gusts exceeding 175 mph (Timm and Genoways 2004, p. 861). The winds destroyed the majority of older trees and snags within several kilometers of the coast that were potentially available as roost trees (Timm and Genoways 2004, p. 861; W. Kern, Jr., *in litt.* 2012). Timm and Genoways (2004, p. 861) indicated that habitat loss from development (see *Factor A*), increased use of pesticides, and Hurricane Andrew may have had a significant impact on an already small population of the Florida bonneted bat. For example, historical hurricane damage in the Miami area eliminated all of the large pine snags in one study area, leaving less than half a dozen large snags within a 526–ha (1,300–ac) area (F. Ridgley, pers. comm. 2013b).

Several less intense hurricanes have impacted both coasts of Florida during the past decade. Acoustical surveys conducted in south Florida prior to the hurricane season of 2004 (from 1997 through 2003) were compared with results after the hurricanes (Marks and Marks 2008a, pp. 12, D1–D6, E1–E26). The limited number of locations and low number of recorded calls suggested that the species was rare before the 2004 storm season and that the population remained low afterward (Marks and Marks 2008a, pp. 12–15). Prior to the 2004 hurricane season, calls were recorded at 4 of 10 locations; after the hurricane season, calls were recorded at 9 of 44 locations (Marks and Marks 2008a, pp. 12–15). Actions taken by a private landowner to reinforce bat houses prior to Hurricane Charlie in 2004, and Hurricane Wilma in 2005, likely prevented the only known extant roost site (at that time) from being destroyed; these storms caused significant damage to both trees and other property on the site (S. Trokey, pers. comm. 2008c).

Major impacts of intense storms may include mortality during the storm, exposure to predation immediately following the storm, loss of natural or artificial roost sites, and impacts on foraging areas and insect abundance (Marks and Marks 2008a, pp. 7–9; W. Kern, Jr. *in litt.* 2012; R. Timm, *in litt.* 2012). In general, bats could be blown into stationary objects or impacted by flying debris, resulting in injury or mortality (Marks and Marks 2008a, p. 7). Trees with cavities can be snapped at their weakest point, which for the Florida bonneted bat may have the most severe impact since the species uses cavities (Marks and Marks 2008a, p. 8); competition for available cavities in south Florida is intense (Belwood 1992, p. 220), and suitable roosting sites in

general are often limiting factors (Humphrey 1975, pp. 341–343). Displaced bats may be found on the ground or other unsuitable locations and exposed to natural predators, domestic pets, and humans (Marks and Marks 2008a, p. 8). As pregnant females have been found in June through September, hurricanes in Florida can occur at critical life-history stages—when females are pregnant or rearing young—possibly resulting in losses of pregnant females, newborns, or juvenile pups (Marks and Marks 2008a, pp. 7–9). Because the entire population may be less than a few hundred individuals (Marks and Marks 2008a, p. 15; 2012, pp. 12–15), the Florida bonneted bat may not be able to withstand losses from intense storms or storms at a critical life-history stage. Alternatively, less intense hurricanes or mild, isolated storms may create roosting opportunities, if tree snags (dead trees) are left in place.

According to the Florida Climate Center, Florida is by far the most vulnerable State in the United States to hurricanes and tropical storms (*http://climatecenter.fsu.edu/topics/tropical-weather*). Based on data gathered from 1856 to 2008, Klotzbach and Gray (2009, p. 28) calculated the climatological and current-year probabilities for each State being impacted by a hurricane and major hurricane. Of the coastal States analyzed, Florida had the highest climatological probabilities for hurricanes and major hurricanes, with a 51 percent probability of a hurricane and a 21 percent probability of a major hurricane over a 152-year timespan. Of the States analyzed, Florida also had the highest current-year probabilities, with a 45 percent probability of a hurricane and an 18 percent probability of a major hurricane (Klotzbach and Gray 2009, p. 28). Based upon data from the period 1886–1998, Neumann *et al.* (1999, pp. 29–30) also found that the number of tropical cyclones within south Florida is high; analyses suggested that areas within the species' range (e.g., Fort Myers, Miami) are expected to experience more than 50 occurrences (tropical cyclones) per 100 years. In addition, the analyses suggested that the incidence of hurricanes in south Florida was roughly 30 per 100 years, higher than any other area except for North Carolina (Neumann *et al.* 1999, pp. 29–30). The number of major hurricanes (roughly 14 per 100 years) was higher than any other area examined (Neumann *et al.* 1999, p. 30).

Studies suggest that the frequency of high-severity hurricanes in the Atlantic will become more frequent as climate warms (Elsner *et al.* 2008, pp. 92–95; Bender *et al.* 2010, pp. 454–458; Grinsted *et al.* 2012, pp. 19601–19605). One model projects a doubling of frequency of category 4 and 5 storms by the end of the 21st century with a decrease in the overall frequency of tropical cyclones (Bender *et al.* 2010, pp. 454–458). In another study that examined records since 1923, warm years in general were more active in all cyclone size ranges than cold years, and a significant trend in the frequency of large surge events was detected (Grinsted *et al.* 2012, pp. 19601–19605). Increases in hurricane-generated wave heights have also been detected along the Atlantic coast (Komar and Allan 2008, pp. 479–488).

If hurricanes and tropical storms increase in severity, frequency, or distribution, vulnerable, tropical, tree-roosting bat species may be heavily impacted (Gannon and Willig 2009, pp. 281–301). Given the Florida bonneted bat's tree-roosting habits, apparent low abundance, few isolated colonies, and use of coastal areas, the species is at risk from hurricanes, storms, or other extreme weather. Depending on the location and intensity, it is possible that the majority of Florida bonneted bats could be killed in a fairly broad area during a single, large, high-intensity hurricane (R. Timm, *in litt.* 2012). More frequent and intense storms, increased storm surges, and coastal flooding can impact Florida bonneted bats and roosting and foraging habitat. Due to the bat's overall vulnerability, intense hurricanes are a significant threat, which is expected to continue or increase in the future.

Other processes to be affected by climate change include temperatures, rainfall (amount, seasonal timing, and distribution), and storms (frequency and intensity). Temperatures are projected to rise approximately 2 °C to 5 °C (3.6 °F to 9 °F) for North America by the end of this century (IPCC 2007, pp. 7–9, 13). In addition to climate change, weather variables are extremely influenced by other natural cycles, such as El Niño Southern Oscillation with a frequency of every 4 to 7 years, solar cycle (every 11 years), and the Atlantic Multi-decadal Oscillation. All of these cycles influence changes in Floridian weather. The exact severity, direction, and distribution of all of these changes at the regional level are difficult to project.

This species is also vulnerable to prolonged extreme cold weather events. Air temperatures dropped to below freezing and reached a low of –2.0 °C (28 °F) in ENP on January 11, 2010; air temperatures at Royal Palm for the first 2 weeks of January marked the coldest period recorded over the previous 10 years (Hallac *et al.* 2010, p. 1). The effects of this severe and prolonged cold event on the Florida bonneted bats or other bats in Florida are not known, but some mortality was observed. At least 8 Florida bonneted bats were lost from the North Fort Myers colony during the event, before 12 remaining bats were brought into captivity, warmed, and fed (S. Trokey, pers. comm. 2010a). Those rescued were emaciated and in poor condition. Initially, only 9 individuals appeared to survive after this event, although 10 individuals were still alive at this site in April 2010 (S. Trokey, pers. comm. 2010a-c). Approximately 30 Brazilian free–tailed bats were found dead below a bat house in Everglades City during this event (R. Arwood, pers. comm. 2010). Overall, approximately 100 Brazilian free-tailed bats using bat houses were found dead following this severe cold event (C. Marks, pers. comm. 2011). South Florida again experienced cold temperatures in December 2010. Temperatures in December 2010 were among the coldest on record within ENP (J. Sadle, NPS, pers. comm. 2011). In the short term, the severe and prolonged cold events in south Florida resulted in mortality of at least several adult Florida bonneted bats at one observed site (S. Trokey, pers. comm. 2010a). However, it is not known if the species persisted at all sites previously documented following the prolonged and repeated cold temperatures in 2010. Overall, the long-term effects of prolonged and repeated cold events on the species are not known.

Molossids, the family of bats which includes the Florida bonneted bat, appear to be an intermediate between tropical and temperate zone bat families (Arlettaz *et al.* 2000, pp. 1004–1014). Members of this family that inhabit the warmer temperate and subtropical zones incur much higher energetic costs for thermoregulation during cold weather events than those inhabiting northern regions (Arlettaz *et al.* 2000, pp. 1004–1014). At such temperatures, bats are likely unable to find food and cannot re-warm themselves. Such a stochastic, but potentially severe, event poses a significant threat to the entire population. Impacts of past cold weather events are evident, but the effect on all colonies is not known. Additional extreme weather events are anticipated in the future, and such extremes can have disastrous impacts on small populations of mammals (R. Timm, pers. comm. 2012).

Aspects of the Species' Life History and Climate Change Implications

For bats in general, climate changes can affect food availability, timing of hibernation, frequency of torpor, rate of energy expenditure, reproduction, and development rate (Sherwin *et al.* 2012, pp. 1–18). Although increased temperatures may lead to benefits (e.g., increased food supply, faster development, range expansion), other negative outcomes may also occur (e.g., extreme weather, reduced water availability, spread of disease) (Sherwin *et al.* 2012, p. 14). Food abundance is a fundamental factor influencing bat activity (Wang *et al.* 2010, pp. 315–323). Insectivorous bats are dependent upon ectothermic (cold–blooded) prey, whose activity is affected by climate conditions (Burles *et al.* 2009, pp. 132–138). Aerial-hawking species such as the Florida bonneted bat are likely highly sensitive to climatic changes due to their dependence on a food supply that is highly variable in both time and space (Sherwin *et al.* 2012, p. 3).

In assessing implications of climate change, Sherwin *et al.* (2012, p. 4) identified two risk factors directly related to foraging: (1) Bats inhabiting water-stressed regions, and (2) aerial-hawking species, which are reliant on spatially variable food sources. Bats generally have higher rates of evaporative water loss than other similarly sized terrestrial mammals and birds (Herreid and Schmidt-Nielsen 1966; Studier 1970 as cited in Chruszcz and Barclay 2002, p. 24; Webb *et al.* 1995, p. 270). Due to their high surface area to volume ratios and large, naked flight membranes (wings), the potential for loss of evaporative water is generally high (Webb *et al.* 1995, pp. 269–278). Travelling farther to access water and food entails more energy expenditure and may affect reproductive success (Sherwin *et al.* 2012, p. 4). Considering foraging risk alone, the Florida bonneted bat may be especially susceptible to climate changes since it is an insectivorous, aerial-hawking species largely restricted to south and southwest Florida, a region expected to become water-stressed in the future (see *Factor A,* above).

Summary of Factor E

Based on our analysis of the best available information, we have identified a wide array of natural and manmade factors affecting the continued existence of the Florida bonneted bat. Inadvertent or purposeful impacts by humans caused by intolerance or lack of awareness (e.g., removal, landscaping activities, and bridge maintenance) can lead to mortality or disturbances to maternity colonies. The Florida bonneted bat's ability to adapt well to manmade structures has likely been a factor in its decline because the bat tends to inhabit structures that place it at risk from inadvertent or purposeful harm by humans. Competition for tree cavities from native and nonnative wildlife is a potential threat. Proposed wind energy facilities in the species' habitat can cause mortalities, and this threat may increase as the demands for such facilities increase. The species may be exposed to a variety of chemical compounds through multiple routes of exposure, and intensive pesticide use may alter insect prey availability. Ecological light pollution may also be a potential threat. Small population size, restricted range, low fecundity, and few and isolated colonies are serious ongoing threats. Catastrophic and stochastic events are of significant concern. All occupied areas are at risk due to hurricanes, which can cause direct mortality, loss of roost sites, and other impacts. More frequent intense hurricanes may be anticipated due to climate change. Extreme cold weather events can also have severe impacts on the population and increase risks from other threats by extirpating colonies or further reducing colony sizes. Collectively, many of these threats have operated in the past, are impacting the species now, and will continue to impact the Florida bonneted bat in the future.

Determination of Status

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Florida bonneted bat. The species occurs in limited numbers in a restricted range in south Florida. Habitat loss, degradation, and modification from human population growth and associated development and agriculture have impacted the Florida bonneted bat and are expected to further curtail its limited range (see *Factor A*). Environmental effects from climate change, including sea level rise and coastal squeeze, are predicted to become severe in the future, resulting in additional habitat losses that are expected to place the species at greater risk (see *Factor A*).

The Florida bonneted bat also faces threats from a wide array of natural and manmade factors (see *Factor E*). Effects of small population size, restricted range, few colonies, slow reproduction, low fecundity, and relative isolation contribute to the species' vulnerability. Other aspects of the species' natural history (e.g., aerial-hawking foraging, tree-roosting habits) and environmental stochasticity may also contribute to its imperilment. Multiple anthropogenic factors are also threats (e.g., impacts or intolerance by humans) or potential threats (e.g., wind energy projects, ecological light pollution) of varying severity. As an insectivore, the species is also likely exposed to a variety of pesticides and contaminants through multiple routes of exposure; pesticides may also affect its prey base. Given its vulnerability, disease and predation (see *Factor C*) have the potential to impact the species. Finally, existing regulatory mechanisms (see *Factor D*), due to a variety of constraints, do not provide adequate protection for the species. Overall, impacts from increasing threats, operating singly or in combination, place the species at risk of extinction.

Section 3 of the Act defines an endangered species as ''any species which is in danger of extinction throughout all or a significant portion of its range'' and a threatened species as ''any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' By all indications, the species occurs only in limited numbers within a restricted range and faces considerable and immediate threats, which place it at risk of extinction. Aspects of the species' natural history may also contribute to and exacerbate threats and increase its vulnerability to extinction. Since immediate and ongoing significant threats to the Florida bonneted bat extend throughout its entire range, we have determined that the species is currently in danger of extinction throughout all of its range. Because threats extend throughout the entire range, it is unnecessary to determine if the Florida bonneted bat is in danger of extinction throughout a significant portion of its range. Therefore, on the basis of the best available scientific and commercial information, we have determined that the Florida bonneted bat meets the definition of an endangered species under the Act. In other words, we find that a threatened species status is not appropriate for the Florida bonneted bat because of the severity and immediacy of the threats, the restricted range of the species, and its apparent small population size. Consequently, we are listing the Florida bonneted bat as an endangered species throughout its entire range in accordance with sections 3(6) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation by Federal, State, Tribal, and local agencies; private organizations; and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed, preparation of a draft and final recovery plan, and revisions to the plan as significant new information becomes available. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. The recovery plan identifies site-specific management actions that will achieve recovery of the species, measurable criteria that determine when a species may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (comprising species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the draft and final recovery plans will be available on our Web site (*http://www.fws.gov/endangered*), or from our South Florida Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribal, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, County, State, and Tribal lands.

Once this species is listed (see **DATES**), funding for recovery actions may be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of Florida will be eligible for Federal funds to implement management actions that promote the protection and recovery of the Florida bonneted bat. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph include, but are not limited to: management and any other landscape-altering activities on Federal lands administered by the Department of Defense, Fish and Wildlife Service, National Park Service, and U.S. Forest Service; habitat restoration by the U.S. Department of Agriculture, Natural Resources Conservation Service; issuance of section 404 Clean Water Act (33 U.S.C. 1251 *et seq.*) permits by the U.S. Army Corps of Engineers; permitting of construction and management of gas pipeline, power line rights-of-way, and wind energy facilities by the Federal Energy Regulatory Commission; construction and maintenance of roads, highways, or bridges by the Federal Highway Administration; and pesticide registration by the U.S. Environmental Protection Agency.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions of section 9(a)(2) of the Act, codified at 50 CFR 17.21 for endangered wildlife, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import, export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. Under the Lacey Act (18 U.S.C. 42–43; 16 U.S.C. 3371–3378), it is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies. The Florida bonneted bat is listed by the State of Florida; therefore, certain State laws also apply. Listing will also require Federal agencies to avoid actions that might jeopardize the species (16 U.S.C. 1536(a)(2)), and will provide opportunities for funding of conservation measures and land acquisition that would not otherwise be available to them (16 U.S.C. 1534, 1535(d)).

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species, and at 17.32 for threatened species. With regard to endangered wildlife, a permit must be issued for the following purposes: for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within the range of the federally listed species.

We estimate that the following activities would be likely to result in a violation of section 9 of the Act; however, possible violations are not limited to these actions alone:

(1) Unauthorized possession, collecting, trapping, capturing, killing, harassing, sale, delivery, or movement, including interstate and foreign commerce, or harming or attempting any of these actions, of Florida bonneted bats. Research activities where Florida bonneted bats are handled, captured (e.g., netted, trapped), tagged, fitted with radiotransmitters or other instrumentation, or collected will require authorization pursuant to the Act.

(2) Incidental take of the Florida bonneted bat without authorization pursuant to section 7 or section 10(a)(1)(B) of the Act.

(3) Sale or purchase of specimens of this taxon, except for properly documented antique specimens of this taxon at least 100 years old, as defined by section 10(h)(1) of the Act.

(4) Unauthorized destruction or alteration of Florida bonneted bat occupied or potentially occupied habitat (which may include, but is not limited to, unauthorized grading, leveling, plowing, mowing, burning, clearing, lighting, or pesticide application) in ways that kills or injures individuals by significantly impairing the species' essential breeding, foraging, sheltering, or other essential life functions.

(5) Unauthorized release of biological control agents that attack any life stage of this taxon.

(6) Unauthorized removal or destruction of cavity trees and other natural structures being utilized as roosts by the Florida bonneted bat that results in take of the species.

(7) Unauthorized removal or exclusion from buildings or artificial structures being used as roost sites by the species that results in take of the species.

(8) Unauthorized maintenance or repair of bridges or overpasses that are being used as roost sites by the Florida bonneted bat that results in take of the species.

(9) Unauthorized building and operation of wind energy facilities within areas used by the Florida bonneted bat that results in take of the species.

We will review other activities not identified above on a case-by-case basis to determine whether they may be likely to result in a violation of section 9 of the Act. We do not consider these lists to be exhaustive, and we provide them as information to the public.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Field Supervisor of the Service's South Florida Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Requests for copies of the regulations concerning listed animals and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 1875 Century Boulevard, Atlanta, GA 30345 (Phone 404–679–7313; Fax 404–679–7081).

Jeopardy Standard

Prior to and following listing, the Service applies an analytical framework for jeopardy analyses that relies heavily on the importance of core area populations to the survival and recovery of the species. The section 7(a)(2) analysis is focused not only on these populations but also on the habitat conditions necessary to support them.

The jeopardy analysis usually expresses the survival and recovery needs of the species in a qualitative fashion without making distinctions between what is necessary for survival and what is necessary for recovery. Generally, if a proposed Federal action is incompatible with the viability of the affected core area populations(s), inclusive of associated habitat conditions, a jeopardy finding is considered to be warranted, because of the relationship of each core area population to the survival and recovery of the species as a whole.

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions

are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Critical Habitat Prudency

We found that designation of critical habitat for the Florida bonneted bat is prudent. For further discussion, see the proposed listing rule (77 FR 60749; October 4, 2012).

Critical Habitat Determinability

Our regulations (50 CFR 424.12(a)(2)) further state that critical habitat is not determinable when one or both of the following situations exist: (1) Information sufficient to perform the required analysis of the impacts of the designation is lacking, or (2) the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

In accordance with sections 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we must consider those physical and biological features essential to the conservation of the species. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, and rearing (or development) of offspring;

and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distribution of a species.

We conducted an evaluation to find if the designation of critical habitat for the Florida bonneted bat is determinable. Based on that evaluation, we are currently unable to identify the physical and biological features essential for the conservation of the Florida bonneted bat because information on those features for this species remains uncertain. The apparent poor viability of the species recorded in recent years indicates that current conditions are not sufficient to meet the basic biological requirements of the species in most areas of its current range.

Species-specific ecological requirements (e.g., natural roost sites, seasonal changes in roosting habitat, dietary needs, seasonal changes in diet, prime foraging habitat) are currently being researched. Population dynamics, such as species interactions and community structure, population trends, and population size and age class structure necessary to maintain long-term viability, have not been fully determined. As we are unable to identify many physical and biological features essential to the conservation of the Florida bonneted bat, we are unable to identify areas that contain features necessary for long-term viability. Therefore, we find that critical habitat is not determinable at this time.

As one peer reviewer stated during the public comment period, identifying home ranges and habitat affinities of the Florida bonneted bat is imperative to determining the physical and biological features essential to the conservation of the species. In order for designation of critical habitat to be meaningful and effective, the extent of the species' range and the species' roosting affinities should be defined prior to designation. The Service continues to work with researchers, other agencies, and stakeholders on filling large information gaps regarding the species and its habitat needs and preferences. We continue to fund research and study the habitat requirements of the bat and we intend to publish a proposed critical habitat designation for the Florida bonneted bat in a separate rule in the near future.

Required Determinations

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act, need not be prepared in connection with listing a species as an endangered or threatened species under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the Field Supervisor, South Florida Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this rule are the staff members of the South Florida Ecological Services Field Office.

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.

■ 2. Amend § 17.11(h) by adding an entry for ''Bat, Florida bonneted'' to the List of Endangered and Threatened Wildlife in alphabetical order under Mammals, 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							
*	*	*	*	*	*	*	
Bat, Florida bonneted.	*Eumops floridanus*	U.S.A. (FL)	Entire	E	822	NA	NA
*	*	*	*	*	*	*	

* * * * *

Dated: September 19, 2013.

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2013–23401 Filed 10–1–13; 8:45 am]

BILLING CODE 4310–55–P



FEDERAL REGISTER

Vol. 78 Wednesday,
No. 191 October 2, 2013

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Eastern Small-Footed Bat and the Northern Long-Eared Bat as Endangered or Threatened Species; Listing the Northern Long-Eared Bat as an Endangered Species; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R5–ES–2011–0024; 4500030113]

RIN 1018–AY98

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Eastern Small-Footed Bat and the Northern Long-Eared Bat as Endangered or Threatened Species; Listing the Northern Long-Eared Bat as an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; 12-month finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the eastern small-footed bat (*Myotis leibii*) and the northern long-eared bat (*Myotis septentrionalis*) as endangered or threatened under the Endangered Species Act of 1973, as amended (Act) and to designate critical habitat. After review of the best available scientific and commercial information, we find that listing the eastern small-footed bat is not warranted but listing the northern long-eared bat is warranted. Accordingly, we propose to list the northern long-eared bat as an endangered species throughout its range under the Act. We also determine that critical habitat for the northern long-eared bat is not determinable at this time. This proposed rule, if finalized, would extend the Act's protections to the northern long-eared bat. The Service seeks data and comments from the public on this proposed listing rule for the northern long-eared bat.

DATES: We will consider comments received or postmarked on or before December 2, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for a public hearing, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by November 18, 2013.

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

(1) In the Search box, enter Docket No. FWS–R5–ES–2011–0024, which is the docket number for this rulemaking. Then, 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 ''Comment Now!'' 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.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R5–ES–2011–0024; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all information received on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Information Requested section below for more details).

FOR FURTHER INFORMATION CONTACT: Peter Fasbender, Field Supervisor, U.S. Fish and Wildlife Service, Green Bay Ecological Services Office, 2661 Scott Tower Dr., New Franken, Wisconsin, 54229; by telephone (920) 866–3650 or by facsimile (920) 866–1710. *mailto:* If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, if a species is determined to be an endangered or threatened species throughout all or a significant portion of its range, we are required to promptly publish a proposal in the **Federal Register** and make a determination on our proposal within one year. Listing a species as an endangered or threatened species can only be completed by issuing a rule.

This document consists of:

- Our status review and finding that listing is warranted for the northern long-eared bat and not warranted for the eastern small-footed bat.
- A proposed rule to list the northern long-eared bat as an endangered species. This rule assesses best available information regarding the status of and threats to the northern long-eared bat.

The basis for our action. Under the Act, we can 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 have determined that the northern long-eared bat is in danger of extinction, predominantly due to the threat of white-nose syndrome (Factor C). However, other threats (Factors A, B, E) when combined with white-nose syndrome heighten the level of risk to the species.

We will seek peer review. We are seeking comments from knowledgeable individuals with scientific expertise to review our analysis of the best available science and application of that science and to provide any additional scientific information to improve this proposed rule. Because we will consider all comments and information we receive during the comment period, our final determination may differ from this proposal.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned Federal and State agencies, the scientific community, or any other interested party concerning this proposed rule. We particularly seek comments regarding the northern long-eared bat concerning:

(1) The species' biology, range, and population trends, including:

(a) Habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) Any information on the biological or ecological requirements of the species, and ongoing conservation measures for the species and its habitat.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and regulations that may be addressing those threats.

(4) Current or planned activities in the areas occupied by the species and possible impacts of these activities on this species.

(5) Additional information regarding the threats to the species under the five listing factors, which are:

(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; and

(e) Other natural or manmade factors affecting its continued existence.

(6) The reasons why areas should or should not be designated as critical habitat as provided by section 4 of the Act (16 U.S.C. 1531 *et seq.*), including the possible risks or benefits of designating critical habitat, including risks associated with publication of maps designating any area on which this species may be located, now or in the future, as critical habitat.

(7) The following specific information on:

(a) The amount and distribution of habitat for northern long-eared bat;

(b) What areas, that are currently occupied and that contain the physical and biological features essential to the conservation of this species, should be included in a critical habitat designation and why;

(c) Special management considerations or protection that may be needed for the essential features in potential critical habitat areas, including managing for the potential effects of climate change;

(d) What areas not occupied at the time of listing are essential for the conservation of this species and why;

(e) The amount of forest removal occurring within known summer habitat for this species;

(f) Information on summer roost habitat requirements that are essential for the conservation of the species and why; and

(g) Information on species winter habitat (hibernacula) features and requirements for the species.

(8) Information on the projected and reasonably likely impacts of changing environmental conditions resulting from climate change on the species and its habitat.

Please note that 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 determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in the **ADDRESSES** section. If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov*. Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

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 the U.S. Fish and Wildlife Service, Green Bay, Wisconsin Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(B) of the Act requires that, for any petition to revise the Federal Lists of Threatened and Endangered Wildlife and Plants that contains substantial scientific or commercial information that listing a species may be warranted, we make a finding within 12 months of the date of receipt of the petition on whether the petitioned action is: (a) Not warranted; (b) warranted; or (3) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether any species is endangered or threatened, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. In this document, we have determined that the petitioned action to list the eastern small-footed bat is not warranted, but listing the northern long-eared bat is warranted and; therefore, we are publishing a proposed rule to list the northern long-eared bat.

Previous Federal Actions

On September 18, 1985 (50 FR 37958), November 21, 1991 (56 FR 58804), and November 15, 1994 (59 FR 58982), the Service issued notices of review identifying the eastern small-footed bat as a ''category-2 candidate'' for listing under the Act. However, on December 5, 1996 (50 FR 64481), the Service discontinued the practice of maintaining a list of species regarded as ''category-2 candidates,'' that is, taxa for which the Service had insufficient information to support issuance of a proposed listing rule.

On January 21, 2010, we received a petition from the Center for Biological Diversity, requesting that the eastern small-footed bat and northern long-eared bat be listed as endangered or threatened and that critical habitat be designated under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, as required by 50 CFR 424.14(a). In a February 19, 2010, letter to the petitioner, we acknowledged receipt of the petition and stated that we would review the petitioned request for listing and inform the petitioner of our determination upon completion of our review. On June 23, 2010, we received a notice of intent to sue (NOI) from the petitioner for failing to make a timely 90-day finding. In a letter dated July 20, 2010, we responded to the NOI, stating that we had assigned lead for the two bat species to the Services' Midwest and Northeast Regions, and that although completing the 90-day finding within the 90 days following our receipt of the petition was not practicable, the Regions were recently allocated funding to work on the findings and had begun review of the petition. On June 29, 2011, we published in the **Federal Register** (76 FR 38095) our finding that the petition to list the eastern small-footed bat and northern long-eared bat presented substantial information indicating that the requested action may be warranted, and we initiated a status review of the species. On July 12, 2011, the Service filed a proposed settlement agreement with the Center for Biological Diversity in a consolidated case in the U.S. District Court for the District of Columbia. The settlement agreement was approved by the court on September 9, 2011. As part of this settlement agreement, the Service agreed to complete a status review for the eastern small-footed bat and northern long-eared bat by September 30, 2013, and if warranted for listing, publish a proposed listing rule also by that date.

Species Information

Eastern Small-Footed Bat

Taxonomy and Species Description

The eastern small-footed bat (*Myotis leibii*) belongs to the Order Chiroptera,

Suborder Microchiroptera, and Family Vespertilionidae (Best and Jennings 1997, p. 1). The eastern small-footed bat is considered monotypic, whereby no subspecies has been recognized (van Zyll de Jong 1984, p. 2525). This species has been identified by different scientific names: *Vespertilio leibii* (Audubon and Bachman 1842, p. 284) and *Myotis subulatus* (Miller and Allen 1928, p. 164). This species also has been identified by different common names: Leib's bat (Audubon and Bachman 1842, p. 284), least brown bat (Mohr 1936, p. 62), and Leib's masked bat or least bat (Hitchcock 1949, p. 47). The Service agrees with the treatment in Best and Jennings (1997, p. 1) regarding the scientific and common names and will refer to this species as eastern small-footed bat and recognizes it as a listable entity under the Act.

The eastern small-footed bat is one of the smallest North American bats, weighing from 3 to 8 grams (g) (0.1 to 0.3 ounces (oz)) (Merritt 1987, p. 94). Total body length is from 73 to 85 millimeters (mm) (2.9 to 3.4 inches (in)), tail length is from 31 to 34 mm (1.2 to 1.3 in), forearm length is from 30 to 36 mm (1.2 to 1.4 in), and wingspan is from 212 to 248 mm (8.4 to 9.8 in) (Barbour and Davis 1969, p. 103; Merritt 1987, p. 94; Erdle and Hobson 2001, p. 6; Amelon and Burhans 2006, p. 57). Eastern small-footed bats are recognized by their short hind feet (less than 8 mm (0.3 in)), short ears (less than 15 mm (0.6 in)), black facial mask, black ears, keeled calcar (a spur of cartilage that helps spread the wing membrane), and small flattened skull (Barbour and Davis 1969, p. 103; Best and Jennings 1997, p. 1). The wings and interfemoral membrane (the wing membrane between the tail and hind legs) are black. The dorsal fur is black at the roots and tipped with light brown, giving it a dark yellowish-brown appearance. The ventral fur is gray at the roots and tipped with yellowish-white (Audubon and Bachman 1842, pp. 284–285).

Distribution and Abundance

The eastern small-footed bat occurs from eastern Canada and New England south to Alabama and Georgia and west to Oklahoma. The species' range includes 26 states and 2 Canadian provinces, including Alabama, Arkansas, Connecticut, Delaware, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, Ontario, and Quebec. Relative to other species of bats in its range, eastern small-footed bats are considered uncommon (Best and Jennings 1997, p. 3). They historically have been considered rare because of their patchy distribution and generally low population numbers (Mohr 1932, p. 160). In areas with abundant summer habitat, however, they have been found to be relatively common (Brack *et al.,* unpublished manuscript). Johnson *et al.* (2011, p. 99) observed that capture success decreased as the distance increased from suitable roosting habitat. Eastern small-footed bats have also been noted for their ability to detect and avoid mist nets, which are typically relied upon for summer bat surveys (Barbour and Davis 1974, p. 84), suggesting their numbers could be underrepresented (Tyburec 2012).

Eastern small-footed bats have most often been detected during winter hibernacula (the areas where the bats hibernate during winter; primarily caves and mines) surveys (Barbour and Davis 1969, p. 103). Two-hundred eighty-nine hibernacula (includes cave and abandoned mine features only) have been identified across the species' range, though most contain just a few individuals. The majority of known hibernacula occur in Pennsylvania (n=55), New York (n=53), West Virginia (n=50), Virginia (n=33), Kentucky (n=26), and North Carolina (n=25), but hibernacula are also known from Tennessee (approximately 12), Arkansas (n=9), Maryland (n=7), Vermont (n=6), Missouri (n=3), Maine (n=2), Massachusetts (n=2), New Hampshire (n=2), New Jersey (n=2), Indiana (n=1), and Oklahoma (n=1). In Vermont, eastern small-footed bats were consistently found in very small numbers and often not detected at all during periodic surveys of hibernacula (Trombulak *et al.* 2001, pp. 53–57). Their propensity for hibernating in cracks and crevices in cave and mine floors and ceilings may also mean they are more often overlooked than other cave-hibernating bat species. The largest number of hibernating individuals ever reported for the species was 2,383, which were found in a mine in Essex County, New York (Herzog 2013, pers. comm.).

In Pennsylvania, eastern small-footed bats were observed at 55 of 480 (12 percent) hibernacula from 1984 to 2011, accounting for only 0.1 percent of the total bats observed during winter hibernacula surveys. The number of eastern small-footed bats observed per site fluctuates annually and ranges from 1 to 46 (mean = 4, median = 1). Summer mist-net surveys also confirm that eastern small-footed bats are observed less frequently than other bat species. From 1995 to 2011, of the 7,007 bat mist-net surveys conducted in Pennsylvania, only 104 surveys (2 percent) include eastern small-footed bat captures, representing only 0.3 percent of the total bats captured (Butchkoski 2011, unpublished data). Of the other states within the species' range, seven states (Alabama, Connecticut, Delaware, Indiana, Massachusetts, Mississippi, and Rhode Island) have no summer records, and of those States with summer records, the most have fewer than 20 capture locations (Service, unpublished data).

Illustrating the potential for under-representation of the species during hibernacula surveys, the following is an example from one state. From 1939 to 1944, over 100 caves were surveyed in Pennsylvania (and a portion of West Virginia), and out of these, eastern small-footed bats were observed at only 7 sites, totaling 363 individuals. In 1978 and 1979, the same seven caves were surveyed again, and no eastern small-footed bats were observed (Felbaum *et al.* 1995, p. 24). However, surveys conducted from 1980 to 1988, found eastern small-footed bats inhabiting 21 hibernacula from an 8-county area in Pennsylvania (Dunn and Hall 1989, p. 169), and by 2011, surveys had confirmed presence at 55 sites in a 14-county area (Pennsylvania Game Commission, unpublished data). This example is typical of the species' potential for fluctuation throughout its range.

Habitat

Winter Habitat

Eastern small-footed bats have been observed most often overwintering in hibernacula that include caves and abandoned mines (*e.g.,* limestone, coal, iron). Because they tolerate colder temperatures more so than other *Myotis* bats, they are most often encountered close to cave or mine entrances where humidity is low and temperature fluctuations may be high relative to more interior areas (Hitchcock 1949, p. 53; Barbour and Davis 1969, p. 104; Best and Jennings 1997, pp. 2–3; Veilleux 2007, p. 502). On occasion, however, they have been observed hibernating deep within cave interiors (Hitchcock 1965, p. 9; Gunier and Elder 1973, p. 490). In Pennsylvania, caves containing wintering populations of eastern small-footed bats have been found in hemlock-dominated forests in the foothills of mountains that rise to 610 meters (m) (2000 feet (ft)) (Mohr 1936, p. 63). Dunn and Hall (1989, p. 169) noted that 52 percent of Pennsylvania hibernacula

used by eastern small-footed bats were small caves of less than 150 m (500 ft) in length. Before it was commercialized, the cave in Fourth Chute, Ontario was home to a relatively large number of hibernating eastern small-footed bats (n = 434) and is described in Hitchcock (1949, pp. 47–54) as follows: ''the cave is in a limestone outcropping on the north bank of the Bonnechere River, at an elevation of 425 ft (130 m). Sinkholes and large openings to passages make this cave conspicuous. Most of the land immediately surrounding the cave area is open field or pasture, with wooded hills beyond. The part utilized by bats for hibernation lies farthest from the river, and is entered from one of the large, outside passageways through a narrow opening; the main passages are well ventilated by a through draft; the forests near Fourth Chute are mixed, with spruce and white cedar predominating among the conifers.'' Eastern small-footed bats were found in cold, dry, drafty locations at Fourth Chute, usually in narrow cracks in the cave wall or roof (Hitchcock 1949, p. 53).

Winter habitat used by eastern small-footed bats may also include non-cave or non-mine features, such as rock outcrops and stone highway culverts. In Pennsylvania, eastern small-footed bats were observed hibernating multiple years during the months of January and March in a rock outcrop located high above the Juniata River. The bats were found in small cracks and crevices at the back of a 4.6-m (15-ft) depression in the rock outcrop. Big brown bats (*Eptesicus fuscus*) were also present. Temperatures within the cracks where bats were hibernating ranged from 1.7 to 8.3 °C (35 to 47 °F). Observers noted that it seemed a cold, unstable site for hibernating bats (Pennsylvania Game Commission, unpublished data). In West Virginia, an eastern small-footed bat was observed in a crack in a rock outcrop about 1.5 to 1.8 m (5 to 6 ft) above the ground in February (Stihler 2012, pers. comm.). Sasse *et al.* (in press) reported a single female eastern small-footed bat hibernating inside a stone highway culvert underneath a highway in Arkansas. Mohr (1936, p. 64) noted fluctuations in the number of eastern small-footed bats observed at hibernacula during winter surveys conducted 2 to 3 weeks apart, suggesting bats left caves and mines during warmer winter periods only to return when it became colder. Consequently, eastern small-footed bats may be utilizing non-cave or non-mine rock features during mild or milder portions of winters, but to what extent they may be doing so is largely unknown.

Summer Habitat

In the summer, eastern small-footed bats are dependent on emergent rock habitats for roosting and on the immediately surrounding forests for foraging (Johnson *et al.* 2009, p. 5). Eastern small-footed bats have been observed roosting singly or in small maternity colonies in talus fields and slopes, rock-outcrops, rocky ridges, sandstone boulders, shale rock piles, limestone spoil piles, rocky terrain of strip mine areas, and cliff crevices, but have also been found on humanmade structures such as buildings and expansion joints of bridges (Barbour and Davis 1969, p. 103; McDaniel *et al.* 1982, p. 93; Merritt 1987, p. 95; MacGregor and Kiser 1998, p. 175; Roble 2004, p. 43; Amelon and Burhans 2006, p. 58; Chenger 2008a, p. 10; Chenger 2008b, p. 6; Johnson *et al.* 2011, p. 100; Johnson and Gates 2008, p. 456; Hauser and Chenger 2010; Sanders 2010; Mumma and Capouillez 2011, p. 24; Thomson and O'Keefe 2011; Brack *et al.,* unpublished manuscript). Other humanmade features exploited by eastern small-footed bats include rocky dams, road cuts, rocky mine lands, mines, and rock fields within transmission-line and pipeline clearings (Sanders 2011, pers. comm.; Johnson *et al.* 2011, p. 99; Thomson and O'Keefe 2011). Roost sites are most often located in areas with full solar exposure, but have also been found in areas with moderate to extensive canopy cover (Johnson *et al.* 2011, p. 100; Brack *et al.* unpublished manuscript, pp. 9–15; Thomson and O'Keefe 2012). In New Hampshire, eastern small-footed bats have been observed roosting between boulder crevices along the southern outflow of the Surry Mountain Reservoir (Veilleux and Reynolds 2006, p. 330). In Vermont, one summer colony, containing approximately 30 eastern small-footed bats, was located in a slate roof of a house (Darling and Smith 2011, p. 4). Tuttle (1964, p. 149) reported two individuals found in April in Tennessee under a large flat rock at the edge of a quarry surrounded by woods and cow pastures (elevation 549 m (1,800 ft)). In Ontario, a colony of approximately 12 bats was found in July behind a shed door (Hitchcock 1955, p. 31). In addition, small numbers of adult and juvenile eastern small-footed bats have been observed using caves and mines as roosting habitat during the summer months in Maryland, Pennsylvania, Kentucky, Arkansas, West Virginia, and Virginia (Davis *et al.* 1965, p. 683; Krutzsch 1966, p. 121; Hall and Brenner 1968, p. 779; McDaniel *et al.* 1982, p. 93; Agosta *et al.* 2005, p. 1213; Reynolds, pers. comm.).

Summer foraging habitat used by eastern small-footed bats includes rivers, streams, riparian forests, upland forests, clearings, strip mines, and ridgetops (Chenger 2003, pp. 14–23; Chenger 2008a, pp. 10 and 69–71; Chenger 2008b, p. 6; Hauser and Chenger 2010; Johnson *et al.* 2009, p. 3; Mumma and Capouillez 2011, p. 24; Brack *et al.,* unpublished manuscript).

Biology

Hibernation

Eastern small-footed bats hibernate during the winter months to conserve energy from increased thermoregulatory demands and reduced food resources. To increase energy savings, individuals enter a state of torpor where internal body temperatures approach ambient temperature, metabolic rates are significantly lowered, and immune function declines (Thomas *et al.* 1990, p. 475; Thomas and Geiser 1997, p. 585; Bouma *et al.* 2010, p. 623). Periodic arousal from torpor naturally occurs in all hibernating mammals (Lyman *et al.* 1982, p. 92), although arousals remain among the least understood of hibernation phenomena (Thomas and Geiser 1997, p. 585). Numerous factors (*e.g.,* reduction of metabolic waste, body temperature theories, and water balance theory) have been proposed to account for the occurrence and frequency of arousals (Thomas and Geiser 1997, p. 585). Each time a bat arouses from torpor, it uses a significant amount of energy to warm its body and increase its metabolic rate. The cost and number of arousals are the two key factors that determine energy expenditures of hibernating bats in winter (Thomas *et al.* 1990, p. 475). For example, little brown bats (*Myotis lucifugus*) used as much fat during a typical arousal from hibernation as would be used during 68 days of torpor, and arousals and subsequent activity may constitute 84 percent of the total energy used by hibernating bats during the winter (Thomas *et al.* 1990, pp. 477–478).

Of all hibernating bats, eastern small-footed bats are among the last to enter hibernacula and the first to emerge in the spring (Barbour and Davis 1969, p. 104). Hibernation is approximately mid-November to March (Barbour and Davis 1969, p. 104; Dalton 1987, p. 373); however, there are indications that eastern small-footed bats are active during mild winter weather (Mohr 1936, p. 64; Fenton 1972, p. 5). Fenton (1972, p. 5) observed that when temperatures at hibernation sites rose above 4°

Celsius (C) (39.2 °F (F)), eastern small-footed bats, along with big brown bats, aroused and departed from caves and mines. Whether these bats departed to take advantage of prey availability during mild winter spells or seek out other hibernation sites was never determined. Frequent oscillations in microclimate near cave or mine entrances may contribute to frequent arousals from torpor by eastern small-footed bats (Hitchcock 1965, p. 8). Frequent arousals may deplete energy reserves at a faster rate than would more continuous torpor characteristic of other cave-hibernating bats, contributing to a lower survival rate compared to other *Myotis* bats (Hitchcock *et al.* 1984, p. 129). Eastern small-footed bats lose up to 16 percent of their body weights during hibernation (Fenton 1972, p. 5).

Eastern small-footed bats often hibernate solitarily or in small groups and have been found hibernating in the open, in small cracks in cave walls and ceilings, in rock crevices in cave or mine floors, and beneath rocks (Hitchcock 1949, p. 53; Davis 1955, p. 130; Martin *et al.* 1966, p. 349; Barbour and Davis 1969, p. 104; Banfield 1974, p. 52; Dalton 1987, p. 373). Martin *et al.* (1966, p. 349) observed up to 30 eastern small-footed bats hanging from the ceilings of two mines in New York. From one small fissure, Hitchcock (1949, p. 53) extracted 35 eastern small-footed bats that were packed so tightly that it appeared almost impossible for those farthest in to get air. This propensity for hibernating in narrow cracks and crevices may mean they are sometimes overlooked by surveyors. In Maryland, for example, far fewer eastern small-footed bats were observed by surveyors during internal hibernacula surveys than were caught in traps during spring emergence (Maryland Department of Natural Resources 2011, unpublished data).

Eastern small-footed bats have been observed hibernating in caves that also contain little brown bats, big brown bats, northern long-eared bats (*Myotis septentrionalis*), Indiana bats (*Myotis sodalis*), tri-colored bats (*Perimyotis subflavus*), Virginia big-eared bats (*Corynorhinus townsendii virginianus*), gray bats (*Myotis grisescens*), and Rafinesque's big-eared bats (*Corynorhinus rafinesquii rafinesquii*), and approximately equal numbers of males and females occupy the same areas and cluster together indiscriminately (Hitchcock 1949, pp. 48–49; Hitchcock 1965, pp. 6–8; Fenton 1972, p. 3; Best and Jennings 1997, p. 3; Hemberger 2011, unpublished data; Graeter 2011, unpublished data; Graham 2011, unpublished data). Fenton (1972, p. 5) commonly observed eastern small-footed bats hibernating in physical contact with big brown bats, usually in small clusters of fewer than five bats, but never close to or in contact with little brown or Indiana bats. Eastern small-footed bats often hibernate in a horizontal position, tucked between cracks and crevices, unlike most *Myotis* bats, which hang in the open (Merritt 1987, p. 95). When suspended, however, the position of the forearm is unique in that, instead of hanging parallel to the body, as in other *Myotis* bats, the forearms are somewhat extended (Banfield 1974, p. 52). Like most bat species, eastern small-footed bats exhibit high site fidelity to hibernacula, with individuals returning to the same site year after year (Gates *et al.* 1984, p. 166).

Migration and Homing

Eastern small-footed bats have been observed migrating up to 19 kilometers (km) (12 miles (mi)) (Hitchcock 1955, p. 31) and as little as 0.1 km (0.06 mi) from winter hibernacula to summer roost sites (Johnson and Gates 2008, p. 456). The distance traveled is probably influenced by the availability of hibernacula and roosting sites across the landscape (Johnson and Gates 2008, p. 457). But in general, data suggest that this species hibernates in proximity to its summer range (van Zyll de Jong 1985, p. 119; Divoll *et al.* 2011). Eastern small-footed bats show a definite homing ability (Best and Jennings 1997, p. 4). Marked bats were present in the same cave in consecutive winters, and when moved to a different cave during the winter, they returned to the original cave the following winter (Mohr 1936, p. 64). In the Mammoth Cave region of Kentucky, eastern small-footed bats are fairly common in late summer in the groups of migrating bats, although the whereabouts of these bats at other seasons is unknown (Barbour and Davis 1969, p. 104).

Summer Roosts

Both males and females change summer roost sites often, even daily, although they typically are moving short distances within a general area (Chenger 2003, pp. 14–23; Johnson *et al.* 2011, p. 100; Brack *et al.,* unpublished manuscript). Chenger (2009, p. 7) suggests that eastern small-footed bats roost in low numbers over a wide area, such as talus fields, as a predator-avoidance strategy (Chenger 2009, p. 7). Frequent roost-switching may be another means of avoiding potential predators. Johnson *et al.* 2011 (pp. 98–101) radiotracked five lactating female bats and five nonreproductive males and observed that females and males switched roosts on average every 1.1 days. Males traveled an average of 41 m (135 ft) between consecutive roosts. Females traveled an average of 67 m (218 ft) between consecutive roosts, and roosts were closer to ephemeral water sources than those used by males.

Johnson *et al.* 2011 (p. 103) hypothesized that roost selection is based on either avoiding detection by predators or minimizing energy expenditures. They observed that roosts were located within 15 m (50 ft) from vegetation or forest edge and in areas with low canopy cover, which consequently provided a short distance to protective cover and high solar exposure. It appears eastern small-footed bats exhibit fidelity to their summer roosting areas, as demonstrated by the recapture of banded bats in successive years at the Surry Mountain Reservoir and Acadia National Park (Divoll *et al.* 2013; Veilleux and Moosman, unpublished data).

Reproduction

Available data regarding the eastern small-footed bat suggest that females of this species form small summer colonies, with males roosting singly or in small groups (Erdle and Hobson 2001, p. 10; Johnson *et al.* 2011, p. 100). Small maternity colonies of 12 to 20 individuals occurring in buildings have been reported (Merritt 1987, p. 95). Eastern small-footed bats are thought to be similar to sympatric *Myotis* that breed in the fall; spermatozoa are stored in the uterus of hibernating females until spring ovulation, and a single pup is born in May or June (Barbour and Davis 1969, p. 104; Amelon and Burhans 2006, p. 58). Brack *et al.* (unpublished manuscript) captured two female eastern small-footed bats in the fall that appeared to have recently mated as noted by fluids around the vagina. Two female eastern small-footed bats caught on June 20 and 24 were pregnant, and 16 female bats caught from June 23 to July 15 were lactating (Brack *et al.,* unpublished manuscript).

Adult longevity is estimated to be up to 12 years in the wild (Hitchcock 1965, p. 11). Estimated mean annual survival is low compared to other *Myotis,* and survival rates are significantly lower for females than for males, 42 and 75 percent, respectively (Hitchcock *et al.* 1984, p. 128). The lower rate of survival of females may be a result of a combination of factors: The greater demands of reproduction on females; the higher metabolic rates and less frequent torpor; and the greater exposure to possible disease-carrying parasites in maternity colonies

(Hitchcock *et al.* 1984, p. 127). Low survivorship in combination with low reproductive potential (*i.e.,* one offspring produced per year) (Best and Jennings 1997, p. 2) may explain why eastern small-footed bats are generally uncommon (Hitchcock *et al.* 1984, p. 129).

Foraging Behavior and Home Range

Eastern small-footed bats have low wing loading and high, frequency-modulated echolocation calls, making them capable of foraging efficiently in cluttered forest interiors (Johnson *et al.* 2009, p. 5). Although some accounts state that this species emerges early in the evening (van Zyll de Jong 1985, p. 119), Brack *et al.* (unpublished manuscript) found that activity peaked well after dark, and low post-midnight activities point to the possibility of a bimodal activity period. Most observations indicate that eastern small-footed bats fly slow and close to the ground, usually at heights from 0.6 to 3.5 m (2 to 11.5 ft) (Davis *et al.* 1965, p. 683; Brack *et al.,* unpublished manuscript).

Using ridgelines, streams, and forested roads as travel corridors, eastern small-footed bats have been observed travelling from 0.8 to 13.2 km (0.5 to 8.2 mi) between daytime roost sites and foraging areas (Chenger 2003, pp. 14–23; Chenger 2008b, p. 6; Johnson *et al.* 2009, p. 3; Mumma and Capouillez 2011, p. 24). Considerable declines in eastern small-footed bat capture rates have been observed with increasing distance from available rock habitat; and short distances between roosts and capture sites suggest these bats have small home ranges (Johnson *et al.* 2011, p. 104). Observed home range varies from 10.2 to 1,405 hectares (ha) (25 to 3,472 acres (ac)) (Johnson *et al.* 2009, p. 3; Mumma and Capouillez 2011, p. 25), although core habitat for three male and two female eastern small-footed bats ranged from 4 to 75 ha (10 to 185 ac) (50 percent fixed kernel utilization distribution) (Mumma and Capouillez 2011, p. 25).

Food habits of eastern small-footed bats are those of a generalist, although moths (Lepidoptera), true flies (Diptera), and beetles (Coleoptera) compose most of their diet (Johnson and Gates 2007, p. 319; Moosman *et al.* 2007, p. 355; Brack *et al.,* unpublished manuscript). Presence of spiders (Araneae) and crickets (Gryllidae) in the diet suggest eastern small-footed bats capture some prey via gleaning (Moosman *et al.* 2007, p. 358). Gleaning behavior is characterized by catching prey on surfaces via echolocation; calls are generally short in duration, high frequency, and of low intensity, characteristics that are difficult for some invertebrate prey to detect (Faure *et al.* 1993, p. 174).

Species Information

Northern Long-Eared Bat

Taxonomy and Species Description

The northern long-eared bat belongs to the order Chiroptera, suborder Microchiroptera, family Vespertilionidae, subfamily Vesperitilionae, genus Myotis, subgenus Myotis (Caceres and Barclay 2000, p. 1). The northern long-eared bat was considered a subspecies of Keen's long-eared Myotis (*Myotis keenii)* (Fitch and Schump 1979, p. 1), but was recognized as a distinct species by van Zyll de Jong in 1979 (1979, p. 993) based on geographic separation and difference in morphology (as cited in Caceres and Pybus 1997 p. 1; Caceres and Barclay 2000, p. 1; Nagorsen and Brigham 1993, p. 87; Whitaker and Hamilton 1998, p. 99; Whitaker and Mumford 2009, p. 207; Simmons 2005, p. 516). No subspecies have been described for this species (Nagorsen and Brigham 1993, p. 90; Whitaker and Mumford 2009, p. 214; van Zyll de Jong 1985, p. 94). This species has been recognized by different common names, such as: Keen's bat (Whitaker and Hamilton 1998, p. 99), northern myotis bat (Nagorsen and Brigham 1993, p. 87, Whitaker and Mumford 2009, p. 207), and the northern bat (Foster and Kurta 1999, p. 660). For the purposes of this finding, we refer to this species as the northern long-eared bat, and recognize it as a listable entity under the Act.

A medium-sized bat species, the northern long-eared bat adult body weight averages 5 to 8 g (0.2 to 0.3 ounces), with females tending to be slightly larger than males (Caceres and Pybus 1997, p. 3). Average body length ranges from 77 to 95 mm (3.0 to 3.7 in), tail length between 35 and 42 mm (1.3 to 1.6 in), forearm length between 34 and 38 mm (1.3 to 1.5 in), and wingspread between 228 and 258 mm (8.9 to 10.2 in) (Caceres and Barclay 2000, p. 1; Barbour and Davis 1969, p. 76). Pelage (fur) colors include medium to dark brown on its back, dark brown, but not black, ears and wing membranes, and tawny to pale-brown fur on the ventral side (Nagorsen and Brigham 1993, p. 87; Whitaker and Mumford 2009, p. 207). As indicated by its common name, the northern long-eared bat is distinguished from other *Myotis* species by its long ears (average 17 mm (0.7 in), Whitaker and Mumford 2009, p. 207) that, when laid forward, extend beyond the nose but less than 5 mm (0.2 in) beyond the muzzle (Caceres and Barclay 2000, p. 1). The tragus (projection of skin in front of the external ear) is long (average 9 mm (0.4 in); Whitaker and Mumford 2009, p. 207), pointed, and symmetrical (Nagorsen and Brigham 1993, p. 87; Whitaker and Mumford 2009, p. 207). Within its range, the northern long-eared bat can be confused with the little brown bat or the western long-eared myotis (*Myotis evotis*). The northern long-eared bat can be distinguished from the little brown bat by its longer ears, tragus, slightly longer tail, and less glossy pelage (Caceres and Barclay 2000, p. 1). The northern long-eared bat can be distinguished from the western long-eared myotis by its darker pelage and paler membranes (Caceres and Barclay 2000, p. 1).

Distribution and Abundance

The northern long-eared bat ranges across much of the eastern and north central United States, and all Canadian provinces west to the southern Yukon Territory and eastern British Columbia (Nagorsen and Brigham 1993, p. 89; Caceres and Pybus 1997, p. 1; Environment Yukon 2011, p. 10). In the United States, the species' range reaches from Maine west to Montana, south to eastern Kansas, eastern Oklahoma, Arkansas, and east to the Florida panhandle (Whitaker and Hamilton 1998, p. 99; Caceres and Barclay 2000, p. 2; Wilson and Reeder 2005, p. 516; Amelon and Burhans 2006, pp. 71–72). The species' range includes the following 39 States (including the District of Columbia, which we count as one of the ''States''): Alabama, Arkansas, Connecticut, Delaware, the District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming. Historically, the species has been most frequently observed in the northeastern United States and in Canadian Provinces, Quebec and Ontario, with sightings increasing during swarming and hibernation (Caceres and Barclay 2000, p. 2). However, throughout the majority of the species' range it is patchily distributed, and historically was less common in the southern and western portions of the range than in the northern portion of the range (Amelon and Burhans 2006, p. 71).

Although they are typically found in low numbers in inconspicuous roosts, most records of northern long-eared bats are from winter hibernacula surveys (Caceres and Pybus 1997, p. 2) (for more information on use of hibernacula, see *Biology* below). More than 780 hibernacula have been identified throughout the species' range in the United States, although many hibernacula contain only a few (1 to 3) individuals (Whitaker and Hamilton 1998, p. 100). Known hibernacula (sites with one or more winter records) include: Arkansas (n=20), Connecticut (n=5), Georgia (n=1), Illinois (n=36), Indiana (n=25), Kentucky (n=90), Maine (n=3), Maryland (n=11), Massachusetts (n=7), Michigan (n=94), Minnesota (n=11), Missouri (n=>111), Nebraska (n=2), New Hampshire (n=9), New Jersey (n=8), New York (n=58), North Carolina (n=20), Oklahoma (n=4), Ohio (n=3), Pennsylvania (n=112), South Carolina (n=2), South Dakota (n=7), Tennessee (n=11), Vermont (n=13 (23 historical)), Virginia (n=8), West Virginia (n=104), and Wisconsin (n=45). Other states within the species' range have no known hibernacula (due to no suitable hibernacula present or lack of survey effort). They are typically found roosting in small crevices or cracks on cave or mine walls or ceilings, thus are easily overlooked during surveys and usually observed in small numbers (Griffin 1940, pp. 181–182; Barbour and Davis 1969, p. 77; Caire *et al.* 1979, p. 405; Van Zyll de Jong 1985, p. 9; Caceres and Pybus 1997, p. 2; Whitaker and Mumford 2009, pp. 209–210).

The U.S. portion of the northern long-eared bat's range can be described in four parts, as discussed below: the eastern population, Midwestern population, the southern population, and the western population.

Eastern Population

Historically, the northern long-eared bat was most abundant in the eastern portion its range (Caceres and Barclay 2000, p. 2). Northern long-eared bats have been consistently caught during summer mist nets surveys and detected during acoustic surveys in eastern populations. Large numbers of northern long-eared bats have been found in larger hibernacula in Pennsylvania (*e.g.,* an estimated 881 individuals in a mine in Bucks County, Pennsylvania in 2004). Fall swarm trapping conducted in September–October 1988–1989, 1990–1991, and 1999–2000 at two hibernacula with large historical numbers of northern long-eared bats had total captures ranging from 6 to 30 bats per hour, which demonstrated that the species was abundant at these hibernacula (Pennsylvania Game Commission, unpublished data, 2012).

In Delaware, the species is rare and no hibernacula are documented within the State; however, there is a historical record from Newcastle County in 1970 (Niederriter 2012, pers. comm.). In Connecticut, the northern long-eared bat was historically one of the most commonly encountered bats in the State and had been documented statewide (Dickson 2011, pers. comm.). In Maine, 3 hibernacula are known (all on private land), and the species has also been found in the summer in Acadia National Park (DePue 2012, unpublished data) where northern long-eared bats were found to be fairly common in 2009–2010 (242 northern long-eared bats captured comprising 27 percent of the total captures for the areas surveyed) (NPS 2010).

In Maryland, three of seven known hibernacula for the species are railroad tunnels, and no summer mist net or acoustic surveys have been conducted for the species (Feller 2011, unpublished data). In Massachusetts, there are 7 known hibernacula, 42 percent of which are privately owned. In New Hampshire, northern long-eared bats are known to inhabit at least nine mines and two World War II bunkers and have been found in summer surveys, including at Surry Mountain Dam (Brunkhurst 2012, unpublished data). In the White Mountain National Forest in New Hampshire in 1993–1994, northern long-eared was one of the most common species captured (27 percent) (Sasse and Pekins 1996, pp. 93–95). In New Jersey, one of the seven known hibernacula is a cave, and the remainder are mines (Markuson 2011, unpublished data). Northern long-eared bats consisted of 6 to 14 percent of total number of captures at Wallkill River National Wildlife Refuge in New Jersey from 2006–2010 (Kitchell and Wight 2011).

In Vermont, prior to 2009, the species was found in 23 hibernacula, totaling an estimated 595 animals, which was thought to be an under-estimate due to the species' preference for hibernating in hibernacula cracks and crevices. Summer capture data (2001–2007) indicated that northern long-eared bats comprised 19 percent of bats captured; it was considered the second most common bat species in the State (Smith 2011, unpublished data). In Virginia, they were historically considered ''fairly common'' during summer mist net surveys; however, they are considered ''uncommon'' during winter hibernacula surveys (Reynolds 2012, unpublished data).

In West Virginia, northern long-eared bats are found regularly in hibernacula surveys, but typically in small numbers (less than 20 individuals) in caves (Stihler 2012, unpublished data). The species has also been found in 41 abandoned coal mines in winter surveys conducted from 2002 to 2011 in the New River Gorge National River and Gauley River National Recreation Area, both managed by the National Park Service (NPS); the largest number observed was 157 in one of the NPS mines (NPS 2011, unpublished data). Northern long-eared bats are considered common in summer surveys in West Virginia; in summer records from 2006–2011 northern long-eared bat captures comprised 46 to 49 percent of all bat captures (Stihler 2012, pers. comm.).

Northern long-eared bats have been observed in 58 hibernacula in abandoned mines, caves, and tunnels in New York. They have also been observed in summer mist net and acoustic surveys. Summer mist-net surveys in New York from 2003–2008 resulted in a range of 0.21–0.47 bats/net night and declined to 0.012 bats/net night in 2011 (Herzog 2012, unpublished data). They have also been observed on Fort Drum in New York, where acoustic surveys (2003–2010) and mist net surveys (1999, 2007) have monitored the summer population (Dobony 2011, unpublished data). There are no known hibernacula in Rhode Island; however, there were 6 records from 2011 mist-net surveys in Washington County (Brown 2012, unpublished data).

Midwest Population

The northern long-eared bat is commonly encountered in summer mist-net surveys throughout the majority of the Midwest and is considered fairly common throughout much of the region. However, the species is often found infrequently and in small numbers in hibernacula surveys throughout most of the Midwest. In Missouri, northern long-eared bats were listed as a State species of conservation concern until 2007, after which it was decided the species was more common than previously thought because they were commonly captured in mist net surveys (Elliot 2013, pers. comm.). Historically, the northern long-eared bat was considered quite common throughout much of Indiana, and was the fourth or fifth most abundant bat species in the State in 2009. The species has been captured in at least 51 counties, is often captured in mist-nets along streams, and is the most common bat taken by trapping at mine entrances (Whitaker and Mumford 2009, pp. 207–

208). The abundance of northern long-eared bats appears to vary within Indiana during the summer. For example, during 3 summers (1990–1992) of mist-netting surveys in the northern half of Indiana, 37 northern long-eared bats were captured at 22 of 127 survey sites, which represented 4 percent of all bats captured (King 1993, p. 10). In contrast, northern long-eared bats were the most commonly captured bat species (38 percent of all bats captured) during three summers (2006–2008) of mist netting on two State forests in south-central Indiana (Sheets *et al.* 2013, p. 193). Indiana has 25 hibernacula with winter records of one or more northern long-eared bats. However, it is very difficult to find individuals in caves and mines during hibernation in large numbers in Indiana hibernacula (Whitaker and Mumford 2009, p. 208).

In Michigan, the northern long-eared bat is known from 25 counties and is not commonly encountered in the State except in parts of the northern Lower Peninsula and portions of the Upper Peninsula (Kurta 1982, p. 301; Kurta 2013, pers. comm.). The majority of hibernacula in Michigan are in the far northern and western Upper Peninsula; therefore, there are very few cave-hibernating bats in general in the southern half of the Lower Peninsula during the summer because the distance to hibernacula is too great (Kurta 2013, pers. comm.). It is thought that the few bats that do spend the summer in the southern half of the Lower Peninsula may hibernate in caves or mines in neighboring states, such as Indiana (Kurta 1982, pp. 301–302; Kurta 2013, pers. comm.).

In Wisconsin, the species is reported to be uncommon (Amelon and Burhans 2006, pp. 71–72). ''Although the northern long-eared bat can be found in many parts of Wisconsin, it is clearly not abundant in any one location. The department has determined that the Northern long-eared bat is one of the least abundant bats in Wisconsin through cave and mine hibernacula counts, acoustic surveys, mist-netting in summer foraging areas and harp trap captures during the fall swarming period'' (Redell 2011, pers. comm.). Northern long-eared bats are regularly caught in mist-net surveys in the Shawnee National Forest in southern Illinois (Kath 2013, pers. comm.). Further, the average number of northern long-eared bats caught during surveys between 1999 and 2011 at Oakwood Bottoms in the Shawnee National Forest has been fairly consistent (Carter 2012, pers. comm.). In Iowa, there are only summer mist net records for the species; in 2011 there were eight records (including three lactating females) from west-central Iowa (Howell 2011, unpublished data). In Minnesota, one mine in St. Louis County may contain a large number of individuals, possibly over 3,000; however, this is a very rough estimate since the majority of the mine cannot be safely accessed for surveys (Nordquist 2012, pers. comm.). In Ohio, there are three known hibernacula and the largest population in Preble County has had more than 300 bats. In general, northern long-eared bats are also regularly collected as incidental catches in mist-net surveys for Indiana bats in Ohio (Boyer 2012, pers. comm.).

Southern Population

The northern long-eared bat is less common in the southern portion of its range than in the northern portion of the range (Amelon and Burhans 2006, p. 71) and, in the South, is considered more common in states such as Kentucky and Tennessee, and more rare in the southern extremes of the range (*e.g.,* Alabama, Georgia, South Carolina). In Alabama, the northern long-eared bat is rare, while in Tennessee it is uncommon (Amelon and Burhans 2006, pp. 71–72). In Tennessee, northern long-eared bats were found in summer mist-net surveys conducted through summer of 2010 in addition to hibernacula censuses. Northern long-eared bats were found in 11 caves surveyed in 2011 in Tennessee (Pelren 2011, pers. comm.). In 2000, during sampling of bat populations in the Kisatchie National Forest, Louisiana, three northern long-eared bat specimens were collected; these were the first official records of the species from Louisiana (Crnkovic 2003, p. 715). In Georgia, northern long-eared bats have been found at 1 of 5 known hibernacula in the State and 24 summer records were found between 2007 and 2011. Mist-net surveys were conducted in the Chattahoochee National Forest in 2001–2002 and 2006–2007, with 51 total records for the species (Morris 2012, unpublished data). Northern long-eared bats have been found in 20 hibernacula within North Carolina (Graeter 2011, unpublished data). In the summer of 2007, (Morris *et al.* 2009, p. 356) six northern long-eared bats were captured in Washington County, North Carolina. Both adults and juveniles were captured, suggesting that there is a reproducing resident population (Morris *et al.* 2009, p. 359). In Kentucky, although typically found in small numbers, northern long-eared bats were historically found in the majority of hibernacula in Kentucky and have been a commonly captured species during summer surveys (Hemberger 2012, pers. comm.). The northern long-eared bat can be found throughout the majority of Kentucky, with historical records in 91 of its 120 counties. Eighty-five counties have summer records, and 68 of those include reproductive records (*i.e.,* captures of juveniles or pregnant, lactating, or post-lactating adult females) (Hemberger 2012, pers. comm.). In South Carolina, there are two known hibernacula: one is a cave that had 26 bats present in 1995, but has not been surveyed since, and the other is a tunnel where only one bat was found in 2011 (Bunch 2011, unpublished data). Northern long-eared bats are known from 20 hibernacula in Arkansas, although they are typically found in very low numbers (Sasse 2012, unpublished data). Surveys in the Ouachita Mountains of central Arkansas from 2000–2005 tracked 17 males and 23 females to 43 and 49 day roosts, respectively (Perry and Thill 2007, pp. 221–222). The northern long-eared bat is known to occur in seven counties along the eastern edge of Oklahoma, (Stevenson 1986, p. 41). The species has been recorded in 21 caves (7 of which occur on the Ozark Plateau National Wildlife Refuge) during the summer. The species has regularly been captured in summer mist-net surveys at cave entrances in Adair, Cherokee, Sequoyah, Delaware, and LeFlore counties, and are often one of the most common bats captured during mist-net surveys at cave entrances in the Ozarks of northeastern Oklahoma (Stark 2013, pers. comm.). Small numbers of northern long-eared bats (typical range of 1–17 individuals) also have been captured during mist-net surveys along creeks and riparian zones in eastern Oklahoma.

Western Population

The northern long-eared bat is generally less common in the western portion of its range than in the northern portion of the range (Amelon and Burhans 2006, p. 71) and is considered common in only small portions of the western part of its range (*e.g.,* Black Hills of South Dakota) and uncommon or rare in the western extremes of the range (*e.g.,* Wyoming, Kansas, Nebraska) (Caceres and Barclay 2000, p. 2). The northern long-eared bat has been observed hibernating and residing during the summer and is considered abundant in the Black Hills National Forest in South Dakota. Capture and banding data for survey efforts in the Black Hills of South Dakota and Wyoming showed northern long-eared bats to be the second most common bat banded (159 of 878 total bats) during 3 years of survey effort (Tigner and Aney

1994, p. 4). South Dakota contains seven known hibernacula, five of which are abandoned mines. The largest number of individuals was found in a hibernaculum near Hill City, South Dakota; 40 individuals were found in this mine in the winter of 2002–2003 (Tigner and Stukel 2003, pp. 27–28). A summer population was found on the habitats in Dakota Prairie National Grassland and Custer National Forest in 2005 (Lausen undated, unpublished data). Also, northern long-eared bats have been captured during the summer along the Missouri River in South Dakota (Swier 2006, p. 5; Kiesow and Kiesow 2010, pp. 65–66). Summer surveys in North Dakota (2009–2011) documented the species in the Turtle Mountains, the Missouri River Valley, and in the Badlands (Gillam and Barnhart 2011, pp. 10–12). No hibernacula are known within North Dakota; however, there has been very limited survey effort in the State (Riddle 2012, pers. comm.).

Northern long-eared bats have been observed at two quarries located in east-central Nebraska, but there is no survey data for either of these sites (Geluso 2011, unpublished data). They are also known to summer in the northwestern parts of Nebraska, specifically Pine Ridge in Sheridan County (only males have been documented), and a reproducing population has been documented north of Valentine in Cherry County (Benedict *et al.* 2000, pp. 60–61). During an acoustic survey conducted during the summer of 2012 the species was common in Cass County (east-central Nebraska), but was uncommon or absent from extreme southeastern Nebraska (White *et al.* 2012, p. 2). The occurrence of this species in Cass County, Nebraska is likely attributable to limestone quarries in the region that are used as hibernacula by this species and others (White *et al.* 2012, p. 3).

During acoustic and mist net surveys conducted throughout Wyoming in the summers of 2008–2011, 27 separate observations of northern long-eared bats were made in the northeast part of the State and breeding was confirmed (Wyoming Game and Fish Department 2012, unpublished data). To date, there are no known hibernacula in Wyoming and it is unclear if there are existing hibernacula, although the majority of potential hibernacula (abandoned mines) within the State occur outside of the northern long-eared bat's range (Tigner and Stukel 2003, p. 27; Wyoming Game and Fish Department 2012). Montana has only one known record: a male collected in an abandoned coal mine in 1978 in Richland County (Montana Fish, Wildlife, and Parks 2012). In Kansas, the northern long-eared bat was first found in summer mist-net surveys in 1994 and 1995 in Osborne and Russell counties, before which the species was thought to only migrate through parts of the State (Sparks and Choate 1995, p. 190).

Canada Population

The northern long-eared bat occurs throughout the majority of the forested regions of Canada, although it is found in higher abundance in eastern Canada than in western Canada, similar to in the United States (Caceres Pybus 1997, p. 6). However, the scarcity of records in the western parts of Canada may be due to more limited survey efforts. It has been estimated that approximately 40 percent of the northern long-eared bat's global range is in Canada; however, due to the species being relatively common and widespread, limited effort has been made to determine overall population size within Canada (COSEWIC 2012, p.9). The range of the northern long-eared bat in Canada includes Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Prince Edward Island, Ontario, Quebec, Saskatchewan, and Yukon (COSEWIC 2012, p. 4). There are no records of the species overwintering in Yukon and Northwest Territories (COSEWIC 2012, p. 9).

Habitat

Winter Habitat

Northern long-eared bats predominantly overwinter in hibernacula that include caves and abandoned mines. Hibernacula used by northern long-eared bats are typically large, with large passages and entrances (Raesly and Gates 1987, p. 118), relatively constant, cooler temperatures (0 to 9 °C (32 to 48 °F) (Raesly and Gates 1987, p. 18; Caceres and Pybus 1997, p. 2; Brack 2007, p. 744), and with high humidity and no air currents (Fitch and Shump 1979, p. 2; Van Zyll de Jong 1985, p. 94; Raesly and Gates 1987 p. 118; Caceres and Pybus 1997, p. 2). The sites favored by northern long-eared bats are often in very high humidity areas, to such a large degree that droplets of water are often observed on their fur (Hitchcock 1949, p. 52; Barbour and Davis 1969, p. 77). Northern long-eared bats typically prefer cooler and more humid conditions than little brown bats, similar to the eastern small-footed bat and big brown bat, although the latter two species tolerate lower humidity than northern long-eared bats (Hitchcock 1949, p. 52–53; Barbour and Davis 1969, p. 77; Caceres and Pybus 1997, p. 2). Northern long-eared bats are typically found roosting in small crevices or cracks in cave or mine walls or ceilings, often with only the nose and ears visible, thus are easily overlooked during surveys (Griffin 1940, pp. 181–182; Barbour and Davis 1969 p.77; Caire *et al.* 1979, p. 405; Van Zyll de Jong 1985, p.9; Caceres and Pybus 1997, p. 2; Whitaker and Mumford 2009, pp. 209–210). Caire *et al.* (1979, p. 405) and Whitaker and Mumford (2009, p. 208) commonly observed individuals exiting caves with mud and clay on their fur, also suggesting the bats were roosting in tighter recesses of hibernacula. They are also found hanging in the open, although not as frequently as in cracks and crevices (Barbour and Davis 1969, p.77, Whitaker and Mumford 2009, pp. 209–210). In 1968, Whitaker and Mumford (2009, pp. 209–210) observed three northern long-eared bats roosting in the hollow core of stalactites in a small cave in Jennings County, Indiana.

To a lesser extent, northern long-eared bats have been found overwintering in other types of habitat that resemble cave or mine hibernacula, including abandoned railroad tunnels, more frequently in the northeast portion of the range. Also, in 1952 three northern long-eared bats were found hibernating near the entrance of a storm sewer in central Minnesota (Goehring 1954, p. 435). Kurta and Teramino (1994, pp. 410–411) found northern long-eared bats hibernating in a hydro-electric dam facility in Michigan. In Massachusetts, northern long-eared bats have been found hibernating in the Sudbury Aqueduct, a structure created in the late 1800s to transfer water, but that is rarely used for this purpose today (French 2012, unpublished data). Griffin (1945, p. 22) found northern long-eared bats in December in Massachusetts in a dry well, and commented that these bats may regularly hibernate in ''unsuspected retreats'' in areas where caves or mines are not present.

Summer Habitat

During the summer, northern long-eared bats typically roost singly or in colonies underneath bark or in cavities or crevices of both live trees and snags (Sasse and Perkins 1996, p. 95; Foster and Kurta 1999, p. 662; Owen *et al.* 2002, p. 2; Carter and Feldhamer 2005, p. 262; Perry and Thill 2007, p. 222; Timpone *et al.* 2010, p. 119). Males and non-reproductive females' summer roost sites may also include cooler locations, including caves and mines (Barbour and Davis 1969, p. 77; Amelon and Burhans 2006, p. 72). Northern long-eared bats have also been observed roosting in

colonies in humanmade structures, such as buildings, barns, a park pavilion, sheds, cabins, under eaves of buildings, behind window shutters, and in bat houses (Mumford and Cope 1964, p. 72; Barbour and Davis 1969, p. 77; Cope and Humphrey 1972, p. 9 ; Amelon and Burhans 2006, p. 72; Whitaker and Mumford 2009, p. 209; Timpone *et al.* 2010, p. 119; Joe Kath 2013, pers. comm.).

The northern long-eared bat appears to be somewhat opportunistic in tree roost selection, selecting varying roost tree species and types of roosts throughout its range, including tree species such as black oak (*Quercus velutina*), northern red oak (*Quercus rubra*), silver maple (*Acer saccharinum*), black locust (*Robinia pseudoacacia*), American beech (*Fagus grandifolia*), sugar maple (*Acer saccharum*), sourwood (*Oxydendrum arboreum*), and shortleaf pine (*Pinus echinata*) (*e.g.,* Mumford and Cope 1964, p. 72; Clark *et al.* 1987, p. 89; Sasse and Pekins 1996, p. 95; Foster and Kurta 1999, p. 662; Lacki and Schwierjohann 2001, p. 484; Owen *et al.* 2002, p. 2; Carter and Feldhamer 2005, p. 262; Perry and Thill 2007, p. 224; Timpone *et al.* 2010, p. 119). Northern long-eared bats most likely are not dependent on a certain species of trees for roosts throughout their range; rather, certain tree species will form suitable cavities or retain bark and the bats will use them opportunistically (Foster and Kurta 1999, p. 668). Carter and Felhamer (2005, p. 265) speculated that structural complexity of habitat or available roosting resources are more important factors than the actual tree species.

Many studies have documented the northern long-eared bat's selection of live trees and snags, with a range of 10 to 53 percent selection of live roosts found (Sasse and Perkins 1996, p. 95; Foster and Kurta 1999, p. 668; Lacki and Schwierjohann 2001, p. 484; Menzel *et al.* 2002, p. 107; Carter and Feldhamer 2005, p. 262; Perry and Thill 2007, p. 224; Timpone *et al.* 2010, p. 118). Foster and Kurta (1999, p. 663) found 53 percent of roosts in Michigan were in living trees, whereas in New Hampshire, 34 percent of roosts were in snags (Sasse and Pekins 1996, p. 95). The use of live trees versus snags may reflect the availability of such structures in study areas (Perry and Thill 2007, p. 224) and the flexibility in roost selection when there is a sympatric bat species present (*e.g.,* Indiana bat) (Timpone *et al.* 2010, p. 120). In tree roosts, northern long-eared bats are typically found beneath loose bark or within cavities and have been found to use both exfoliating bark and crevices to a similar degree for summer roosting habitat (Foster and Kurta 1999, p. 662; Lacki and Schwierjohann 2001, p. 484; Menzel *et al.* 2002, p. 110; Owen *et al.* 2002, p. 2; Perry and Thill 2007, p. 222; Timpone *et al.* 2010, p. 119).

Canopy coverage at northern long-eared bat roosts has ranged from 56 percent in Missouri (Timone *et al.* 2010, p. 118), 66 percent in Arkansas (Perry and Thill 2007, p. 223), greater than 75 percent in New Hampshire (Sasse and Pekins 1996, p. 95), to greater than 84 percent in Kentucky (Lacki and Schwierjohann 2001, p. 487). Studies in New Hampshire and British Columbia have found that canopy coverage around roosts is lower than in available stands (Caceres 1998; Sasse and Pekins 1996, p. 95). Females tend to roost in more open areas than males, likely due to the increased solar radiation, which aids pup development (Perry and Thill 2007, p. 224). Fewer trees surrounding maternity roosts may also benefit juvenile bats that are starting to learn to fly (Perry and Thill 2007, p. 224). However, in southern Illinois, northern long-eared bats were observed roosting in areas with greater canopy cover than in random plots (Carter and Feldhamer 2005, p. 263). Roosts are also largely selected below the canopy, which could be due to the species' ability to exploit roosts in cluttered environments; their gleaning behavior suggests an ability to easily maneuver around obstacles (Foster and Kurta 1999, p. 669; Menzel *et al.* 2002, p. 112).

Female northern long-eared bats typically roost in tall, large-diameter trees (Sasse and Pekins 1996, p. 95). Studies have found that the diameter-at-breast height (dbh) of northern long-eared bat roost trees was greater than random trees (Lacki and Schwierjohann 2001, p. 485) and others have found both dbh and height of selected roost trees to be greater than random trees (Sasse and Pekins 1996, p. 97; Owen *et al.* 2002 p. 2). However, other studies have found that roost tree mean dbh and height did not differ from random trees (Menzel *et al.* 2002, p. 111; Carter and Feldhamer 2005, p. 266). Lacki and Schwierjohann (2001, p. 486) have also found that northern long-eared bats roost more often on upper and middle slopes than lower slopes, which suggests a preference for higher elevations due to increased solar heating.

Biology

Hibernation

Similar to the eastern small-footed bat description above, the northern long-eared bats hibernate during the winter months to conserve energy from increased thermoregulatory demands and reduced food resources. In general, northern long-eared bats arrive at hibernacula in August or September, enter hibernation in October and November, and leave the hibernacula in March or April (Caire *et al.* 1979, p. 405; Whitaker and Hamilton 1998, p. 100; Amelon and Burhans 2006, p. 72). However, hibernation may begin as early as August (Whitaker and Rissler 1992, p. 56). In Copperhead Cave in west-central Indiana, the majority of bats enter hibernation during October, and spring emergence occurs mainly from about the second week of March to mid-April (Whitaker and Mumford 2009, p. 210). In Indiana, northern long-eared bats become more active and start feeding outside the hibernaculum in mid-March, evidenced by stomach and intestine contents. This species also showed spring activity earlier than little brown bats and tri-colored bat (Whitaker and Rissler 1992, pp. 56–57). In northern latitudes, such as in upper Michigan's copper-mining district, hibernation for northern long-eared bats and other *myotis* species may begin as early as late August and may last for 8 to 9 months (Stones and Fritz, 1969, p. 81; Fitch and Shump 1979, p. 2). Northern long-eared bats have shown a high degree of philopatry (using the same site multiple years) for a hibernaculum (Pearson 1962, p. 30), although they may not return to the same hibernaculum in successive seasons (Caceres and Barclay 2000, p. 2).

Typically, northern long-eared bats are not abundant and compose a small proportion of the total number of bats hibernating in a hibernaculum (Barbour and Davis 1969, p. 77; Mills 1971, p. 625; Caire *et al.* 1979, p. 405; Caceres and Barclay 2000, pp. 2–3). Although usually found in small numbers, the species typically inhabits the same hibernacula with large numbers of other bat species, and occasionally are found in clusters with these other bat species. Other species that commonly occupy the same habitat include: little brown bat, big brown bat, eastern small-footed bat, tri-colored bat, and Indiana bat (Swanson and Evans 1936, p. 39; Griffin 1940, p. 181; Hitchcock 1949, pp. 47–58; Stones and Fritz 1969, p. 79; Fitch and Shump 1979, p. 2). Whitaker and Mumford (2009, pp. 209–210), however, infrequently found northern long-eared bats hibernating beside little brown bats, Indiana bats, or tri-colored bats, since they found few hanging on side walls or ceilings of cave passages. Barbour and Davis (1969, p. 77) found that the

species is never abundant and rarely recorded in concentrations of over 100 in a single hibernaculum.

Northern long-eared bats often move between hibernacula throughout the winter, which may further decrease population estimates (Griffin 1940, p. 185; Whitaker and Rissler 1992b, p. 131; Caceres and Barclay 2000 pp. 2–3). Whitaker and Mumford (2009, p. 210) found that this species flies in and out of some of the mines and caves in southern Indiana throughout the winter. In particular, the bats were active at Copperhead Cave periodically all winter, with northern long-eared bats being more active than other species (such as little brown bat and tri-colored bat) hibernating in the cave. Though northern long-eared bats fly outside of the hibernacula during the winter, they do not feed; hence the function of this behavior is not well understood (Whitaker and Hamilton 1998, p. 101). However, it has been suggested that bat activity during winter could be due in part to disturbance by researchers (Whitaker and Mumford 2009, pp. 210–211).

Northern long-eared bats exhibited significant weight loss during hibernation. In southern Illinois, weight loss during hibernation was found in male northern long-eared bats, with individuals weighing an average of 6.6 g (0.2 ounces) prior to 10 January, and those collected after that date weighing an average of 5.3 g (0.2 ounces) (Pearson 1962, p. 30). Whitaker and Hamilton (1998, p. 101) reported a weight loss of 41–43 percent over the hibernation period for northern long-eared bats in Indiana. In eastern Missouri, male northern long-eared bats lost an average of 3 g (0.1 ounces) during the hibernation period (late October through March), and females lost an average of 2.7 g (0.1 ounces) (Caire *et al.* 1979, p. 406).

Migration and Homing

While the northern long-eared bat is not considered a long-distance migratory species, short migratory movements between summer roost and winter hibernacula between 56 km (35 mi) and 89 km (55 mi) have been documented (Nagorsen and Brigham 1993 p. 88; Griffith 1945, p. 53). However, movements from hibernacula to summer colonies may range from 8 to 270 km (5 to 168 mi) (Griffin 1945, p. 22).

Several studies show a strong homing ability of northern long-eared bats in terms of return rates to a specific hibernaculum, although bats may not return to the same hibernaculum in successive winters (Caceres and Barclay 2000, p. 2). Banding studies in Ohio, Missouri, and Connecticut show return rates to hibernacula of 5.0 percent (Mills 1971, p. 625), 4.6 percent (Caire *et al.* 1979, p. 404), and 36 percent (Griffin 1940, p. 185), respectively. An experiment showed an individual bat returned to its home cave up to 32 km (20 mi) away after being removed 3 days prior (Stones and Branick 1969, p. 158). Individuals have been known to travel between 56 and 97 km (35 and 60 mi) between caves during the spring (Caire *et al.* 1979, p. 404; Griffin 1945, p. 20).

Summer Roosts

Northern long-eared bats switch roosts often (Sasse and Perkins 1996, p. 95), typically every 2–3 days (Foster and Kurta 1999, p. 665; Owen *et al.* 2002, p. 2; Carter and Feldhamer 2005, p. 261; Timpone *et al.* 2010, p. 119). In Missouri, the longest time spent roosting in one tree was 3 nights; however, the up to 11 nights spent roosting in a humanmade structure has been documented (Timpone *et al.* 2010, p. 118). Similarly, Carter and Feldhamer (2005, p. 261) found that the longest a northern long-eared bat used the same tree was 3 days; in West Virginia, the average time spent at one roost was 5.3 days (Menzel *et al.* 2002, p. 110). Bats switch roosts for a variety of reasons, including, temperature, precipitation, predation, parasitism, and ephemeral roost sites (Carter and Feldhamer 2005, p. 264). Ephemeral roost sites, with the need to proactively investigate new potential roost trees prior to their current roost tree becoming uninhabitable (*e.g.,* tree falls over), may be the most likely scenario (Kurta *et al.* 2002, p. 127; Carter and Feldhamer 2005, p. 264; Timpone *et al.* 2010, p. 119). In Missouri, Timpone *et al.* (2010, p. 118) radiotracked 13 northern long-eared bats to 39 roosts and found the mean distance between the location where captured and roost tree was 1.7 km (1.1 mi) (range 0.07–4.8 km (0.04–3.0 mi), and the mean distance traveled between roost trees was 0.67 km (0.42 mi) (range 0.05–3.9 km (0.03–2.4 mi)). In Michigan, the longest distance the same bat moved between roosts was 2 km (1.2 mi) and the shortest was 6 m (20 ft) (Foster and Kurta 1999, p. 665). In New Hampshire, the mean distance between foraging areas and roost trees was 602 m (1975 ft) (Sasse and Pekins 1996, p. 95). In the Ouachita Mountains of Arkansas, Perry and Thill (2007, p. 22) found that individuals moved among snags that were within less than 2 ha (5 ac).

Some studies have found tree roost selection to differ slightly between male and female northern long-eared bats. Male northern long-eared bats have been found to more readily use smaller diameter trees for roosting than females, suggesting males are more flexible in roost selection than females (Lacki and Schwierjohann 2001, p. 487; Broders and Forbes 2004, p. 606; Perry and Thill 2007, p. 224). In the Ouachita Mountains of Arkansas, both sexes primarily roosted in snags, although females roosted in snags surrounded by fewer midstory trees than did males (Perry and Thill 2007, p. 224). In New Brunswick, Canada, Broders and Forbes (2004, pp. 606–607) found that there was spatial segregation between male and female roosts, with female maternity colonies typically occupying more mature, shade-tolerant deciduous tree stands and males occupying more conifer-dominated stands. In northeastern Kentucky, males do not use colony roosting sites and are typically found occupying cavities in live hardwood trees, while females form colonies more often in both hardwood and softwood snags (Lacki and Schwierjohann 2001, p. 486).

The northern long-eared bat is comparable to the Indiana bat in terms of summer roost selection, but appears to be more opportunistic (Carter and Feldhamer 2005, pp. 265–266; Timpone *et al.* 2010, p. 120–121). In southern Michigan, northern long-eared bats used cavities within roost trees, living trees, and roosts with greater canopy cover more often than does the Indiana bat, which occurred in the same area (Foster and Kurta 1999, p. 670). Similarly, in northeastern Missouri, Indiana bats typically roosted in snags with exfoliating bark and low canopy cover, whereas northern long-eared bats used the same habitat in addition to live trees, shorter trees, and trees with higher canopy cover (Timpone *et al.* 2010 pp. 118–120). Although northern long-eared bats are more opportunistic than Indiana bats, there may be a small amount of roost selection overlap between the two species (Foster and Kurta 1999, p. 670; Timpone *et al.* 2010, pp. 120–121).

Reproduction

Breeding occurs from late July in northern regions to early October in southern regions and commences when males begin to swarm hibernacula and initiate copulation activity (Whitaker and Hamilton 1998, p. 101; Whitaker and Mumford 2009, p. 210; Caceres and Barclay 2000, p. 2; Amelon and Burhans 2006, p. 69). Copulation occasionally occurs again in the spring (Racey 1982, p. 73). Hibernating females store sperm until spring, exhibiting a delayed fertilization strategy (Racey 1979, p.

392; Caceres and Pybus 1997, p. 4). Ovulation takes place at the time of emergence from the hibernaculum, followed by fertilization of a single egg, resulting in a single embryo (Cope and Humphrey 1972, p. 9; Caceres and Pybus 1997, p. 4; Caceres and Barclay 2000, p. 2); gestation is approximately 60 days (Kurta 1994, p. 71). Males are reproductively inactive until late July, with testes descending in most males during August and September (Caire *et al.* 1979, p. 407; Amelon and Burhans 2006, p. 69).

Maternity colonies, consisting of females and young, are generally small, numbering from about 30 (Whitaker and Mumford 2009, p. 212) to 60 individuals (Caceres and Barclay 2000, p. 3); however, one group of 100 adult females was observed in Vermilion County, Indiana (Whitaker and Mumford 2009, p. 212). In West Virginia, maternity colonies in two studies had a range of 7–88 individuals (Owen *et al.* 2002, p. 2) and 11–65 individuals, with a mean size of 31 (Menzel *et al.* 2002, p. 110). Lacki and Schwierjohann (2001, p. 485) found that the population size of colony roosts declined as the summer progressed with pregnant females using the largest colonies (mean=26) and post-lactating females using the smallest colonies (mean=4), with the largest overall reported colony size of 65 bats. Other studies have also found that the number of individuals within a maternity colony typically decreases from pregnancy to post-lactation (Foster and Kurta 1999, p. 667; Lacki and Schwierjohann 2001, p. 485; Garroway and Broders 2007, p. 962; Perry and Thill 2007, p. 224; Johnson *et al.* 2012, p. 227). Female roost site selection, in terms of canopy cover and tree height, changes depending on reproductive stage; relative to pre- and post-lactation periods, lactating northern long-eared bats have been shown to roost higher in tall trees situated in areas of relatively less canopy cover and tree density (Garroway and Broders 2008, p. 91).

Adult females give birth to a single pup (Barbour and Davis 1969). Birthing within the colony tends to be synchronous, with the majority of births occurring around the same time (Krochmal and Sparks 2007, p. 654). Parturition (birth) likely occurs in late May or early June (Caire *et al.* 1979, p. 406; Easterla 1968, p. 770; Whitaker and Mumford 2009, p. 213), but may occur as late as July (Whitaker and Mumford 2009, p. 213). Broders *et al.* (2006, p. 1177) estimated a parturition date of July 20 in New Brunswick. Lactating and post-lactating females were observed in mid-June in Missouri (Caire *et al.* 1979, p. 407), July in New Hampshire and Indiana (Sasse and Pekins 1996, p. 95; Whitaker and Mumford 2009, p. 213), and August in Nebraska (Benedict 2004, p. 235). Juvenile volancy (flight) occurs by 21 days after parturition (Krochmal and Sparks 2007, p. 651, Kunz 1971, p. 480) and as early as 18 days after parturition (Krochmal and Sparks 2007, p. 651). Subadults were captured in late June in Missouri (Caire *et al.* 1979, p. 407), early July in Iowa (Sasse and Pekins 1996, p. 95), and early August in Ohio (Mills 1971, p. 625).

Adult longevity is estimated to be up to 18.5 years (Hall 1957, p. 407), with the greatest recorded age of 19 years (Kurta 1995, p. 71). Most mortality for northern long-eared and many other species of bats occurs during the juvenile stage (Caceres and Pybus 1997, p. 4).

Foraging Behavior and Home Range

The northern long-eared bat has a diverse diet including moths, flies, leafhoppers, caddisflies, and beetles (Nagorsen and Brigham 1993, p. 88; Brack and Whitaker 2001, p. 207; Griffith and Gates 1985, p. 452), with diet composition differing geographically and seasonally (Brack and Whitaker 2001, p. 208). Feldhamer *et al.* (2009, p. 49) noted close similarities of all *Myotis* diets in southern Illinois, while Griffith and Gates (1985, p. 454) found significant differences in the diets of northern long-eared bat and little brown bat. The most common insects found in the diets of northern long-eared bats are lepidopterans (moths) and coleopterans (beetles) (Feldhamer *et al.* 2009, p. 45; Brack and Whitaker 2001, p. 207) with arachnids (spiders) also being a common prey item (Feldhamer *et al.* 2009, p. 45).

Foraging techniques include hawking (catching insects in flight) and gleaning in conjunction with passive acoustic cues (Nagorsen and Brigham 1993, p. 88; Ratcliffe and Dawson 2003, p. 851). Observations of northern long-eared bats foraging on arachnids (Feldhamer *et al.* 2009, p. 49), presence of green plant material in their feces (Griffith and Gates 1985, p. 456), and non-flying prey in their stomach contents (Brack and Whitaker 2001, p. 207) suggest considerable gleaning behavior. Northern long-eared bats have the highest frequency call of any bat species in the Great Lakes area (Kurta 1995, p. 71). Gleaning allows this species to gain a foraging advantage for preying upon moths because moths are less able to detect these high frequency echolocation calls (Faure *et al.* 1993, p. 185). Emerging at dusk, most hunting occurs above the understory, 1 to 3 m (3 to 10 ft) above the ground, but under the canopy (Nagorsen and Brigham 1993, p. 88) on forested hillsides and ridges, rather than along riparian areas (Brack and Whitaker 2001, p. 207; LaVal *et al.* 1977, p. 594). This coincides with data indicating that mature forests are an important habitat type for foraging northern long-eared bats (Caceres and Pybus 1998, p. 2). Occasional foraging also takes place over forest clearings and water, and along roads (Van Zyll de Jong 1985, p. 94). Foraging patterns indicate a peak activity period within 5 hours after sunset followed by a secondary peak within 8 hours after sunset (Kunz 1973, p. 18–19). Brack and Whitaker (2001, p. 207) did not find significant differences in the overall diet of northern long-eared bats between morning (3 a.m. to dawn) and evening (dusk to midnight) feedings; however there were some differences in the consumption of particular prey orders between morning and evening feedings. Additionally, no significant differences existed in dietary diversity values between age classes or sex groups (Brack and Whitaker 2001, p. 208).

Female home range size may range from 19 to 172 ha (47–425 acres) (Lacki *et al.* 2009, p. 5). Owen *et al.* (2003, p. 353) estimated average maternal home range size to be 65 ha (161 ac). Home range size of northern long-eared bats in this study site was small relative to other bat species, but this may be due to the study's timing (during the maternity period) and the small body size of *M. septentrionalis* (Owen *et al.* 2003, pp. 354–355). The mean distance between roost trees and foraging areas of radio-tagged individuals in New Hampshire was 620 m (2034 ft) (Sasse and Pekins 1996, p. 95).

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on any of the following 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; and (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in

combination. Each of these factors is discussed below.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the eastern small-footed and northern long-eared bats. Effects to both the eastern small-footed bat and northern long-eared bat from these factors are discussed together where the species are affected similarly.

There are several factors presented below that affect both the eastern small-footed and the northern long-eared bats to a greater or lesser degree; however, we have found that no other threat is as severe and immediate to the northern long-eared bat's persistence as the disease, white-nose syndrome (WNS), discussed below in Factor C. WNS is currently the predominant threat to the species, and if WNS had not emerged or was not affecting the northern long-eared bat populations to the level that it has, we presume the species' would not be experiencing the dramatic declines that it has since WNS emerged. Therefore, although we have included brief discussions of other factors affecting both species, the focus of the discussion below is on WNS.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Hibernation Habitat

Modifications to bat hibernacula by erecting physical barriers (*e.g.,* doors, gates) to control cave access and mining can affect the thermal regime of the habitat, and thus the ability of the cave or mine to support hibernating bats, including the northern long-eared and, in some cases, the eastern small-footed bat. For example, the Service's Indiana Bat Draft Recovery Plan (2007, pp. 71–74) presents a discussion of well-documented examples of these type of effectss to cave-hibernating species that are also applicable to our discussion here. Modifications to cave and mine entrances, such as the addition of gates or other structures intended to exclude humans, not only restricts flight and movement (Hemberger 2011, unpublished data), but also changes airflow and alters internal microclimates of the caves and mines and eliminating their utility as hibernacula. For example, Richter *et al.* (1993, p. 409) attributed the decline in the number of Indiana bats at Wyandotte Cave, Indiana (which harbors one of the largest known population of hibernating Indiana bats), to an increase in the cave's temperature resulting from restricted airflow caused by a stone wall erected at the cave's entrance. After the wall was removed, the number of Indiana bats increased markedly over the next 14 years (Richter *et al.* 1993, p. 412; Brack *et al.* 2003, p. 67). In an eastern small-footed bat example, the construction associated with commercializing the Fourth Chute Cave in Ontario, Canada, eliminated the circulation of cold air in one of the unvisited passages where a relatively large number of eastern small-footed bats hibernated. These bats were completely displaced as a result of the warmer microclimate produced (Mohr 1972, p. 36). Correctly installed gates, however, at other locations (*e.g.,* Aitkin Cave, Pennsylvania) have led to increases in eastern small-footed bat populations (Butchkoski 2012, pers. comm.). An example of northern long-eared bats likely being affected occurred when John Friend Cave in Maryland was filled with large rocks in 1981, which closed the only known entrance to the cave (Gates *et al.* 1984, p. 166).

In addition to the direct access modifications to caves discussed above, debris buildup at entrances or on cave gates can also significantly modify the cave or mine site characteristics through restricting airflow, altering the temperature of hibernacula, and restricting water flow. Water flow restriction could lead to flooding, thus drowning hibernating bats (Amelon and Burhans 2006, p. 72; Hemberger 2011, unpublished data). In Minnesota, 5 of 11 known northern long-eared bat hibernacula are known to flood, presenting a threat to hibernating bats (Nordquist 2012, pers. comm.). In Massachusetts, one of the known hibernacula for northern long-eared bats is a now unused aqueduct that on very rare occasions may fill up with water and make the hibernaculum unusable (French 2012, unpublished data). Flooding has been noted in hibernacula in other States within the range of the northern long-eared bat, but to a lesser degree. Although modifications to hibernacula can lead to mortality of both species, it has not had population-level effects.

Mining operations, mine passage collapse (subsidence), and mine reclamation activities can also affect bats and their hibernacula. Internal and external collapse of abandoned coal mines was identified as one of the primary threats to eastern small-footed and northern long-eared bat hibernacula at sites located within the New River Gorge National River and Gauley River National Recreation Area in West Virginia (Graham 2011, unpublished data). Collapse of hibernacula entrances or areas within the hibernacula, as well as quarry and mining operations that may alter known hibernacula, are considered threats to northern long-eared bats within Kentucky (Hemberger 2011, unpublished data). In States surveyed for effects to northern long-eared bats by hibernacula collapse, responses varied, with the following number of hibernacula in each State reported as susceptible to collapse: 1 (of 7) in Maryland, 3 (of 11) in Minnesota, 1 (of 5) in New Hampshire, 4 (of 15) in North Carolina, 1 (of 2) in South Carolina, and 1 (of 13) in Vermont (Service 2011, unpublished data).

Before current cave protection laws, there were several reported instances where mines were closed while bats were hibernating and entombing entire colonies (Tuttle and Taylor 1998, p. 8). Several caves were historically sealed or mined in Maryland prior to cave protection laws, although bat populations were undocumented (Feller 2011, unpublished data). For both the eastern small-footed and northern long-eared bats, loss of potential winter habitat through mine closures has been noted as a concern in Virginia, although visual inspections of openings are typically conducted to determine whether gating is warranted (Reynolds 2011, unpublished data). In Nebraska, closing quarries, and specifically sealing quarries in Cass and Sapry Counties, is considered a potential threat to northern long-eared bats (Geluso 2011, unpublished data).

In general, threats to the integrity of bat hibernacula have decreased since the Indiana bat was listed as endangered in 1967, and since the implementation of Federal and State cave protection laws. Increasing awareness about the importance of cave and mine microclimates to hibernating bats and regulation under the Act have helped to alleviate the destruction or modification of hibernation habitat, at least where the Indiana bat is present (Service 2007, p. 74). The eastern small-footed bat and northern long-eared bat have likely benefitted from the protections given to the Indiana bat and its winter habitat, as both species' ranges overlap significantly with the Indiana bat's range.

Disturbance of Hibernating Bats

Human disturbance of hibernating bats has long been considered a threat to cave-hibernating bat species like the eastern small-footed and northern long-eared bats, and is discussed in detail in the Service's Indiana Bat Draft Recovery Plan (2007, pp. 80–85). The primary forms of human disturbance to hibernating bats result from cave commercialization (cave tours and other commercial uses of caves), recreational

caving, vandalism, and research-related activities (Service 2007, p. 80). Arousal during hibernation causes the greatest amount of energy depletion in hibernating bats (Thomas *et al.* 1990, p. 477). Human disturbance at hibernacula, specifically non-tactile disturbance such as changes in light and sound, can cause bats to arouse more frequently, causing premature energy store depletion and starvation, as well as increased tactile disturbance of bats to other individuals (Thomas *et al.* 1995, p. 944; Speakman *et al.* 1991, p. 1103), leading to marked reductions in bat populations (Tuttle 1979, p. 3). Prior to the outbreak of WNS, Amelon and Burhans (2006, p. 73) indicated that ''the widespread recreational use of caves and indirect or direct disturbance by humans during the hibernation period pose the greatest known threat to this species (northern long-eared bat).'' Olson *et al.* (2011, p. 228), hypothesized that decreased visits by recreational users and researchers were related to an increase in the hibernating bat population (including northern long-eared bats) at Cadomin Cave in Alberta, Canada. Disturbance during hibernation could cause movements within or between caves (Beer 1955, p. 244).

Human disturbance is a potential threat at approximately half of the known eastern small-footed bat hibernacula in the States of Kentucky, Maryland, North Carolina, Vermont, and West Virginia (Service, unpublished data). Of the States in the northern long-eared bat's range that assessed the possibility of human disturbance at bat hibernacula, 93 percent (13 of 14) identified potential effects from human disturbance for at least 1 of the known hibernacula for this species in their state (Service, unpublished data). Eight of these 14 States (Arkansas, Kentucky, Maine, Minnesota, New Hampshire, North Carolina, South Carolina, and Vermont) indicated the potential for human disturbance at over 50 percent of the known hibernacula in that State. Nearly all States without WNS identified human disturbance as the primary threat to hibernating bats, and all others (including WNS-positive States) noted human disturbance as a secondary threat (WNS was predominantly the primary threat in these States) or of significant concern (Service, unpublished data).

The threat of commercial use of caves and mines during the hibernation period has decreased at many sites known to harbor Indiana bats, and we believe that this also applies to eastern small-footed and northern long-eared bats. However, effects from recreational caving are more difficult to assess. In addition to unintended effects of commercial and recreational caving, intentional killing of bats in caves by shooting, burning, and clubbing has been documented, although there are no data suggesting that eastern small-footed bats have been killed by these activities (Tuttle 1979, pp. 4, 8). Intentional killing of northern long-eared bats has been documented at a small percentage of hibernacula (*e.g.,* several cases of vandalism at hibernacula in Kentucky, one case of shooting disturbance in Maryland, one case of bat torching in Massachusetts where approximately 100 bats (northern long-eared bats and other species) were killed) (Service, unpublished data), but we do not have evidence that this is happening on a large enough scale to have population-level effects.

In summary, while there are isolated incidents of previous disturbance to both bat species due to recreational use of caves in both species, we conclude that there is no evidence suggesting that this threat in itself has led to population declines in either species.

Summer Habitat

Eastern small-footed bats roost in a variety of natural and manmade rock features, whereas northern long-eared bats roost predominantly in trees and to a lesser extent in manmade structures, as discussed in detail in the *Species Information* section above. We know of only one documented account where vandals were responsible for destroying a portion of an eastern small-footed bat roost located in Maryland (Feller 2011, unpublished data). More commonly, roost habitat for both the eastern small-footed bat and northern long-eared bat is at risk of modification or destruction. In Pennsylvania, for example, highway construction, commercial development, and several wind-energy projects may remove eastern small-footed bat roosting habitat (Librandi-Mumma 2011, pers. comm.). Some of the highest rates of development in the conterminous United States are occurring within the range of eastern small-footed and northern long-eared bats (Brown *et al.* 2005, p. 1856) and contribute to loss of forest habitat.

Wind-energy development is rapidly increasing throughout the eastern small-footed bat and northern long-eared bats' ranges, particularly in the States of New Hampshire, New York, Pennsylvania, and Massachusetts. As well, Iowa, Illinois, Minnesota, Oklahoma, and North Dakota are within the top 10 States for wind power capacity (in megawatts) (installed projects) in the United States (American Wind Energy Association 2012, p. 6). If projects are sited in forested habitats, effects from wind-energy development may include forest-clearings associated with turbine placement, road construction, turbine lay-down areas, transmission lines, and substations. In Maryland, wind power development has been proposed in areas with documented eastern small-footed bat and northern long-eared bat summer habitat (Feller 2011, unpublished data). In Pennsylvania, the majority of wind-energy projects are located in habitats characterized as mountain ridge-top, cliffs, steep slopes, or isolated hills with steep, often vertical sides (Mumma and Capouillez 2011, pp. 11–12). Eastern small-footed bats were confirmed through bat mist-net surveys at 7 of 34 proposed wind-energy project sites in Pennsylvania, and northern long-eared bats were confirmed at all 34 proposed wind project sites (Mumma and Capouillez 2011, pp. 62–63). See *Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence* for a discussion on effects to bats from the operation of wind turbines.

Another activity that may modify or destroy eastern small-footed bat roosting habitat is mined-land reclamation, whereby rock habitats (*e.g.,* rock piles, cliffs, spoil piles) are removed from previously mined lands. The Office of Surface Mining Reclamation and Enforcement and its partners are responsible for reclaiming and restoring lands degraded by mining operations. Mining sites eligible for restoration are numerous in the States of Pennsylvania, Ohio, West Virginia, and Kentucky. Reclaiming these sites often involves the removal of exposed rock habitats that may be used as eastern small-footed bat roost habitat (Sanders 2011, pers. comm.). The number of potential roost sites that have been destroyed or that may be destroyed in the future and the potential effect of this destruction on eastern small-footed bat populations are largely unknown. Despite the potential negative effects of this activity, there are no data available suggesting a decrease in the number of eastern small-footed bats from mined-land reclamation activities. Since northern long-eared bats are not known to use exposed rock habitat for roost sites, mined-land reclamation does not affect this species.

Surface coal mining is also common in the central Appalachian region, which includes portions of Pennsylvania, West Virginia, Virginia, Kentucky, and Tennessee, and is one of the major drivers of land cover change in the region (Sayler 2008, unpaginated). Surface coal mining also may destroy forest habitat in parts of the Illinois Basin in southwest Indiana, western Kentucky, and Illinois (King

2013, pers. comm.). One major form of surface mining is mountaintop mining, which is widespread throughout eastern Kentucky, West Virginia, and southwestern Virginia (Palmer *et al.* 2010, p. 148). Mountaintop mining involves the clearing of upper elevation forests, stripping of topsoil, and use of explosives to break up rocks to access buried coal. The excess rock is sometimes pushed into adjacent valleys, where it buries existing streams (Palmer *et al.* 2010, p. 148). Hartman *et al.* (2005, p. 96) reported significant reductions in insect densities in streams affected with fill material, including lower densities of coleopterans, a primary food source of eastern small-footed and northern long-eared bats (Griffith and Gates 1985, p. 452; Johnson and Gates 2007, p. 319; Moosman *et al.* 2007, p. 355; Feldhamer *et al.* 2009, p. 45). The effect of mountaintop mining on eastern small-footed bat and northern long-eared bat populations is largely unknown.

The effect of forest removal related to the eastern small-footed bat is poorly understood. Forest management can influence the availability and characteristics of non-tree roost sites, such as those used by eastern small-footed bats, although the resulting effects on bats and bat populations are poorly known (Hayes and Loeb 2007, p. 215). Since eastern small-footed bats often forage in forests immediately surrounding roost sites, forest management may affect the quality of foraging habitat (Johnson *et al.* 2009, p. 5). Scientific evidence and anecdotal observations support the hypotheses that bats respond to prey availability, that prey availability is influenced by forest management, and that influences of forest management on prey populations affect bat populations (Hayes and Loeb 2007, p. 219). In addition, forest management activities that influence tree density directly alter the amount of vegetative clutter (*e.g.,* tree density) in an area. As a result, forest management can directly influence habitat suitability for bats through changes in the amount of vegetative clutter (Hayes and Loeb 2007, p. 217). Eastern small-footed bats are capable of foraging in cluttered forest interiors, but as discussed in the *Species Information* section above, they have also been found foraging in clearings, in strip mine areas, and over water. Johnson and Gates (2008, p. 459) suggest that a better understanding of the required spatial extent and structure of forest cover along ridgelines and rock outcrops, as well as additional foraging activity requirements, is needed to aid conservation efforts for the eastern small-footed bat.

Although there is still much to learn about the effects of forest removal on northern long-eared bats and their associated summer habitat, studies to date have found that the northern long-eared bat shows a varied degree of sensitivity to timber harvesting practices. Several studies (as discussed in the *Species Information* section above) have found that the species uses a wide range of tree species for roosting, suggesting that forest succession may play a larger role in roost selection (than tree species) (Silvis *et al.* 2012, p. 6). Studies have found that female bat roosts are more often (*i.e.,* greater than what would be expected from random chance) located in areas with partial harvesting than in random sites, which may be due to trees located in more open habitat receiving greater solar radiation and therefore speeding development of young (Menzel *et al.* 2002, p. 112; Perry and Thill 2007, pp. 224–225). In the Appalachians of West Virginia, diameter-limit harvests (70–90 year-old stands, with 30–40 percent of the basal area removed in the past 10 years) rather than intact forest was the habitat type most selected by northern long-eared bats (Owen *et al.* 2003, p. 356). Cryan *et al.* (2001, p. 49) found several northern long-eared bat roost areas in recently harvested (less than 5 years) stands in the Black Hills of South Dakota, although the largest colony (n=41) was found in a mature forest stand that had not been harvested in over 50 years. In intensively managed forests in the central Appalachians, Owen *et al.* (2002, p. 4) found roost availability was not a limiting factor for the northern long-eared bat, since bats often chose black locust and black cherry as roost trees, which were quite abundant since these trees often regenerate quickly after disturbance (*e.g.,* timber harvest).

It is possible that this flexibility in roosting habits allows northern long-eared bats to be adaptable in managed forests, which allows them to avoid competition for roosting habitat with more specialized species, such as the Indiana bat (Timpone *et al.* 2010, p. 121). However, the northern long-eared bat has shown a preference for contiguous tracts of forest cover for foraging (Owen *et al.* 2003, p. 356; Yates and Muzika 2006, p. 1245). Jung *et al.* (2004, p. 333) found that it is important to retain snags and provide for recruitment of roost trees during selective harvesting in forest stands that harbor bats. If roost networks are disturbed through timber harvesting, there may be more dispersal and fewer shared roost trees, which may lead to less communication between bats in addition to less disease transmission (Johnson *et al.* 2012, p. 230). In the Appalachians, Ford *et al.* (2006, p. 20) assessed that northern long-eared bats may be a suitable management indicator species for assessing mature forest ecosystem integrity, since they found male bats using roosts in mature forest stands of mostly second growth or regenerated forests.

There is conflicting information on sensitivities of male versus female northern long-eared bats to forestry practices and resulting fragmentation. In Arkansas, Perry and Thill (2007, p. 225) found that male northern long-eared bats seem to prefer more dense stands for summer roosting, with 67 percent of male roosts occurring in unharvested sites versus 45 percent of female roosts. The greater tendency of females to roost in more open forested areas than males may be due to greater solar radiation experienced in these openings, which could speed growth of young in maternity colonies (Perry and Thill 2007, p. 224). Lacki and Schwierjohann (2001, p. 487) stated that silvicultural practices could meet both male and female roosting requirements by maintaining large-diameter snags, while allowing for regeneration of forests. However, Broders and Forbes (2004, p. 608) found that timber harvest may have negative effects on female bats since they use forest interiors at small scales (less than 2 km (1.2 mi) from roost sites). They also found that males are not as limited in roost selection and they do not have the energetic cost of raising young; therefore males may be less affected than females (Broders and Forbes 2004, p. 608). Henderson *et al.* (2008, p. 1825) also found that forest fragmentation effects northern long-eared bats at different scales based on sex; females require a larger unfragmented area with a large number of suitable roost trees to support a colony, whereas males are able to use smaller areas (more fragmented). Henderson and Broders (2008, pp. 959–960) examined how female northern long-eared bats use the forest-agricultural landscape on Prince Edward Island, Canada, and found that bats were limited in their mobility and activities are constrained where suitable forest is limited. However, they also found that bats in relatively fragmented areas used a building for colony roosting, which suggests an alternative for a colony to persist in an area with fewer available roost trees. Although we are still learning about the effect of forest removal on northern long-eared

bats and their associated summer habitat, studies to date have found that the northern long-eared bat shows a varied degree of sensitivity to timber harvesting practices and the amount of forest removal occurring varies by State.

Natural gas development from shale is expanding across the United States, particularly throughout the range of the northern long-eared and eastern small-footed bat. Natural gas extraction involves fracturing rock formations and uses highly pressurized fluids consisting of water and various chemicals to do so (Hein 2012, p. 1). Natural gas extraction, particularly across the Marcellus Shale region, which includes large portions of New York, Pennsylvania, Ohio, and West Virginia, is expected to expand over the coming years. In Pennsylvania, for example, nearly 2,000 Marcellus natural gas wells have already been drilled or permitted, and as many as 60,000 more could be built by 2030, if development trends continue (Johnson 2010, pp. 8, 13). Habitat loss and degradation due to this practice could occur in the form of forest clearing for well pads and associated infrastructure (*e.g.,* roads, pipelines, and water impoundments), which would decrease the amount of suitable interior forest habitat available to northern long-eared and eastern small-footed bats for establishing maternity colonies and for foraging, in addition to further isolating populations and, therefore, potentially decreasing genetic diversity (Johnson 2010, p. 10; Hein 2012, p. 6). Since northern long-eared bats and eastern small-footed bats have philopatric tendencies, loss or alteration of forest habitat for natural gas development may also put additional stress on females when returning to summer roost or foraging areas after hibernation if females were forced to find new roosting or foraging areas (expend additional energy) (Hein 2012, pp. 11–12).

Conservation Efforts To Reduce Habitat Destruction, Modification, or Curtailment of Its Range

Although there are various forms of habitat destruction and disturbance that present potential adverse effects to the northern long-eared bat, this is not considered the predominant threat to the species. Even if all habitat-related stressors were eliminated or minimized, the significant effects of WNS on the northern long-eared bat would still be present. Therefore, below we present a few examples, but not a comprehensive list, of conservation efforts that have been undertaken to lessen effects from habitat destruction or disturbance to northern long-eared and eastern small-footed bats. One of the threats to bats in Michigan is the closure of unsafe mines in such a way that bats are trapped within or excluded; however, there have been efforts by the Michigan Department of Natural Resources and others to work with landowners who have open mines to encourage them to install bat-friendly gates to close mines to humans, but allow access to bats (Hoving 2011, unpublished data). The NPS has proactively taken efforts to minimize effects to bat habitat resulting from vandalism, recreational activities, and abandoned mine closures (Plumb and Budde 2011, unpublished data). In addition, the NPS is properly gating, using a ''bat-friendly design, abandoned coal mine entrances as funding permits (Graham 2011, unpublished data). All known hibernacula within national grasslands and forestlands of the Rocky Mountain Region of the U.S. Forest Service are closed during the winter hibernation period, primarily due to the threat of white-nose syndrome, although this will reduce disturbance to bats in general inhabiting these hibernacula (U.S. Forest Service 2013, unpaginated). Concern over the importance of bat roosts, including hibernacula, fueled efforts by the American Society of Mammalogists to develop guidelines for protection of roosts, many of which have been adopted by government agencies and special interest groups (Sheffield *et al.* 1992, p. 707).

Summary of the Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

We have identified several activities, such as constructing physical barriers at cave accesses, mining, flooding, vandalism, development, and timber harvest, that may modify or destroy habitat for the eastern small-footed bat and northern long-eared bat. Although such activities occur, these activities alone do not have significant, population-level effects on either species.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

There are very few records of either species being collected specifically for commercial, recreational, scientific, or educational purposes, and thus we do not consider such collection activities to pose a threat to either species. Disturbance of hibernating bats as a result of recreational use and scientific research activities in hibernacula is discussed under Factor A.

Factor C. Disease or Predation

Disease

White-Nose Syndrome

White-nose syndrome is an emerging infectious disease responsible for unprecedented mortality in some hibernating insectivorous bats of the northeastern United States (Blehert *et al.* 2009, p. 227), and poses a considerable threat to several hibernating bat species throughout North America (Service 2010, p. 1). Since its first documented appearance in New York in 2006, WNS has spread rapidly throughout the Northeast and is expanding through the Midwest. As of August 2013, WNS has been confirmed in 22 States (Alabama, Connecticut, Delaware, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Vermont, Virginia, and West Virginia) and 5 Canadian provinces (New Brunswick, Nova Scotia, Ontario, Prince Edward Island, and Quebec). Four additional States (Arkansas, Iowa, Minnesota, and Oklahoma) are considered suspect for WNS based on the detection of the causative fungus on bats within those States, but with no associated disease to date. Service biologists and partners estimate that at least 5.7 million to 6.7 million bats of several species have now died from WNS (Service 2012, p. 1). Dzal *et al.* (2011, p. 393) documented a 78-percent decline in the summer activity of little brown bats in New York State, coinciding with the arrival and spread of WNS, suggesting large-scale population effects. Turner *et al.* (2011, p. 22) reported an 88-percent decline in the number of hibernating bats at 42 sites from the States of New York, Pennsylvania, Vermont, Virginia, and West Virginia. Furthermore, Frick *et al.* (2010, p. 681) predicted that the little brown bat, formerly the most common bat in the northeastern United States, will likely become extinct in the region by 2026 (potential loss of some 6.5 million bats) if current trends continue. Similarly, Thogmartin *et al.* (2013, p. 171) predicted that WNS is likely to extirpate the federally endangered Indiana bat over large parts of its range. These predicted trends in little brown bats and Indiana bats may or may not also be indicative of population trends in other bat species like the eastern small-footed and northern long-eared bats.

The first evidence of WNS was documented in a photograph taken from Howes Cavern, 52 km (32 mi) west of

Albany, New York, on February16, 2006 (Blehert *et al.* 2009, p. 227). Prior to the arrival of WNS, surveys of six species of hibernating bats in New York State revealed that populations had been stable or increasing in recent decades (Service 2010, p. 1). Decreases in some species of bats at WNS-infected hibernacula have ranged from 30 to 99 percent (Frick *et al.* 2010, p. 680).

The pattern of spread has generally followed predictable trajectories along recognized migratory pathways and overlapping summer ranges of hibernating bat species. Therefore, Kunz and Reichard (2010, p. 12) assert that WNS is spread mainly through bat-to-bat contact; however, evidence suggests that fungal spores can be transmitted by humans (United States Geologic Survey (USGS) National Wildlife Health Center, Wildlife Health Bulletin 2011–05), and bats can also become infected by coming into contact with contaminated cave substrate (Darling 2012, pers. comm.). Six North American hibernating bat species (little brown bat, Indiana bat, northern long-eared bat, eastern small-footed bat, big brown bat, and tri-colored bat), are known to be affected by WNS; however, the effect of WNS varies by species. The fungus that causes WNS has been detected on three additional species; the southeastern bat (*Myotis austroriparius*), and gray bat (*Myotis grisescens*), and cave bat (*Myotis velifer*). White-nose syndrome is caused by the recently described psychrophilic (cold-loving) fungus, currently known as *Geomyces destructans. Geomyces destructans* may be nonnative to North America, and only recently arrived on the continent (Puechmaille *et al.* 2011, p. 8). The fungus grows on and within exposed tissues of hibernating bats (Lorch *et al.* 2011, p. 376; Gargas *et al.* 2009, pp. 147–154)), and the diagnostic feature is the white fungal growth on muzzles, ears, or wing membranes of affected bats, along with epidermal (skin) erosions that are filled with fungal hyphae (branching, filamentous structures of fungi) (Blehert *et al.* 2009, p. 227; Meteyer 2009, p. 412). *Geomyces destructans* grows optimally at temperatures from 5 to 10 °C (41 to 50 °F), the same temperatures at which bats typically hibernate (Blehert *et al.* 2009, p. 227). Temperatures in WNS-affected hibernacula seasonally range from 2 to 14 °C (36 to 57 °F), permitting year-round growth, and may act as a reservoir maintaining the fungus (Blehert *et al.* 2009, p. 227). Growth is slow, and no growth occurs at temperatures above 24 °C (75 °F) (Gargas *et al.* 2009, p. 152). Bats that are found in more humid regions of hibernacula may be more susceptible to WNS, but further research is needed to confirm this hypothesis. Declines in Indiana bats have been greater under more humid conditions, suggesting that growth of the fungus and either intensity or prevalence of infections are higher in more humid conditions (Langwig *et al.* 2012a, p. 1055). Although *G. destructans* has been isolated from five bat species from Europe, research suggests that bat species in Europe may be immunologically or behaviorally resistant, having coevolved with the fungus (Wibbelt *et al.* 2010, p. 1241). Pikula *et al.* (2012, p. 210), however, confirmed that bats found dead in the Czech Republic exhibited lesions consistent with WNS infection.

In addition to the presence of the white fungus, initial observations showed that bats affected by WNS were characterized by some or all of the following: (1) Depleted fat reserves by mid-winter; (2) a general unresponsiveness to human disturbance; (3) an apparent lack of immune response during hibernation; (4) ulcerated, necrotic, and scarred wing membranes; and (5) aberrant behaviors, including shifts of large numbers of bats in hibernacula to roosts near the entrances or unusually cold areas, large numbers of bats dispersing during the day from hibernacula during mid-winter, and large numbers of fatalities, either inside the hibernacula, near the entrance, or in the immediate vicinity of the entrance (WNS Science Strategy Report 2008, p. 2; Service 2010, p. 2). Although the exact process by which WNS leads to death remains undetermined, it is likely that the immune function during torpor compromises the ability of hibernating bats to combat the infection (Bouma *et al.* 2010, p. 623; Moore *et al.* 2011, p. 10).

Early hypotheses suggested that WNS may affect bats before the hibernation season begins, causing bats to arrive at hibernacula with insufficient fat to survive the winter. Alternatively, a second hypothesis suggests that bats arrive at hibernacula unaffected and enter hibernation with sufficient fat stores, but then become affected and use fat stores too quickly as a result of disruption to hibernation physiology (WNS Science Strategy Group 2008, p. 7). More recent observations, however, suggest that bats are arriving to hibernacula with sufficient or only slightly lower fat stores (Turner 2011, pers. comm.), and that although body weights of WNS-infected bats were consistently at the lower end of the normal range, in one study 12 of 14 bats (10 little brown bats, 1 big-brown bat, and 1 tri-colored bat) had an appreciable degree of fat stores (Courtin *et al.* 2010, p. 4).

Boyles and Willis (2010, pp. 92–98) hypothesized that infection by *Geomyces destructans* alters the normal arousal cycles of hibernating bats, particularly by increasing arousal frequency, duration, or both. In fact, Reeder *et al.* (2012, p. 5) and Warnecke *et al.* (2012, p. 2) did observe an increase in arousal frequency in laboratory studies of hibernating bats infected with *G. destructans.* A disruption of this torpor-arousal cycle could easily cause bats to metabolize fat reserves too quickly, thereby leading to starvation. For example, skin irritation from the fungus might cause bats to remain out of torpor for longer than normal to groom, thereby exhausting their fat reserves prematurely (Boyles and Willis 2010, p. 93).

Due to the unique physiological importance of wings to hibernating bats in relation to the damage caused by *Geomyces destructans,* Cryan *et al.* (2010, pp. 1–8) suggests that mortality may be caused by catastrophic disruption of wing-dependent physiological functions. The authors hypothesize that *G. destructans* may cause unsustainable dehydration in water-dependent bats, trigger thirst-associated arousals, cause significant circulatory and thermoregulatory disturbance, disrupt respiratory gas exchange, and destroy wing structures necessary for flight control (Cryan *et al.* 2010, p. 7). The wings of winter-collected WNS-affected bats often reveal signs of infection, whereby the degree of damage observed suggests functional impairment. Emaciation is a common finding in bats that have died from WNS (Cryan *et al.* 2010, p. 3). Cryan *et al.* (2010, p. 3) hypothesized that disruption of physiological homeostasis, potentially caused by *G. destructans* infection, may be sufficient to result in emaciation and mortality. The authors hypothesized that wing damage caused by *G. destructans* infections could sufficiently disrupt water balance to trigger frequent thirst-associated arousals with excessive winter flight, and subsequent premature depletion of fat stores. In related research, Cryan *et al.* (2013, p. 398) found, after analyzing blood from hibernating bats infected with WNS, that electrolytes, sodium and chloride, tended to decrease as wing damage increased in severity. Proper concentrations of electrolytes are necessary for maintaining physiologic homeostasis, and any imbalance could be life-threatening (Cryan *et al.* 2013, p. 398). Although the exact mechanism by which WNS affects bats is still in

question, the effect it has on many hibernating bat species is well documented as well as the high levels of mortality it causes in some susceptible bat species.

Effects of White-Nose Syndrome on the Eastern Small-Footed Bat

Eastern small-footed bats are known to be susceptible to WNS. As of 2011, of the 283 documented eastern small-footed bat hibernacula, 86 (31 percent) were WNS-positive (Service 2011, unpublished data). Only three eastern small-footed bats have been collected, tested, and confirmed positive for WNS by histology: One bat collected and euthanized from New York in 2009, one bat found dead in Pennsylvania in 2011, and one bat found dead from South Carolina in 2013 (Ballmann 2011, pers. comm.; Last 2013a, pers. comm.). An additional eastern small-footed bat collected in winter 2011–2012 from the Mammoth Cave Visitor Center in Kentucky, was submitted to the Southeastern Cooperative Wildlife Disease Study; however, this bat tested negative for WNS. Biologists also observed approximately five dead eastern small-footed bats with obvious signs of fungal infection in Virginia (Reynolds 2011, pers. comm.).

To determine whether WNS is causing a population-level effect to eastern small-footed bats, the Service began by reviewing winter hibernacula survey data. By comparing the most recent pre-WNS count to the most recent post-WNS count, Turner *et al.* (2011, p. 22) reported a 12-percent decline in the number of hibernating eastern small-footed bats at 25 hibernacula in New York, Pennsylvania, Vermont, Virginia, and West Virginia. Data analyzed in this study were limited to sites with confirmed WNS mortality for at least 2 years and sites with comparable survey effort across pre- and post-WNS years. Based on a review of pre-WNS hibernacula count data over multiple years at 12 of these sites, the number of eastern small-footed bats fluctuated between years.

When we compared the most recent post-WNS eastern small-footed bat count to pre-WNS observations, we found that post-WNS counts were within the normal observed range at nine sites (75 percent), higher at two sites (17 percent), and lower at only one site (8 percent). In addition, although Langwig *et al.* (2012a, p. 1052) reported a significantly lower population growth rate compared to pre-WNS population growth rates for eastern small-footed bat, they found that the species was not declining significantly at hibernacula in New York, Vermont, Connecticut, and Massachusetts. Langwig *et al.* (2012b, p. 15) also observed lower prevalence of *Geomyces destructans* on eastern small-footed bat wing and muzzle tissue during late hibernation, compared to other bat species (*e.g.,* little brown bats). Lastly, biologists did not observe fungal growth (although the fungus may not be visible after the first couple of years) on eastern small-footed bats during 2013 hibernacula surveys in New York, Pennsylvania, and North Carolina, even though it was observed on other bat species (*e.g.,* little brown bats) within the same sites (although a few, not all, eastern small-footed bats viewed under ultraviolet light did show signs of mild infections), nor did they observe reduced numbers of eastern small-footed bats compared to pre-WNS years (Graeter 2013, pers. comm.; Herzog 2013, pers. comm.; Turner 2013, unpublished data). In fact, biologists in New York observed the largest number of hibernating eastern small-footed bats ever reported (2,383) during surveys conducted in 2013, up from 1,727 reported in 1993 using roughly comparable survey effort (Herzog 2013, pers. comm.). In summary, WNS does not appear to have caused a significant population decline in hibernating eastern small-footed bats.

Summer survey data are limited for the eastern small-footed bat. We know of only three studies that have attempted to quantify changes in the number of non-hibernating eastern small-footed bats since the spread of WNS (Francl *et al.* 2012; Nagel and Gates 2012; Moosman *et al.* in press). At one study location, Surry Mountain Reservoir, New Hampshire, bats were mist-netted over multiple years before and after the emergence of WNS (Moosman *et al.* in press). Researchers observed a significant decline in the relative abundance of eastern small-footed bats between 2005 and 2011, based on reductions in capture rates. However, they found that the probability of capturing greater than or equal to one eastern small-footed bat on any given visit during the 7 years of study was similar across years, although the probability of capturing other species (*e.g.,* northern long-eared and little brown bats) declined over time. Moosman *et al.* (unpublished data) also noted that the observed decline in relative abundance of eastern small-footed bats at their site should not be solely attributed to WNS because of the potential for bats to become trap-shy due to repeated sampling efforts.

Eastern small-footed bats are noted for their ability to detect and avoid mist-nets, perhaps more so than other bat species within their range (Tyburec 2012, unpaginated). In addition, Francl *et al.* (2012, p. 34) compared bat mist-net data collected from 31 counties in West Virginia prior to the detection of WNS (1997 to 2008) to 8 West Virginia and 1 extreme southwestern Pennsylvania counties surveyed in 2010. Researchers reported a 16-percent decline in the post-WNS capture rate for eastern small-footed bats, although they acknowledge the small sample size may have inherently higher variation and bias compared to more common species that showed consistently negative trends (*e.g.,* northern long-eared, little brown, and tri-colored bats) (Francl *et al.* 2012, p. 40). Lastly, during acoustic surveys for bats, Nagel and Gates (2012, p. 5) reported a 63-percent increase in the number of eastern small-footed bat passes during acoustic surveys from 2010 to 2012 in western Maryland, although large declines in bat passes were observed for other species (*e.g.,* northern long-eared, little brown/Indiana, and tri-colored bats).

Several factors may influence why eastern small-footed bats are potentially less susceptible to WNS than other *Myotis* bats. First, during mild winters, eastern small-footed bats may not enter caves and mines or, if they do, may leave during mild periods. Although there are few winter observations of this species outside of cave and mine habitat, it was first speculated in 1945 as a possibility. In trying to explain why so many bats banded in the summer were unaccounted for during winter hibernacula surveys, Griffin (1945, p. 22) suggested that bats may be using alternate hibernacula such as small, deep crevices in rocks, which he suggested would provide a bat with adequate protection from freezing. Neubaum *et al.* (2006, p. 476) observed many big brown bats choosing hibernation sites in rock crevices and speculated that this pattern of roost selection could be common for other species. Time spent outside of cave and mine habitat by eastern small-footed bats means less time for the fungus to grow because environmental conditions (*e.g.,* temperature and humidity) are suboptimal for fungus growth.

A second factor that may influence lower susceptibility of eastern small-footed bats to WNS is that this bat species tends to enter cave or mine habitat later (mid-November) and leave earlier (mid-March) compared to other *Myotis* bats, again providing less time for the fungus to grow, and less energy expenditure than other species that hibernate longer. Third, when eastern small-footed bats are present at caves and mines, they are most frequently observed at the entrances, where

humidity is low and temperature fluctuations are high, which consequently does not provide ideal environmental conditions for fungal growth. Cryan *et al.* (2010, p. 4) suggest that eastern small-footed bats may be less susceptible to evaporative water loss, since they often select drier areas of hibernacula, and therefore may be less susceptible to succumbing to WNS. Big brown bats also tend to select drier, more ventilated areas for hibernation, and consequently, Blehert *et al.* (2009, p. 227) and Courtin *et al.* (2010, p. 4) did not observe the fungus in big brown bat specimens. Lastly, unlike some other gregarious bats (*e.g.,* little brown bats), eastern small-footed bats frequently roost solitarily or deep within cracks, possibly further reducing their exposure to the fungus.

Fenton (1972, p. 5) never observed eastern small-footed bats close to or in contact with little brown or Indiana bats, both highly gregarious species experiencing severe population declines. Solitary hibernating habits have also been suggested as one of the reasons why big brown bats appear to have been only moderately affected by WNS (Ford *et al.* 2011, p. 130). Laboratory studies conducted by Blehert *et al.* (2011) further support this hypothesis. In their study, only healthy bats that came into direct contact with infected bats or were inoculated with pure cultures of *Geomyces destructans* developed lesions consistent with WNS. Healthy bats housed with infected bats in such a way as to prohibit animal-to-animal contact but still allow for potential aerosols to be transmitted from sick bats did not develop any detectable signs of WNS.

In conclusion, there are several factors that may explain why eastern small-footed bats appear to be less susceptible to WNS than other cave bat species. These factors include hibernacula selection (cave versus non-cave), total time spent hibernating in hibernacula, location within the hibernacula (areas with lower humidity and higher temperature fluctuation), and solitary roosting behavior.

Effects of White-Nose Syndrome on the Northern Long-Eared Bat

The northern long-eared bat is known to be susceptible to WNS, and mortalities due to the disease have been confirmed. The USGS National Wildlife Health Center in Madison, Wisconsin, received 79 northern long-eared bat submissions since 2007, of which 65 were tested for WNS. Twenty-eight of the 65 northern long-eared bats tested were confirmed as positive for WNS by histopathology and another 10 were suspect (Ballmann 2013, pers. comm.). In addition, 9 of 14 northern long-eared bats in 2012–2013 were positive, and 1 was suspect (Last 2013b, pers. comm.); all the WNS-positive submissions were from Tennessee, Kentucky, and Ohio. The New York Department of Environmental Conservation has confirmed 29 northern long-eared bats submitted with signs of WNS, at minimum (there are still bat carcasses that have not been analyzed yet), since 2007 in New York (Okonieski 2012, pers. comm.).

Due to WNS, the northern long-eared bat has experienced a sharp decline in the northeastern part of its range, as evidenced in hibernacula surveys. The northeastern United States is very close to saturation (WNS found in majority of hibernacula) for the disease, with the northern long-eared bat being one of the species most severely affected by the disease (Herzog and Reynolds 2012, p. 10). Turner *et al.* (2011, p. 22) compared the most recent pre-WNS count to the most recent post-WNS count for 6 cave bat species; they reported a 98-percent decline between pre- and post-WNS in the number of hibernating northern long-eared bats at 30 hibernacula in New York, Pennsylvania, Vermont, Virginia, and West Virginia. Data analyzed in this study were limited to sites with confirmed WNS mortality for at least 2 years and sites with comparable survey effort across pre and post-WNS years. In addition to the Turner *et al.* (2011) data, the Service conducted an additional analysis that included data from Connecticut (n=3), Massachusetts (n=4), and New Hampshire (n=4), and added one additional site to the previous Vermont data. We used a similar protocol for analyses as used in Turner *et al.* (2011); our analysis was limited to sites where WNS has been present for at least 2 years. The combined overall rate of decline seen in hibernacula count data for the 8 States is approximately 99 percent.

In hibernacula surveys in New York, Vermont, Connecticut, and Massachusetts, hibernacula with larger populations of northern long-eared bats experienced greater declines, suggesting a density-dependent decline due to WNS (Langwig *et al.* 2012a, p. 1053). Also, although some species' populations (*e.g.,* tri-colored bat, Indiana bat) stabilized at drastically reduced levels compared to pre-WNS, each of the 14 populations of northern long-eared bats became locally extinct within 2 years due to disease, and no population was remaining 5 years post-WNS (Langwig *et al.* 2012, p. 1054). During 2013 hibernacula surveys at 34 sites where northern long-eared bats were also observed prior to WNS in Pennsylvania, researchers found a 99-percent decline (from 637 to 5 bats) (Turner 2013, unpublished data).

Due to favoring small cracks or crevices in cave ceilings, making them more challenging to locate during hibernacula surveys, data in some States (particularly those with a greater number of caves with more cracks or crevices) may not give an entirely clear picture of the level of decline the species is experiencing (Turner *et al.* 2011, p. 21). When dramatic declines due to WNS occur, the overall rate of decline appears to vary by site; some sites experience the progression from the detection of a few bats with visible fungus to widespread mortality after a few weeks, while at other sites this may take a year or more (Turner *et al.* 2011, pp. 20–21). For example, in Massachusetts, WNS was first confirmed in February of 2008, and by 2009, ''the population (northern long-eared bat) was knocked down, and the second year the population was finished'' (French 2012, pers. comm.). Further, in Virginia, Reynolds (2012, pers. comm.) reported that ''not all sites are on the same 'WNS time frame,' but it appears the effects will be similar, suggesting that all hibernacula in the mountains of Virginia will succumb to WNS at one time or another.'' We have not yet seen the same level of decline in the Midwestern and southern parts of the species' range, although we expect similar rates of decline once the disease arrives or becomes more established.

Although the disease has not yet spread throughout the species' entire range (WNS is currently found in 22 of 39 States where the northern long-eared bat occurs), it continues to spread, and we have no reason not to expect that where it spreads, it will have the same impact to the affected species (Coleman 2013, pers. comm.). The current rate of spread has been rapid, spreading from the first documented occurrence in New York in February 2006, to 22 states and 5 Canadian provinces by July 2013. There is some uncertainty as to the timeframe when the disease will spread throughout the species' range and when resulting mortalities as witnessed in the currently affected area will occur in the rest of the range. Researchers have suggested that there may be a 'slow down' in the spread of the disease in the Great Plains (Frick and Kilpatrick 2013, pers. comm.); however, this is on the western edge of the northern long-eared bat's range where the species is naturally less common and, therefore, offers little respite to the species. A few models have attempted to project the

spread of *Geomyces destructans* and WNS, and although they have differed in the timing of the disease spreading throughout the continental United States, all were in agreement that WNS will indeed spread throughout the United States (Hallam *et al.* 2011, p. 8; Maher *et al.* 2012, pp. 4–5). One of these models suggests that there may be a temperature-dependent boundary in southern latitudes that may offer refuge to WNS-susceptible bats. However, this would likely provide little relief to the northern long-eared bat, since the species' range only slightly enters these southern states (Hallam *et al.* 2011, pp. 9–11). In addition, human transmission could introduce the spread of the fungus to new locations that are far removed from the current known locations (e.g., spread the fungus farther than an infected bat could transmit it within their natural movement patterns) (Coleman 2013, pers. comm.).

Long-term (including pre- and post-WNS) summer data for the northern long-eared bat are somewhat limited; however, the available data parallel the population decline exhibited in hibernacula surveys. Summer data can corroborate and confirm the decline to the species seen in hibernacula data. Summer surveys from 2005–2011 near Surry Mountain Lake in New Hampshire showed a 99-percent decline in capture success of northern long-eared bats post-WNS, which is similar to the hibernacula data for the State (a 95-percent decline) (Brunkhurst 2012, unpublished data).

The northern long-eared bat is becoming less common on the Vermont landscape as well. Pre-WNS, the species was the second most common bat species in the State; however, it is now one of the least likely to be encountered, with the change in effort to capture one bat increasing by nearly 13 times, and approximately a 94-percent overall reduction in captures in mist-net surveys (Darling and Smith 2011, unpublished data). In eastern New York, captures of northern long-eared bats have declined dramatically, approximately 93 percent, for the species from pre-WNS (Herzog 2012, unpublished data). Prior to discovery of WNS in West Virginia, northern long-eared bat mist-net captures comprised 41 percent of all captures and 24 percent post-WNS (2010) and at a rate of 23 percent of historical rates (Francl *et al.* 2012, pp. 35–36). In addition, pregnancy peaked more than 2 weeks earlier post-WNS than pre-WNS (May 20 versus June 7, respectively) and the proportion of juveniles declined by more than half in mid-August; it is unclear if this change will have population-level effects on the species at this time (Francl *et al.* 2012, p. 36). Ford *et al.* (2011, p. 127) conducted summer acoustic surveys on Fort Drum, New York, from 2003–2010, including pre-WNS (2003–2008) and post-WNS (2008–2010). Although activity still rose from early summer to late summer for northern long-eared bats, the overall activity levels for the species declined from pre- to post-WNS (Ford *et al.* 2011, pp. 129–130). Similarly, Nagel and Gates (2012, p. 5) reported a 78-percent decrease in northern long-eared bat passes (as compared to a 63-percent increase in the number of eastern small-footed bats mentioned above) during acoustic surveys between 2010 and 2012 in western Maryland. ''Due to the greatest recorded decline in regional hibernacula counts (Turner *et al.* 2011), the northern long-eared bat is of particular concern (to researchers in Pennsylvania)'' (Turner 2013, unpublished data). Therefore, researchers in Pennsylvania selected two sites to study in 2010 and 2011, where pre-WNS swarm trapping had previously been conducted. The capture rates at the first site declined by 95 percent and at the second site by 97 percent, which corroborates documented interior hibernacula declines (Turner 2013 unpublished data; Turner *et al.* 2011, p. 18).

Although northern long-eared bats are known to awaken from a state of torpor sporadically throughout the winter and move between hibernacula (Griffin 1940, p. 185; Whitaker and Rissler 1992b, p. 131; Caceres and Barclay 2000 pp. 2–3), they have not been observed roosting regularly outside of caves and mines during the winter, as species that are less susceptible to WNS (*e.g.,* big brown bat) have. Northern long-eared bats may be more susceptible to evaporative water loss (and therefore more susceptible to WNS) due to their propensity to roost in the most humid parts of the hibernacula (Cryan *et al.* 2010, p. 4). As described in the *Hibernation* section above, northern long-eared bats roost in areas within hibernacula that have higher humidity, possibly leading to higher rates of infection, as Langwig *et al.* (2012a, p. 1055) found with Indiana bats. Also, northern long-eared bats prefer cooler temperatures within hibernacula: 0 to 9 °C (32 to 48 °F) (Raesly and Gates 1987, p. 18; Caceres and Pybus 1997, p. 2; Brack 2007, p. 744), which are within the optimal growth limits of *Gyomyces destructans* (5 to 10 °C (41 to 50 °F)) (Blehert *et al.* 2009, p. 227).

The northern long-eared bat may also spend more time in hibernacula than other species that are less susceptible (*e.g.,* eastern small-footed bat (see *Effects of White-nose Syndrome on the Eastern Small-footed Bat* section, above)), which allows more time for the fungus to infect bats and grow; northern long-eared bats enter the cave or mine in October or November (although they may enter as early as August) and leave the hibernaculum in March or April (Caire *et al.* 1979, p. 405; Whitaker and Hamilton 1998, p. 100; Amelon and Burhans 2006, p. 72). Furthermore, the northern long-eared bat occasionally roosts in clusters or in the same hibernacula as other bat species that are also susceptible to WNS (see *Hibernation* section, above); therefore, northern long-eared bats may have increased susceptibility to bat-to-bat transmission of WNS.

Given the observed dramatic population declines attributed to WNS, as described above, we are greatly concerned about this species' persistence where WNS has already spread. The area currently affected by WNS constitutes the core of the northern long-eared bat's range, where the species was most common prior to WNS; the species is less common in the southern and western parts of its range and is considered to be rare in the northwestern part of its range (Caceres and Barclay 2000, p. 2; Harvey 1992, p. 35), the areas where WNS has not yet been detected. Furthermore, the rate at which WNS has spread has been rapid; it was first detected in New York in 2006, and has spread west at least as far as Illinois and Missouri, south as far as Georgia and South Carolina, and north as far as southern Quebec and Ontario as of 2013. Although this spread rate may slow or have reduced effects in the more southern and western parts of the species' range (Frick and Kilpatrick 2013, pers. comm.), general agreement is that WNS will indeed spread throughout the United States (Hallam *et al.* 2011, p. 8; Maher *et al.* 2012, pp. 4–5). WNS has already had a substantial effect on northern long-eared bats in the core of its range and is likely to spread throughout the species' entire range within a short time; thus we consider it to be the predominant threat to the species rangewide.

Other Diseases

Infectious diseases observed in North American bat populations include rabies, histoplasmosis, St. Louis encephalitis, and Venezuelan equine encephalitis (Burek 2001, p. 519; Rupprecht *et al.* 2001, p. 14; Yuill and Seymour 2001, pp. 100, 108). Rabies is the most studied disease of bats, and can lead to mortality, although antibody evidence suggests that some bats may

recover from the disease (Messenger *et al.* 2003, p. 645) and retain immunological memory to respond to subsequent exposures (Turmelle *et al.* 2010, p. 2364). Bats are hosts of rabies in North America (Rupprecht *et al.* 2001, p. 14), accounting for 24 percent of all wild animal cases reported during 2009 (Centers for Disease Control and Prevention 2011). Although rabies is detected in up to 25 percent of bats submitted to diagnostic labs for testing, less than 1 percent of bats sampled randomly from wild populations test positive for the virus (Messenger *et al.* 2002, p. 741). Eastern small-footed and northern long-eared bats are among the species reported positive for rabies virus infection (Constantine 1979, p. 347; Burnett 1989, p. 12; Main 1979, p. 458); however, rabies is not known to have appreciable effects to either species.

Histoplasmosis has not been associated with eastern small-footed bats or northern long-eared bats and may be limited in these species compared to other bats that form larger aggregations with greater exposure to guano-rich substrate (Hoff and Bigler 1981, p. 192). St. Louis encephalitis antibody and high concentrations of Venezuelan equine encephalitis virus have been observed in big brown bats and little brown bats (Yuill and Seymour 2001, pp. 100, 108), although data are lacking on the prevalence of these viruses in eastern small-footed bats. Eastern equine encephalitis has been detected in northern long-eared bats (Main 1979, p. 459), although no known population declines have been found due to presence of the virus. Northern long-eared bats are also known to carry a variety of pests including chiggers, mites, bat bugs, and internal helminthes (Caceres and Barclay 2000, p. 3). None of these diseases or pests, however, has caused the record level of bat mortality like that observed since the emergence of WNS.

Predation

Typically, animals such as owls, hawks, raccoons, skunks, and snakes prey upon bats, although a limited number of animals consume bats as a regular part of their diet (Harvey *et al.* 1999, p. 13). Eastern small-footed and northern long-eared bats experience a very small amount of predation; therefore, predation does not appear to be a major cause of mortality (Caceres and Pybus 1997, p. 4; Whitaker and Hamilton 1998, p. 101).

Predation has been observed at a limited number of hibernacula within the range of the northern long-eared and eastern small-footed bats. Of the State and Federal agency responses received pertaining to eastern small-footed bat hibernacula and the threat of predation, only 8 out of 80 responses (10 percent) reported hibernacula as being prone to predation. For northern long-eared bats, 1 hibernacula in Maine, 3 in Maryland (2 of which were due to feral cats), 1 in Minnesota, and 10 in Vermont were reported as being prone to predation. In one instance, domestic cats were observed killing bats at a hibernaculum used by northern long-eared bat and eastern small-footed bat in Maryland, although the species of bat killed was not identified (Feller 2011, unpublished data). Turner (1999, personal observation) observed a snake (species unknown) capture an emerging Virginia big-eared bat (*Corynorhinus townsendii virginianus*) in West Virginia. The bat was captured in flight while the snake was perched along the top of a bat gate at the cave's entrance. Tuttle (1979, p. 11) observed (eastern) screech owls (*Otus asio*) capturing emerging gray bats.

Northern long-eared bats are known to be affected to a small degree by predators at summer roosts. Avian predators, such as owls and magpies, are known to successfully take individual bats as they roost in more open sites, although this most likely does not have an effect on the overall population size (Caceres and Pybus 1997, p. 4). In addition, Perry and Thill (2007, p. 224) observed a black rat snake (*Elaphe obsoleta obsoleta*) descending from a known maternity colony snag in the Ouachita Mountains of Arkansas. In summary, since bats are not a primary prey source for any known natural predators, it is unlikely that predation has substantial effects on either species at this time.

Conservation Efforts To Reduce Disease or Predation

As mentioned above, WNS is a disease that is responsible for unprecedented mortality in some hibernating bats in the northeast, like the northern long-eared bat, and it continues to spread throughout the range of the northern long-eared bat and eastern small-footed bat. Although conservation efforts have been undertaken to help reduce the spread of the disease through human-aided transmission, these efforts have only been in place for a few years and it is too early to determine how effective they are in decreasing the rate of spread. In 2008, the Service, along with several other State and Federal agencies, initiated a national plan (A National Plan for Assisting States, Federal Agencies, and Tribes in Managing White-Nose Syndrome in Bats (WNS National Plan, *http://static.whitenosesyndrome.org/sites/default/files/white-nose_syndrome_national_plan_may_2011.pdf*) that details the elements critical to investigating and managing WNS, along with identifying actions and roles for agencies and entities involved with the effort (Service 2011, p. 1). In addition to bat-to-bat transmission of the disease, fungal spores can be transmitted by humans (USGS National Wildlife Health Center, Wildlife Health Bulletin 2011–05). Therefore, the WNS Decontamination Team (a sub-group under the WNS National Plan), created a decontamination protocol (Service 2012, p. 2) that provides specific procedures to ensure human transmission risk to bats is minimized.

The Service also issued an advisory calling for a voluntary moratorium on all caving activity in States known to have hibernacula affected by WNS, and all adjoining States, unless conducted as part of an agency-sanctioned research or monitoring project (Service 2009). The Western Bat Working Group has also developed a White-nose Syndrome Action Plan, a comprehensive strategy to prevent the spread of WNS, that covers States currently outside the range of WNS (Western Bat Working Group 2010, p. 1–11). Although the majority of State and Federal agencies and tribes within the northern long-eared bat's and eastern small-footed bat's ranges have adopted the recommendations and protocols in the WNS National Plan, these are not mandatory or required. For example, in Virginia, the decontamination procedures are recommended for cavers; however, although the Virginia Department of Game and Inland Fisheries currently has closed the caves on the agencies' properties, they are reviewing this policy in light of the extensive spread of WNS throughout the State.

The NPS is currently updating their cave management plans (for parks with caves) to include actions to minimize the risk of WNS spreading to uninfected caves. These actions include WNS education, screening visitors for disinfection, and closure of caves if necessary (NPS 2013, *http://www.nature.nps.gov/biology/WNS*). In April 2009, all caves and mines on U.S. Forest Service lands in the Eastern Region were closed on an emergency basis in response to the spread of WNS. Eight National Forests in the Eastern Region contain caves or mines that are used by bats; caves and mines on seven of these National Forests (Allegheny, Hoosier, Ottawa, Mark Twain, Mononqahela, Shawnee, and Wayne) are currently closed, and no closure is

needed for the one mine on the eighth National Forest (Green Mountain) because it is already gated with a bat-friendly structure. Forest supervisors continue to evaluate the most recent information on WNS to inform decisions regarding extending cave and mine closures for the purpose of limiting the spread of WNS (U.S. Forest Service 2013, *http://www.fs.fed.us/r9/wildlife/wildlife/bats.php*). Caves and mines on U.S. Forest Service lands in the Rocky Mountain Region were closed on an emergency basis in 2010, in response to WNS, but since then have been reopened, with some exceptions (U.S. Forest Service 2013, *http://www.fs.usda.gov/detail/r2/home/?cid=stelprdb5319926*). In place of the emergency closures, the Rocky Mountain Region will implement an adaptive management strategy that will require registration to access an open cave, prohibit use of clothing or equipment used in areas where WNS is found, require decontamination procedures prior to entering any and all caves, and close all known cave hibernacula during the winter hibernation period. Although the above mentioned WNS-related conservation measures may help reduce or slow the spread of the disease, these efforts are not currently enough to ameliorate the population-level effect to the northern long-eared bat.

Summary of Disease and Predation

In summary, while populations of several species of hibernating bats (*e.g.,* little brown bat, Indiana bat, northern long-eared bat, tri-colored bat) have experienced mass mortality due to WNS, populations of the eastern small-footed bat appear to be stable, and if they are in decline, the level of impact is not discernible at this time. Summer monitoring data are scarce, and the little data we have are inconclusive. However, based on the best available scientific information, we conclude that disease does not have an appreciable effect on the eastern small-footed bat.

Unlike the eastern small-footed bat, the northern long-eared bat has experienced a sharp decline, estimated at approximately 99 percent (from hibernacula data), in the northeastern portion of its range, due to the emergence of WNS. Summer survey data have confirmed rates of decline observed in northern long-eared bat hibernacula data post-WNS. The species is highly susceptible to WNS where the disease currently occurs in the East, and there is no reason to expect that western populations will be resistant to the disease. Thus, we expect that similar declines as seen in the East will be experienced in the future throughout the majority of the species' range. This is currently viewed as the predominant threat to the species, and if WNS had not emerged or was not affecting northern long-eared bat populations to the level that it has, we presume the species would not be declining to the degree observed.

As bats are not a primary prey source for any known natural predators, it is unlikely that predation is significantly affecting either species at this time.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

Under this factor, we examine whether existing regulatory mechanisms are inadequate to address the threats to the species discussed under the other factors. Section 4(b)(1)(A) of the Act requires the Service to take into account ''those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species. . . .'' In relation to Factor D under the Act, we interpret this language to require the Service to consider relevant Federal, State, and tribal laws, regulations, and other such mechanisms that may minimize any of the threats we describe in threat analyses under the other four factors, or otherwise enhance conservation of the species. We give strongest weight to statutes and their implementing regulations and to management direction that stems from those laws and regulations. An example would be State governmental actions enforced under a State statute or constitution, or Federal action under statute.

Having evaluated the significance of the threat as mitigated by any such conservation efforts, we analyze under Factor D the extent to which existing regulatory mechanisms are inadequate to address the specific threats to the species. Regulatory mechanisms, if they exist, may reduce or eliminate the effects from one or more identified threats. In this section, we review existing State, Federal, and local regulatory mechanisms to determine whether they effectively reduce or remove threats to the eastern small-footed bat or northern long-eared bat.

No existing regulatory mechanisms have been designed to protect the species against WNS, the primary threat to the northern long-eared bat; thus, despite regulatory mechanisms that are currently in place, the species is still at risk. There are, however, some mechanisms in place to provide some protection from other factors that may act cumulatively with WNS. As such, the discussion below provides a few examples of such existing regulatory mechanisms, but is not a comprehensive list.

Federal

Several laws and regulations help Federal agencies protect bats on their lands, such as the Federal Cave Resources Protection Act (16 U.S.C. 4301 *et seq.*) that protects caves on Federal lands and National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) review, which serves to mitigate effects to bats due to construction activities on federally owned lands. The NPS has additional laws, policies, and regulations that protect bats on NPS units, including the NPS Organic Act od 1916 (16 U.S.C. 1 *et seq.*), NPS management policies (related to exotic species and protection of native species), and NPS policies related to caves and karst systems (provides guidance on placement of gates on caves not only to address human safety concerns but also for the preservation of sensitive bat habitat) (Plumb and Budde 2011, unpublished data). Even if a bat species is not listed under the Endangered Species Act, the NPS works to minimize effects to the species. In addition, the NPS Research Permitting and Reporting System tracks research permit applications and investigator annual reports, and NPS Management Policies require non-NPS studies conducted in parks to conform to NPS policies and guidelines regarding the collection of bat data (Plumb and Budde 2011, unpublished data).

The northern long-eared bat is considered a ''sensitive species'' throughout U.S. Forest Service's Eastern Region (USDA Forest Service 2012). As such, the northern long-eared bat must receive, ''special management emphasis to ensure its viability and to preclude trends toward endangerment that would result in the need for Federal listing. There must be no effects to sensitive species without an analysis of the significance of adverse effects on the populations, its habitat, and on the viability of the species as a whole. It is essential to establish population viability objectives when making decisions that would significantly reduce sensitive species numbers'' (Forest Service Manual (FSM) 2672.1).

State

The eastern small-footed bat is State-listed as endangered in Maryland and New Hampshire; State-listed as threatened in Kentucky, Pennsylvania, South Carolina, and Vermont; and considered as a species of special concern in Connecticut, Delaware,

Georgia, Indiana, Massachusetts, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, Tennessee, Virginia, and West Virginia. The level of protection provided under these laws varies by State, but most prohibit take, possession, or transport of listed species. For example, in Maryland, a person may not take, possess, transport, export, process, sell, offer for sale, or ship nongame wildlife (MD Code, Natural Resources, sec. 10–2A–01–09); however, effects to summer roosting habitat and direct mortality from wind energy development projects under 70 Megawatts (MW) are currently exempted from protections offered to the eastern small-footed bat (Feller 2011, unpublished data). In Pennsylvania, however, a House Bill proposed in the General Assembly, if passed, would not allow any ''commonwealth agency to take action to classify or consider wildlife, flora or fauna as threatened or endangered unless the wildlife, flora or fauna is protected under the Endangered Species Act of 1973'' (General Assembly of Pennsylvania 2013, p. 2).

The northern long-eared bat is listed in very few of the States within the species' range. The northern long-eared bat is listed as endangered under the Massachusetts endangered species act, under which all listed species are, ''protected from killing, collecting, possessing, or sale and from activities that would destroy habitat and thus directly or indirectly cause mortality or disrupt critical behaviors.'' In addition, listed animals are specifically protected from activities that disrupt nesting, breeding, feeding, or migration (Massachusetts Division of Fisheries and Wildlife 2012, unpublished document). In Wisconsin, all cave bats, including the northern long-eared bat, were listed as threatened in the State in 2011, due to previously existing threats and the impending threat of WNS (Redell 2011, pers. comm.). Certain development projects (*e.g.,* wind energy), however, are excluded from regulations in place to protect the species in Wisconsin (Wisconsin Department of Natural Resources, unpublished document, 2011, p. 4). The northern long-eared bat is considered as some form of species of concern in 17 States: ''Species of Greatest Concern'' in Alabama and Rhode Island; ''Species of Greatest Conservation Need'' in Delaware, Iowa, and Vermont; ''Species of Concern'' in Ohio and Wyoming; ''Rare Species of Concern'' in South Carolina; ''Imperiled'' in Oklahoma; ''Critically Imperiled'' in Louisiana; and ''Species of Special Concern'' in Indiana, Maine, Minnesota, New Hampshire, North Carolina, Pennsylvania, and South Carolina.

In the following States, there is either no State protection law or the northern long-eared bat is not protected under the existing law: Arkansas, Connecticut, Florida, Georgia, Illinois, Kansas, Kentucky, Maryland, Mississippi, Missouri, Montana, Nebraska, New Jersey, New York, North Dakota, Tennessee, Virginia, and West Virginia. In Kentucky, although the northern long-eared bat does not have a State listing status, it is considered protected from take under Kentucky State law; however, since greater than 95 percent of hibernacula in Kentucky are privately owned, cave closures are not often possible to enforce (Hemberger 2011, unpublished data).

Wind energy development regulation varies by State within the northern long-eared bat's and eastern small-footed bat's ranges. For example, in Virginia, although there are not currently any wind energy developments in the State, new legislation requires mitigation for bats with the objective of reducing fatalities. As part of the regulation, operators are required to ''measure the efficacy'' of mitigation (Reynolds 2011 unpublished data). In Vermont, all wind projects are required to conduct bat mortality surveys, and at least 2 of the 3 currently permitted projects in the State include application of operational adjustments (curtailment) to reduce bat fatalities (Smith 2011, unpublished data).

Summary of Inadequacy of Existing Regulatory Mechanisms

No existing regulatory mechanisms have been designed to protect the species against WNS, the primary threat to the northern long-eared bat. Therefore, despite regulatory mechanisms that are currently in place for the northern long-eared bat, the species is still at risk, primarily due to WNS, as discussed under *Factor C.*

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Wind Energy Development

In general, bats are killed in significant numbers by utility-scale (greater than or equal to 0.66 megawatt (MW)) wind turbines along forested ridge tops in the eastern United States (Johnson 2005, p. 46; Arnett *et al.* 2008, p. 63). The majority of bats killed include migratory foliage-roosting species: the hoary bat (*Lasiurus cinereus*) and eastern red bat (*Lasiurus borealis*); migratory tree and cavity-roosting silver-haired bats (*Lasionycteris noctivagans*); and tri-colored bats (Arnett *et al.* 2008, p. 64).

Three effects may explain proximate causes of bat fatalities at wind turbines: (1) Bats collide with turbine towers, (2) bats collide with moving blades, or (3) bats suffer internal injuries (barotrauma) after being exposed to rapid pressure changes near the trailing edges and tips of moving blades (Cryan and Barclay 2009, p. 1331). It appears that barotrauma may be responsible for some deaths observed at wind-energy development sites. For example, nearly half of the 1,033 bat carcasses discovered over a 2-year study by Klug and Baerwald (2010, p. 15) had no fatal external injuries, and over 90 percent of those necropsied had internal injuries consistent with barotrauma (Baerwald *et al.* 2008, pp. 695–696). However, another study found that bone fractures from direct collision with turbine blades contributed to 74 percent of bat deaths, and therefore suggest that skeletal damage from direct collision with turbine blades is a major cause of fatalities for bats killed by wind turbines (Grodsky *et al.* 2011, p. 920). The authors suggest that these injuries can lead to an underestimation of bat mortality at wind energy facilities due to delayed lethal effects (Grodsky *et al.* 2011, p. 924). Lastly, the authors also note that the surface and core pressure drops behind the spinning turbine blades are high enough (equivalent to sound levels that are 10,000 times higher in energy density than the threshold of pain in humans (Cmiel *et al.* 2004)) to cause significant ear damage to bats flying near wind turbines (Grodsky *et al.* 2011, p. 924). Bats crippled by ear damage would have a difficult time navigating and foraging, since both of these functions depend on the bats' ability to echolocate (Grodsky *et al.* 2011, p. 924).

Wind projects have been constructed in areas within a large portion of the ranges of eastern small-footed bats and northern long-eared bats, suggesting these species may be exposed to the risk of turbine-related mortality. However, as of 2011, only two eastern small-footed bat and 13 northern long-eared bat fatalities were recorded from North American wind-energy facilities, representing less than 0.1 percent and 0.2 percent of the total bat mortality, respectively (American Wind Energy Association 2011, p. 18). Because eastern small-footed bats fly slowly and close to the ground (Davis *et al.* 1965, p. 683), they may be less susceptible to mortality caused by the operation of wind turbines.

The threat level posed by wind development to northern long-eared and eastern small-footed bats throughout their ranges varies. For example, in Illinois, wind energy development is viewed as a large threat to northern long-eared bats, especially during migration. Although the species is not considered a long-distance migrant, even limited migration distances between summer and winter habitats pose a risk to the northern long-eared bat in Illinois, due to the increasingly large line of wind farms across most of the central portion of the State (Kath 2012, pers. comm.). In 2012, 7 to 10 wind farms were in operation, and at least as many are planned. Further, northern long-eared bats have been found in pre-construction surveys for many of the wind farms (both planned and operational) (Kath 2012, pers. comm.). In Minnesota, wind energy development is moving at a rapid pace, and is one of the reasons State wildlife agency officials are concerned about the species' status in the State (Baker 2011, pers. comm.). In many States, such as Maryland, New Hampshire, South Carolina, and Vermont, wind energy projects have just recently been completed or are in the process of being installed; therefore, the level of mortality to northern long-eared bats and eastern small-footed bats has yet to be seen (Brunkhurst 2012, pers. comm.; Bunch 2011,unpublished data; Feller 2011, unpublished data; Smith 2011, unpublished data). Vermont currently has three permitted wind energy facilities in the State (the first of which is currently under construction), from which State officials see limited potential that northern long-eared bat fatalities will occur (Smith 2011, unpublished data), likely due to the current low population of the species in the State. We conclude that there may be adverse effects posed by wind energy development to northern long-eared bats and eastern small-footed bats; however, there is no evidence suggesting effects from wind energy development in itself have led to population declines in either species.

Climate Change

Our analyses under the Act include consideration of ongoing and projected changes in climate. The terms ''climate'' and ''climate change'' are 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 2007a, p. 78). The term ''climate change'' thus refers to a change in the mean or variability of one or more measures of climate (*e.g.,* temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007a, p. 78).

Scientific measurements spanning several decades demonstrate that changes in climate are occurring, and that the rate of change has been faster since the 1950s. Examples include warming of the global climate system, and substantial increases in precipitation in some regions of the world and decreases in other regions. (For these and other examples, see IPCC 2007a, p. 30; Solomon *et al.* 2007, pp. 35–54, 82–85). 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 ''very likely'' (defined by the IPCC as 90 percent or higher probability) due to the observed increase in greenhouse gas (GHG) concentrations in the atmosphere as a result of human activities, particularly carbon dioxide emissions from use of fossil fuels (IPCC 2007a, pp. 5–6 and figures SPM.3 and SPM.4; Solomon *et al.* 2007, pp. 21–35). Further confirmation of the role of GHGs comes from analyses by Huber and Knutti (2011, p. 4), who concluded it is extremely likely that approximately 75 percent of global warming since 1950 has been caused by human activities.

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 GHG emissions, to evaluate the causes of changes already observed and to project future changes in temperature and other climate conditions (*e.g.,* Meehl *et al.* 2007, entire; Ganguly *et al.* 2009, pp. 11555, 15558; Prinn *et al.* 2011, pp. 527, 529). All combinations of models and emissions scenarios yield very similar projections of increases in the most common measure of climate change, average global surface temperature (commonly known as global warming), until about 2030. Although projections of the magnitude and rate of warming differ after about 2030, the overall trajectory of all the projections is one of increased global warming through the end of this century, even for the projections based on scenarios that assume that GHG emissions will stabilize or decline. Thus, 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 the extent of GHG emissions (IPCC 2007a, pp. 44–45; Meehl *et al.* 2007, pp. 760–764 and 797–811; Ganguly *et al.* 2009, pp. 15555–15558; Prinn *et al.* 2011, pp. 527, 529). (See IPCC 2007b, p. 8, for a summary of other global projections of climate-related changes, such as frequency of heat waves and changes in precipitation. Also see IPCC 2011 (entire) for a summary of observations and projections of extreme climate events.)

Various changes in climate may have direct or indirect effects on species. These effects may be positive, neutral, or negative, and they may change over time, depending on the species and other relevant considerations, such as interactions of climate with other variables (*e.g.,* habitat fragmentation) (IPCC 2007, pp. 8–14, 18–19). Identifying likely effects often involves aspects of climate change vulnerability analysis. Vulnerability refers to the degree to which a species (or system) is susceptible to, and unable to cope with, adverse effects of climate change, including climate variability and extremes. Vulnerability is a function of the type, magnitude, and rate of climate change and variation to which a species is exposed, its sensitivity, and its adaptive capacity (IPCC 2007a, p. 89; see also Glick *et al.* 2011, pp. 19–22). There is no single method for conducting such analyses that applies to all situations (Glick *et al.* 2011, p. 3). We use our expert judgment and appropriate analytical approaches to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

As is the case with all stressors that we assess, even if we conclude that a species is currently affected or is likely to be affected in a negative way by one or more climate-related effects, it does not necessarily follow that the species meets the definition of an ''endangered species'' or a ''threatened species'' under the Act. If a species is listed as endangered or threatened, knowledge regarding the vulnerability of the species to, and known or anticipated impacts from, climate-associated changes in environmental conditions can be used to help devise appropriate strategies for its recovery.

The unique natural history traits of bats and their susceptibility to local temperature, humidity, and precipitation patterns make them an early warning system for effects of climate change in regional ecosystems (Adams and Hayes 2008, p. 1120). Climate change is expected to alter seasonal ambient temperatures and

precipitation patterns across regions (Adams and Hayes 2008, p. 1115). The ability of successful reproductive effort in female insectivorous bats is related directly to roost temperatures and water availability (Adams and Hayes 2008, p. 1116). Adams and Hayes (2008, p. 1120) predict an overall decline in bat populations in the western United States from reduced regional water storage caused by climate warming. In comparison, the northeast United States is projected to see a steady increase in annual winter precipitation, although a much greater proportion is expected to fall as rain rather than as snow. Overall, little change in summer rainfall is expected, although projections are highly variable (Frumhoff *et al.* 2007, p. 8). Based on this model, water availability should not be a limiting factor to bats in the northeast United States.

Climate change may result in warmer winters, which could lead to a reduced period of hibernation, increased winter activity, and reduced reliance on the relatively stable temperatures of underground hibernation sites (Jones *et al.* 2009, p. 99). Hibernation sites chosen by eastern small-footed bats (*e.g.,* under rocks) may be even more susceptible to temperature fluctuations, which may lead to energy depletion that reduces winter survival (Rodenhouse *et al.* 2009, p. 251). An earlier spring would presumably result in a shorter hibernation period and the earlier appearance of foraging bats (Jones *et al.* 2009, p. 99). An earlier emergence from hibernation may have no detrimental effect on population size if sufficient food is available (Jones *et al.* 2009, p. 99); however, predicting future insect population dynamics and distributions is complex (Bale *et al.* 2002, p. 6). Alterations in precipitation, stream flow, and soil moisture could influence insect populations in such a way as to potentially alter food availability for bats (Rodenhouse *et al.* 2009, p. 250).

Warmer winter temperatures may also disrupt bat reproductive physiology. Both eastern small-footed bats and northern long-eared bats breed in the fall, and spermatozoa are stored in the uterus of hibernating females until spring ovulation. If bats experience warm conditions they may arouse from hibernation prematurely, ovulate, and become pregnant (Jones *et al.* 2009, p. 99). Given this dependence on external temperatures, climate change is likely to affect the timing of reproductive cycles (Jones *et al.* 2009, p. 99), but whether these effects would be to the detriment of the species is largely unknown. A shorter hibernation period and warmer winter temperatures may lead to less exposure and slower spread of WNS or persistence of the fungus, which would likely benefit both species. However, the rapid rate at which WNS is affecting the species is on a much quicker time scale than are the changes associated with climate change. Thus, longer-term effects of climate change are unlikely to have an impact on the short-term effects of WNS. Although we do have information that suggests that climate change may impact both the northern long-eared bat and eastern small-footed bat and bats in general, we do not have any evidence suggesting that climate change in itself has led to population declines in either species.

Contaminants

Effects to bats from contaminant exposure have likely occurred and gone, for the most part, unnoticed among bat populations (Clark and Shore 2001, p. 204). Contaminants of concern to insectivorous bats like the eastern small-footed and northern long-eared bats include organochlorine pesticides, organophosphate, carbamate and neonicotinoid insecticides, polychlorinated biphenyls and polybrominated diphenyl ethers (PBDEs), pyrethroid insecticides, and inorganic contaminants such as mercury (Clark and Shore 2001, pp. 159–214).

Organochlorine pesticides (*e.g.,* DDT, chlordane) persist in the environment due to lipophilic (fat-loving) properties, and therefore readily accumulate within the fat tissue of bats. Because insectivorous bats have high metabolic rates, associated with flight and small size, their food intake increases the amount of organochlorines available for concentration in the fat (Clark and Shore 2001, p. 166). Because bats are long-lived, the potential for bioaccumulation is great, and effects on reproduction and populations have been documented (Clark and Shore 2001, pp. 181–190). In maternity colonies, young bats appear to be at the greatest risk of mortality. This is because organochlorines become concentrated in the fat of the mother's milk and these chemicals continually and rapidly accumulate in the young as they nurse (Clark 1988, pp. 410–411).

In addition to indirect effects of contaminants on bats via prey consumption, documented cases of population-level effects involve direct application of pesticides to bats or their roosts. For example, when a mixture of DDT and chlordane was applied to little brown bats and their roost site, mortality from exposure was observed (Kunz *et al.* 1977, p. 478). Most organochlorine pesticides have been banned in the United States and have largely been replaced by organophosphate insecticides, which are generally short-lived in the environment and do not accumulate in food chains; however, risk of exposure is still possible from direct exposure from spraying or ingesting insects that have recently been sprayed but have not died, or both (Clark 1988, p. 411). Organophospahate and carbamate insecticides are acutely toxic to mammals. Also, some organophosphates may be stored in fat tissue and contribute to ''organophosphate-induced delayed neuropathy'' in humans (USEPA 2013, p. 44).

Bats are less sensitive to organophosphate insecticides than birds in regards to acute toxicity, but many bats lose their motor coordination from direct application and are unlikely to survive in the wild in an incapacitated state lasting over 24 hours (Plumb and Budde 2011, unpublished data). Bats may be exposed to organophosphate and carbamate insecticides in regions where methyl parathion is applied in cotton fields and where malathion is used for mosquito control (Plumb and Budde 2011, unpublished data). The organophosphate, chlorpyrifos, has high fat solubility and is commonly used on crops such as corn, soybeans (van Beelen 2000, p. 34 of Appendix 2; *http://water.usgs.gov/nawqa/pnsp/usage/maps/show_map.php?year=2009&map=CHLORPYRIFOS&hilo=L*).

The neonicotinoids have been found to cause oxidative stress, neurological damage and possible liver damage in rats and immune suppression in mice (*http://www.sciencedirect.com/science/article/pii/S0048357512001617* Badgujar *et al.* 2013, p. 408; Duzguner 2012, p. 58; Kimura-Kuroda *et al.* 2011, p. 381), Due to information indicating that there is a link between neonicotinoids used in agriculture and a decline in bee numbers, the European Union proposed a two year ban on the use of the neonocotinoids, thiamethoxam, imidacloprid and clothianidin on crops attractive to honeybees, beginning in December of 2013 (*http://www.lawbc.com/regulatory-developments/entry/proposal-for-restriction-of-neonicotinoid-products-in-the-eu/*).

The more recently developed ''third generation'' of pyrethroids have acute oral toxicities rivaling the toxicity of organophosphate, carbamate and organochlorine pesticides. These pyrethroids include esfenvalerate, deltamethrin, bifenthrin, tefluthrin, flucythrinate, cyhalothrin and fenpropathrin (Mueller-Beilschmidt 1990, p. 32). Pyrethroids are

increasingly used in the United States, and some of these compounds have very high fat solubility (*e.g.,* bifenthrin, cypermethrin) (van Beelen 2000, p. 34 of Appendix 2).

Like the organochlorine pesticides, PCBs and PBDEs are highly lipophilic and therefore readily accumulate in insectivorous bats. Outside of laboratory experiments, there is no conclusive evidence that bats have been killed by PCBs, although effects on reproduction have been observed (Clark and Shore 2001, pp. 192–194).

In New Hampshire, to limit the amount of plant material growing on the rock slope of the Surry Mountain Reservoir, the U.S. Army Corps of Engineers spray the rock slope with herbicide; this site is an eastern small-footed bat summer roosting site (Veilleux and Reynolds 2006, p. 331). It is unknown whether the direct application of herbicide on the roost area reduces the roost quality or causes mortality of adult bats, young bats, or both.

Eastern small-footed bats and northern long-eared bats forage on emergent insects and can be characterized as occasionally foraging over water (Yates and Evers 2006, p. 5), and therefore are at risk of exposure to bioaccumulation of inorganic contaminants (*e.g.,* cadmium, lead, mercury) from contaminated water bodies. Bats tend to accumulate inorganic contaminants due to their diet and slow means of elimination of these compounds (Plumb and Budde 2011, unpublished data). In Virginia, for example, the North Fork Holston River is a water body that was highly contaminated by a waterborne point source of mercury through contamination by a chlor-alkali plant. Based on findings from a pilot study for bats in 2005 (Yates and Evers 2006), there is sufficient information to conclude that bats from near-downstream areas of the North Fork Holston River have potentially harmful body burdens of mercury, although the effect on bats is unknown. Fur samples taken from eastern small-footed bats have also yielded detectable amounts of mercury and zinc (Hickey *et al.* 2001, p. 703). Hickey *et al.* (2001, p. 705) suggest that the concentrations of mercury reported may be sufficient to cause sublethal biological effects to bats. Divoll *et al.* (*in prep*) found that eastern small-footed bats and northern long-eared bats showed consistently higher mercury levels than little brown bats or eastern red bats sampled in Maine, which may be correlated with gleaning behavior and the consumption of spiders by these two bat species. Eastern small-footed bats exhibited the highest mercury levels of all species. Bats recaptured during the study 1 or 2 years after their original capture maintained similar levels of mercury in fur year-to-year. Biologists suggest that individual bats accumulate body burdens of mercury that cannot be reduced once elevated to a certain threshold.

Exposure to holding ponds containing flow-back and produced water associated with hydraulic fracturing operations may also expose bats to toxins, radioactive material, and other contaminants (Hein 2012, p. 8). Cadmium, mercury, and lead are contaminants reported in hydraulic fracturing operations. Whether bats drink directly from holding ponds or contaminants are introduced from these operations into aquatic ecosystems, bats will presumably accumulate these substances and potentially suffer adverse effects (Hein 2012, p. 9). In summary, the best available data indicate that contaminant exposure can pose an adverse effect to individual northern long-eared and eastern small-footed bats, although it is not an immediate and significant risk in itself at a population level.

Prescribed Burning

Eastern forest-dwelling bat species, such as the eastern small-footed and northern long-eared bats, likely evolved with fire management of mixed-oak ecosystems (Perry 2012, p. 182). A recent review of prescribed fire and its effects on bats (U.S. Forest Service 2012, p. 182) generally found that fire had beneficial effects on bat habitat. Fire may create snags for roosting and creates more open forests conducive to foraging on flying insects (Perry 2012, pp. 177–179), although gleaners such as northern long-eared bats may readily use cluttered understories for foraging (Owen *et al.* 2003, p. 355). Cavity and bark roosting bats, such as the eastern small-footed and northern long-eared, use previously burned areas for both foraging and roosting (Johnson *et al.* 2009, p. 239; Johnson *et al.* 2010, p. 118). In Kentucky, the abundance of prey items for northern long-eared bats increased after burning (Lacki *et al.* 2009, p. 1170), and more roosts were found in post-burn areas (Lacki *et al.* 2009, p. 1169). Burning may create more suitable snags for roosting through exfoliation of bark (Johnson *et al.* 2009, p. 240), mimicking trees in the appropriate decay stage for roosting bats. In contrast, a prescribed burn in Kentucky caused a roost tree used by a radio-tagged female northern long-eared bat to prematurely fall after its base was weakened by smoldering combustion (Dickinson *et al.* 2009, p. 56). Low-intensity burns may not kill taller trees directly but may create snags of smaller trees and larger trees may be injured, resulting in vulnerability (of the tree) to pathogens that cause hollowing of the trunk, which provides roosting habitat (Perry 2012, p. 177). Prescribed burning also opens the tree canopy, providing more canopy light penetration (Boyles and Aubrey 2006, p. 112; Johnson *et al.* 2009, p. 240), which may facilitate faster development of juvenile bats (Sedgeley 2001, p. 434). Although Johnson *et al.* (2009, p. 240) found the amount of roost switching did not differ between burned and unburned areas, the rate of switching in burned areas of every 1.35 days was greater than that found in other studies of every 2–3 days (Foster and Kurta 1999, p. 665; Owen *et al.* 2002, p. 2; Carter and Feldhamer 2005, p. 261; Timpone *et al.* 2010, p. 119).

Direct effects of fire on bats likely differ among species and seasons (Perry 2012, p. 172). Northern long-eared bats have been seen flushing from tree roosts shortly after ignition of prescribed fire during the growing season (Dickinson *et al.* 2009, p. 60). Fires of reduced intensity that proceed slowly allow sufficient time for roosting bats to arouse from sleep or torpor and escape the fire (Dickinson *et al.* 2010, p. 2200), although extra arousals from fire smoke could cause increased energy loss (Dickinson *et al.* 2009, p. 52). During prescribed burns, bats are potentially exposed to heat and gases; the roosting behavior of these two species, however, may reduce their vulnerability to toxic gases. When trees are dormant, the bats are roosting in caves or mines (hibernacula can be protected from toxic gases through appropriate burn plans), and during the growing season, northern long-eared bats roost in tree cavities or under bark above the understory, above the area with the highest concentration of gases in a low-intensity prescribed burn (Dickinson *et al.* 2010, pp. 2196, 2200). Carbon monoxide levels did not reach critical thresholds that could harm bats in low-intensity burns at the typical roosting height for the eastern small-footed and northern long-eared bats (Dickinson *et al.* 2010, p. 2196); thus heat effects from prescribed fire are of greater concern than gas effects on bats. Direct heat could cause injury to the thin tissue of bat ears and is more likely to occur than exposure to toxic gas levels during prescribed burns (Dickinson *et al.* 2010, p. 2196). In addition, fires of reduced intensity with shorter flame height could lessen the effect of heat to bats roosting higher in trees (Dickinson *et al.* 2010, p. 2196).

Winter, early spring, and late fall generally contain less intense fire conditions than during other seasons and coincide with time periods when bats are less affected by prescribed fire due to low activity in forested areas. Furthermore, no young are present during these times, which reduces the likelihood of heat injury and exposure of vulnerable young to fire (Dickinson *et al.* 2010, p. 2200). Prescribed fire objectives, such as fires with high intensity and rapid ignition in order to meet vegetation goals, must be balanced with the exposure of bats to the effects of fire (Dickinson *et al.* 2010, p. 2201). Currently, the Service and U.S. Forest Service strongly recommend not burning in the central hardwoods from mid- to late April through summer to avoid periods when bats are active in forests (Dickinson *et al.* 2010, p. 2200).

Bats that occur in forests are likely equipped with evolutionary characteristics that allow them to exist in environments with prescribed fire. Periodic burning can benefit habitat through snag creation and forest canopy gap creation, but frequency and timing need to be considered to avoid direct and indirect adverse effects to bats when using prescribed burns as a management tool. We conclude that there may be adverse effects posed by prescribed burning to individual northern long-eared bats and eastern small-footed bats; however, there is no evidence suggesting effects from prescribed burning itself have led to population declines in either species.

Conservation Efforts To Reduce Other Natural or Manmade Factors Affecting Its Continued Existence

In the Midwest, rapid wind development is a concern with regards to the effect to bats (Baker 2011, pers. comm.; Kath 2012, pers. comm.). Due to the known impact from wind energy development, in particular to listed (and species currently being evaluated to determine if listing is warranted) bird and bat species in the Midwest, the Service, State natural resource agencies, and wind energy industry representatives are developing the Midwest Wind Energy Multi-Species Habitat Conservation Plan (MSHCP). The planning area includes the Midwest Region of the Service, which includes all or portions of the following States: Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. The MSHCP would allow permit holders to proceed with wind energy development, which may result in ''incidental'' taking of a listed species under section 10 of the Act, through issuance of an incidental take permit (77 FR 52754; August 30, 2012). Currently, both the northern long-eared bat and eastern small-footed bat are being considered for inclusion as covered species under the MSHCP. The MSHCP will address protection of covered species through avoidance, minimization of take, and mitigation to offset effect of ''take'' (*e.g.,* habitat preservation, habitat restoration, habitat enhancement) to help ameliorate the effect of wind development (77 FR 52754; August 30, 2012). In some cases, the U.S. Forest Service has agreed to limit or restrict burning in the central hardwoods from mid- to late April through summer to avoid periods when bats are active in forests (Dickinson *et al.* 2010, p. 2200).

Summary of Factor E

We have identified a number of factors (*e.g.,* wind energy development, climate change, contaminants, prescribed burning) that may have direct or indirect effects on eastern small-footed bats and northern long-eared bats. Although such activities occur, there is no evidence that these activities alone have significant effects on either species, because their effects are often localized and not widespread throughout the species' ranges. However, these factors may have a cumulative effect on the northern long-eared bat when added to white-nose syndrome, because the disease had led to dramatic population declines in that species (discussed under *Factor C*).

Cumulative Effects From Factors A Through E

None of the factors discussed above under Factors A, B, C, or E, alone or in combination, is affecting the eastern small-footed bat at a population level. Conversely, WNS (Factor C) alone has led to dramatic and rapid population-level effects on the northern long-eared bat. White-nose syndrome is the most significant threat to the northern long-eared bat, and the species would likely not be imperiled were it not for this disease. However, although the effects on the northern long-eared bat from Factors A, B, and E individually or in combination do not have significant effects on the species, when combined with the significant population reductions due to white-nose syndrome (Factor C), the resulting cumulative effect may further adversely impact the species.

Finding

Eastern Small-Footed Bat

As required by the Act, we considered the five factors in assessing whether the eastern small-footed bat 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 eastern small-footed bat. We reviewed the petition, information available in our files, and other available published and unpublished information, and we consulted with recognized bat experts and other Federal and State agencies. Threats previously identified for the eastern small-footed bat include modification or destruction of winter and summer habitat, disturbance of hibernating bats from commercial and/or recreational activities in caves and mines, disease, wind energy development, climate change, and contaminants. The primary threat previously identified was WNS. While other species of hibernating bats have experienced mass mortality due to WNS, there is no indication of a population-level decline in eastern small-footed bat based on winter survey data. A review of pre-WNS and post-WNS hibernacula count data over multiple years finds that post-WNS counts were within the normal observed range at the majority of sites analyzed. Several life-history traits may reduce the susceptibility of this bat to WNS, which include their comparatively late arrival and early departure from hibernacula, departure from hibernacula during mild winter periods, solitary roosting habits, and selection of drier microhabitats (*e.g.,* cave and mine entrances). We will continue to closely monitor the spread of WNS and its effects on eastern small-footed bats. As for the other above-mentioned threats, although there is risk of exposure and individual mortality in isolated incidences, no declines in eastern small-footed bat populations have been documented.

Our review of the best available scientific and commercial information indicates that the eastern small-footed bat is not in danger of extinction (endangered) nor likely to become endangered within the foreseeable future (threatened), throughout all of its range.

Distinct Vertebrate Population Segment

After assessing whether the species is endangered or threatened throughout its range, we next consider whether a distinct vertebrate population segment (DPS) of the eastern small-footed bat meets the definition of an endangered or threatened species.

Under the Service's Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act (61 FR 4722;

February 7, 1996 (DPS Policy)), three elements are considered in the decision concerning the establishment and classification of a possible DPS. These are applied similarly for additions to or removal from the Federal List of Endangered and Threatened Wildlife. These elements include:

(1) The discreteness of a population in relation to the remainder of the species to which it belongs;

(2) The significance of the population segment to the species to which it belongs; and

(3) The population segment's conservation status in relation to the Act's standards for listing, delisting, or reclassification (i.e., is the population segment endangered or threatened).

Discreteness

Under the DPS policy, a population segment 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 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) of the Act.

There are no characteristics of the eastern small-footed bat's taxonomy, distribution or abundance, habitat, or biology (see the *Species Information* section, above) that suggest the species may be segmented into discrete populations. Throughout its range, the eastern small-footed bat has similar morphology and, as far as we know, genetics; uses similar roosting and foraging habitat; and exhibits similar roosting, foraging, and reproductive behavior. Therefore, the best available information indicates there is no evidence of markedly separated eastern small-footed bat populations.

There are no characteristics of the eastern small-footed bat's management that suggest the species may be segmented into discrete populations. The eastern small-footed bat occurs in the Canadian provinces of Ontario and Quebec, as well as in the United States. However, the species is not listed under Canada's Species At Risk Act. In addition, we have no information to suggest that the species, its habitat, or the potential threats evaluated above in the five factor analysis are managed differently in the Canadian versus U.S. portions of the eastern small-footed bat's range. Therefore, the best available information indicates that there is no evidence that the eastern small-footed bat 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) of the Act.

We determine, based on a review of the best available information, that no population of the eastern small-footed bat meets the discreteness conditions of the 1996 DPS policy. Therefore, no eastern small-footed bat population qualifies as a DPS under our policy, and no population is a listable entity under the Act.

The DPS policy is clear that significance is analyzed only when a population segment has been identified as discrete. Since we found that no population segment meets the discreteness element and, therefore, does not qualify as a DPS under the Service's DPS policy, we will not conduct an evaluation of significance.

Significant Portion of the Range

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened 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 definition of ''species'' is also relevant to this discussion. The Act defines ''species'' as follows: ''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.'' The phrase ''significant portion of its range'' (SPR) is not defined by the statute, and we have never addressed in our regulations: (1) The consequences of a determination that a species is either endangered or likely to become so throughout a significant portion of its range, but not throughout all of its range; or (2) what qualifies a portion of a range as ''significant.''

Two recent district court decisions have addressed whether the SPR language allows the Service to list or protect less than all members of a defined ''species'': *Defenders of Wildlife* v. *Salazar,* 729 F. Supp. 2d 1207 (D. Mont. 2010), concerning the Service's delisting of the Northern Rocky Mountain gray wolf (74 FR 15123; April 2, 2009); and *WildEarth Guardians* v. *Salazar,* 2010 U.S. Dist. LEXIS 105253 (D. Ariz. September 30, 2010), concerning the Service's 2008 finding on a petition to list the Gunnison's prairie dog (73 FR 6660; February 5, 2008). The Service had asserted in both of these determinations that it had authority, in effect, to protect only some members of a ''species,'' as defined by the Act (i.e., species, subspecies, or DPS), under the Act. Both courts ruled that the determinations were arbitrary and capricious on the grounds that this approach violated the plain and unambiguous language of the Act. The courts concluded that reading the SPR language to allow protecting only a portion of a species' range is inconsistent with the Act's definition of ''species.'' The courts concluded that once a determination is made that a species (i.e., species, subspecies, or DPS) meets the definition of ''endangered species'' or ''threatened species,'' it must be placed on the list in its entirety and the Act's protections applied consistently to all members of that species (subject to modification of protections through special rules under sections 4(d) and 10(j) of the Act).

Consistent with that interpretation, and for the purposes of this finding, we interpret the phrase ''significant portion of its range'' in the Act's definitions of ''endangered species'' and ''threatened species'' to provide an independent basis for listing; thus there are two situations (or factual bases) under which a species would qualify for listing: A species may be endangered or threatened throughout all of its range; or a species may be endangered or threatened in only a significant portion of its range. If a species is in danger of extinction throughout a significant portion of its range, the species is an ''endangered species.'' The same analysis applies to ''threatened species.'' Based on this interpretation and supported by existing case law, the consequence of finding that a species is endangered or threatened in only a significant portion of its range is that the entire species shall be listed as endangered or threatened, respectively, and the Act's protections shall be applied across the species' entire range.

We conclude, for the purposes of this finding, that interpreting the significant portion of its range phrase as providing an independent basis for listing is the best interpretation of the Act because it is consistent with the purposes and the plain meaning of the key definitions of the Act; it does not conflict with established past agency practice (i.e.,

prior to the 2007 Solicitor's Opinion), as no consistent, long-term agency practice has been established; and it is consistent with the judicial opinions that have most closely examined this issue. Having concluded that the phrase ''significant portion of its range'' provides an independent basis for listing and protecting the entire species, we next turn to the meaning of ''significant'' to determine the threshold for when such an independent basis for listing exists.

Although there are potentially many ways to determine whether a portion of a species' range is ''significant,'' we conclude, for the purposes of this finding, that the significance of the portion of the range should be determined based on its biological contribution to the conservation of the species. For this reason, we describe the threshold for ''significant'' in terms of an increase in the risk of extinction for the species. We conclude that a biologically based definition of ''significant'' best conforms to the purposes of the Act, is consistent with judicial interpretations, and best ensures species' conservation. Thus, for the purposes of this finding, and as explained further below, a portion of the range of a species is ''significant'' if its contribution to the viability of the species is so important that without that portion, the species would be in danger of extinction.

We evaluate biological significance based on the principles of conservation biology using the concepts of redundancy, resiliency, and representation. Resiliency describes the characteristics of a species and its habitat that allow it to recover from periodic disturbance. Redundancy (having multiple populations distributed across the landscape) may be needed to provide a margin of safety for the species to withstand catastrophic events. Representation (the range of variation found in a species) ensures that the species' adaptive capabilities are conserved. Redundancy, resiliency, and representation are not independent of each other, and some characteristic of a species or area may contribute to all three. For example, distribution across a wide variety of habitat types is an indicator of representation, but it may also indicate a broad geographic distribution contributing to redundancy (decreasing the chance that any one event affects the entire species), and the likelihood that some habitat types are less susceptible to certain threats, contributing to resiliency (the ability of the species to recover from disturbance). None of these concepts is intended to be mutually exclusive, and a portion of a species' range may be determined to be ''significant'' due to its contributions under any one or more of these concepts.

For the purposes of this finding, we determine if a portion's biological contribution is so important that the portion qualifies as ''significant'' by asking whether without that portion, the representation, redundancy, or resiliency of the species would be so impaired that the species would have an increased vulnerability to threats to the point that the overall species would be in danger of extinction (i.e., would be ''endangered''). Conversely, we would not consider the portion of the range at issue to be ''significant'' if there is sufficient resiliency, redundancy, and representation elsewhere in the species' range that the species would not be in danger of extinction throughout its range if the population in that portion of the range in question became extirpated (extinct locally).

We recognize that this definition of ''significant'' (a portion of the range of a species is ''significant'' if its contribution to the viability of the species is so important that without that portion, the species would be in danger of extinction) establishes a threshold that is relatively high. On the one hand, given that the consequences of finding a species to be endangered or threatened in a significant portion of its range would be listing the species throughout its entire range, it is important to use a threshold for ''significant'' that is robust. It would not be meaningful or appropriate to establish a very low threshold whereby a portion of the range can be considered ''significant'' even if only a negligible increase in extinction risk would result from its loss. Because nearly any portion of a species' range can be said to contribute some increment to a species' viability, use of such a low threshold would require us to impose restrictions and expend conservation resources disproportionately to conservation benefit: Listing would be rangewide, even if only a portion of the range of minor conservation importance to the species is imperiled. On the other hand, it would be inappropriate to establish a threshold for ''significant'' that is too high. This would be the case if the standard were, for example, that a portion of the range can be considered ''significant'' only if threats in that portion result in the entire species' being currently endangered or threatened. Such a high bar would not give the significant portion of its range phrase independent meaning, as the Ninth Circuit held in *Defenders of Wildlife* v. *Norton,* 258 F.3d 1136 (9th Cir. 2001).

The definition of ''significant'' used in this finding carefully balances these concerns. By setting a relatively high threshold, we minimize the degree to which restrictions will be imposed or resources expended that do not contribute substantially to species conservation. But we have not set the threshold so high that the phrase ''in a significant portion of its range'' loses independent meaning. Specifically, we have not set the threshold as high as it was under the interpretation presented by the Service in the *Defenders* litigation. Under that interpretation, the portion of the range would have to be so important that current imperilment there would mean that the species would be currently imperiled everywhere. Under the definition of ''significant'' used in this finding, the portion of the range need not rise to such an exceptionally high level of biological significance. (We recognize that if the species is imperiled in a portion that rises to that level of biological significance, then we should conclude that the species is in fact imperiled throughout all of its range, and that we would not need to rely on the significant portion of its range language for such a listing.) Rather, under this interpretation we ask whether the species would be endangered everywhere without that portion, i.e., if that portion were completely extirpated. In other words, the portion of the range need not be so important that even the species being in danger of extinction in that portion would be sufficient to cause the species in the remainder of the range to be endangered; rather, the complete extirpation (in a hypothetical future) of the species in that portion would be required to cause the species in the remainder of the range to be endangered.

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 have no reasonable potential to be significant or to 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 there is substantial information indicating 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 essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats to the species occurs only in portions of the species' range that clearly would not meet the biologically based definition of ''significant,'' such portions will not warrant further consideration.

We evaluated the current range of the eastern small-footed bat to determine if there is any apparent geographic concentration of potential threats for the species. We examined potential habitat threats from modification of cave and mine openings, mine reclamation, vandalism, wind energy development, and timber harvesting (Factor A); disturbance from cave recreation and research-related activities (Factor B); WNS and predation (Factor C); the inadequacy of existing regulatory mechanisms (Factor D); and collisions from wind energy development projects, climate change, contaminants, and prescribed burning (Factor E). We found no concentration of threats that suggests that the eastern small-footed bat may be in danger of extinction in a portion of its range. We found no portions of its range where potential threats are significantly concentrated or substantially greater than in other portions of its range. Therefore, we find that factors affecting the eastern small-footed bat are essentially uniform throughout its range, indicating no portion of the range warrants further consideration of possible endangered or threatened status under the Act. There is no available information indicating that there has been a range contraction for the species, and therefore we find that lost historical range does not constitute a significant portion of the range for the eastern small-footed bat. Our review of the best available scientific and commercial information indicates that the eastern small-footed bat is not in danger of extinction (endangered) nor likely to become endangered within the foreseeable future (threatened), throughout all of its range or in a significant portion of its range. Therefore, we find that listing the eastern small-footed bat as an endangered or threatened species under the Act is not warranted at this time.

We request that you submit any new information concerning the status of, or threats to, the eastern small-footed bat to our Pennsylvania Field Office, 315 South Allen Street, Suite 322, State College, PA 16801, whenever it becomes available. New information will help us monitor the eastern small-footed bat and encourage its conservation. If an emergency situation develops for the eastern small-footed bat, we will act to provide immediate protection.

Northern Long-Eared Bat

As required by the Act, we considered the five factors in assessing whether the northern long-eared bat is an endangered or threatened species, as cited in the petition, throughout all of its range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the northern long-eared bat. We reviewed the petition, information available in our files, and other available published and unpublished information, and we consulted with recognized bat and disease experts and other Federal and State agencies.

This status review identifies that the primary threat to the northern long-eared bat is attributable to WNS (Factor C), a disease caused by the fungus *Geomyces destructans* that is known to kill bats. The disease has led to dramatic and rapid population declines in northern long-eared bats of up to 99 percent from pre-WNS levels in some areas. White-nose syndrome has spread rapidly throughout the East and is currently spreading through the Midwest. We have no information to indicate that there are areas within the species' range that will not be impacted by the disease or that similar rates of decline (to what has been observed in the East, where the disease has been present for at most 8 years) will not occur throughout the species' range. Other sources of mortality to the species include wind-energy development, habitat modification, destruction and disturbance (*e.g.,* vandalism to hibernacula, roost tree removal), effects of climate change, and contaminants. Although no significant decline due to these factors has been observed, they may have cumulative effects to the species in addition to WNS.

On the basis of the best scientific and commercial information available, we find that the petitioned action to list the northern long-eared bat as an endangered or threatened species is warranted. A determination on the status of the species as an endangered or threatened species is presented below in the proposed listing determination.

Proposed Determination for Northern Long-Eared Bat

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on (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. Listing actions may be warranted based on any of the above threat factors, singly or in combination.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the northern long-eared bat. There are several factors that affect the northern long-eared bat; however, we have found that no other threat is as severe and immediate to the species persistence as WNS (Factor C). Predominantly due to the emergence of WNS, the northern long-eared bat has experienced a severe and rapid decline in the Northeast, estimated at approximately 99 percent (from hibernacula data) since the disease was first discovered there in 2007. Summer survey data in the Northeast have confirmed rates of decline observed in northern long-eared bat hibernacula data post-WNS, with rates of decline ranging from 93 to 98 percent. This disease is considered the prevailing threat to the species, as there is currently no known cure. As mentioned under Factor C, although at the current time the disease has not spread throughout the species' entire range (WNS is currently found in 22 of 39 States where the northern long-eared bat occurs), it continues to spread, and we have no reason not to expect that where it spreads, it will have the same impact to the affected species (Coleman 2013, pers. comm.). Although there is some uncertainty as far as when the disease will spread throughout the northern long-eared bat's range, all models that have attempted to project the spread of WNS (presented in Factor C) were in agreement that WNS will indeed spread

across the United States. In addition, human transmission could introduce the spread of the fungus to new locations that are far removed from the current known locations (Coleman 2013, pers. comm.). This threat is ongoing, is expected to increase in the future, and is significant because it continues to extirpate northern long-eared bat populations as it spreads and is expected to continue to spread throughout the species' range. Other threats to the northern long-eared bat include wind-energy development, winter and summer habitat modification, destruction and disturbance (*e.g.,* vandalism to hibernacula, roost tree removal), climate change, and contaminants. Although these threats (prior to WNS) have not in and of themselves had significant impacts at the species level, they may increase the overall impacts to the species when considered cumulatively with WNS.

The Act defines an endangered species as any species that is ''in danger of extinction throughout all or a significant portion of its range'' and a threatened species as any species ''that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.'' We find that the northern long-eared bat is presently in danger of extinction throughout its entire range based on the severity and immediacy of threats currently affecting the species. The overall range has been significantly impacted because a large portion of populations in the eastern part of the range have been extirpated due to WNS. White-nose syndrome is currently or is expected in the near future to impact the remaining populations. In addition other factors are acting in combination with WNS to reduce the overall viability of the species. The risk of extinction is high because the species is considered less common to rare in the areas not yet, but anticipated to soon be, affected by WNS, and significant rates of decline have been observed over the last 6 years in the core of the species' range, which is currently affected by WNS; these rates of decline are especially high in the eastern part of the species' range, where rates of decline have been as high as 99 percent in hibernating populations of the species. Therefore, on the basis of the best available scientific and commercial information, we propose listing the northern long-eared bat as endangered in accordance with sections 3(6) and 4(a)(1) of the Act. We find that a threatened species status is not appropriate for the northern long-eared bat because the threat of WNS has significant effects where it has occurred and is expected to spread rangewide in a short timeframe.

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. The threats to the survival of the species occur throughout the species' range and are not restricted to any particular significant portion of that range. Accordingly, our assessment and proposed determination applies to the species throughout its entire range.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies; private organizations; and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan identifies site-specific management actions that set a trigger for review of the five factors that control whether a species remains endangered or may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our Web site (*http://www.fws.gov/endangered*), or from our Green Bay, Wisconsin, Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribal, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat protection, habitat restoration (*e.g.,* restoration of native vegetation) and management, research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

If this species is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, under section 6 of the Act, the State(s) of Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming, and the District of Columbia, would be eligible for Federal funds to implement management actions that promote the protection or recovery of the northern long-eared bat. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Although the northern long-eared bat is only proposed for listing under the Act at this time, please let us know if

you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph include management and any other landscape-altering activities on Federal lands administered by the U.S. Fish and Wildlife Service, U.S. Forest Service, NPS, and other Federal agencies; issuance of section 404 Clean Water Act (33 U.S.C. 1251 *et seq.*) permits by the U.S. Army Corps of Engineers; and construction and maintenance of roads or highways by the Federal Highway Administration.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife. The prohibitions of section 9(a)(2) of the Act, codified at 50 CFR 17.21 for endangered wildlife, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import, export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. Under the Lacey Act (18 U.S.C. 42–43; 16 U.S.C. 3371–3378), it is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species, and at § 17.32 for threatened species. With regard to endangered wildlife, a permit must be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of species proposed for listing. The following activities could potentially result in a violation of section 9 of the Act; this list is not comprehensive:

(1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the species, including import or export across State lines and international boundaries, except for properly documented antique specimens of these taxa at least 100 years old, as defined by section 10(h)(1) of the Act.

(2) Incidental take of the species without authorization pursuant to section 7 or section 10(a)(1)(B) of the Act.

(3) Disturbance or destruction of known hibernacula due to commercial or recreational activities during known periods of hibernation.

(4) Unauthorized destruction or modification of summer habitat (including unauthorized grading, leveling, burning, herbicide spraying, or other destruction or modification of habitat) in ways that kills or injures individuals by significantly impairing the species' essential breeding, foraging, sheltering, or other essential life functions.

(5) Unauthorized removal or destruction of trees and other natural and manmade structures being utilized as roosts by the northern long-eared bat that results in take of the species.

(6) Unauthorized release of biological control agents that attack any life stage of this taxon.

(7) Unauthorized removal or exclusion from buildings or artificial structures being used as roost sites by the species, resulting in take of the species.

(8) Unauthorized building and operation of wind energy facilities within areas used by the species, which results in take of the species.

(9) Unauthorized discharge of chemicals, fill, or other materials into sinkholes which may lead to contamination of known northern long-eared bat hibernacula.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Green Bay, Wisconsin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Critical Habitat for Northern Long-Eared Bat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the

destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical and biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. Primary constituent elements are those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of listed species, both inside and outside the critical habitat designation, continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

There is currently no imminent threat of take attributed to collection or vandalism under Factor B for the northern long-eared bat, and identification and mapping of critical habitat is not expected to initiate any such threat. In the absence of finding that the designation of critical habitat would increase threats to a species, if there are any benefits to a critical habitat designation, then a prudent finding is warranted. The potential benefits of designation include: (1) Triggering consultation under section 7 of the Act, in new areas for actions in which there may be a Federal nexus where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential features and areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species. Therefore, because we have determined that the designation of critical habitat will not likely increase the degree of threat to the species and may provide some measure of benefit, we find that designation of critical

habitat is prudent for the northern long-eared bat.

Critical Habitat Determinability

Having determined that designation is prudent, under section 4(a)(3) of the Act we must find whether critical habitat for the species is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist: (i) Information sufficient to perform required analyses of the impacts of the designation is lacking, or (ii) The biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

We reviewed the available information pertaining to the biological needs of the species and habitat characteristics where this species is located. Since information regarding the biological needs of the species is not sufficiently well known to permit identification of areas as critical habitat, we conclude that the designation of critical habitat is not determinable for the northern long-eared bat at this time.

There are many uncertainties in designating hibernacula as critical habitat for the northern long-eared bat. First, we are not able to establish which of the large number of known hibernacula the species is known to inhabit are essential to the conservation of the species. This is due to the species typically being found in small numbers (often fewer than 10 individuals per hibernaculum). Also, those hibernacula with historically greater numbers (greater than 100) are often now infected with WNS, where the northern long-eared bat has been extirpated or close to extirpated. In addition, we lack sufficient information to define the physical and biological features or primary constituent elements with enough specificity; we are not able to determine how habitats affected by WNS (where populations previously thrived and are now extirpated) may contribute to the recovery of the species or whether those areas may still contain essential physical and biological features. Finally, for several States (*e.g.,* Alabama, Iowa, Kansas, Montana, Nebraska, North Dakota, Oklahoma) within the species' range it is unknown if hibernacula occur within parts of the State, due to either the lack of survey effort or (especially the case in the western part of the range) the species being sparsely populated over a large landscape, making locating potential hibernacula challenging. Therefore, we currently lack the information necessary to propose critical habitat for the species.

There are also uncertainties with potential designation of summer habitat, specifically maternity colony habitat. Although research has given us indication of some key summer roost requirements, the northern long-eared bat appears to be somewhat opportunistic in roost selection, selecting varying roost tree species and types of roosts throughout the range. Thus, it is not clear whether certain summer habitats are essential for the recovery of the species, or whether summer habitat is not a limiting factor for the species. Although research has shown some consistency in female summer roost habitat (*e.g.,* selection of mix of live trees and snags as roosts, roosting in cavities, roosting beneath bark, and roosting in trees associated with closed canopy), the species and diameter of the tree (when tree roost is used) selected by northern long-eared bats for roosts vary widely depending on availability. Therefore, we are currently unable to determine whether specific summer habitat features are essential to the conservation of the species, and find that critical habitat is not determinable for the northern long-eared bat at this time. We will seek more information regarding the specific winter and summer habitat features and requirements for the northern long-eared bat and make a determination on critical habitat no later than 1 year following any final listing.

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our listing determination for this species is based on scientifically sound data, assumptions, and analyses. We will invite these peer reviewers to comment during the public comment period.

We will consider all comments and information we receive during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposal in the **Federal Register**. Such requests must be sent to the address shown in the **FOR FURTHER INFORMATION CONTACT** section. We will schedule public hearing on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Persons needing reasonable accommodations to attend and participate in a public hearing should contact the Green Bay, Wisconsin, Field Office at 920–866–1717, as soon as possible. To allow sufficient time to process requests, please call no later than 1week before the hearing date. Information regarding this proposed rule is available in alternative formats upon request.

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:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) 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 the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers 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 (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the Green Bay, Wisconsin, Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Green Bay, Wisconsin, Field Office and the State College, Pennsylvania, Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

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.

■ 2. Amend § 17.11(h) by adding an entry for ''Bat, northern long-eared'' in alphabetical order under MAMMALS to 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							
*	*	*	*	*	*		*
Bat, northern long-eared.	*Myotis septentrionalis*.	U.S.A. (AL, AR, CT, DE, DC, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NJ, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, VT, VA, WV, WI, WY); Canada (AB, BC, LB, MB, NB, NF, NS, NT, ON, PE, QC, SK, YT).	Entire	E		NA	NA
*	*	*	*	*	*		*

Dated: September 10, 2013.

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2013–23753 Filed 10–1–13; 8:45 am]

BILLING CODE 4310–55–P



FEDERAL REGISTER

Vol. 78 Wednesday,
No. 191 October 2, 2013

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Withdrawal of the Proposed Rule To List Coral Pink Sand Dunes Tiger Beetle and Designate Critical Habitat; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2012–0053; Docket No. FWS–R6–ES–2013–0020; 4500030113]

RIN 1018–AY11; AZ39

Endangered and Threatened Wildlife and Plants; Withdrawal of the Proposed Rule To List Coral Pink Sand Dunes Tiger Beetle and Designate Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), withdraw the proposed rule to list the Coral Pink Sand Dunes tiger beetle, *Cicindela albissima,* as a threatened species under the Endangered Species Act of 1973, as amended (Act), and designate critical habitat for the species. This withdrawal is based on our conclusion that the threats to the species as identified in the proposed rule no longer are as significant as believed at the time of the proposed rule. We base this conclusion on our analysis of current and future threats and conservation efforts. We find the best scientific and commercial data available indicate that the threats to the species and its habitat have been reduced below the statutory definition of threatened or endangered. Therefore, we are withdrawing our proposal to list the species as threatened with critical habitat.

DATES: The Fish and Wildlife Service is withdrawing the proposed rule published October 2, 2012 (77 FR 60208) as of October 2, 2013.

ADDRESSES: The withdrawal of our proposed rule, comments, and supplementary documents are available on the Internet at *http://www.regulations.gov* at Docket Nos. FWS–R6–ES–2012–0053 and FWS–R6–ES–2013–0020. Comments and materials received, as well as supporting documentation used in the preparation of this withdrawal, are also available for public inspection, by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Utah Ecological Services Field Office, 2369 West Orton Circle, Suite 50, West Valley City, Utah 84119; telephone 801–975–3330; or facsimile 801–975–3331.

FOR FURTHER INFORMATION CONTACT: Larry Crist, Field Supervisor, Utah Ecological Services Field Office (see **ADDRESSES** section). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish this document. Under the Endangered Species Act, a species may warrant protection through listing if it is endangered or threatened throughout all or a significant portion of its range. Listing a species as an endangered or threatened species can only be completed by issuing a rule. Accordingly, we had issued a proposed rule to list this species. However, this document withdraws that proposed rule because we have determined that threats have been reduced such that listing is not necessary for this species.

The basis for our action. Under the Endangered Species Act, we can 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 have determined that threats have been reduced such that listing is not necessary for this species.

Peer review and public comment. We sought comments from independent specialists to ensure that our proposed listing designation is based on scientifically sound data, assumptions, and analyses. We invited these peer reviewers to comment on our listing proposal. We also considered all comments and information received during the comment periods.

Background

Previous Federal Actions

Please refer to the proposed listing rule for the Coral Pink Sand Dunes (CPSD) tiger beetle (77 FR 60208, October 2, 2012) for a detailed description of the previous Federal actions concerning this species.

In 1997, the Service, Bureau of Land Management (BLM), Utah Department of Natural Resource's Division of State Parks and Recreation (Utah State Parks), and Kane County signed a Candidate Conservation Agreement (CCA) and formed a conservation committee with the dual goals of protecting CPSD tiger beetle habitat and balancing the needs of this rare species with off-road vehicle (ORV) use in the area (Conservation Committee 1997, pp. 4–5). These agencies renewed the CCA in 2009 (Conservation Committee 2009, entire). Coordination under the CCA resulted in the establishment of two Conservation Areas that protected the CPSD tiger beetle from ORV use—Conservation Areas A and B (see *Habitat* and *Factor A* for more information on the Conservation Areas).

In our 2010 Candidate Notice of Review, we identified the CPSD tiger beetle as a species for which listing as an endangered or threatened species was warranted (with a listing priority number of 2) but precluded by our work on higher priority listing actions (75 FR 69222, November 10, 2010). In the 2011 Candidate Notice of Review, we announced that we were not updating our assessment for this species, because we received funding to develop a proposed listing rule (76 FR 66370, October 26, 2011).

On October 2, 2012, we proposed to list the CPSD tiger beetle as a threatened species with designated critical habitat under the Act (77 FR 60208). Publication of the proposed rule opened a 60-day comment period that closed on December 3, 2012. Following publication of our proposed rule, the conservation committee reconvened to evaluate current species' survey and distribution information and reassess the conservation commitments in the 2009 CCA. Based on this evaluation, the conservation committee agreed to expand Conservation Area A, which is already subject to management under a CCA, and provide protected habitat islands for the species in the intervening dunes between Conservation Areas A and B as they are defined in the CCA. The 2009 Conservation Agreement was amended accordingly in 2013 (2013 CCA Amendment) (see *Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range*).

On May 6, 2013 (78 FR 26308), we announced the reopening of the public comment period on our October 2, 2012, proposed listing decision and proposed designation of critical habitat for the species. At this time we also announced the availability of a draft economic analysis (DEA), a draft environmental assessment (EA), the 2013 Amendment to the 2009 Conservation Agreement and Strategy for the Coral Pink Sand Dunes tiger beetle (2013 CCA Amendment), and an amended required determinations section of the proposal (78 FR 26308). We also announced the availability of 2012 CPSD tiger beetle survey results that were not available when the proposed rule was being written and the plans to hold a public information meeting and public hearing

on May 22, 2013, in Kanab, Utah (78 FR 26308).

Taxonomy and Species Description

The CPSD tiger beetle is a member of the family Cicindelidae and genus *Cicindela.* There are 109 species of tiger beetles in the genus *Cicindela* in the United States and Canada (Pearson *et al.* 2006, p. 4). The CPSD tiger beetle occurs only at the CPSD geologic feature in southern Utah and is separated from its closest related subspecies, the Great Sand Dunes tiger beetle (*C. theatina*), by over 600 kilometers (km) (378 miles (mi)) (Rumpp 1961, p. 182). It shares the typical characteristics of other members of the maritima group (a group of closely related species of sand dune tiger beetles) and is most similar in morphology to other subspecies of *Cicindela limbata* (no common name). It was originally described as *C. limbata albissima* (Rumpp 1961, p. 181). However, more recent genetic analysis revealed that the CPSD tiger beetle is different from all other members in the maritima group; consequently, we now consider it a distinct species, *Cicindela albissima* (Morgan *et al.* 2000, p. 1111). This is the accepted taxonomic classification (Pearson *et al.* 2006, p. 77).

CPSD tiger beetle adults are 11 to 15 millimeters (mm) (0.4 to 0.6 inches (in)) in size and have striking coloration. The large wing cases (known as elytra) are predominantly white except for a thin reddish band that runs down the length of the center. Much of the body and legs are covered in white hairs. The upper thorax (middle region) has a metallic sheen, and the eyes are particularly large (Pearson *et al.* 2006, p. 77).

Habitat

Tiger beetles can occur in many different habitats, including riparian habitats, beaches, dunes, woodlands, grasslands, and other open areas (Pearson *et al.* 2006, p. 177). Most tiger beetle species are habitat-specific and consequently are useful as indicators of habitat quality (Knisley and Hill 1992, p. 140). The CPSD tiger beetle, like its close relatives the Great Sand Dunes tiger beetle (*Cicindela theatina*) from the Great Sand Dunes of Colorado, *C. l. limbata* from the western Great Plains, and the St. Anthony Dunes tiger beetle (*C. arenicola*) from the St. Anthony Dunes of Idaho, is restricted to sand dune habitat.

The species' current range extends along the CPSD geologic feature. The CPSD is a geologic feature named for the deep pink color of its sand dunes (Ford *et al.* 2010, p. 380). The CPSD are located 5 km (3.1 mi) north of the Utah–Arizona state line and 13 km (8 mi) west of Kanab, Utah (see Figure 1 below in *Population Distribution*). The CPSD are about 13 km (8 mi) long, averaging 1.1 km (0.7 mi) in width, and 1,416 ha (3,500 ac) in surface area.

The CPSD consist of a series of high, mostly barren, dry dune ridges separated by lower, moister, and more vegetated interdunal swales (low places between sand dune crests) (Romey and Knisley 2002, p. 170). Wind action, primarily blowing from south to north, created and continues to shape the CPSD, using sand from nearby eroding Navajo sandstone (Doelling and Davis 1989, p. 3). Wind velocity decreases as it moves across the sand dunes (from south to north), resulting in a dynamic and less vegetated southern CPSD area that transitions to a less dynamic, more heavily vegetated, higher elevation northern CPSD area (Ford *et al.* 2010, pp. 387–392).

The CPSD are in a semiarid climatic zone (Ford *et al.* 2010, p. 381). The nearest weather station, in Kanab, has a mean annual temperature of 12.4 °Celsius (°C) (54.4°Fahrenheit (°F)) and mean annual precipitation of 33.8 centimeters (cm) (13.3 in) (Ford *et al.* 2010, p. 381). The northern 607 ha (1,500 ac) of CPSD is Federal land managed by the BLM. The southern 809 ha (2,000 ac) of the CPSD is within Utah's CPSD State Park.

Adult CPSD tiger beetles use most of the dune areas from the swales to the upper dune slopes. Larval CPSD tiger beetles are more restricted to vegetated swale areas (Knisley and Hill 2001, p. 386), where the vegetation supports the larval prey base of flies, ants, and other prey (Conservation Committee 2009, p. 14). Larval CPSD tiger beetle habitat is typically dominated by the leguminous plants *Sophora stenophylla* (silvery sophora) and *Psoralidium lanceolatum* (dune scurfpea), and several grasses, including *Sporobolus cryptandrus* (sand dropseed) and *Achnatherum hymenoides* (Indian ricegrass). Larvae also are closely associated with a federally threatened plant species, *Asclepius welshii* (Welsh's milkvetch) (Knisley and Hill 2001, p. 385), for which the entire CPSD area is designated critical habitat (52 FR 41435, October 28, 1987).

We do not have comprehensive analysis or occupancy modeling that predicts the habitat preferences of the CPSD tiger beetle. However, a preliminary habitat assessment indicated that the beetle exists where there is abundant prey and larvae, large swale areas capable of supporting the appropriate vegetation, swale sediment characteristics appropriate for vegetation and larval burrows, dune migration characteristics that permit vegetation to develop and persist within dune swales, proper sediment supply, and a proper wind regime (Fenster *et al.* 2012, pp. 2–4).

Rainfall and associated soil moisture is a critical factor for CPSD tiger beetles (Knisley and Juliano 1988, entire) and is likely the most important natural environmental factor affecting population dynamics of the species. Rainfall and the associated increase in soil moisture have a positive effect on CPSD tiger beetle oviposition (egg depositing) and survivorship (Knisley and Hill 2001, p. 391). The areas in the dune field with the highest level of soil moisture and where soil moisture is closer to the surface contain the highest densities of CPSD tiger beetle larvae (Knisley and Gowan 2011, p. 22), indicating that both proximity to moisture and overall soil moisture are important to the CPSD tiger beetle's life cycle. Experimental supplemental watering has resulted in significantly more adults and larvae, more oviposition events, increased larval survival, and faster larval development compared to unwatered control plots (Knisley and Gowan 2011, pp. 18–22).

Population Distribution

The CPSD tiger beetle occurs sporadically throughout the CPSD geologic feature, but only consistently exists in two populations—central and northern—which are separated by 4.8 km (3 mi) (Figure 1; Knisley 2012, pers. comm.). The total range of the species is approximately 202 ha (500 ac) in size (Morgan *et al.* 2000, p. 1109).

The central population is the largest and is self-sustaining, but at relatively moderate numbers (see *Population Size and Dynamics,* below). The northern population comprises a small number of adults and larvae (Knisley 2001, p. 9), which are typically found in only a few individual swales (Knisley and Gowan 2013, pp. 8–11). In the proposed rule, we stated that the northern population likely persists because of adults dispersing from the central population (Knisley and Gowan 2011, p. 9). However, we received information from a peer reviewer indicating it may sustain itself at low numbers via natural reproduction, and thus not be reliant on dispersers from the central population (see Peer Review; Knisley 2013, pers. comm.). At this time, we do not have enough information to determine which scenario is correct or if it is a combination of the two. Regardless, we do not consider the northern population to be self-sustaining because only a small number of adults and larvae have

been found at this location since 1998, and insect populations typically need to have larger populations to be considered self-sustaining (Thomas 1990, p. 325; see Small Population Effects under *Factor E.*). Therefore, we conclude that the area between the central and northern populations can provide a corridor for dispersal (Knisley 2013, pers. comm.), and has the potential to provide habitat for colonization by CPSD tiger beetles (see Climate Change and Drought under *Factor E.*).

Low densities of adult CPSD tiger beetles occur in the dune area between the central and northern populations (Figure 1; Hill and Knisley 1993, p. 9; Knisley 2012, pers. comm.), and suitable swale habitat likely exists in this area. This area has not been extensively surveyed on a regular basis, and observations of the species in this area are from opportunistic and inconsistent surveys. No CPSD tiger beetles were observed in this area during 2012 surveys. Regardless, the 4.8-km (3-mi) long area of dune between the two populations provides habitat for the species and may provide a dispersal corridor between populations (see *Adult Dispersal* below; Knisley and Gowan 2011, p. 9).

BILLING CODE 4310–55–P

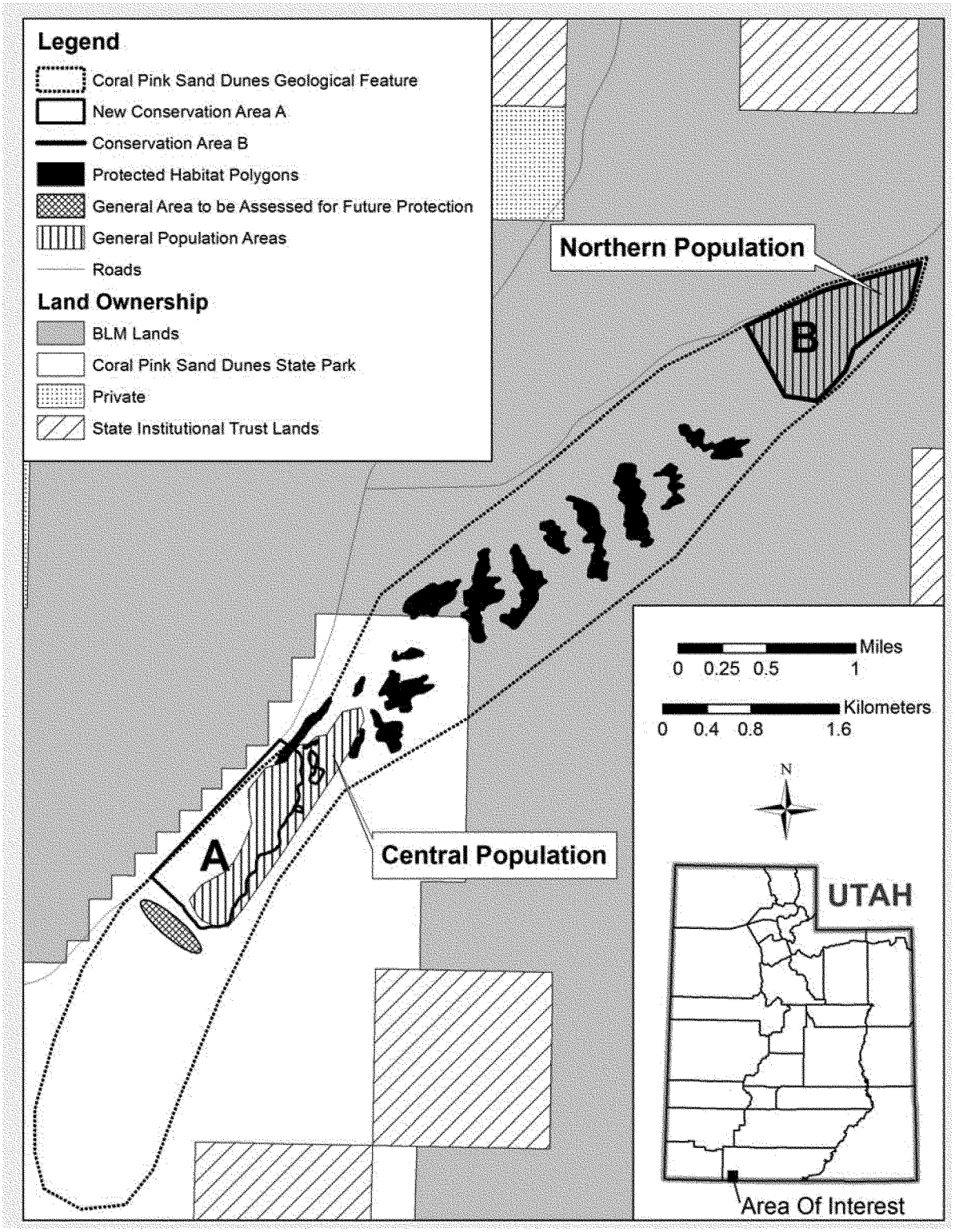


Figure1. Coral Pink Sand Dunes tiger beetle populations and Conservation Areas.

BILLING CODE 4310–55–C

As previously mentioned (see *Previous Federal Actions*), an interagency CCA (as amended in 2013) established Conservation Areas A and B and intervening habitat islands between the two conservation areas to protect the CPSD tiger beetles from ORV use (see *Factor A, The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range* for more information). These Conservation Areas generally overlap the central and northern populations of CPSD tiger beetles (see Figure 1).

Life History

Similar to other tiger beetles, the CPSD tiger beetle goes through several developmental stages. These include an

egg, three larval stages (known as ''instars,'' with each instar separated by molting), pupa, and adult (Knisley and Shultz 1997, p. 13).

CPSD tiger beetle oviposition occurs in a manner typical of most tiger beetles, which can include several different methods. For one method, the female is positioned vertically and digs a small hole with the ovipositor at the end of her body and places an egg in the small hole, typically about 6.35 mm (0.25 in) deep. Eggs can also be laid by the female within the burrows that tiger beetles typically dig during the hot part of the day and at night. These burrows are about 25.4–50.8 mm (1–2 in) deep and 50.8 mm (2 in) long. This method puts the eggs deeper in the soil than the first egg-laying method and can more easily deposit eggs in moist soil (Knisley 2013, pers. comm.).

Moist soil appears necessary for egg laying; however, we have no specific information on CPSD tiger beetle egg survival or how various factors might affect eggs since the eggs are almost impossible to find (about 1 mm (0.04 in) long and inconspicuous in the sand) even when a female is observed laying them (Knisley 2013, pers. comm.). For these reasons, we do not know how many eggs are laid by tiger beetles in their natural environment or the environmental conditions that affect eggs in the field (Knisley 2013, pers. comm.). In the lab, various species of beetles lay from 20 to 300 eggs and CPSD tiger beetles lay 30–50 eggs per female over several weeks (Knisley 2013, pers. comm.). Most or all eggs are viable and will hatch under suitable conditions, particularly moist soil. Many eggs will hatch only after sufficient rains, since, as with many insects, the egg coat needs to absorb moisture to hatch (Knisley 2013, pers. comm.)

First instar larvae appear in late spring after hatching from eggs that were oviposited in sand the previous late summer or fall (Knisley and Hill 1997, p. 2). The first instar larvae dig small vertical burrows from the sand surface down 6 to 9 cm (2.4 to 3.5 in) into the sand substrate (Conservation Committee 2009, p. 14). After several weeks of feeding at the surface, the first instar larva plugs its burrow opening, sheds its skin (molts), and becomes a larger second instar larva (Conservation Committee 1997, p. 2). The second instar stage lasts several months (again emerging from its burrow and feeding at the surface for a brief period) before developing into a third instar, with most reaching this stage by mid- to late summer (Conservation Committee 1997, p. 2). Larvae continue as second or third instars into fall, and then hibernate in burrows during the winter (Conservation Committee 1997, p. 3). The third instar stage can take 9 months to over a year to reach full development (Conservation Committee 1997, p. 3). After the third instar is fully developed, the CPSD tiger beetle plugs its burrow opening and transforms into a pupa (Pearson and Vogler 2001, p. 34). During the pupal period (stage between third instar and adult emergence), the beetle undergoes a metamorphosis where many of the adult physical structures develop (i.e., wings and flight muscles) (Pearson and Vogler 2001, p. 34). Adults emerge soon after this metamorphosis. The CPSD tiger beetle completes its entire life cycle from egg to adult reproduction to death within 2 or 3 years (Knisley and Hill 1997, p. 3).

Adult Behavior and Ecology

Adults are active on sunny days along the dunes and swale edges. The majority of recently metamorphosed adult CPSD tiger beetles emerge from their burrows in late March to early April, reach peak abundance by May, begin declining in June, and die by August (Knisley and Hill 2001, p. 387). A small proportion of a second adult cohort emerges in early September and remains active into October before digging overwintering burrows (Knisley and Hill 2001, pp. 387–388).

Adult tiger beetles are active predators, attacking and eating prey with their large and powerful mandibles (mouthparts). They can run or fly rapidly over the sand surface to capture or scavenge for prey arthropods. Adults feed primarily on ants, flies, and other small arthropods (Hill and Knisley 1993, p. 13).

CPSD tiger beetle behavior and distribution, like other tiger beetles, is largely determined by their thermoregulation needs. Adult tiger beetles dedicate up to 56 percent of their daily activity towards behavior that controls their internal body temperature (Pearson and Vogler 2001, p. 135). These behaviors include basking (positioning the body to maximize exposure to solar radiation); seeking out wet, cool substrate or shade; and burrowing (Pearson and Vogler 2001, p. 136). Tiger beetles require a high body temperature for maximal predatory activity, and at low body temperatures they become sluggish (Pearson and Vogler 2001, p. 131). Thus, the numbers of adult CPSD tiger beetles observed on rainy or cool, cloudy days are very low (Knisley and Hill 2001, p. 388). Tiger beetles maintain body temperatures near their lethal limits of 47 to 49 °C (116 to 120 °F) (Pearson and Vogler 2001, p. 131), so heat refuge is important (Shutlz and Hadley 1987, p. 363). During peak spring and fall activity, when it is sunny, adult CPSD tiger beetles are usually active early (9 a.m.–2 p.m.) and again in late afternoon (4 p.m.–7 p.m.) (Hill and Knisley 1993, pp. 13–14). They dig and reside in burrows to avoid unfavorable weather conditions such as hot mid-afternoons or cool or rainy daytime conditions (Hill and Knisley 1993, p. 14). Shade provided by vegetative cover is important for CPSD tiger beetle thermoregulation during warm periods (Knisley 2012, pers. comm.).

Adult Dispersal

Dispersal is the movement of individuals from one habitat area to another. The ability to disperse is often important to tiger beetle species because many species inhabit areas such as sand dunes or riverbanks that are prone to disturbance and physical change (Pearson and Vogler 2001, pp. 130–142; see *Factor E (Sand Dune Movement)*). In the proposed rule we stated that we did not have information on the dispersal habits of the CPSD tiger beetle, so we evaluated information for surrogate species that occupy unstable habitats similar to the CPSD geologic formation. Peer review comments on our proposed rule (see Peer Review) indicate that limited dispersal information exists for the species. Available information shows CPSD tiger beetle adults commonly move up to 800 m (2,625 ft) within the dune field over a period of 1 or 2 weeks (Knisley and Gowan, 2004; entire; Knisley 2013, pers. comm.), but we do not know the mechanisms by which this dispersal affects population persistence. Information on the dispersal habits of other species is provided below for comparative purposes.

The Maricopa tiger beetle, *Cicindela oregona maricopa,* is an example of a species that uses dispersal mechanisms to persist in an unstable environment. The Maricopa tiger beetle inhabits moist sandy habitat on the banks of small streams and creeks (Pearson and Vogler 2001, p. 141). Flash flooding periodically scours away this sandy habitat and most of the existing population (Pearson and Vogler 2001, p. 141). These floods redistribute the scoured sand elsewhere, and surviving adult tiger beetles quickly disperse and colonize the newly available habitat (Pearson and Vogler 2001, p. 141). Similarly for the CPSD tiger beetle, the CPSD geologic formation is continually changing as winds redistribute the sands, creating and destroying swale habitat and dispersal habitat within and

between Conservation Areas A and B (see *Factor E Sand Dune Movement* below).

Often, tiger beetle populations depend upon dispersal among separated populations for the survival of individual populations and the species (Knisley *et al.* 2005, p. 557). The extirpation of at least one population of the Northeastern Beach tiger beetle, *Cicindela dorsalis dorsalis,* (federally listed as a threatened species) is partially attributed to the lack of nearby populations and associated dispersal habitats (Knisley *et al.* 2005, p. 557). Similarly, in the CPSD geologic feature, the northern population of the CPSD tiger beetle may persist because of dispersal from the central population, across the CPSD (Knisley and Gowan 2011, p. 9), although as we learned in the peer review of our proposed rule this dependency is uncertain (see *Population Distribution;* Peer Review). In like fashion, the resilience of the central population would be greatly increased if the northern population became self-sustaining with a higher population number, and thus could more easily and frequently contribute to the central population by dispersing across the CPSD.

Larval Behavior and Ecology

Larval CPSD tiger beetles are ambush predators that wait at the mouth of their burrow to capture small arthropod prey when it passes nearby. The daily period of activity is highly variable and influenced by temperature, moisture levels, and season (Knisley and Hill 2001, p. 388; Knisley and Gowan 2008, p. 20). Larvae can be active much of the day during cool or cloudy spring and fall days, except during high wind periods (Conservation Committee 2009, p. 14). Maximal activity occurs in early mornings before the soil becomes dry and warm from the sun and again in late afternoon and evening after the soil has cooled (Conservation Committee 2009, p. 14).

Adult females determine the larval microhabitat by their selection of an oviposition site (Knisley and Gowan 2011, p. 6). Recently hatched larvae construct burrows in the sand at the site of oviposition and subsequently pass through three larval stages before pupating and emerging to the adult form (Conservation Committee 2009, p. 14). Most larvae occur within the swale bottoms and up the lower slopes of the dunes, particularly where the soil or subsoil is moist most of the time (Knisley and Hill 1996, p. 11; Knisley and Gowan 2011, p. 22). The swale vegetation supports the larval prey base of ants, flies, and other prey (Conservation Committee 2009, p. 14). Larvae most often remain in the same burrow throughout their development and only rarely move outside of their burrow to dig a new burrow in a more favorable location (Knisley and Hill 1996, p. 11).

Population Size and Dynamics

Substantial year-to-year population variation is typical of many desert arthropods that are greatly affected by climatic factors such as rainfall (Knisley and Hill 2001, p. 391). Adult abundance in any year is a result of many interacting factors that affect recruitment of the cohort oviposited 2 or 3 years previous (because of a 2- or 3-year life cycle), and also the survivorship of the developmental stages of that year's cohort (Knisley 2001, p. 10).

The central and northern populations were monitored for the last 21 and 15 years (respectively) to yield a yearly adult CPSD tiger beetle population size estimate. In our proposed rule, we presented an adult population size estimate based solely on data collected from the central population from 1992 to 1997, and after 1997 the adult population size estimate was based on both populations. Information reported to us in the peer review process (see Peer Review) revealed that it was not appropriate to report population estimates from both of these periods on the same graph due to changes in population sampling methods (Knisley and Gowan 2013, pp. 7–9). Furthermore, the currently used (1998–2013) removal method for population estimates is very reliable while the previously used (1992–1997) mark–recapture method significantly overestimated abundance, often 2–3 fold. Consequently, since the estimates made in 1992 to 1997 are overestimates, comparisons of population size before and after 1998 are not valid (Knisley and Gowan 2013, pp. 7–9). In this document, we focus on population estimates from 1998 forward because of these reasons, and because this time period encompasses the lowest and highest population estimates recorded.

Population numbers fluctuated greatly over the 1998 to 2013 timeframe, ranging from a high of 2,944 in 2002 to a low of 558 in 2005 (Figure 2). The total adult population size estimate in 2013 was 2,494 (Knisley 2013, pers. comm.). Population monitoring results indicate a low, yet stable to increasing, population size since 2003 that contrasts with highly variable population estimates in previous periods (Knisley and Gowan 2011, pp. 7–8; Knisley and Gowan 2013, p. 8; Knisley 2013, pers. comm.).

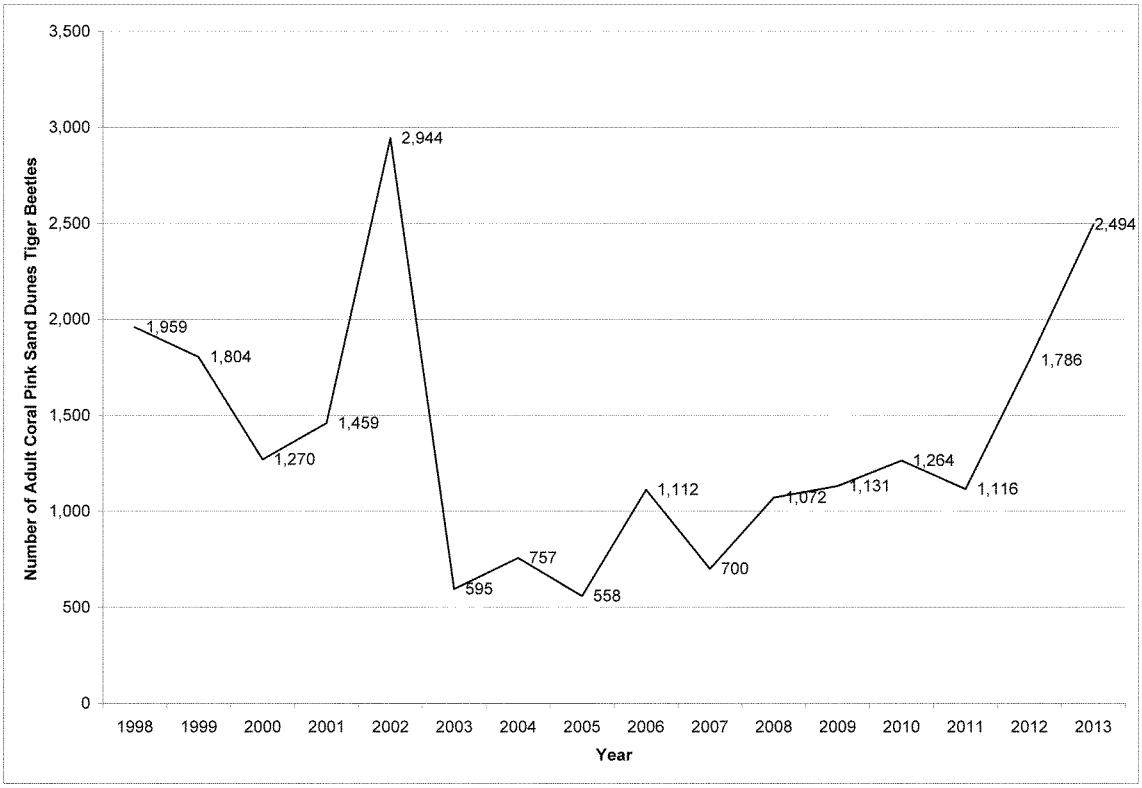


Figure 2. Adult CPSD tiger beetle population size estimate at Coral Pink Sand Dunes from 1998 to 2013 (data from Knisley and Gowan 2013, p. 8; Knisley 2013, pers. comm.).

Population Viability Analysis

The CPSD tiger population viability analysis (PVA) in the proposed rule demonstrated that reductions in growth rate and carrying capacity (albeit a moderate effect on PVA compared to growth rate) increase the probability of extinction for this species (77 FR 60208, October 2, 2012). Since publication of the proposed rule, we have further investigated the appropriateness of using PVA models to inform the CPSD tiger beetle listing decision and rulemaking process. We have determined that PVA analysis should not be used as an absolute prediction of the likelihood of species extinction due to the intrinsic limitations of any model that uses incomplete information to predict future events (Reed et al. 2002, pp. 14–15). Instead, PVA analysis is more useful to direct conservation actions or decide among a suite of alternative management strategies (Schultz and Hammond 2003, p. 1376; Beissinger *et al.* 2006, p. 13). Thus, we do not further discuss PVA analysis of CPSD tiger beetle populations, and alternatively will use the modeling tool in the future to direct species management options.

Summary of Comments and Recommendations

In the proposed rule published on October 2, 2012 (77 FR 60208), we requested that all interested parties submit written comments on the proposal by December 3, 2012. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. A newspaper notice inviting general public comment and advertisement of the information meeting and public hearing was published in the Southern Utah News. We received requests for a public hearing, which was held in Kanab, Utah, on May 22, 2013. We reopened the comment period on May 6, 2013 (78 FR 26308), to accept comments on several rule-related documents (see Previous Federal Actions) and for comments received during the public hearing. The final comment period closed June 5, 2013.

During the two comment periods for the proposed rule, we received more than 1,000 comment letters directly addressing the proposed listing of the CPSD tiger beetle with designated critical habitat. Submitted comments were both for and against listing the species with designated critical habitat. During the May 22, 2013, public hearing, fewer than 10 individuals or organizations commented on the proposed rule, all of which were opposed to the proposal. All substantive information provided during the comment periods has either been incorporated directly into this withdrawal or addressed below.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from three appropriate and independent specialists with scientific expertise that included familiarity with tiger beetles and their habitat, biological needs, and threats. We received responses from two of the peer reviewers.

We reviewed all comments received from the peer reviewers for substantive

issues and new information regarding the listing of the CPSD tiger beetle. Peer reviewer comments are addressed in the following summary and incorporated into this withdrawal document as appropriate.

Peer Review Comments

(1) Comment: One peer reviewer said that questions exist about how the northern population fluctuates or is sustained. The peer reviewer stated that dispersal from the central population as the factor that sustains the northern population; however, this theory is uncertain and there is no solid evidence for it except that adults disperse when the central population numbers are high. The peer reviewer stated that at these times, more adults are observed in peripheral areas. The peer reviewer put forth an alternative explanation that the fairly consistent numbers of larvae (although highly variable) produce and sustain the presence of small numbers of adults seen there, and thus the northern population could exist independent of dispersal. The peer reviewer noted that regardless of which theory is correct, the area between these two populations can provide a corridor for dispersal. The peer reviewer further stated that monitoring information shows CPSD tiger beetles can disperse as far as 800 m (2,625 ft) within a week or less and that no information is available to indicate how important the area between A and B is for dispersal, so it is uncertain if and how many adults might be killed by ORV activity in these areas.

Our Response: Although the northern population is not self-sustaining, it provides an important component to the conservation of CPSD tiger beetle. At this time, we do not have enough information to determine whether the northern population maintains itself at a low level via natural reproduction and recruitment, or is sustained by dispersing CPSD tiger beetles from the central population (see *Population Distribution* under Background). Regardless, the habitat between Conservation Areas A and B provides important habitat for the species for dispersal and potential colonization and will be important to offset the effects of climate change. A dispersal corridor is, therefore, being permanently protected in this area by 14 habitat polygons,that were established through the 2013 CCA Amendment (see Ongoing and Future Conservation Efforts).

(2) Comment: One peer reviewer asked why the Service needed to designate critical habitat for the CPSD tiger beetle when critical habitat is already designated for Welsh's milkweed.

Our Response: Critical habitat designation is established for individual species based on the habitat necessary for the species' sustained survival, including primary constituent elements particular to an individual species. However, this document withdraws the proposed listing for the CPSD tiger beetle; therefore, no critical habitat is being designated.

(3) Comment: One peer reviewer indicated that fairly extensive CPSD tiger beetle surveys were conducted in 2012 for the area between the central and northern populations, but no adults were found.

Our Response: Published information regarding this sampling was not available prior to the time that the proposed rule was finalized for publication. We incorporated the 2012 survey information into this final determination.

(4) Comment: One peer reviewer questioned whether the northern occurrence of CPSD tiger beetle should be referred to as a population.

Our Response: We believe that this occurrence of the species is properly described in the proposed rule as it is a localized grouping of the species that has been observed separately from the central population for over the last 15 years. However, we do not consider the northern population to be self-sustaining because only a small number of adults and larvae have been found at this location since 1998, and insect populations typically need to have larger populations to be considered self-sustaining (see Small Population Effects under *Factor E.*).

(5) Comment: One peer reviewer provided information that CPSD tiger beetles are present in smaller numbers south and east of Conservation Area A. The reviewer noted the proposed rule incorrectly indicated that CPSD tiger beetles are absent from the south-central and southeastern portions of Conservation Area A and the general area south of Conservation Area A.

Our Response: CPSD tiger beetle distribution was considered in the 2013 CCA Amendment and updated for this determination and withdrawal of the proposed rule.

(6) Comment: One peer reviewer stated that the information in the proposed rule regarding surveys in northern swales is not fully accurate; regular surveys were completed in the northern area swales, and adults or larvae were found each year for the past 5–7 years including 2012. The peer reviewer noted that in the 1990s, extensive surveys over the whole northern area confirmed absence of adults in most of the swales; thus, more recent surveys targeted those few swales that supported adults or larvae. The peer reviewer stated that enough surveys have been completed in Conservation Area B to confirm the absence of CPSD tiger beetles and habitat in all but a small part of the area, and that area is marginal habitat.

Our Response: CPSD tiger beetle distribution information was updated based on this information (see *Population Distribution* under Background). Although the quality of the habitat in Conservation Area B may not currently allow for large populations of CPSD tiger beetles to develop, the presence of the species in low numbers indicates that this area is important to conservation of the species.

(7) Comment: One peer reviewer recommended updating the information in the proposed rule regarding collection of CPSD tiger beetles by amateur beetle collectors. The reviewer is familiar with general amateur collector behavior in the United States and stated the following regarding the effects of this activity on CPSD tiger beetles: (1) Amateur collectors have taken adult CPSD tiger beetles in recent years; (2) there are many tiger beetle collectors out there, possibly a hundred or more and perhaps increasing; (3) most want to collect all of the U.S. species, and it is virtually impossible for State park personnel to prevent this; however, it is likely that most collectors will take only a small number of adults with limited effects on the population.

Our Response: CPSD tiger beetle amateur collecting information was updated based on this information (see *Factor B.*).

(8) Comment: One peer reviewer questioned if it was necessary to protect Conservation Area B given the small numbers of tiger beetles in this area.

Our Response: Although the proposed rule states that the CPSD tiger beetle population at Conservation Area B is not self-sustaining, the species is still present in this area and should continue to receive the protection provided by Conservation Area B. Continuing to protect the species in this location results in improved long-term habitat conditions for the CPSD tiger beetle, resulting in increased species' resiliency, which makes the species less susceptible to threats such as climate change and drought, demographic and environmental stochasticity, and catastrophic events (see *Factor E. Climate Change and Drought* and *Small Population Effects*). Continued protection of Conservation Area B is discussed in this withdrawal document

and included as a conservation measure in the 2013 CCA Amendment (see Background, Ongoing and Future Conservation Efforts, and PECE Analysis).

(9) Comment: One peer reviewer stated that the area between Conservation A and B has not been confirmed as a dispersal corridor.

Our Response: The proposed rule stated that this area it is likely a dispersal corridor. We have updated this information to reflect that we are uncertain to what level this area acts as a dispersal corridor, but that based on the life history of similar tiger beetle species, this area should be protected for CPSD tiger beetle dispersal and colonization. Further, the establishment and monitoring of the additional habitat polygons in this area will provide additional information on the importance and usage of this area by the CPSD tiger beetle.

(10) Comment: One peer reviewer concluded that the CPSD tiger beetle must receive significant protection because of its small population size and very limited geographical range. The peer reviewer stated that over the past decade, populations have been as low as several hundred individuals and the core habitat for this population consists of just a few dune swales located within the CPSD geologic feature. The peer reviewer noted this core habitat is currently protected from ORV use, but this does not negate the inherent risk posed by small population size and limited habitat.

Our Response: The Service agrees that the CPSD tiger beetle should receive protection in part because of its small population size and very limited geographical range. Conservation actions have been developed and implemented as part of the 2013 CCA Amendment to address the risk posed by ORV use, small population size, and limited habitat. In addition, as a result of the existing conservation efforts, CPSD tiger beetle numbers have generally been increasing for the past 8 years.

(11) Comment: One peer reviewer stated that the critical habitat identified in the proposed rule is correct, with the most critical habitat currently located in the southern end of the area (''Conservation Area A'').

Our Response: This document withdraws the proposed listing of the CPSD tiger beetle. Therefore, critical habitat will not be designated for this species.

(12) Comment: One peer reviewer and another commenter recommended that the Service explore opportunities to expand the natural range of the beetle beyond the CPSD geologic feature.

Our Response: We agree that range expansion should be pursued as a goal for CPSD tiger beetle conservation, and actions to achieve this objective are detailed in the 2013 CCA Amendment.

(13) Comment: One peer reviewer concluded that the protected areas described in the proposed rule (now called ''Conservation Area A'' and ''Conservation Area B'', with Area A being the most important) should be expanded to provide adequate protection from ORV use. However, this reviewer also concluded that the beetle would still face extinction due to naturally small population sizes and limited habitat, and the additional protection provided by the expanded conservation areas would not materially improve the species' chances for survival.

Our Response: We agree that expansion of CPSD tiger beetle protective areas should be pursued as a goal for the species' conservation, and actions to achieve this objective are included and being implemented by the 2013 CCA Amendment. However, as discussed in the proposed rule and this withdrawal document, we do not consider small population size alone to be a threat. A species that has always been rare, yet continues to survive, could be well equipped to continue to exist into the future. Many naturally rare species have persisted for long periods within small geographic areas, and many naturally rare species exhibit traits that allow them to persist despite their small population sizes. Consequently, the fact that a species is rare does not necessarily indicate that it may be in danger of extinction.

(14) Comment: One peer reviewer recommended that the Service expand Conservation Area A to include: (1) The two dune ridges to the south (termed ''the D swales'' in recent reports by Knisley and Gowan); and (2) swales immediately to the east and north, numbered as follows in the 2013 CCA Amendment: 6, 7, 8, 12, 15, 16, 19, 20, 21, 22, 23, 25, and 27. The peer reviewer further stated that these swales should not be protected as individual ''islands.'' Instead, they should be included in one expanded, contiguous conservation area (i.e., the boundary should be established around the entire set of swales).

Our Response: Generally, this recommendation is being adopted as part of the 2013 CCA Amendment, although not all swales will be incorporated into Conservation A so that safe travel corridors can be maintained for ORV users within the CPSD feature. Although the entirety of the D swales is not incorporated into Conservation Area A, the conservation committee agreed to protect this swale habitat as isolated polygons. Swales 6 and 7 will be protected in an isolated polygon as will swale 8 and 9, and a portion of swale 12 will be protected. The remainder of the swales and the lands in between them will be incorporated into Conservation Area A.

(15) Comment: One peer reviewer noted that because the dune field is dynamic, the boundaries of newly protected habitat will need to be adjusted over time as specific dunes become either more or less suitable for tiger beetles. The peer reviewer stated that continued monitoring of the distribution and abundance of the beetle, with the potential to expand or reduce the areas off-limits to ORVs, is necessary, and adaptive management of tiger beetle habitat is key to reducing extinction risk.

Our Response: We agree with this approach for CPSD tiger beetle conservation and adaptive management. Actions to achieve this objective are detailed in the 2013 CCA Amendment (see Ongoing and Future Conservation Efforts).

(16) Comment: One peer reviewer noted that the description and analysis of the biology, habitat, population trends, historical and current distribution of the species, and factors affecting the species contained in the proposed rule are accurate. The peer reviewer further stated that the proposed rule cites all the necessary and pertinent literature to support the subsequent assumptions, arguments, and conclusions.

Our Response: Comment noted.

State and County Comments

(17) Comment: The Utah Governor's Office does not agree that listing the species and designating critical habitat is necessary to ensure the protection of the CPSD tiger beetle. The Utah Governor's Office stated that instead, conservation of the species should continue under direction of the 1997 CCA, its reauthorization in 2009, and the 2013 Amendment to this agreement. The Utah Governor's Office provided examples of the effectiveness of the CCAs, including: establishment of two conservation areas that prohibit ORV use; annual monitoring; species life-history research; watering research; genetics studies; population viability analysis; protection for the species via BLM and Utah State Parks law enforcement; an educational program; and development of a translocation protocol. The Utah Governor's Office

also stated that the collaborative partnership of the CCA has demonstrated a track record of addressing threats to the CPSD tiger beetle based on the best available information, and thus listing is not necessary to ensure the species' continued existence into the future.

Our Response: The Service is signatory to the 1997 CCA and 2009 reauthorization, and we have worked closely with the other signatories to develop and implement the additional conservation measures in the 2013 CCA Amendment. We agree that the 2009 CCA and the 2013 CCA Amendment provide significant conservation actions to benefit CPSD tiger beetle. As part of this rulemaking process, we conducted an evaluation consistent with our Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) (68 FR 15100) to evaluate the 2013 CCA Amendment. PECE analysis was performed on the conservation actions in the 2013 CCA Amendment to determine if these actions, which have yet to be implemented or to show effectiveness, will contribute to making listing CPSD tiger beetle as a threatened or endangered species unnecessary. The results of that analysis determined that there will be certainty of implementation (for those measures not already implemented) and certainty of effectiveness for the conservation actions specified in the 2013 CCA Amendment. Thus, we have determined that the measures will be effective at eliminating or reducing threats to the CPSD tiger beetle and the species no longer meets the definition of a threatened or endangered species.

(18) Comment: Utah congressional representatives requested that we: (1) Extend the original comment period for the proposed rule by 90 days; (2) extend the date by which the public can request a hearing on the proposal until 60 days into the 90-day extension; and (3) make all the resources cited in the proposed rule readily available on the Service Web site.

Our Response: The Service is committed to working closely with the public, governmental agencies, and nongovernmental groups to make certain that all comments, concerns, and relevant information are considered in our rulemaking process. However, court-mandated deadlines and statutory limitations of the Act limit the temporal flexibility we have to administer this rulemaking process. For example, the Service's multi-district litigation settlement (*In re Endangered Species Act Section 4 Deadline Litigation,* No. 10–377 (EGS), MDL Docket No. 2165 (D.D.C May 10, 2011)) mandates completion of the Coral Pink Sand Dunes tiger beetle rulemaking within the standard timeline set forth in the Act. In addition, the time period by which the public can request a public hearing (45 days following publication of a proposal) is specified in the Act and cannot be extended. For these reasons, we were not able to provide a 90-day extension to the original proposed rule comment period. However, on May 6, 2013, we published in the **Federal Register** a notice of availability of the draft economic analysis for the proposed rule as well as other documents pertinent to the listing. We also reopened the comment period on the proposed rule for 30 days, and thus we accepted additional comments on the CPSD tiger beetle rulemaking. The two comment periods included: (1) October 2, 2012, to December 3, 2013; and (2) May 6, 2013, to June 5, 2013.

After the publication of the proposed rule in early October 2012, the Service received an informal request from Kane County Commissioners for a public hearing. In response to this request, we held an informational meeting and a public hearing on May 22, 2013, in Kanab, Utah. Notification of the meeting and the hearing was provided in the **Federal Register** and the Southern Utah News newspaper, which covers the local area.

The Service realized that we cited a significant number of sources for this rulemaking, and we wanted to ensure that those who wished to meaningfully comment had access to this information. Thus, during the first comment period (October 2012) the Service made available on the Federal eRulemaking Portal all information sources cited in the proposed rule. These documents can be found at: *http://www.regulations.gov* with a search for Docket No. FWS–R6–ES–2012–0053.

(19) Comment: One commenter cites Knisley (2011, entire) as concluding that there is a lack of scientific evidence of the impacts of human-caused disturbances on CPSD tiger beetles, and available information is largely anecdotal and observational. In addition, the commenter indicated that the proposed rule acknowledges that the last 9 years of population data suggests that the threat of ORV use will not cause imminent extinction of the CPSD tiger beetle. The commenter was concerned that the listing of the CPSD tiger beetle could result in the closure or restriction of over 70 percent of the dunes to ORVs.

Our Response: Although Knisley (2011, entire) stated that there is relatively little literature or studies on the effects of anthropogenic disturbances on tiger beetles, he also reasoned that the sum of this information is especially important for assessing habitat disturbance. Overall, we used the best scientific and commercial information available for the purpose of making a listing determination for the CPSD tiger beetle, and we concluded that the species does not require listing as a threatened or endangered species under the Act.

(20) Comment: One commenter concluded that our determination to protect the dune area between Conservation Areas A and B is based on speculative, anecdotal, and opportunistic information. The commenter stated that, by the scientists' own admission, little study of the areas outside the two conservation areas has been done in the past 20 years. However, the commenter notes that the Service supposes that beetles might be killed by ORVs operating between the two conservation areas, thus ORVs cause impacts to population dispersal. The commenter questioned the evidence to support the existence of a dispersal corridor between Conservation Areas A and B. The commenter indicated that furthermore, the Service previously stated in their Candidate Notice of Review (CNOR) for the species that, ''The majority of traffic is concentrated in the play areas, and ORV use in these areas has no direct impact on the tiger beetle. The play areas have never been observed to support beetles, and likely did not have suitable habitat prior to ORV use due to vegetative succession, high winds and dune movement. Therefore, ORV use is likely only directly impacting the areas immediately surrounding the Conservation Areas.''

Our Response: As stated in our response to Comment (1), additional information has been included in this determination and withdrawal document (see Background) stating that it is unclear if the Conservation Area B population is being maintained via dispersal from Conservation Area A. Regardless of whether the northern population maintains itself via natural reproduction and recruitment, by dispersing CPSD tiger beetles from the central population, or by some combination of the two, the dispersal corridor provides important habitat for the species for dispersal and potential colonization and will be important to offset the effects of climate change. The dispersal corridor area between Conservation Area A and B is, therefore, being permanently protected by 14 new habitat polygons that will be established as part of the 2013 CCA Amendment. Both this withdrawal document and the 2013 CCA Amendment incorporate new

information that became available after the publication of the CNOR in 2011.

(21) Comment: State lawmakers are concerned that in the past researchers have been studying the CPSD tiger beetle without any input from the land managers with regard to the information they need in order to make sound management decisions. The commenters noted that working collectively, the Service, BLM, Utah State Parks, and Kane County can implement strategies and management objectives to improve the CPSD tiger beetle population. The commenters recommended that the Service withdraw the proposal to list the CPSD tiger beetle and continue using the existing CCA as an adaptive management strategy to improve CPSD tiger beetle populations.

Our Response: Management, research, and education efforts for the CPSD tiger beetle have been coordinated with land managers. For more than 15 years, CPSD tiger beetle management, research, and education efforts have been funded by BLM and executed in coordination with BLM and Utah State Parks land managers as well as the conservation committee that is composed of these agencies as well as the Service and Kane County. As part of the rulemaking process, we used the PECE process to evaluate the 2013 CCA Amendment. We determined that the CCA measures will be effective at eliminating or reducing threats to the CPSD tiger beetle and the species no longer meets the definition of a threatened or endangered species.

(22) Comment: State lawmakers stated that decisions that will have such a major impact on the land managers and the local economy should not be made in a regulatory vacuum. They stated that they would have liked greater transparency during the drafting of the CCA, which could have precluded the need for the proposed rule. State lawmakers also expressed concern that the current dune field was not considered as an exclusion area for critical habitat.

Our Response: Throughout the Service's process to evaluate the CPSD tiger beetle for listing and designation of critical habitat, the public has had opportunity to provide input. The Service requested information from the public as part of our evaluation, including two public comment periods following the publication of our proposed listing and critical habitat rule (77 FR 60208 and 78 FR 26308). The drafting of the 1997, 2009, and 2013 CCAs were also transparent processes that involved the signatory agencies of Kane County, Utah State Parks, BLM, and the Service. The comment relative to critical habitat designation is no longer relevant because we are withdrawing our proposed rule to list the CPSD tiger beetle.

(23) Comment: Multiple commenters stated that the economy of southern Utah depends heavily upon tourism and that limiting or closing the CPSD State Park to ORVs could have a significant adverse effect on the economies of Kanab and Kane County. Commenters stated that economic effects should be evaluated more thoroughly. In addition, commenters stated that the majority of CPSD State Park visitors come to participate in riding or observing ORVs across the sand dunes and surrounding areas and significant restriction of ORV use at CPSD would force the State of Utah to close CPSD State Park. Commenters indicated such a closure would significantly impact the economies in the surrounding region. Commenters stated estimates of total positive economic impact of the CPSD State Park vary from $733,584 to $780,050.

Our Response: As discussed in the economic analysis, ORV restrictions resulting from the proposed listing of the species and designation of critical habitat are not expected to result in changes in visitation to CPSD State Park. Future shifting of dunes has the potential to restrict access such that ORV visitation would be expected to decrease. If ORV use decreased sufficiently to cause CPSD State Park to close, the resultant loss of $780,050 in economic output associated with CPSD State Park is less than two-tenths of 1 percent of the county's total output. Thus, limiting or closing ORV use would not significantly affect the county's economy, although individual businesses may be impacted more than others. Regardless, this document withdraws our proposed rule to list the CPSD tiger beetle and designate critical habitat for the species.

(24) Comment: Kane County asked if the boundary lines along the southern and northern portion of Conservation Area A, as delineated by Figure 4 of the 2012 Conservation Studies Final Report, were intended to eliminate ORV traffic from traveling along the east side of the habitat areas.

Our Response: The recommendation of the researchers who wrote the report was to eliminate ORV traffic from traveling along the east side of Conservation Area A. However, this closure was not incorporated into the 2013 CCA Amendment due to concerns for human safety, and the related expansion of Conservation Area A has allowed for the continued use of ORVs in these areas.

(25) Comment: Kane County asked us to discuss the survival rates of the CPSD tiger beetle eggs that are laid in the late summer and hatched in the spring of the following year, as well as the number of eggs that are viable/fertilized when they are laid. They also asked for information on the level of predation of the eggs or the loss from disease or parasites.

Our Response: We are not aware of any additional published information regarding CPSD tiger beetle egg ecology beyond what was provided in the proposed rule. However, additional information regarding CPSD tiger beetle egg ecology was provided by Dr. Barry Knisley via personal communication and has been incorporated into this final determination and withdrawal document (see *Life History* under Background).

(26) Comment: Some commenters noted that the Environmental Assessment that the Service prepared for the critical habitat designation stated that the Service does not have information on the dispersal habits of the CPSD tiger beetle, and it only presented population monitoring information from the central and northern populations. The commenters recommend that additional study should be done on the CPSD tiger beetle dispersal habits and population dynamics and that, if a decision to list the species under the Act were made now, it would be with incomplete information.

Our Response: The Act requires us to use the best commercial and scientific information available to make listing determinations. The best available information is often incomplete. As such, dispersal habitat of other tiger beetle species comprised the best information available at the time and was used to infer what the dispersal characteristics are of the CPSD tiger beetle. Similarly, past monitoring of the species primarily occurred at the central and northern populations. Additional studies are being planned through the 2013 CCA Amendment to better assess the dispersal habits and population dynamics of the CPSD tiger beetle.

(27) Comment: The commenters referred to Page 14, section 2.1.9 of the Environmental Assessment and asked what are the other natural or manmade factors that are specifically referred to and how are these evaluated by the EA or the process of managing the CPSD tiger beetle through the CCAs.

Our Response: This section of the Environmental Assessment that was prepared for the critical habitat designation is a summary of the significant threats identified in the proposed rule that are affecting the

CPSD tiger beetle. The phrase ''other natural or manmade factors affecting its continued existence'' refers to listing Factor E, and includes: (1) Sand dune movement; (2) climate change and drought; (3) small population effects; and (4) cumulative effects of all threats that may impact the species. In this withdrawal, we determined that these ''other natural or manmade factors'' are not a threat to the CPSD tiger beetle. These factors are being managed and their threat is reduced through the 2013 CCA Amendment by protecting key occupied, dispersal, and future colonization habitats for the species throughout the CPSD geologic feature.

(28) Comment: The commenters stated that the area proposed as designated critical habitat includes the entirety of the northern 80 percent of the CPSD geologic feature, but much of this area does not currently support the CPSD tiger beetle. They requested an explanation of why the entirety of this area was proposed as critical habitat.

Our Response: CPSD tiger beetles are primarily found in conservation areas in the northern and central areas of the CPSD geologic feature; however, the species is found in significant numbers outside of Conservation Area A and thought to disperse from the central area to the northern area. Because CPSD tiger beetle habitat is dynamic and changes based on the effects of wind-driven dune movement, the habitat adjacent to occupied swales was included in the proposed critical habitat designation. In addition, habitat between the central and northern populations was included in the proposed critical habitat designation to include habitat that could be used for dispersal and could be colonized by new populations, thus providing redundancy for current populations and resiliency to climate change and drought. Regardless, we have determined that it is appropriate to withdraw the proposed listing rule for the CPSD tiger beetle, and critical habitat will not be designated for this species.

(29) Comment: Commenters expressed concern that designation of critical habitat may not include all habitat eventually determined as necessary to recover the species.

Our Response: As explained in the proposed rule, proposed designated critical habitat for this species was delineated to include the physical and biological features that are essential to the conservation of the CPSD tiger beetle. Furthermore, the species was never known to occur outside of the CPSD geologic feature, and we concluded that designating critical habitat outside of the historical range of the species was not necessary to conserve this species.

(30) Comment: One commenter found the economic analysis seriously flawed in that it focuses mainly on the costs of the Act's Section 7 consultations, development of incidental take permits (federal and state enforcement), and consumer surplus losses. The commenter requests that the analysis investigate and analyze the effects on local businesses in Kane County and surrounding areas.

Our Response: Although the primary purpose of the economic analysis is to identify and value the direct coextensive impacts of the listing and critical habitat designation, the analysis also considers the indirect impact of the proposed action on the regional economy in Section 3.2 and small businesses in Section 6 (USFWS 2013, entire). The analysis recognizes that particular businesses catering exclusively to ORV users may experience larger impacts relative to other businesses; however, the total impact to the county is not expected to be significant because (1) the proposed action has the potential to restrict ORV use but does not eliminate ORV use, (2) any decline in visitation to CPSD State Park has the potential to increase visitation to other ORV areas resulting in benefits to businesses in those areas, and (3) the county contains several other tourism attractions that account for the majority of the local tourism-based economy.

(31) Comment: The commenter states that the conservation benefits section of the Environmental Assessment implies that the decision has already been made to close the CPSD State Park to ORV traffic. The commenter requests that prior to finalizing the Economic Analysis, the Environmental Assessment should have been reviewed for its analysis and conclusions.

Our Response: It should be noted that the proposed rule did not suggest eliminating ORV use. The conservation benefits section of the draft environmental assessment does not indicate the extent to which ORVs would be restricted as it had not yet been determined. However, the proposed rule to list the CPSD tiger beetle is being withdrawn, and critical habitat is not being designated. The 2013 CCA Amendment provides some increased ORV restrictions and protection for the CPSD tiger beetle.

(32) Comment: One commenter suggested that the purpose of the economic analysis is to determine what is best for the CPSD tiger beetle and still allow all forms of recreation on the CPSD.

Our Response: The purpose of the economic analysis is to evaluate the potential economic impacts associated with the proposed critical habitat designation for CPSD tiger beetle. The analysis considers current and future impacts to both the economic efficiency and distribution that may result from efforts to protect the CPSD tiger beetle and its habitat.

(33) Comment: One commenter stated that the revenue generated by ORV use in Kane County, and particularly at the CPSD State Park, should be evaluated in more detail than is presented in the economic analysis.

Our Response: The economic analysis provides information regarding the revenue generated by ORV use in Utah on page 3–8. It should be noted that the proposed action had the potential to restrict ORV use but did not propose to eliminate ORV use. However, under this withdrawal, the species is not being listed under the Act and critical habitat is not being designated.

(34) Comment: The commenter finds the definition of ''surplus losses'' in the economic analysis to be highly subjective and of little value when determining financial losses to local businesses.

Our Response: The definition of and methodology for consumer surplus loss estimates presented in the economic analysis are widely recognized in the field of economic analysis. Consumer surplus loss measures losses only to consumers, not to businesses. The objective of the economic analysis is to determine the economic impact of the proposed rule. The proposed action was not anticipated to have a significant impact overall on local businesses given the limited number of visitors and businesses impacted (see Section 3.2). However, under this withdrawal, the species is not being listed under the Act and critical habitat is not being designated.

(35) Comment: The commenter requests clarification of the following statement from the economic analysis: ''costs associated with uncertainty and misperception of the regulatory burden imposed by critical habitat designation'' and a definition of ''misperception of regulatory burden.''

Our Response: The misperception of regulatory burden refers to the difference between the actual restrictions imposed as a result of the proposed critical habitat designation and the way the public perceives the restrictions. In some cases, the public may perceive restrictions to be above and beyond the actual restrictions implemented as a result of the proposed action. Costs associated with

uncertainty and misperception of the regulatory burden imposed by critical habitat refers to any economic impacts resulting from this difference in actual versus perceived restrictions.

(36) Comment: The commenter states that the economic analysis did not include contact with business owners (motels/hotels, gas stations, mechanics, restaurants, or ATV rental businesses) in Kane County, or else did not provide documentation of those contacted.

Our Response: We contacted 10 hotels, 1 RV Park, and 2 ORV rental businesses in Kanab, UT, to collect information for the economic analysis. Only three of the hotels responded to our calls.

Federal Agency Comments

(37) Comment: The BLM stated that implementation of the CCA has been an effective tool in the management and recovery of the CPSD tiger beetle. They indicated as habitat management changes become necessary, such as adjustments in conservation area boundaries due to shifting dunes or tiger beetle population migration, these actions are easily accommodated by the CCA. The BLM is concerned that, should the beetle become listed, the management flexibility currently provided by the CCA would be unavailable and replaced by the more formal mandates of the Act.

Our Response: The Service makes listing determinations solely on the basis of the best scientific and commercial data available after conducting a review of the status of the species and after taking into account efforts to protect the species. Thus, the issue of future management flexibility cannot be taken into consideration as part of the determination. Regardless, our decision in this document is to withdraw the listing proposal for the CPSD tiger beetle. The beetle will continue to be managed under the 2013 CCA Amendment.

(38) Comment: The BLM noted that the proposed designated critical habitat located on BLM-administered lands is located within the Moquith Mountain Wilderness Study Area (WSA). They stated that ORV use is restricted in the WSA to open dune areas, and no land disturbances or uses that would affect the wilderness characteristics of the area are allowed. They indicated that it can reasonably be assumed that no BLM-authorized activities would adversely modify the proposed critical habitat for the CPSD tiger beetle.

Our Response: The proposed rule states that the northern portion of the CPSD feature is located within the WSA, and that the northern population of the CPSD tiger beetle is located in Conservation Area B, which is a 150-ha (370-ac) protected area within the WSA. Our decision in this document is to withdraw the proposed rule to list the CPSD tiger beetle; therefore, the critical habitat designation is also withdrawn.

(39) Comment: The BLM stated that the Service's not warranted 12-month finding on four Great Basin butterflies gave significant consideration to BLM's management regulations and policies, which included: (1) Numerous laws, regulations, and policies that have been developed to assist the agency in management of their lands, including National Environmental Policy Act (NEPA) analysis; (2) BLM's usage of Resource Management Plans (RMPs) to provide a framework and programmatic guidance for site-specific activity plans regarding livestock grazing, oil and gas development, travel management, wildlife habitat management and other activities; and (3) BLM policy and guidance for species of concern occurring on BLM-administered lands as addressed under BLM's 6840 Manual ''Special Status Species Management''. As a result of the conservation benefit that these regulations and policies provide to CPSD tiger beetle, the Service should not list the species.

Our Response: The Service described the BLM's management regulations and policies in the proposed rule and acknowledged the conservation benefits these actions provide to the CPSD tiger beetle. We are withdrawing the proposed rule to list the CPSD tiger beetle in large part due to conservation measures that are ongoing and have been implemented through the CCA, including the most recent 2013 CCA amendment, as described in this withdrawal.

(40) Comment: The BLM agrees that ORV use is a factor affecting CPSD tiger beetle population numbers and habitat. However, the BLM stated greater credence should be given to climate-related factors that are beyond the control of any management agency, especially rainfall. The BLM cited Dr. Knisley's 2008 study, ''As a result of our long term studies with this beetle and additional experience with tiger beetles, we have become convinced that rainfall is the primary factor controlling population size and the changing dynamics.''

Our Response: Although rainfall amounts, drought, and other climate-related factors cannot be directly affected by management actions, corresponding conservation actions such as controlling ORV use can have a positive effect on the CPSD tiger beetle and its habitat, thus making the species more resilient to climate-related factors.

Likewise, increasing the number of populations of the species on the landscape increases the species' redundancy by allowing for geographically distinct populations that have the potential of being acted on separately by climatic threats. The 2013 CCA amendment addresses all threat factors and provides appropriate conservation actions to address ORV use and impacts to habitat caused by climate change

(41) Comment: BLM agrees that the population trend is currently stable to increasing. BLM does not think that the assumption can be made that the overall trend since 1992 is in decline as there was a major change in inventory and monitoring methods in 1997. BLM states that any discussion on population trends should be based only on data obtained since 1997, as the method used prior to that time tended to overestimate population numbers and cannot be compared to the current inventory method. BLM notes that as Dr. Kinsley notes in his reports, comparisons of population size before and after 1998 are not valid.

Our Response: We agree with this interpretation of CPSD population data and have adjusted our analysis accordingly (see *Population Size and Dynamics* in Background).

(42) Comment: BLM suggested that the Service provide information with Figure 2 in the proposed rule, which shows annual and monthly precipitation amounts. They stated that the correlation between precipitation and beetle populations is striking and lends credibility to the thesis that climate is the primary factor in beetle population trends. BLM is planning to install a climate monitoring station at the CPSD feature to ensure availability of more accurate climate data.

Our Response: We agree that precipitation is a significant natural environmental factor affecting the species, and we support the addition of climatic data in the future to associate with CPSD tiger beetle population trends. We believe our rulemaking process properly evaluated the potential effects of precipitation and climate change.

(43) Comment: BLM concludes that ORV use is a rather minor impact compared to natural climatic events and patterns. They stated that the discussion in the proposed rule leads the reader to understand that ORV use is the major cause of population decline, which is not the case. The BLM indicated that the issue is further complicated by the discussion on page 60217 (first column,

second paragraph) in which the Service states that, ''We do not have specific data regarding the level of impact ORVs have on the CPSD tiger beetle in the unprotected area between Conservation Area A and B.'' They stated that more study is needed to determine the actual impact that ORV use has on the beetle.

Our Response: ORV use was the most significant human-induced threat to CPSD tiger beetle that was identified in the proposed rule. It is true that we do not have specific data regarding the level of impact of ORVs. We agree that precipitation is a significant natural environmental factor affecting the species. However, we have determined that neither factor results in a need to list the species as threatened or endangered, and we are withdrawing our proposed rule.

(44) Comment: BLM asked what the precipitation pattern was the year preceding the information provided on Page 60217 of the proposed rule that, ''The year following removal of ORV use, the tiger beetle density on this swale more than doubled to 150 beetles. . . .'' BLM wondered if the precipitation pattern could have been a factor in the increase of beetle numbers.

Our Response: We have included the precipitation information in our discussion of ORV use in this document (see ORV use under *Factor A*.).

(45) Comment: The BLM stated that the data in Table 1 of the proposed rule is out of date and should be updated with new survey information that used more accurate monitoring procedures implemented in 1998.

Our Response: In the proposed rule, Table 1 presents information regarding number of adult CPSD tiger beetles found injured or killed (by ORVs) before and after high ORV use holiday weekends. More recent data are not available, but we believe the available data are an accurate portrayal of the direct impacts to CPSD tiger beetle that can be expected from ORVs.

(46) Comment: BLM agrees with the discussion and conclusions for Factors B and C in the proposed rule.

Our Response: Comment noted.

(47) Comment: BLM concurs with the discussion of sand dune movement in the proposed rule. They stated that it will be necessary to continually adjust the boundaries on the Conservation Areas to compensate for dune movement. BLM believes that this is best done through continued implementation of the CCA and the flexibility that it provides.

Our Response: Adaptive management of conservation boundaries in response to dune movement is included in the 2013 CCA Amendment, as discussed in this document.

(48) Comment: BLM asked for clarification on information the Service provided in the proposed rule (Page 60229), stating that, ''The remaining 460 ha (1,138 ac.) are open to ORV use.'' The BLM does not believe this statement is technically correct. They stated that the 2000 amendment to the Vermilion Management Framework Plan affirmed allowable ORV traffic over open sand dunes within the Moquith Mountain WSA but outside of the conservation area for the beetle. They also stated that the 2008 Kanab Resource Management Plan continued that action, but also specified that ''all vehicles on the dunes are required to stay at least 10 feet from vegetation.''

Our Response: Within the CPSD feature, BLM-managed lands include 150 ha (370 ac) that are closed to ORV use; and approximately 445 ha (1,100 ac) that are available for ORV use outside of the Conservation Area B on BLM lands, but with the stipulation that ORVs stay on open dunes and maintain a 3-m (10-ft) buffer around vegetation. BLM and Utah State Parks sufficiently enforce ORV restrictions for Conservation Areas A and B. However, enforcement is minimal on lands that are not designated for protection with carsonite posts and primarily relies on voluntary compliance. Thus, we have no record of enforcement effort or success of the buffer around vegetation, but Service staff have observed ORV tracks though vegetation and within the vegetation buffer distance.

(49) Comment: BLM assumed that Dr. Knisley would be one of the peer review experts and indicated they fully support his inclusion as a peer reviewer. They stated that Dr. Knisley has a long history of quality work with the beetle, and BLM trusts his findings. The BLM recommended that the other peer review experts be chosen from local universities who have experience working with the CPSD tiger beetle. They asked that the Service notify them of the selected peer reviewers and their findings.

Our Response: We asked Dr. Knisley, Dr. Charles Gowan, and Dr. Leon Higley to provide peer review of the CPSD tiger beetle proposed rule, and Dr. Knisley and Dr. Gowan provided their reviews of the rule. Their comments are part of the rulemaking record and are available to the public through the *http://www.regulations.gov* Web site. This withdrawal also incorporates information and addresses the comments provided by the peer reviewers.

Public Comments

(50) Comment: Commenters stated that the Service relied upon insufficient evidence to analyze threats to the CPSD tiger beetle and that the Service selectively overlooked uncertainties and data gaps as well as evidence of increases in the species' population. Comments reflected dissatisfaction with the use of population monitoring information that did not cover the entire CPSD geologic feature; that sampling methods had changed during the period of record reported and this was not disclosed; and that the population viability analysis was used as a basis for listing.

Our Response: We acknowledge that the science regarding the CPSD tiger beetle may not be complete, but we must base our decisions on the best scientific information available when making listing determinations under the Act. We corrected the discrepancy portraying data that were collected using different methods, and it is included in this withdrawal. In our proposed rule and this final determination, we used the best available scientific information to support our decision. Any new information that was provided, such as the 2012 surveys, was incorporated into the information in Species Information, above. The appropriateness of including PVA analysis in our decision is addressed above as well (see *Population Viability Analysis* under Background).

(51) Comment: Multiple commenters stated that the allegations of climate change-based threats are speculative, artificially conflated with harms from ORV use, and not supported by the record.

Our Response: In summary, climate change is occurring and there is strong scientific support for projections that warming will continue through the 21st century (see Climate Change and Drought under *Factor E*.). Regional projections indicate the Southwest, including southern Utah, may experience the greatest temperature increase of any area in the lower 48 States. Because of increased temperature, Utah soils are expected to dry more rapidly and this is likely to result in reduced soil moisture levels in CPSD tiger beetle habitat. This analysis is well documented and supported in the proposed and this final determination. In addition, the proposed rule thoroughly explains the effects ORVs can have to CPSD tiger beetle habitat and the species reliance on soils with the correct moisture levels. Please see the discussion on Climate Change and Drought, below, for

additional discussion. However, our conclusion is that the effects of climate change are not a threat to the CPSD tiger beetle, and we are withdrawing our proposal to list the species.

(52) Comment: A commenter stated that the Act does not authorize the Service to list a species that is not in need of recovery.

Our Response: Under the Act, we can 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. However, our analysis of these factors shows that the species does not warrant listing as threatened or endangered, and we are withdrawing our proposal to list the species.

(53) Comment: One commenter stated that if the Service lists the CPSD tiger beetle as threatened and counts climate change as among the threats to the species, then the Service should consider proposing a special rule under section 4(d) of the Act to exclude otherwise lawful activities, such as greenhouse gas emissions, from those actions that others may allege to constitute as ''take'' of the CPSD tiger beetle.

Our Response: A special rule under section 4(d) can be issued for species listed as threatened species under the Act; however, we are withdrawing our proposal to list the CPSD tiger beetle as a threatened species.

(54) Comment: Several commenters stated that the CPSD tiger beetle should be listed with designated critical habitat as detailed in the proposed rule, and that the previous CCA as well as the 2013 CCA Amendment do not fully address the threat of ORV use. These commenters indicated that extensive ORV use is permitted across the majority of CPSD State Park and in the areas between the 'islands of habitat' (as specified in the 2013 CCA Amendment) located between the two populations. The commenters stated the use of ORVs is also permitted (although restricted) on the BLM lands surrounding the northern population. The commenters believe the tiger beetle remains vulnerable to impacts from illegal ORV use, both in its occupied habitat and in the area between the two populations.

Our Response: At the time of publication of the proposed rule, threats to CPSD tiger beetle included negative effects of ORV use. The threat of ORV use has been addressed in the 2013 CCA Amendment by creating additional protective habitat surrounding Conservation Area A (24 ha (59 ac)), and in polygons between Conservation Areas A and B (106 ha (263 ac)) that will allow for CPSD tiger beetle dispersal and colonization. See answer to Comment (48), *Factor D. The Inadequacy of Existing Regulatory Mechanisms,* and Ongoing and Future Conservation Efforts for additional information.

(55) Comment: One commenter stated that the 2013 CCA Amendment should be adequate to protect CPSD tiger beetle if the proposed open area on the east side of Conservation Area A is reduced to a carefully sited and clearly demarcated trail, no more than two vehicles wide, through the area of unstable dunes on the east side, that is laid out with direction of Dr. Knisley and the Service, with the cooperation of CPSD State Park and a representative of the ORV community.

Our Response: We did not demarcate an ORV trail on the east side of Conservation Area A as part of the conservation actions of the 2013 CCA Amendment. This option was discussed but deemed unsafe for ORV use by CPSD Park personnel.

(56) Comment: One commenter stated that Dr. Knisley's methods are pioneering, consistent, detailed, reliable, and as thorough as possible given limited time and budget. The commenter stated that his work supports the conclusion that the species is habitat limited and that its habitat is subject to change and has changed over the period of study.

Our Response: We have included the analysis of much of Dr. Knisley's CPSD tiger beetle work in our proposed rule and this withdrawal of the proposed rule.

(57) Comment: One commenter concluded that it is clear that the dunes are moving, and cited Dr. Knisley's work over the past decade as evidence of consistent movement of the dune crests. This commenter believed that restricting critical habitat to the currently occupied habitat would not allow the freedom of the dunes to move as natural forces dictate. The commenter opined that to protect the dunes ecosystem, including the CPSD tiger beetle and all of the resources upon which it depends, the dunes must have room to move and a source of sand and wind consistent with the history of the ecosystem over ecological time.

Our Response: We are withdrawing our proposed listing and critical habitat designation. The 2013 CCA Amendment includes adaptive management processes that are intended to account for dune movement (see Table 2).

(58) Comment: One commenter stated that carsonite posts and the potential threat of being ticketed by an overworked ranger are not sufficient barriers to ORV use. The same commenter expressed concern that funding of the CCA could be cut, discontinued, or weakened.

Our Response: Demarcation of Conservation Area A with carsonite posts has been effective at protecting CPSD tiger beetle for the last 15 years, and we are confident that this method will be effective for new locations as well. Conservation actions directed by the 1997 and 2009 versions of the CCA have been consistently funded by the Service, BLM, and Utah State Parks since the CCA was signed, funding has been committed for the next 10 years as part of the 2013 CCA Amendment, and we are confident that it will continue into the future. Since signing of the original CCA in 1997, the document was renewed on a standard timeline (2009) and has since become even stronger and provided more conservation with the 2013 amendment.

(59) Comment: Commenters urge the Service to continue ongoing discussions with the BLM, Utah State Parks, and Kane County Commissioners about updating the existing Conservation Agreement. The commenters stated that any protections necessary for the CPSD area are best developed through this process, and this process serves the local community best.

Our Response: We agree. The 2013 CCA Amendment was signed by these entities in March 2013 and discussions will continue on an annual basis to further conservation of the CPSD tiger beetle through associated monitoring, research, education, and habitat protection actions.

(60) Comment: One commenter stated that the area currently under consideration for designation as critical habitat exceeds the area that is absolutely necessary to conserve CPSD tiger beetle.

Our Response: The area considered in the proposed rule for critical habitat designation included those areas that provide sufficient elements of physical or biological features necessary to support CPSD tiger beetle life-history processes. However, we have withdrawn our proposal to list the CPSD tiger beetle and designate critical habitat. The 2013 CCA Amendment provides sufficient habitat protection to reduce threats to the species from ORV use, small population size, drought, and climate change.

(61) Comment: One commenter shared that, 20 years ago, motorized versus non-motorized use at the CPSD feature was divided 50/50; however, more recently, a 2001 CPSD State Park visitor survey indicated a conflict between motorized and non-motorized use, stating that 80 to 90 percent of visitors were offended by issues involving safety, tracks, and noise. The commenter noted that as reported in the Southern Utah News (September 19, 2001), visitor surveys indicate visitors oppose motorized use at the Sand Dunes. The commenter said the article further stated that, although motorized use constitutes the majority of activity on holiday weekends, visitor expectation is for a more pristine experience like they have at the Grand Canyon and Zion National Parks. The commenter indicated that these data make clear that motorized use within the CPSD State Park and the Moquith Mountain WSA is not the economic driver of the area. The commenter additionally stated that, based on these data, it is likely that economic benefit may actually flow from critical habitat designation as a substantial number of non-motorized users begin to revisit both the CPSD State Park and the Moquith Mountain WSA as a result of restricted ORV use.

Our Response: The Service has limited information regarding user conflicts or preferences at the CPSD dune geologic feature; however, this issue is outside of the scope of our rulemaking process. Please see *Comment (23)* for information on the economic benefits of motorized use in the CPSD to the economy of Kane County. Nevertheless, the proposed listing is withdrawn by this document and therefore no critical habitat will be designated.

Summary of Changes From the Proposed Rule

Based upon our review of the public comments, comments from other Federal and State agencies, peer review comments, issues addressed at the public hearing, and any new relevant information that may have become available since the publication of the proposal, we reevaluated our proposed rule and made changes as appropriate. Other than minor clarifications and incorporation of additional information on the species' biology, this determination differs from the proposal by:

(1) Based on our analyses, the Service has determined that the CPSD tiger beetle should not be listed as a threatened species. This document withdraws the proposed rule as published on October 2, 2012 (77 FR 60208).

(2) The addition of the Ongoing and Future Conservation Efforts section prior to the Summary of Factors Affecting the Species section, below. The conservation agreements are no longer discussed in detail in *Factor D. Inadequacy of Existing Regulatory Mechanisms,* but are included in the Ongoing and Future Conservation Efforts section.

(3) The Service reevaluated population sampling information and has adjusted how sampling information is reported. This information is included in the Background section.

Ongoing and Future Conservation Efforts

Below we summarize the 2009 CCA and the 2013 CCA Amendment that provide conservation benefits to the CPSD tiger beetle. We describe the significant conservation efforts that are already occurring and those that are expected to occur in the future. We have also completed an analysis of the newly initiated efforts pursuant to our PECE policy on the 2013 CCA Amendment (Conservation Committee 2013, entire).

After the CPSD tiger beetle became a candidate species in 1997, a variety of conservation initiatives were put in place to conserve the species' habitat, while continuing ORV activities in the area. The document that served as the foundation for the conservation of CPSD tiger beetle was the 1997 CCA, which was renewed in 2009 and amended in 2013 (Conservation Committee 1997, entire; Conservation Committee 2009, entire; Conservation Committee 2013, entire). This CCA provided the conservation framework necessary for the development of several collaborative conservation efforts that have benefited the CPSD tiger beetle. The proposed rule details these conservation measures in several locations within the document (77 FR 60208). In summary, the 1997 and 2009 CCAs coordinated or enacted conservation efforts over the last 15 years including:

(a) Two conservation areas were established. Conservation Area A was 207 ac (84 ha), and Conservation Area B was 150 ha (370 ac) at the time of the 2009 CCA. ORVs were not allowed in these areas, and Utah State Parks and BLM staff have enforced this restriction. These conservation areas have protected significant CPSD tiger beetle habitat from ORV impacts.

(b) Annual monitoring was conducted to evaluate population status, and habitat and population response to conservation actions.

(c) Research efforts clearly defined the CPSD tiger beetle lifecycle and observed population fluctuations relative to fluctuations in rainfall.

(d) A 2-year field study was completed that indicates supplemental watering has a significant and positive effect on recruitment of new CPSD tiger beetle larvae, their survival, and their speed of development.

(e) Genetic studies were conducted and demonstrated that the CPSD tiger beetle is an independent species, rather than the subspecies it was considered when the original 1997 CCA partnership was established.

(f) A population viability analysis was developed to determine the likelihood of extinction and the range of habitat required for the species to persist. The population viability model will serve as a useful tool to evaluate, adapt, and prioritize conservation strategies.

(g) Educational materials were developed and are displayed and distributed at the CPSD State Park and BLM office.

(h) A protocol for translocation was developed and beetles were translocated in a pilot effort to establish a more secure population at Conservation Area B.

(i) The BLM Kanab Field Office revised its land use plan and included direction to implement measures identified in the CCA for CPSD tiger beetle management.

Despite the positive accomplishments of the 1997 CCA and 2009 CCA, the proposed rule identified several threats that were still negatively acting on CPSD tiger beetle and its habitat. Residual threats identified in the proposed rule included: (1) Continued habitat loss and degradation caused by ORV use; (2) small population effects, such as vulnerability to random chance events; (3) the effects of climate change and drought; (4) and cumulative interaction of the individual factors listed above (77 FR 60208, October 2, 2012). The proposed rule also determined that existing regulatory mechanisms were not adequately addressing the ORV-related threats to the species.

Based on information provided in the proposed rule, discussions with researchers, and onsite evaluations with the CCA partners, signatory agencies established a 2013 amendment to the 2009 CCA. This amendment outlined several new conservation actions that will be enacted to address the threats that were identified in our October 2, 2012, proposed rule (77 FR 60208) (Table 1). The 2013 CCA Amendment evaluated the most recent tiger beetle survey information and peer review

comments from our proposed rule and concluded that modifications to the boundaries of the Conservation Areas are needed to ensure continued protection of the tiger beetle from ongoing threats (see Figure 1; Table 1; Conservation Committee 2013, entire).

Current survey information identified the species occurring in significant numbers south and east of the Conservation Area A boundary, as defined by the 2009 CCA (Knisley and Gowan 2013, entire). Therefore, the 2013 CCA Amendment will enlarge Conservation Area A from 207 ac (81 ha) to 266 ac (108 ha) (see Figure 1) to protect most of the known occupied habitats—the expansion of Conservation Area A protects 88 percent of the central population's habitat. Posting of new habitat began in summer 2013 and will be completed by the end of the year. The Amendment also commits to evaluating areas farther to the south of Conservation Area A where adults and larvae were found in 2012—this process was initiated in the spring of 2013, and the conservation committee is evaluating the need to provide additional protection to some of this habitat. In addition, the 2013 CCA Amendment provides protection for islands of habitat, totaling an additional 263 ac (106 ha), between Conservation Areas A and B (see Figure 1), with the intent of providing dispersal habitat for the species. Additional conservation measures of the 2013 CCA Amendment are listed in Table 1 and were evaluated for certainty of implementation and certainty of effectiveness with the PECE process. The Service's detailed PECE analysis on the 2013 CCA Amendment is available for review at *http://www.regulations.gov* and *http://www.fws.gov/mountain-prairie/species/invertebrates/coralpinksanddunestigerbeetle/index.html.*

TABLE 1—SUMMARY OF CONSERVATION MEASURES IN THE CPSD TIGER BEETLE 2013 CCA AMENDMENT

[Conservation Committee 2013, entire]

Threat	Conservation measure	Status
Habitat loss/degradation and mortality associated with ORV use	• Utah State Parks agrees to expand the boundary of Conservation Area A to protect additional habitat while addressing diversity in recreation and maintaining safety standards for dune visitors. This area will be permanently expanded in 2013 from 207 ac (84 ha) to 266 ac (108 ha) (Figure 1), thus increasing protection of tiger beetle occupied swales from 48 percent to 88 percent for the central population. All new or expanded habitat areas will be demarcated with carsonite marking posts to facilitate compliance by CPSD State Park visitors.	• Posting of the new Conservation Area A boundary began in summer 2013 and will be completed by the end of the year. • Posting of 14 new habitat patches began in summer 2013 and will be completed by the end of the year. • Habitat south of Conservation Area A was identified for protection by the Conservation Committee in spring 2013. Will have final configuration and be posted by end of 2013. • Analysis of historical dune imagery will ocurr in combination with 3-year boundary analysis. Baseline dune analysis has been completed by Fenster *et al.* (2012). • Plans to perform vegetation treatments have been discussed informally, but this action will be a low priority until new habitat areas are posted. • Conservation boundaries will be reassessed in 2016.
	• Utah State Parks and the BLM will protect vegetated habitat islands of connectivity between the central and northern conservation areas and monitor to ensure compliance. This action will occur in 2013 and will protect 263 ac (106 ha) of additional sand dune habitat comprising 14 individual habitat patches (Figure 1), which range in size from 2.6 ac (1.0 ha) to 37.1 ac (15 ha) each. All new or expanded habitat areas will be demarcated with carsonite marking posts to facilitate compliance by CPSD State Park visitors. • CPSD tiger beetle adults and larvae were found south of Conservation Area A in 2012. The conservation committee visited this area in spring of 2013 to determine which additional habitats will be protected to support the tiger beetle (Figure 1). All conservation committee members agreed that several swales should be protected. The exact size and configuration of these protected areas are currently being determined by CPSD tiger beetle researchers and members of the conservation committee. All new or expanded habitat will be finalized by late 2013 and demarcated with carsonite posts to facilitate compliance by CPSD State Park visitors.	• Enforcement of conservation areas is ongoing.

TABLE 1—SUMMARY OF CONSERVATION MEASURES IN THE CPSD TIGER BEETLE 2013 CCA AMENDMENT—Continued

[Conservation Committee 2013, entire]

Threat	Conservation measure	Status
	• The conservation committee will analyze available historical aerial imagery, and other data, to better understand dune movement and associated vegetation changes as they relate to beetle occupation and suitable habitat over time. Knowledge of dune movement patterns will be used in adaptive management planning to accommodate dune changes and the need to alter conservation area boundaries. • The conservation committee will conduct experimental vegetation treatments within existing conservation areas to determine if this could be an effective mechanism to increase suitable habitat. • The conservation committee will revisit conservation area boundaries on a routine cycle (every 3 years) and make necessary adjustments to these boundaries as a result of shifting dunes, vegetation changes, population increases and decreases, and resulting changes to suitable habitat. • Utah State Parks and the BLM will continue efforts in law enforcement, education, and outreach.	
Vulnerability to stochastic events due to small population size.	• We are not aware of any additional populations of CPSD tiger beetle outside of the CPSD formation. However, the conservation committee believes it is appropriate to continue surveys for this species in the area. The conservation committee will identify potential habitat within a 50-mile radius of the CPSD formation using aerial imagery and survey for CPSD tiger beetle presence and habitat suitability. If appropriate habitat is found, the area will be considered for experimental introduction. • The conservation committee will increase research effort in experimental translocations in Conservation Area B and evaluate new habitat islands for appropriateness for reintroduction efforts. • The conservation committee will introduce individuals into suitable habitats (potential sites have been identified between Conservation Areas A and B), monitor these sites, and revise translocation activities via an adaptive management process.	• Utah DNR has successfully advertised (proposal submitted) a request-for-proposals to begin effort to search for potential habitat within 50 mile radius. • Annual monitoring which happens each spring will include newly protected habitat and will include translocation efforts as appropriate.
Inadequacy of existing regulatory mechanisms	• Utah State Parks and the BLM have done a creditable job of enforcing the protection boundaries of Conservation Areas A and B for approximately the last 15 years. This amendment increases the size of Conservation Area A by 59 ac (24 ha), and the conservation committee will consider further protection of habitats to the south of Conservation Area A (see Habitat loss/degradation and mortality associated with ORV use, above). In addition, the 2013 CCA Amendment establishes 14 habitat patches to support dispersal of tiger beetles between Conservation Areas A and B, increasing the total protected area by an additional 263 ac (106 ha). Because these signatory agencies have complied with the Conservation Agreement and Strategy for the last 15 years, it can reasonably be concluded that the BLM and Utah State Parks will continue to properly enforce the boundaries of all protected areas.	• Status of habitat protection actions as described above will regulate ORV use. • Enforcement of conservation areas is ongoing

TABLE 1—SUMMARY OF CONSERVATION MEASURES IN THE CPSD TIGER BEETLE 2013 CCA AMENDMENT—Continued

[Conservation Committee 2013, entire]

Threat	Conservation measure	Status
Climate change and drought	• The BLM began installing a weather station onsite in spring 2013 to better correlate weather patterns with CPSD tiger beetle abundance (note—this action will be completed in fall 2013). Understanding the effects of weather patterns on CPSD tiger beetle populations will help the conservation committee develop adaptive management strategies by identifying important habitat use areas during particularly dry or warm years. • The establishment of 14 additional habitat patches totaling 263 ac (106 ha) will occur at higher elevations in the sand dune area, and at locations that provide significant vegetated habitat. This has the potential to offset the drying and warming effects of climate change and drought on CPSD tiger beetle habitat. In addition, these habitat polygons will provide dispersal habitat and connectivity between Conservation Areas A and B. This will better allow the tiger beetle to disperse to potentially cooler and wetter habitat that occurs in Conservation Area B.	• Weather station was installed in summer 2013 and is providing data. • Posting of 14 new habitat patches began in summer 2013 and will be completed by the end of the year.
Cumulative effects of the above	• Addressing the threats listed above independently will prevent these threats from acting cumulatively.	• Some conservation actions have been completed, some are ongoing, and the most significant ones (habitat protection) will be completed by the end of 2013. See above for more information regarding status of individual actions.

PECE Analysis

The purpose of PECE is to ensure consistent and adequate evaluation of recently formalized conservation efforts when making listing decisions. The policy provides guidance on how to evaluate conservation efforts that have not yet been implemented or have not yet demonstrated effectiveness. The evaluation focuses on the certainty that the conservation efforts will be implemented and effectiveness of the conservation efforts. The policy presents nine criteria for evaluating the certainty of implementation and six criteria for evaluating the certainty of effectiveness for conservation efforts. These criteria are not considered comprehensive evaluation criteria. The certainty of implementation and the effectiveness of a formalized conservation effort may also depend on species-specific, habitat-specific, location-specific, and effort-specific factors. We consider all appropriate factors in evaluating formalized conservation efforts. The specific circumstances will also determine the amount of information necessary to satisfy these criteria.

To consider that a formalized conservation effort contributes to forming a basis for not listing a species, or listing a species as threatened rather than endangered, we must find that the conservation effort is sufficiently certain to be (1) implemented, and (2) effective, so as to have contributed to the elimination or adequate reduction of one or more threats to the species identified through the section 4(a)(1) analysis. The elimination or adequate reduction of section 4(a)(1) threats may lead to a determination that the species does not meet the definition of threatened or endangered, or is threatened rather than endangered.

An agreement or plan may contain numerous conservation efforts, not all of which are sufficiently certain to be implemented and effective. Those conservation efforts that are not sufficiently certain to be implemented and effective cannot contribute to a determination that listing is unnecessary, or a determination to list as threatened rather than endangered. Regardless of the adoption of a conservation agreement or plan, however, if the best available scientific and commercial data indicate that the species meets the definition of ''endangered species'' or ''threatened species'' on the day of the listing decision, then we must proceed with appropriate rulemaking activity under section 4 of the Act. Further, it is important to note that a conservation plan is not required to have absolute certainty of implementation and effectiveness in order to contribute to a listing determination. Rather, we need to be certain that the conservation efforts will be implemented and effective such that the threats to the species are reduced or eliminated.

Using the criteria in PECE (68 FR 15100, March 28, 2003), we evaluated the certainty of implementation (for those measures not already implemented) and effectiveness of conservation measures pertaining to the CPSD tiger beetle. We have determined that the measures will be effective at eliminating or reducing threats to the species because they protect occupied and suitable habitat, provide habitat and additional management information to address the effects of climate change and drought, and institute on-the-ground changes to better manage and regulate protected habitat and ORV use. We have a high degree of certainty that the measures will be implemented because the conservation committee partners have an impressive track record of implementing conservation measures and CCAs for this species since 1997. Over approximately the past 15 years of implementation, BLM and Utah State Parks have effectively implemented conservation measures from the 1997

CCA and have monitored the CPSD tiger beetle population, conducted translocation and other research, established and enforced protection areas, and educated the public on the occurrence and importance of the species at the CPSD formation.

New conservation measures are prescribed by the 2013 CCA Amendment and are already being implemented, such as establishment of additional protected habitat areas and deployment of a weather station (see Table 1 in Ongoing and Future Conservation Efforts for more information on status of conservation efforts). The 2013 CCA Amendment has sufficient annual monitoring and reporting requirements to ensure that all of the conservation measures are implemented as planned, and are effective at removing threats to the CPSD tiger beetle and its habitat. The collaboration between the Service, Kane County, Utah Parks, and BLM requires regular committee meetings and involvement of all parties in order to fully implement the conservation agreement. Based on the successes of previous actions of the conservation committee, we have a high level of certainty that the conservation measures in the 2013 CCA Amendment will be implemented (for those measures not already begun) and effective, and thus they can be considered as part of the basis for our final listing determination for the CPSD tiger beetle.

Our full analysis of the 2013 CCA Amendment pursuant to PECE can be found at *http://www.regulations.gov.*

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR 424) set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. 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. Listing actions may be warranted based on any of the above threat factors, singly or in combination. Each of these factors is discussed below.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

ORV Use

Loss of habitat is the leading cause of species extinction (Pimm and Raven 2000, p. 843). Insects are highly vulnerable to extinction through habitat loss (McKinney 1997, pp. 501–507), and ORV use has significantly impacted several species of tiger beetle nationwide. More specifically, ORV use has significantly impacted the CPSD tiger beetle's habitat, range, and the beetle itself by directly killing beetles, damaging vegetation that supports prey items, directly killing prey items, and reducing soil moisture.

Nationwide Context—Nationwide, ORV use has drastically reduced or extirpated several tiger beetle populations. For example, ORV use and pedestrian traffic extirpated the Northeastern Beach tiger beetle, *Cicindela dorsalis dorsalis,* in several localities (Knisley 2011, p. 45). Similarly, within several years of the Assateague Island National Seashore (Maryland, USA) opening for ORV use, the White Beach tiger beetle, *C. d. media,* was extirpated from all but those areas where ORVs were restricted (Knisley and Hill 1992, pp. 138–139). Additionally, ORV use is responsible for eliminating tiger beetle populations in coastal southern California (Hairy-necked tiger beetle, *C. hirticollis gravida*), Oregon and Washington (Siuslaw hairy-necked tiger beetle, *C. h. siuslawensis*), and Idaho (St. Anthony Dune tiger beetle, *C. arenicola*) (Knisley 2011, p. 45).

CPSD Tiger Beetle Mortality—ORVs run over and thereby kill and injure CPSD tiger beetles (Hill and Knisley 1993, p. 14; Knisley and Gowan 2008, p. 23). The likelihood of being injured or killed increases if adult CPSD tiger beetle are run over on wet or compact substrates (e.g., moist swales) as compared to soft sands (e.g., dune faces) (Knisley and Hill 2001, p. 390). The likelihood of being hit by ORVs also increases based on the level of ORV use. For example, the numbers of adult CPSD tiger beetles found injured or killed by ORVs increases substantially during periods of heavy use, such as during the Memorial Day holiday (Table 2; Knisley and Hill 2001, p. 390). We have no information quantifying the direct injury or mortality that ORVs cause to eggs or larval CPSD tiger beetle because these stages are underground and not easily monitored.

TABLE 2—A COMPARISON OF THE NUMBER OF ADULT CORAL PINK SAND DUNES TIGER BEETLES FOUND INJURED OR KILLED (BY OFF-ROAD VEHICLES) BEFORE AND AFTER A HIGH ORV USE HOLIDAY WEEKEND (MEMORIAL DAY) FROM 1993 TO 1998 (NO SURVEY CONDUCTED IN 1995)

[Knisley and Hill 2001, p. 390]

Year	Before Memorial Day Weekend		After Memorial Day Weekend	
	Total number observed	Number observed killed or injured	Total number observed	Number observed killed or injured
1993	(1)	(1)	179	14
1994	363	0	125	6
1996	231	2	287	41
1997	256	2	64	6
1998	168	1	278	8

[1] No data.

We do not have specific data regarding the level of impact ORVs have on CPSD tiger beetles in the previously unprotected area between Conservation Areas A and B. It is likely that many of the beetles run over by ORVs in this area were injured or killed. Thus, the ability of adults to disperse between the central population and the northern population was likely negatively impacted by ORVs. The result of these ORV impacts is that the habitat between

the central and northern populations has not provided a sufficient dispersal corridor for beetles or habitat for colonization (see Population Distribution). Thus, the proposed rule concluded that BLM protection of only Conservation Area B, and the absence of protection in the dispersal corridor, would result in the continued threat of ORV use to the CPSD tiger beetle. However, the 2013 CCA Amendment provides for additional protected habitat surrounding Conservation Area A and for islands of habitat between Conservation Areas A and B, thus alleviating this threat to CPSD tiger beetles (see Ongoing and Future Conservation Efforts).

Impacts to Vegetation—As discussed above (see Background, *Habitat*) larval CPSD tiger beetles are more restricted to vegetated swale areas where the vegetation supports the larval prey base of flies, ants, and other prey species. Although adult CPSD tiger beetles are more mobile and can hunt prey species over a wider range of habitat types, vegetated swale habitat is still necessary to support adult prey items (see Background, *Habitat*). The effects of ORVs on vegetation are well documented and include crushing and uprooting of foliage and root systems and the accompanying erosion and drying of soils (Ouren *et al.* 2007, pp. 4–5; Switalski and Jones 2012, p. 14). The protection of Conservation Areas A and B, and islands of habitat between the Conservation Areas includes the protection of vegetated swale habitat, thus reducing the threat of ORV impacts to vegetation.

Prey Mortality—Food limitation has a significant impact on tiger beetle growth, survival, and fecundity, especially for desert species. Adult CPSD tiger beetles are, in some years, extremely food limited and exhibit reduced fecundity (Knisley and Gowan 2008, p. 19). Food limitation is at least partly caused by ORV use. ORVs reduce CPSD tiger beetle prey density and prey species diversity in the CPSD (Knisley and Gowan 2006, p. 19). Ants, a primary prey item, occur in much lower densities in areas frequented by ORVs than in areas with no ORV traffic (Knisley and Gowan 2008, p. 23). In addition, low ORV use areas in the CPSD geologic feature have a higher diversity of prey species and higher numbers of prey items than high ORV use areas (Knisley and Hill 2001, p. 389).

Prey availability significantly affects the number of larvae produced by adult tiger beetles (Pearson and Knisley 1985, p. 165) and the survival of larval tiger beetles (Knisley and Juliano 1988, p. 1990). Low prey densities can result in prolonged development and decreased survivorship in larval tiger beetles and reduced size in adults, which lowers fecundity in females (Pearson and Knisley 1985, p. 165; Knisley and Juliano 1988, p. 1990). Low prey densities also require larval and adult tiger beetles to spend more time searching for food. For larval tiger beetles, this means more time near burrow entrances searching for prey, resulting in increased susceptibility to parasitism and predators (Pearson and Knisley 1985, p. 166). Similarly, adults that spend more time out of their burrows searching for food have an increased susceptibility to predation. The 2013 CCA Amendment protects the majority of known CPSD tiger beetle occupied habitat, thus reducing the threat of ORV impacts to prey availability.

Reduction of Soil Moisture—ORV use degrades larval habitat by reducing soil moisture. ORV use can reduce soil moisture by churning up soils and exposing the moisture that is locked between soil particles (beneath the surface) to greater evaporative pressure (Shultz 1988, p. 28; Knisley and Gowan 2008, p. 10). It also reduces soil moisture by increasing soil compaction (Adams *et al.* 1982, p. 167). Compaction reduces water infiltration and reduces moisture retention in soils (Belnap 1995, p. 39).

As we discussed earlier (see *Habitat*), soil moisture is essential to the CPSD tiger beetle's life history. Extreme drying or desiccation kills tiger beetles (Knisley and Juliano 1988, p. 1990). In a dry environment, such as the CPSD geologic feature, organisms are constantly struggling to acquire and maintain enough water to survive. Reduced water availability is limiting to tiger beetles in CPSD, as evidenced by the fact that experimental water supplementation increased larval CPSD tiger beetle survival by 10 percent (Knisley and Gowan 2008 p. 20). CPSD areas protected from ORV use have significantly higher soil moistures and higher numbers of CPSD tiger beetles than adjacent ORV use areas (Knisley and Gowan 2008, pp. 10–11), therefore the protection of Conservation Areas A and B, as well as the islands of habitats between these two areas, reduces the threat associated with the loss of soil moisture from ORVs.

Population Level Effects—Available information shows the effects of ORV use on CPSD tiger beetle population numbers. For example, swales adjacent to but outside of Conservation Area A are similar in all apparent environmental conditions to swales within Conservation Area A with the exception of ORV impacts. However, CPSD tiger beetle abundance in ORV-impacted occupied swales is consistently lower than adjacent protected occupied swales, potentially because of ORV impacts (Figure 3).

BILLING CODE 4310–55–P

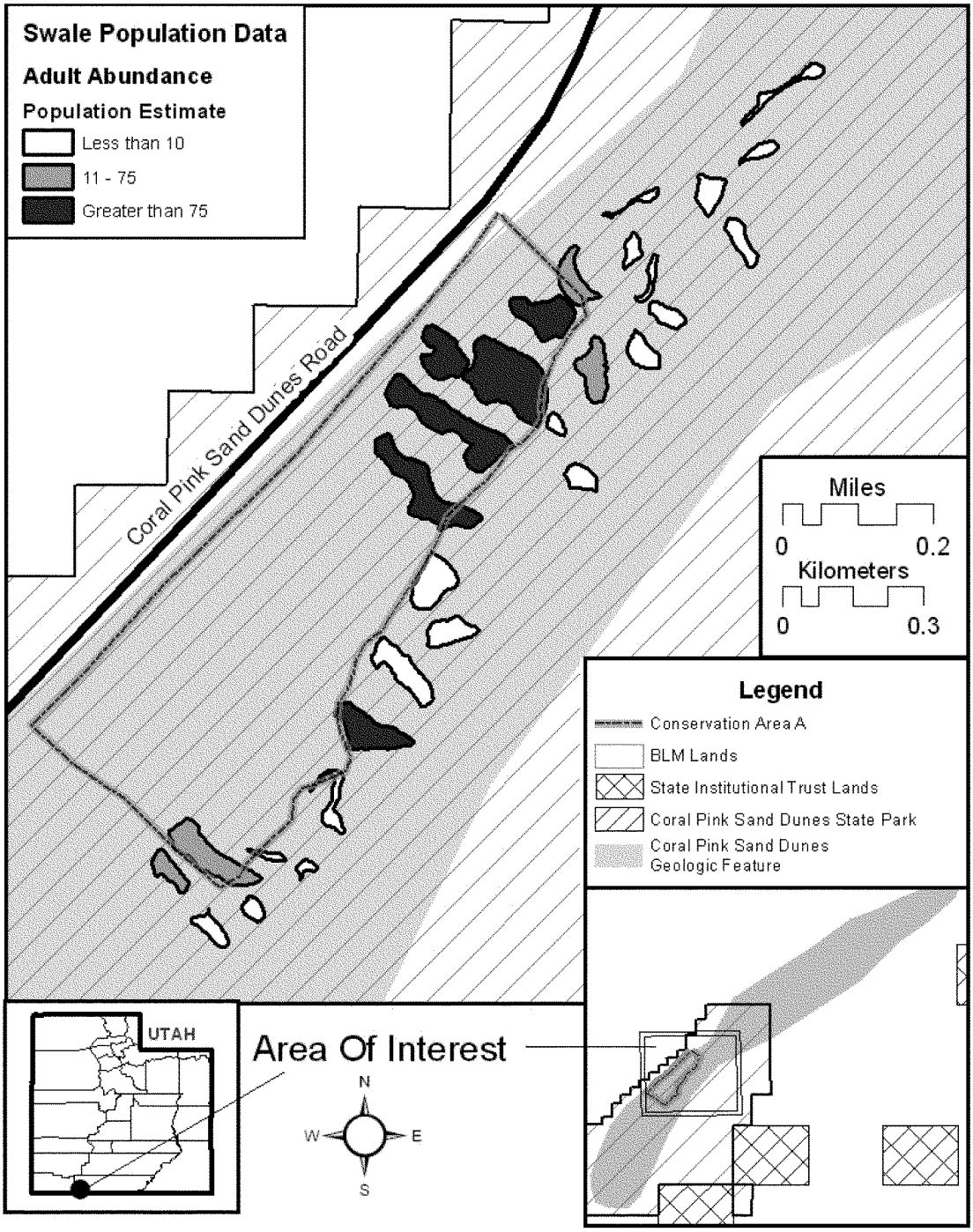


Figure 3. Adult abundance in 2006 for occupied swales within and outside Conservation Area A.

BILLING CODE 4310–55–C

For example, one swale with ORV use had population counts of 60 or more CPSD tiger beetles in most years (Knisley and Gowan 2011, p. 11). Utah State Park staff, at the recommendation of the conservation committee, protected this swale from ORV use in 2010 (Knisley and Gowan 2011, p. 11). The year following removal of ORV use, the tiger beetle density on this swale more than doubled to 150 beetles, which also is the highest number recorded for the swale (Knisley and Gowan 2011, p. 11). This increase could not be attributed to an increase in moisture as rainfall levels were low and declining at this time (Knisley and Gowan 2011, p. 11). This action provides an example of how the conservation committee has used adaptive management to benefit the CPSD tiger beetle and demonstrates a rapid population response to removed ORV disturbance. The increased protection for Conservation Area A and islands of habitat between Conservation

Areas A and B provided by the 2013 CCA Amendment reduces the potential threat of ORV use to population-level effects. In fact, it is likely the increased protection will result in increased tiger beetle populations in these areas.

CCA Protections—The 2009 CCA conservation actions evaluated in the proposed rule protected the entirety of the northern population of CPSD tiger beetle but only 48 percent of the swale habitat occupied by the CPSD tiger beetle in the central population and none of the dispersal corridor habitat (see Table 1). Since the publication of the proposed rule, the 2013 CCA Amendment has been signed and the conservation committee has committed to: (1) Expanding Conservation Area A boundaries to protect 88 percent of the central population from ORV use; (2) protecting a total of 263 ac (106 ha) of vegetated habitat islands of connectivity between the central and northern conservation areas from ORV use and monitoring to ensure compliance; and (3) visiting the area south of Conservation Area A (where significant numbers of CPSD tiger beetle larvae and adults have been found) in spring of 2013 to determine what additional habitats should be protected from ORV use to support the tiger beetle. The size and configuration of any protected areas south of Conservation Area A will be determined during the 2013 field season with input from all members of the conservation committee.

All new or expanded protected habitat areas will be demarcated with carsonite posts to facilitate compliance by CPSD State Park visitors. The conservation committee will revisit conservation area boundaries on a routine cycle (every 3 years) and make necessary adjustments as a result of shifting dunes, vegetation changes, population increase and decreases, and resulting changes to suitable habitat.

Historical ORV use has reduced available habitat and the CPSD tiger beetle population size. This has previously resulted in a population that faces threats from minor stochastic events and minor environmental perturbations. However, we find that recent protections agreed to and implemented by the 2013 CCA Amendment now provide an adequate amount of habitat protected from ORV use to allow the conservation of the central and northern populations of CPSD tiger beetle and the dispersal and colonization habitat between the two populations.

Summary of Factor A

The proposed rule identified ORV use as a threat to the CPSD tiger beetle through direct mortality and injury, and by reducing prey base and soil moisture. We still conclude that ORV use can substantially reduce habitat qualities essential to the CPSD tiger beetle's life cycle (e.g., soil moisture and prey availability) (Knisley and Hill 2001, p. 389; Knisley and Gowan 2008, pp. 10–11). Reduction in habitat quality can reduce reproductive success and the tiger beetle population growth rate (e.g., Klok and de Roos 1998, pp. 205–206). In the proposed rule, we acknowledged the very important protections of Conservation Areas A and B from ORV use. However, despite these conservation efforts, we determined at that time that only 48 percent of occupied swale habitat in the central population was protected, and none of the dispersal corridor habitat was protected (Figure 3, Knisley and Gowan 2009, p. 8). In addition, we concluded that the degradation of habitat (both occupied and potential) by ORV use reduced the ability of the population to expand or disperse in areas outside of the Conservation Areas and thereby reduced the population's carrying capacity.

Since the publication of the proposed rule, the CPSD tiger beetle conservation committee signed the 2013 CCA Amendment that now provides an adequate amount of protected habitat for both the central and northern populations of CPSD tiger beetle and the dispersal and colonization habitat between the two populations. Specific protections include increasing the Conservation Area A boundary to protect 88 percent of CPSD tiger beetle occupied habitat at the central population, and an additional 263 ac (106 ha) of CPSD habitat between the Conservation Areas A and B. We are also working with our partners to evaluate and potentially protect additional occupied habitat south of Conservation Area A.

We conclude that, by restricting ORV use to areas outside of 88 percent of CPSD tiger beetle occupied habitat at the central population, all of the occupied habitat of the northern population, and 263 ac (106 ha) of the dispersal corridor (see Ongoing and Future Conservation Efforts), the species will have a sufficient amount of quality habitat to persist into the future. This protection is being provided through the 2013 CCA Amendment's commitment to eliminate ORV use in Conservation Areas A and B and on islands of habitat within the dispersal corridor. These habitat areas will be protected and be able to sustain sufficient vegetation that supports prey items for larval and adult CPSD tiger beetle, and soil moisture levels that are unaltered by ORV use. Additionally, protected areas will not have ORV use that results in direct killing of CPSD tiger beetles or their prey. Quality habitat and the absence of ORV use will allow for CPSD tiger beetle populations to continue to grow in number and provide resilience to the effects of climate change, drought, and small population size (see *Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence*). Thus, the best scientific and commercial information available indicates that the destruction, modification, or curtailment of the CPSD tiger beetle's habitat or range due to ORV use is not a threat to the species now or in the future.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Tiger beetles are one of the most sought-after groups of insects by amateur collectors because of the unique metallic colors and patterns present in the various species and subspecies, as well as their fascinating habits (Pearson *et al.* 2006, pp. 3–5). Interest in the genus *Cicindela* is reflected in the scientific journal entitled ''Cicindela,'' which is published quarterly (since 1969) and is exclusively devoted to the genus. In certain circumstances, collection of these insects can add valuable information regarding biogeography, taxonomy, and life history of the species. However, some collection is purely recreational and adds little to no value to the scientific understanding or conservation of tiger beetles.

Collection of adult CPSD tiger beetles before they mate and lay their eggs may result in reduced population size of subsequent generations. In the proposed rule, we reported that the magnitude of recreational collection cannot be accurately determined for the CPSD tiger beetle, but it is likely that some number of adults were taken in the past. We further reported that as agreed to in the CCA, CPSD State Park and BLM personnel now enforce restrictions on recreational collecting of CPSD tiger beetles, and consequently, collection levels were expected to be low (Conservation Committee 2009, p. 17). However, a peer reviewer and prominent tiger beetle researcher stated that amateur collectors have taken adult tiger beetle from CPSD in recent years, and that there are many tiger beetle collectors out there, possibly 100 or more nationwide, and perhaps the number could be increasing (see Peer Review). But the peer reviewer expected that most collectors will take small

numbers of adults and considers collecting of adult CPSD tiger beetles to have a limited effect on the population (Knisley 2013, pers. comm.).

Although scientific collection is not restricted by any formal permitting process, only one researcher has collected CPSD tiger beetles in approximately the last 14 years. Over this time period, approximately 70 adults were collected (Knisley 2012, pers. comm.). The adults were collected in late May after they had mated and oviposited eggs (Knisley 2012, pers. comm.).

Summary of Factor B

CPSD tiger beetles are not overutilized for commercial, recreational, scientific, or educational purposes. A limited number of CPSD tiger beetles are collected from wild populations for recreational purposes; however, CPSD State Park and BLM personnel enforce restrictions on recreational collecting. Collection of CPSD tiger beetles for scientific investigation and some recreational purposes occurs on occasion, but the level of collection is small. The best scientific and commercial information available indicates that overutilization for commercial, recreational, scientific, or educational purposes is not a threat to the CPSD tiger beetle now nor will be in the future.

Factor C. Disease or Predation

We know of no diseases that are a threat to the CPSD tiger beetle. Natural mortality through predation and parasitism accounts for some individual loss of adult and larval CPSD tiger beetles (Knisley and Hill 1994, p. 16). Known predators of adult tiger beetles include birds, shrews (Soricidae), raccoons (*Procyon lotor*), lizards (Lacertilia), toads (Bufonidae), ants (Formicidae), robber flies (Asilidae), and dragonflies (Anisoptera) (Knisley and Shultz 1997, pp. 57–59).

Known tiger beetle parasites include ant-like wasps of the family Tiphiidae, especially the genera Methoca, Karlissa, and Pterombrus, and flies of the genus Anthrax (Knisley and Shultz 1997, pp. 53–57). Parasites predominantly target larval tiger beetles (Pearson and Vogler 2001, pp. 170–171). There are two known natural parasites of larval CPSD tiger beetles. Bee flies (Bombyliidae) are known to flick their eggs into beetle burrows (Knisley and Hill 1995, p. 14). When these eggs hatch, the larval parasite feeds on beetle bodily fluids, often resulting in death of the tiger beetle larvae. Wasps of the genus Methoca also can parasitize CPSD tiger beetle larvae (Knisley and Hill 1995, p. 14). These wasps deposit their larvae in the burrows of larval tiger beetles. The wasp larvae then consume the tiger beetle larvae. Despite documented parasitism to larval CPSD tiger beetle, effects to the species are low and not considered a threat to the CPSD tiger beetle (Conservation Committee 1997, p. 7).

Summary of Factor C

We have found no information that indicates that disease negatively affects the CPSD tiger beetle population. There is some information documenting mortality of CPSD tiger beetles by natural predators and parasites; however, not to a level that significantly affects the species. Thus, disease, parasites, and predation are not a threat to the species now or likely to become so in the future.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

The Act requires us to examine the inadequacy of existing regulatory mechanisms with respect to extant threats that place CPSD tiger beetle in danger of becoming either an endangered or threatened species. Regulatory mechanisms affecting the species fall into three general categories: (1) Land management; (2) State mechanisms; and (3) Federal mechanisms.

Land Management

The CPSD geologic feature is approximately 1,416 ha (3,500 ac). The southern 809 ha (2,000 ac) of the CPSD is within the CPSD State Park and is categorized as public land with a recreational emphasis (Conservation Committee 2009, p. 17). The State Park's mission, as described in the most recent general management plan (Franklin *et al.* 2005, p. 3), is ''to provide visitors […] recreation experiences while preserving and interpreting the park's natural, scenic, and recreation resources.'' The northern 1,500 ac (607 ha) is Federal land managed by the BLM's Kanab Field Office (BLM 2000, p. 14). The northern area is partly within the Moquith Mountain Wilderness Study Area (WSA). Public education for both areas includes signage, brochures, and interpretive programs.

As discussed in the proposed rule and stated previously in this document (see *Factor A;* Ongoing and Future Conservation Efforts), the Utah Department of Natural Resources (which oversees the Utah State Parks), the BLM, the Service, and Kane County developed and signed a CCA in 1997 (Conservation Committee 1997), renewed the agreement in 2009 (Conservation Committee 2009, entire), and further amended the agreement in 2013 (Conservation Committee 2013, entire).

The 2009 CCA recommended conservation objectives and actions designed to protect and conserve the CPSD tiger beetle. Despite the positive and ongoing accomplishments of the 2009 CCA, the proposed rule identified several threats that were still negatively acting on CPSD tiger beetle and its habitat (see Ongoing and Future Conservation Efforts). Based on information provided in the proposed rule, discussions with researchers, and onsite evaluations with the CCA partners, signatory agencies established a 2013 amendment to the 2009 CCA. This amendment outlined several new conservation actions that will be enacted to address the threats that were identified in the Service's October 2, 2012, proposed rule (77 FR 60208) (see Table 2). The degree to which the 2009 CCA and the 2013 CCA Amendment have ameliorated identified threats is discussed above and is also discussed below.

Protection for the tiger beetle in Conservation Area A is codified and enforced according to the CPSD State Park's special closure (Conservation Committee 1997, p. 13) and Utah's Administrative Code R 651–633. Of the 809-ha (2,000-ac) CPSD State Park, the conservation actions agreed to in the 2013 CCA Amendment will protect 266 ac (108 ha) of occupied habitat at Conservation Area A, or 88 percent of CPSD tiger occupied swale habitat in the central population. In addition, CPSD tiger beetle adults and larvae were found to the south of Conservation Area A in 2012. The conservation committee visited this area in spring of 2013 to determine any additional habitats that should be protected to support the tiger beetle. The size and configuration of any protected areas will be determined during the remainder of the 2013 field season with input from all members of the conservation committee.

Through regulatory protections established as an outcome of the 1997 CCA, and maintained in the 2013 CCA Amendment, Conservation Area B provides protection to the northern population's entire habitat as we have defined its boundary (see Figure 1). In this area, 370 ac (150 ha) is closed to ORV use to protect a small population of CPSD tiger beetles. Under the original 1997 CCA, approximately 445 ha (1,100 ac) was available for ORV use outside of the Conservation Area B on BLM lands (within the dispersal corridor), but with the stipulation that ORVs stay on open dunes and maintain a 3-m (10-ft) buffer around vegetation. BLM and Utah State

Parks have the authority to issue a ticket to ORV users who do not comply with closed areas that are identified with carsonite posts (essentially all of Conservation Areas A and B, and all protected habitat polygons between these two areas) (Conservation Committee 1997, p. 13).

At the time of the proposed rule, we had no record of enforcement effort or success of the closures at either Conservation Area A or B, or the degree of compliance with the 3-m no-ride buffer around vegetation on BLM land. Since that time we have visited the CPSD dune feature and discussed the issue of compliance with BLM and Utah State Parks staff. Our visits to the area have observed almost no ORV tracks within Conservation Areas A or B but a moderate amount of tracks in the vicinity of some of the vegetated areas on BLM lands that are not in Conservation Area B. BLM and State Park enforcement officers indicate that violation of areas that are currently protected is not a problem and that the large majority of ORV users voluntarily comply with closed areas (Anderson 2013, pers. comm.).

At the time of the proposed rule there was no protection from ORV use for the CPSD tiger beetle in the dispersal corridor between Conservation Areas A and B. As explained above (see *Adult Dispersal*), this area is potentially important for dispersal of tiger beetles or habitat occupancy in the areas between Conservation Area A to Conservation Area B. As part of the 2013 CCA Amendment, Utah Parks and the BLM will protect vegetated habitat islands of connectivity between the southern and northern conservation areas and monitor to ensure compliance. This action was initiated in 2013 and protects 263 ac (106 ha) of additional sand dune habitat comprising 14 individual habitat patches (Figure 4), which range in size from 2.6 to 37.1 ac (1.0 to 15 ha) each.

Overall, the 2013 CCA Amendment increased protected habitat to include 88 percent of the occupied swale habitat of the central population, and an additional 263 ac (106 ha) of habitat between Conservation Areas A and B. In addition, the conservation committee is considering protection of additional occupied swale habitat south of Conservation Area A.

In general, a species' resiliency to demographic and environmental perturbations is related to its ability to disperse within and across habitats, to track the preferred climate space, and to expand rapidly following disturbance as dictated by its reproductive rates and dispersal ability (Williams *et al.* 2008, p. 2). The expanded protection provided by the 2013 CCA Amendment results in improved long-term habitat conditions for the CPSD tiger beetle, resulting in increased species' resiliency, which makes the species less susceptible to other threats such as climate change and drought, demographic and environmental stochasticity, and catastrophic events (see *Factor E. Climate Change and Drought* and *Small Population Effects*). Previously (see the *Background: Population Distribution*), the central population of CPSD tiger beetle occupied a smaller portion of Conservation Area A, and based on population and habitat sampling results to date, we believed it was not likely that the species would expand to other areas in Conservation Area A due to insufficient habitat conditions. With the additional protections of the 2013 CCA Amendment, Conservation Area A will protect additional occupied habitat that is already being used by the species but is at levels that are artificially low due to the effects of ORVs (see *Population Viability Analysis* and *Factor A*).

In the proposed rule, we recommended that the population at Conservation Area B be managed such that it becomes self-sustaining (see *Population Viability Analysis* and *Factor A*). Overall, it remains unclear from a biological or regulatory perspective what will be necessary to achieve this. It is possible that, by expanding Conservation Area A, the central population will increase such that it will be sufficient to provide adequate numbers of dispersers to bolster the population at Conservation Area B, thus making it self-sustaining. This should now be achievable since the conservation committee agreed to put additional regulatory measures in place to protect the dispersal corridor between Conservation Areas A and B to allow for a safe and sufficient level of CPSD tiger beetle dispersal between the two areas. In addition, the additional 263 ac (106 ha) of protected habitat in the dispersal corridor will be available to CPSD tiger beetle for colonization.

Although the CCAs are not regulatory mechanisms by themselves, the signatory agencies have implemented the conservation actions specified in the CCA through the use of regulatory mechanisms since 1997, including the legal restriction of ORVs from occupied habitats and dispersal corridor.

State Mechanisms

Utah's Administrative Code R 651–633 prohibits motorized vehicle use in designated nonmotorized sand dune areas of CPSD State Park. Conservation Area A is a designated nonmotorized sand dune area, and thus the State Code protects tiger beetle habitat in this area. In addition, State Code will now provide protection to the islands of habitat within the portion of the dispersal corridor that is on State Park land. CPSD State Park's dual purpose mission statement of providing recreational experiences while preserving natural resources (Franklin *et al.* 2005, p. 3) has assisted with the conservation of CPSD tiger beetle because the State Park has closed areas (Conservation Area A) to ORV use to protect CPSD tiger beetle.

As described above, the 2009 CCA and 2013 CCA Amendment provide long-term protection of the tiger beetle. The 2013 CCA Amendment expands protection based on our current knowledge of the species' distribution. Although the CCAs are not regulatory mechanisms, the State has shown a consistent commitment and ability to implement the protective measures, by using its regulatory authorities to restrict motorized use through its Administrative Code Process. Therefore, we conclude that adequate State regulatory mechanisms are in place to reduce threats to the CPSD tiger beetle.

Federal Mechanisms

The FLPMA is the primary Federal law governing most land uses on BLM-administered lands. Section 102(a)(8) of FLPMA specifically recognizes wildlife and fish resources as being among the uses for which these lands are to be managed. Regulations pursuant to FLPMA and the Mineral Leasing Act (30 U.S.C. 181 *et seq.*) that address wildlife habitat protection on BLM-administered land include 43 CFR 3162.3–1 and 43 CFR 3162.5–1; 43 CFR 4120 *et seq.;* and 43 CFR 4180 *et seq.* Cumulatively, BLM regulations allow the agency to formally recognize sensitive species for special management and protection, include them as such in their land management plans, and to enforce protective closures of posted species habitat. See below for more information.

The BLM manages the CPSD tiger beetle as a ''sensitive species,'' that is managed under BLM Manual 6840—Special Status Species Management (BLM 2008, entire). The BLM Manual 6840 requires that Resource Management Plans (RMPs) should address sensitive species, and that implementation ''should consider all site-specific methods and procedures needed to bring species and their habitats to the condition under which management under the Bureau sensitive species policies would no longer be necessary'' (BLM 2008, p. 2A1). The BLM will continue to manage the CPSD

tiger beetle as a sensitive species under the BLM Manual 6840 (Bolander 2013, pers. comm.). As a designated sensitive species under BLM Manual 6840, CPSD tiger beetle conservation must be addressed in the development and implementation of RMPs on BLM lands.

The RMPs are the basis for all actions and authorizations involving BLM-administered lands and resources. They establish allowable resource uses, resource condition goals and objectives to be attained, program constraints and general management practices needed to attain the goals and objectives, general implementation sequences, and intervals and standards for monitoring and evaluating the plan to determine its effectiveness and the need for amendment or revision (43 CFR 1601 *et seq.*).

The RMPs provide a framework and programmatic guidance for activity plans, which are site-specific plans written to implement decisions made in an RMP. Activity plan decisions normally require additional planning and NEPA analysis (see below). If an RMP contains specific direction regarding sensitive species habitat, conservation, or management, it represents an enforceable regulatory mechanism to ensure that the species and its habitats are considered during permitting and other decisionmaking regarding BLM lands.

The 2008 Kanab RMP establishes guidance and objectives for the management of the northern portion of CPSD (BLM 2008, entire). In the RMP, the BLM commits to ''implement conservation actions identified in the Conservation Agreement and Strategy for the Coral Pink Sand Dunes tiger beetle, including maintaining the established 370-acre conservation area'' (BLM 2008, p. 32). In addition to maintaining Conservation Area B, the BLM has funded and continues to fund CPSD tiger beetle monitoring and research activities. BLM was signatory to the 2013 CCA Amendment and agreed to provide the continued protection of Conservation Area B and expanded protection on BLM lands within the dispersal corridor between Conservation Areas A and B (see Ongoing and Future Conservation Efforts). Although CCAs are not a regulatory mechanism per se, CCAs can implement conservation measures via regulatory mechanisms, and the BLM has used its regulatory authority to implement the specific protections for the CPSD tiger beetle as outlined in the CCA via its 2008 RMP.

BLM Manual 6840—Special Status Species Management (BLM 2008, entire) also states that ''Bureau sensitive species will be managed consistent with species and habitat management objectives in land use and implementation plans to promote their conservation and to minimize the likelihood and need for listing under the ESA'' (BLM 2008, pp. 26, 32, 41, 64, and 65). As such, BLM manual 6840 establishes management policy and direction for BLM's continued involvement in the CCA and its membership on the conservation committee (Conservation Committee 2009, p. 7).

With respect to regulatory mechanisms that address climate change, on December 15, 2009, the Environmental Protection Agency (EPA) published in the **Federal Register** (74 FR 66496) a rule titled, ''Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act.'' In this rule, the EPA Administrator found that the current and projected concentrations of the six long-lived and directly emitted greenhouse gases (GHGs)—carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride—in the atmosphere threaten the public health and welfare of current and future generations; and that the combined emissions of these GHGs from new motor vehicles and new motor vehicle engines contribute to the GHG pollution that threatens public health and welfare (74 FR 66496). In effect, the EPA has concluded that the GHGs linked to climate change are pollutants, whose emissions can now be subject to the Clean Air Act (42 U.S.C. 7401 *et seq.*) (see 74 FR 66496). However, specific regulations to limit GHG emissions were proposed in 2010 and have not been finalized and, therefore, cannot be considered an existing regulatory mechanism. At present, we have no basis to conclude that implementation of the Clean Air Act in the future (40 years, based on global climate projections) will substantially reduce the current rate of global climate change through regulation of GHG emissions.

However, the establishment of 263 ac (106 ha) of protected habitat on BLM and Utah State Parks managed lands between Conservation Area A and B will occur in locations of the CPSD dune feature that are at a significantly higher elevation than habitat in the central population. The northern half of the CPSD dune feature is also more densely vegetated and (see *Habitat* in Background) should be able to provide better habitat as the effects of climate change are seen in the CPSD area. As a result, establishment of this new habitat will allow CPSD tiger beetle to adjust to the effects of climate change and monitoring of the species' use of this area will inform any adaptive management for the species.

NEPA may provide additional protection to CPSD tiger beetle and its habitat. As explained previously, Federal land management agencies, such as the BLM, have legislation that specifies how their lands are managed for sensitive species. The NEPA provides authority for the Service to assume a cooperating agency role for Federal projects undergoing evaluation for significant impacts to the human environment. This includes participating in updates to RMPs. As a cooperating agency, we have the opportunity to provide recommendations to the action agency to avoid impacts or enhance conservation for CPSD tiger beetle and its habitat where it occurs on Federal land. For projects where we are not a cooperating agency, we often review proposed actions and provide recommendations to minimize and mitigate impacts to fish and wildlife resources. However, acceptance of our NEPA recommendations is not required and is at the discretion of the action agency.

Summary of Factor D

The BLM and Utah State Parks use their regulatory authorities to implement their commitments in the 2009 CCA, and the 2013 CCA Amendment. State management of land in Conservation Area A provides protection for 88 percent of CPSD tiger beetle occupied habitat in the central population. By the end of 2013, State and Federally managed lands between Conservation Areas A and B will provide an additional 263 ac (106 ha) of protected habitat for CPSD tiger beetle for dispersal and colonization. Federal land management by the BLM in the northern portion of CPSD geologic feature includes 150 ha (370 ac) of protected habitat and fully protects the northern population. Utah's Administrative Code prohibits motorized vehicle use in designated nonmotorized sand dune areas of CPSD State Park (Conservation Area A and habitat islands within the dispersal corridor), and the BLM's federal sensitive species and RMP authorities protect CPSD tiger beetle habitat in Conservation Area B and habitat islands within the dispersal corridor.

While the Clean Air Act gives the EPA authority to limit GHGs linked to climate change, our analysis concludes that current regulation of these gases is not adequate to reduce the current rate of global climate change. However,

establishment of newly protected habitat between Conservation Areas A and B (as managed by State and Federal regulatory agencies) will allow CPSD tiger beetle to adjust habitat usage to areas that are more resilient to the effects of climate change.

As evidenced by the discussion above, the species is adequately protected by the existing regulatory mechanisms; thus, we conclude that the existing regulatory mechanisms are not inadequate, now or in the future.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Natural and manmade factors affecting the CPSD tiger beetle include: (1) Sand dune movement; (2) climate change and drought; (3) small population effects; and (4) cumulative effects of all threats that may impact the species.

Sand Dune Movement

Movement of the swales due to sand dune movement naturally occurs in the CPSD system as wind action continues to shape the dunes. Major dune ridgelines moved approximately 22 m (72 ft) (Knisley and Gowan 2005, p. 4) between 2001 and 2002, and most ridgelines moved 45 m (150 ft) between 2002 and 2010 (Knisley and Gowan 2011, p. 25). Dune movement can result in a change in suitable habitat conditions for the CPSD tiger beetle (Knisley and Gowan 2008, pp. 21–22). For example, dune movement has buried previously occupied swale habitat (Knisley and Gowan 2008, pp. 21–22). It is likely that dune movement is uncovering potential habitat as well; however, comprehensive surveys to determine this have not been conducted (Knisley 2012, pers. comm.). Wind action created and continues to shape the current CPSD (Ford *et al.* 2010, p. 387), and we have no evidence to suggest that the rate of dune movement is increasing. Because CPSD tiger beetle presumably evolved in this environment, it is likely that the species is adapted to the continual movement of dunes. We have no evidence demonstrating that dune movement is a threat to the species now or is likely to become so in the future; however, additional study of dune movement is recommended.

Climate Change and Drought

Our analyses under the Act include consideration of environmental changes resulting from ongoing and projected changes in climate. The terms ''climate'' and ''climate change'' are defined by the Intergovernmental Panel on Climate Change (IPCC). ''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 2007a, p. 78). The term ''climate change'' thus refers to a change in the mean or variability of one or more measures of climate (e.g., temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007a, p. 78).

Scientific measurements spanning several decades demonstrate that changes in climate are occurring, and that the rate of change has been faster since the 1950s. Based on extensive analyses of global average surface air temperature, the most widely used measure of change, the IPCC concluded that warming of the global climate system over the past several decades is ''unequivocal'' (IPCC 2007a, p. 2). In other words, the IPCC concluded that there is no question that the world's climate system is warming.

Examples of other changes include substantial increases in precipitation in some regions of the world and decreases in other regions (for these and additional examples, see IPCC 2007a, p. 30; Solomon *et al.* 2007, pp. 35–54, 82–85). Various environmental changes (e.g., shifts in the ranges of plant and animal species, increasing ground instability in permafrost regions, conditions more favorable to the spread of invasive species and of some diseases, changes in amount and timing of water availability) are occurring in association with changes in climate (see IPCC 2007a, pp. 2–4, 30–33; and Global Climate Change Impacts in the United States 2009, pp. 27, 79–88).

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 ''very likely'' (defined by the IPCC as 90 percent or higher probability) due to the observed increase in GHG concentrations in the atmosphere as a result of human activities, particularly carbon dioxide emissions from fossil fuel use (IPCC 2007a, pp. 5–6 and figures SPM.3 and SPM.4; Solomon *et al.* 2007, pp. 21–35). Further confirmation of the role of GHGs comes from analyses by Huber and Knutti (2011, p. 4), who concluded it is extremely likely that approximately 75 percent of global warming since 1950 has been caused by human activities.

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 GHG emissions, to evaluate the causes of changes already observed and to project future changes in temperature and other climate conditions (e.g., Meehl *et al.* 2007, entire; Ganguly *et al.* 2009, pp. 11555, 15558; Prinn *et al.* 2011, pp. 527, 529). All combinations of models and emissions scenarios yield very similar projections of average global warming until about 2030. Although projections of the magnitude and rate of warming differ after about 2030, the overall trajectory of all the projections is one of increased global warming through the end of this century, even for projections based on scenarios that assume that GHG emissions will stabilize or decline. Thus, 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 the extent of GHG emissions (IPCC 2007a, pp. 44–45; Meehl *et al.* 2007, pp. 760–764; Ganguly *et al.* 2009, pp. 15555–15558; Prinn *et al.* 2011, pp. 527, 529).

In addition to basing their projections on scientific analyses, the IPCC reports projections using a framework for treatment of uncertainties (e.g., they define ''very likely'' to mean greater than 90 percent probability, and ''likely'' to mean greater than 66 percent probability; see Solomon *et al.* 2007, pp. 22–23). Some of the IPCC's key projections of global climate and its related effects include: (1) It is virtually certain there will be warmer and more frequent hot days and nights over most of the earth's land areas; (2) it is very likely there will be increased frequency of warm spells and heat waves over most land areas; (3) it is very likely that the frequency of heavy precipitation events, or the proportion of total rainfall from heavy falls, will increase over most areas; and (4) it is likely the area affected by droughts will increase, that intense tropical cyclone activity will increase, and that there will be increased incidence of extreme high sea level (IPCC 2007b, p. 8, Table SPM.2). More recently, the IPCC published additional information that provides further insight into observed changes since 1950, as well as projections of extreme climate events at global and broad regional scales for the middle and end of this century (IPCC 2011, entire).

Various changes in climate may have direct or indirect effects on species. These may be positive, neutral, or negative, and they may change over time, depending on the species and

other relevant considerations, such as interactions of climate with other variables such as habitat fragmentation (for examples, see Franco *et al.* 2006; IPCC 2007b, pp. 8–14, 18–19; Forister *et al.* 2010; Galbraith *et al.* 2010; Chen *et al.* 2011). In addition to considering individual species, scientists are evaluating possible climate change-related impacts to, and responses of, ecological systems, habitat conditions, and groups of species; these studies include acknowledgement of uncertainty (e.g., Deutsch *et al.* 2008; Berg *et al.* 2009; Euskirchen *et al.* 2009; McKechnie and Wolf 2009; Sinervo *et al.* 2010; Beaumont *et al.* 2011; McKelvey *et al.* 2011; Rogers and Schindler 2011).

Many analyses involve elements that are common to climate change vulnerability assessments. In relation to climate change, vulnerability refers to the degree to which a species (or system) is susceptible to, and unable to cope with, adverse effects of climate change, including climate variability and extremes. Vulnerability is a function of the type, magnitude, and rate of climate change and variation to which a species is exposed, its sensitivity, and its adaptive capacity (IPCC 2007a, p. 89; see also Glick *et al.* 2011, pp. 19–22). No single method for conducting such analyses applies to all situations (Glick *et al.* 2011, p. 3). We use our expert judgment and appropriate analytical approaches to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

As is the case with all stressors that we assess, even if we conclude that a species is currently affected or is likely to be affected in a negative way by one or more climate-related impacts, it does not necessarily follow that the species meets the definition of an ''endangered species'' or a ''threatened species'' under the Act. If a species is listed as an endangered or threatened species, knowledge regarding its vulnerability to, and known or anticipated impacts from, climate-associated changes in environmental conditions can be used to help devise appropriate strategies for its recovery.

The IPCC predicts that the resiliency of many ecosystems is likely to be exceeded this century by an unprecedented combination of climate change, associated disturbances (e.g., flooding, drought, wildfire, and insects), and other global drivers (IPCC 2007, pp. 31–33). With medium confidence, IPCC predicts that approximately 20 to 30 percent of plant and animal species assessed by the IPCC so far are likely to be at an increased risk of extinction if increases in global average temperature exceed 1.5 to 2.5 °C (3 to 5 °F) (IPCC 2007a, p. 48).

Regional projections indicate the Southwest, including southern Utah, may experience the greatest temperature increase of any area in the lower 48 States (IPCC 2007a, p. 30). Drought probability is predicted to increase in the Southwest (Karl *et al.* 2009, pp. 129–134), with summers warming more than winters, and annual temperature increasing approximately 2.2 °C (4 °F) by 2050 (Ray *et al.* 2008, p. 29). Additionally, the number of days over 32 °C (90 °F) could double by the end of the century (Karl *et al.* 2009, p. 34). Projections also show declines in snowpack across the West, with the most dramatic declines at lower elevations (below 2,500 m (8,200 ft)) (Ray *et al.* 2008, p. 29). A 10 to 30 percent decrease in precipitation in mid-latitude western North America is projected by the year 2050, based on an ensemble of 12 climate models (Milly *et al.* 2005, p. 1). Overall, future projections for the Southwest include increased temperatures; more intense and longer-lasting heat waves; and increased probability of drought exacerbated by higher temperatures, heavier downpours, increased flooding, and increased erosion (Karl *et al.* 2009, pp. 129–134).

Utah is projected to warm more than the average for the entire globe (Governor's Blue Ribbon Advisory Council on Climate Change (GBRAC) 2008, p. 14). The expected consequences of this warming are fewer frost days, longer growing seasons, and more heat waves (GBRAC 2008, p. 14). For Utah, the projected increase in annual mean temperature by year 2100 is about 4.5 °C (8 °F) (GBRAC 2008, p. 14). Because of increased temperature, Utah soils are expected to dry more rapidly (GBRAC 2008, p. 20); this is likely to result in reduced soil moisture levels in CPSD tiger beetle habitat.

Utah is projected to have more frequent heavy precipitation events, separated by longer dry spells as a result of climate change (GBRAC 2008, p. 15). Drought is a localized dry spell. Drought conditions are a potential stressor to the CPSD tiger beetle, as rainfall indirectly controls population size and the changing dynamics of the species (Knisley and Gowan 2009, p. 8).

Previous drought-like conditions have resulted in drastic CPSD tiger beetle population declines. For example, low rainfall amounts from 2001 to 2003 resulted in reduced adult numbers in 2004 and 2005 (Knisley and Gowan 2008, p. 8). Conversely, high adult numbers in 1996 and 2002 followed several years of higher than average rainfall (Knisley and Gowan 2008, p. 8). These observed population responses to rainfall are most likely caused by reductions and increases in prey and soil moisture. Prey is more abundant during wet years, and this abundance reduces the effects of starvation, decreases development time, and increases fecundity (Knisley and Hill 2001, p. 391). Soil moisture seems to have the greatest effect on oviposition and larval survival. As stated in Factor A, reduced water availability is limiting to tiger beetles in CPSD, and this is evidenced by the fact that in one experiment water supplementation increased larval CPSD tiger beetle survival by 10 percent (Knisley and Gowan 2006, p. 7).

To help the species adapt and be resilient to changing climates, the 2013 CCA Amendment protects an additional 263 ac (106 ha) (see Ongoing and Future Conservation Efforts) of CPSD tiger beetle habitat in the northern area of the CPSD feature at a high elevation and where swale habitat exists with dense vegetation. This northern area of the CPSD area will be more resistant to the warming and drying effects of climate change as temperatures in this area will be somewhat cooler than where the majority of CPSD tiger beetle are currently found at the central population. In addition, many swale habitats in this area are over-vegetated and drying related to climate change would be expected to reduce vegetation amounts as the effects of climate change take place in the future. This scenario is expected to result in habitat that is more moderately vegetated and thus more appropriate CPSD tiger beetle habitat. Also, expanded habitat in the vicinity of the central population as a result of the 2013 CCA Amendment will result in a larger population, which will make the species more resilient to climate change.

In summary, the limited geographic range of CPSD tiger beetle to sand dunes and swales within the CPSD geologic feature somewhat limits the ability of the species to adapt by shifting its range in response to changing climatic conditions. CPSD tiger beetle survival and reproduction, as described above, are highly dependent upon soil moisture, which in turn is dependent upon climatic conditions (precipitation and temperature). Climate change is predicted to increase temperatures and increase the likelihood and duration of drought conditions in Utah. Both of these effects will reduce soil moisture in CPSD and could impact the CPSD tiger beetle. However, newly protected CPSD tiger beetle habitat will be located in the higher elevation northern portion of the

park. Swale habitats in this area will provide protected dispersal habitat between Conservation Areas A and B and will also provide habitat for colonization and population expansion. Some of this habitat is currently over-vegetated and not currently suitable habitat for the CPSD tiger beetle, but will become less vegetated and thus more suitable for the species as temperatures warm and dry the area. For these reasons, we conclude that environmental changes resulting from climate change, including drought, will be moderated as a result of conservation measures in the 2013 CCA Amendment and we do not consider climate change to be a threat to the species, now or in the future.

Small Population Effects

Here we consider that the CPSD tiger beetle has one of the smallest geographical ranges of any known insect (Romey and Knisley 2002, p. 170). It is restricted to the CPSD geologic feature and occupies only 202 ha (500 ac) (Morgan *et al.* 2000, p. 1109).

A species may be considered rare because of a limited geographical range, specialized habitat, or small population size (Primack 1998, p. 176). In the absence of information identifying threats to a species and linking those threats to the rarity of a species, we do not consider rarity alone to be a threat. A species that has always been rare, yet continues to survive, could be well equipped to continue to exist into the future. Many naturally rare species have persisted for long periods within small geographic areas, and many naturally rare species exhibit traits that allow them to persist despite their small population sizes. Consequently, the fact that a species is rare does not necessarily indicate that it may be in danger of extinction.

CPSD tiger beetle has a very limited occupied range and a very small population size (558 adults in 2005 to a high of 2,944 adults in 2002). It has several characteristics typical of species vulnerable to extinction including: (1) A very narrow geographic range; (2) only one known self-sustaining population; and (3) a small population size.

Extinction may be caused by demographic stochasticity due to chance realizations of individual probabilities of death and reproduction, particularly in small populations (Shaffer 1981, p. 131; Lande 1993, pp. 911–912). Environmental stochasticity can result in extinction through a series of small or moderate perturbations that affect birth and death rates within a population (Shaffer 1981, p. 131; Lande 1993, p. 912). Lastly, extinction can be caused by random catastrophes (Shaffer 1981, p. 131; Lande 1993, p. 912). The proposed rule stated that the CPSD tiger beetle was vulnerable to extinction due to: (1) Demographic stochasticity due to its small population size; (2) environmental stochasticity due to continued small perturbations caused by ongoing modification and curtailment of its habitat and range from ORV use; and (3) the chance of random catastrophe such as an extended drought. However, the enactment of the 2013 CCA Amendment has provided conservation actions that address these potential threats. The CPSD tiger beetle population has been increasing in population size for the last 8 years and is of sufficient size to provide dispersers into newly protected habitat; newly protected habitat will remove the threat of ORV use; and the effects of drought and climate change will be offset by protected habitat that occurs at higher elevations that are cooler and have an over-abundance of vegetation.

Small populations also can be vulnerable due to a lack of genetic diversity (Shaffer 1981, p. 132). We have no information regarding genetic diversity of CPSD tiger beetle. A minimum viable population (MVP) will vary depending on the species. An MVP of 1,000 may be adequate for species of normal genetic variability, and an MVP of 10,000 should permit long-term persistence and continued genetic diversity (Thomas 1990, p. 325). These estimates should be increased by at least 1 order of magnitude (to 10,000 and 100,000) for insects, because they usually have greater population variability (Thomas 1990, p. 326). Based upon available information, CPSD tiger beetle likely does not meet these minimum population criteria for maintaining genetic diversity because the estimated population size ranges from 558 to 2,944 individuals. However, the conservation measures that expand Conservation Area A, and create 263 ac of protected habitat between Conservation Areas A and B, are expected to bolster CPSD tiger beetle population numbers, increase the species' resiliency, and thus offset the species' potential vulnerability to a lack of genetic diversity.

In summary, we do not find that small population size on its own is a threat to CPSD tiger beetle. Despite, the species' relatively small population size, the 2009 CCA and the 2013 CCA Amendment conservation actions will reduce the species vulnerability to extinction due to demographic stochasticity, environmental stochasticity, and random catastrophe by removing the threat of ORV use, and by providing additional protected habitat to allow the species to adjust to drought and climate change. In addition, the estimated adult CPSD tiger beetle population has been increasing in size over the last 8 years, and it was estimated at 2,494 in 2013. This is close to its largest estimated size (2,944), which occurred in 2002 (see **Background**). Thus, we do not consider small population size a threat to the species, now or in the future.

Cumulative Effects

Some of the threats discussed in this finding could work in concert with one another to cumulatively create situations that potentially impact the CPSD tiger beetle beyond the scope of the threats that we have already analyzed. However, we believe that the suite of conservation measures in the 1997/2009 CCA and the 2013 CCA Amendment address and alleviate all of the threats to the CPSD tiger beetle adequately for the species to persist into the future. Additional habitat protection areas have removed the threat of ORV use and will allow the CPSD tiger beetle population to increase in numbers in habitat where they are currently present but in low numbers. Population increases will make the species more resilient to the effects of climate change and small populations. In addition, increased protected habitat will allow the species to better disperse between the two existing populations, and newly protected habitat that exists between the two conservation areas is now available for colonization.

Summary of Factor E

Wind action created and continues to shape the CPSD geologic feature (Ford *et al.* 2010, p. 387). Sand dune movement naturally occurs in this system as wind action continues to shape the dunes. Dune movement can result in a change in suitable habitat conditions (Knisley and Gowan 2008, pp. 21–22); however, it is likely that dune movement is uncovering potential habitat as well as covering previously occupied habitat (e.g., Gregory 1950, p. 188). CPSD tiger beetle evolved in a dynamic dune-dominated system, and we have no evidence to suggest that the rate of dune movement is increasing or decreasing. Thus, we have no information indicating that dune movement is a threat to this species, now or is likely to become so in the future.

Utah is projected to have increased temperatures and more frequent heavy precipitation events, separated by longer dry spells, as a result of climate change (GBRAC 2008, p. 15). Utah soils are expected to dry more rapidly as a result

of increased temperatures (GBRAC 2008, p. 20). Drought duration and intensity in CPSD will likely increase in the future, magnifying the soil moisture reductions expected from temperature increases alone. Precipitation and soil moisture levels currently limit the CPSD tiger beetle population in the CPSD (Knisley and Gowan 2006, p. 7), and reductions in soil moisture associated with climate change and drought could further reduce the CPSD tiger beetle population size. However, a suite of conservation measures in the 2009 CCA and the 2013 CCA Amendment address the threats of climate change and drought by providing protected dispersal habitat, at different elevations, between Conservation Areas A and B and also providing habitat for population expansion. Some of this habitat is currently over-vegetated, and not currently suitable habitat for the species. This will change as temperatures warm and dry the area—CPSD tiger beetles prefer areas that are not over-vegetated. In addition, the 2013 CCA Amendment includes a conservation action to perform vegetation treatments, which would more quickly transition these areas to more suitable habitat. Based on the analysis in Factor E, we find environmental changes resulting from climate change and drought will not become threats to the CPSD tiger beetle in the future.

The restricted range of the species does not constitute a threat in itself. However, the species' small population size makes the species more vulnerable to extinction due to demographic stochasticity, environmental stochasticity, and random catastrophe, when combined with the specific threats of ORV use, drought, and climate change. However, the enactment of the 2013 CCA Amendment has provided conservation actions that address these potential threats. Newly protected habitat is of sufficient size to provide dispersal habitat, protection of the habitat will remove the threat of ORV use, and the effects of drought and climate change will be offset by protected habitat that occurs at higher elevations that are cooler and have an over-abundance of vegetation. Furthermore, the CPSD tiger beetle population has been increasing in population size for the last 8 years. Therefore, we do not consider small population size to be a threat to the species, now or in the future.

Threats can work in concert with one another to cumulatively create conditions that will impact CPSD tiger beetle beyond the scope of each individual threat. However, the Service concludes that addressing the threats identified in the proposed rule independently will prevent these threats from acting cumulatively.

Determination

As required by the Act, we considered the five factors in assessing whether the CPSD tiger beetle meets the definition of a threatened or endangered species. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the species. Based on our review of the best available scientific and commercial information, we find that the current and future threats are not of sufficient imminence, intensity, or magnitude to indicate that the CPSD tiger beetle is in danger of extinction (endangered), or likely to become endangered within the foreseeable future (threatened), throughout all or a significant portion of its range. Therefore, the CPSD tiger beetle does not meet the definition of a threatened or endangered species, and we are withdrawing the proposed rule to list the CPSD tiger beetle as a threatened species. Our rationale for this finding is outlined below.

The CPSD tiger beetle is not in danger of extinction now because the population has an increasing trend over the past 8 years, and it has persisted in its current distribution and has been thus far resilient to random natural impacts. Conservation measures currently being enacted will expand protected habitat in the central population area and also increase additional protected habitat for dispersal and colonization, which is expected to increase resilience to future random natural impacts. Further, its distribution encompasses and is representative of the known genetic diversity of the species. As such, the species has not currently declined to the point that it is subject to impacts from stochastic events that would result in a change in the status of the species as a whole. In other words, if the species continues to persist in its current distribution and in the additional areas into which it is expected to colonize and disperse, we conclude that it will have sufficient resiliency, redundancy, and representation to persist now and in the foreseeable future.

In our proposed rule, we identified several threats that we expected to significantly impact the status of the species as a whole into the foreseeable future, which was an appropriate conclusion based on the best available scientific and commercial information available at that time. However, since that time, significant ongoing and new conservation efforts have reduced the magnitude of potential impacts in the future such that the species no longer meets the definition of a threatened or endangered species.

In our proposed rule, we identified direct (killing of CPSD tiger beetles) and indirect effects (habitat loss due to drying, impacts to vegetation, killing of prey items) of ORV use, small population effects, and the effects of climate change and drought as threats to the continued existence of the CPSD tiger beetle. Our conclusion was based on information about past and current impacts to tiger beetle habitat due to these stressors, information about continued and future ORV use within tiger beetle habitat, and the lack of dispersal areas and high-elevation colonization areas protected from these stressors.

Since the time of our proposed listing, the conservation committee has made a significant effort to develop and implement additional conservation measures (2013 CCA Amendment) for the CPSD tiger beetle. The 2009 CCA contains conservation measures that have been implemented by the Utah State Parks, BLM, Kane County, and the Service, and have reduced or eliminated threats to the CPSD tiger beetle (see **Ongoing and Future Conservation Efforts**). In addition, through the 2013 CCA Amendment, the conservation committee has implemented several conservation measures that address the threat of ORV use by increasing protected habitat surrounding Conservation Area A; designating protected habitat areas between Conservation Areas A and B; reassessing conservation area boundaries on a routine cycle (every 3 years) to account for shifting dunes, vegetation changes, population increases and decreases, and resulting changes to suitable habitat; and by continuing Utah State Parks and BLM law enforcement, education, and outreach.

When the 2009 and 2013 CCA measures are considered together, Conservation Area A will protect CPSD tiger beetle occupied swales by restricting ORV use from 88 percent of the species' central population's occupied habitat. In addition, ORVs will be restricted from using a number of habitat islands within the dispersal corridor between Conservation Areas A and B. This protection will increase the resiliency of the CPSD tiger beetle and offset the threat of small population effects by providing additional habitat for the species to increase in number at the central population, and also by providing habitat for colonization and dispersal between Conservation Areas A

and B. The additional colonization and dispersal habitat occurs in areas that are higher and more heavily vegetated than habitat for the central population, and thus will offset the threat of climate change and drought.

Conservation measures that are identified in the 2013 CCA Amendment can be viewed as having regulatory authority because the signatory agencies that have implementation authority have the regulatory controls in place to assure that these measures will be adequately implemented. In addition, independently addressing and eliminating the significance of each of the threats identified in the proposed rule will prevent them from acting cumulatively.

As summarized in the **Ongoing and Future Conservation Efforts and PECE Analysis** sections above, we have a high degree of certainty that the 2009 CCA and the 2013 CCA Amendment will continue to be implemented. See Table 1 under **Ongoing and Future Conservation Efforts** for the status of the 2013 CCA Amendment conservation actions. Our level of certainty is high because: Signatory agencies have been compliant with implementation of the conservation actions of the original 1997 CCA and its 2009 reauthorization; the authorities for expending funds are in place and CPSD tiger beetle research and population monitoring has been funded by signatory agencies for the last 20+ years; signatory agencies have been responsive to designating additional protected habitat for the species; monitoring and documentation of compliance with the conservation measures are in place; annual reports of monitoring have been completed; adaptive management will be used to reassess conservation boundaries on a regular basis; and all parties have the legal authorities to carry out their responsibilities under the 2009 CCA and the 2013 CCA Amendment. In addition, the estimated adult CPSD tiger beetle population has been increasing in size over the last 8 years, and it was estimated at 2,494 in 2013. This is close to its largest estimated size (2,944), which occurred in 2002.

We also have high certainty that the suite of conservation measures in the 2009 CCA and the 2013 CCA Amendment will be effective at reducing and eliminating threats to the CPSD tiger beetle to the point that the species no longer meets the definition of threatened or endangered species. Our certainty arises from the fact that the population has been increasing for the past 8 years, and that the primary effect of both plans is to move current and future ORV impacts outside of occupied and potential swale habitat. Further, the agreements have annual monitoring and reporting requirements to ensure that all of the conservation measures are implemented as planned, and are effective at removing threats to the CPSD tiger beetle and its habitat. Non-compliance ORV issues will be discussed at annual meetings and the adaptive management process will be used to address any identified issues until they are resolved. Potential solutions to ORV non-compliance include increasing enforcement, increasing posting of closed areas, and educational programs. The collaboration between the Service and other stakeholders requires regular meetings and involvement of all parties in order to implement the agreement fully.

In summary, we conclude that the conservation efforts have sufficient certainty of implementation and effectiveness that they can be relied upon in this final listing determination. Further, we conclude that conservation efforts have reduced or eliminated current and future threats to the CPSD tiger beetle to the point that the species is no longer in danger of extinction now or in the foreseeable future. Therefore, we are withdrawing our proposed rule to list the CPSD tiger beetle as a threatened species.

We will continue to monitor the status of the species through monitoring requirements in the 2009 CCA and 2013 CCA Amendment, and our evaluation of any other information we receive. These monitoring requirements will not only inform us of the amount of CPSD tiger beetle habitat conserved and reclaimed, but will also help inform us of the status of the CPSD tiger beetle population. Additional information will continue to be accepted on all aspects of the species. We encourage interested parties, outside of those parties already signatories to the 2009 CCA and the 2013 CCA Amendment, to become involved in the conservation of the species.

If at any time data indicate that the protective status under the Act should be reinstated, for example, we become aware of declining enforcement of or participation in the CCA or CCA amendment or noncompliance with the conservation measures, or if there are new threats or increasing stressors that rise to the level of a threat, we can initiate listing procedures, including, if appropriate, emergency listing pursuant to section 4(b)(7) of the Act.

References Cited

A complete list of all references cited in this document is available on the Internet at *http://www.regulations.gov* at Docket No. FWS–R6–ES–2012–0035 or upon request from the Field Supervisor, Utah Ecological Services Field Office (see **ADDRESSES** section).

Authors

The primary authors of this document are the staff members of the Utah Ecological Services Field Office (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1979, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 12, 2013.

Daniel M. Ashe,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2013–23165 Filed 10–1–13; 8:45 am]

BILLING CODE 4310–55–P



FEDERAL REGISTER

Vol. 78 Wednesday,
No. 191 October 2, 2013

Part V

Small Business Administration

13 CFR Parts 121, 124, 125, et al.
Acquisition Process: Task and Delivery Order Contracts, Bundling, Consolidation; Final Rule

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121, 124, 125, 126, and 127

RIN 3245–AG20

Acquisition Process: Task and Delivery Order Contracts, Bundling, Consolidation

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is amending its regulations governing small business contracting procedures. Specifically, this rule amends SBA's regulations to establish policies and procedures for setting aside, partially setting aside and reserving Multiple Award Contracts for small business concerns. SBA is also is establishing policies and procedures for setting aside task and delivery orders for small business concerns under Multiple Award Contracts. In addition, SBA is addressing how it will determine size under certain Agreements and when recertification of status will be required. Finally, SBA is establishing a new definition of consolidation and reorganizing its prime contracting assistance regulations.

DATES: This rule is effective on or before December 31, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Koppel, Assistant Director, Office of Policy and Research, Office of Government Contracting, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416, (202) 205–7322.

SUPPLEMENTARY INFORMATION:

I. Background

On September 27, 2010, President Obama signed into law the Small Business Jobs Act of 2010 (Jobs Act), Public Law 111–240, which was designed to protect the interests of small businesses and boost their opportunities in the Federal marketplace. The law not only makes significant improvements to the Small Business Act's procurement programs, it also creates new programs and new initiatives. This final rule addresses two important parts of the Jobs Act: (1) the application of the Small Business Administration's (SBA's) small business programs to multiple award contracts; and (2) limitations on contract consolidation and bundling.

Over the past 15 years, Federal agencies have increasingly used multiple award contracts—including the Multiple Award Schedules (MAS or Schedule) contracts managed by the General Services Administration (GSA), Government-wide acquisition contracts (GWACs), multi-agency contracts, and agency-specific indefinite-delivery indefinite-quantity (IDIQ) contracts—to acquire a wide range of products and services. They have also consolidated acquisitions, often through the use of multiple award contracts, to eliminate duplicative efforts, save money by pooling their buying power, and reduce administrative costs. While these actions provide an important foundation for achieving greater fiscal responsibility, they have also created challenges for agencies seeking to take full advantage of the many benefits that small businesses provide to our taxpayers, including creativity, innovation, cost-effective technical expertise, job growth, and economic expansion, as well as maximizing awards to small businesses as both prime and subcontractors in fulfilling the Government's statutory small business goals. This rule seeks to ensure the increased consideration of small businesses in connection with the establishment and use of multiple award contracts and acquisitions that consolidate contracts.

A. Multiple Award Contracts, and the Use of Set-Asides, Partial Set-Asides and Reserves

Section 1331 of the Jobs Act recognizes the significant opportunities that exist to increase small business participation on multiple award contracts and the ability of set-asides—the most powerful small business contracting tool—to unlock these opportunities. Section 1331 requires the Administrator for the Office of Federal Procurement Policy (OFPP) and the Administrator of SBA, in consultation with the Administrator of GSA, to establish regulations under which Federal agencies may: (1) set aside part or parts of multiple award contracts for small business; (2) reserve one or more awards for small businesses on multiple award contracts that are established through full and open competition; and (3) set aside orders under multiple award contracts awarded pursuant to full and open competition that have not been set-aside or partially set-aside, nor include a reserve for small businesses. This applies to multiple award contracts issued and used by only one agency as well as to multiple award multi-agency contracts (MMACs), which can be used by more than one agency. Section 1331 of the Jobs Act does not revise or repeal the requirement for a contracting officer to set aside a contract for exclusive small business participation if the contracting officer determines that at least two capable small businesses can meet the contract's requirements.

In November 2011, SBA and OFPP, in consultation with GSA, requested that the Department of Defense (DoD), GSA, and the National Aeronautics and Space Administration (NASA) publish an interim rule in order to provide agencies with initial guidance that they can use to take advantage of the authorities addressed in section 1331. 76 FR 68032 (Nov. 2, 2011). Among other things, the interim rule makes clear that set-asides may be used in connection with the placement of orders under multiple award contracts, notwithstanding the requirement to provide each contract holder a fair opportunity to be considered, and further makes clear that order set-asides may be used in connection with the placement of orders and blanket purchase agreements under Multiple Award Schedule contracts. While the interim rule amends existing solicitation provisions and contract clauses to provide notice of set-asides, it does not define terms, such as ''reserve,'' nor does it provide guidance for how to apply the various section 1331 authorities.

In May 2012, SBA issued a proposed rule to provide more specific guidance to ensure both that meaningful consideration of set-asides and reserves is given in connection with the award of multiple award contracts and task and delivery orders placed against them, and that these tools are used in a consistent manner across agencies. The proposed rule included the following:

• *Processes for using partial set-asides.* The proposed rule explained that partial set-asides may be used in connection with a multiple award contract when market research indicates that a total set-aside is not appropriate but the procurement can be broken up into smaller discrete portions or categories and two or more small business concerns, including 8(a) Business Development (BD) Participants, Historically Underutilized Business Zone (HUBZone) small business concerns, Service Disabled Veteran-Owned small business concerns (SDVO SBCs) and Women-Owned Small businesses concerns (WOSBs) or Economically Disadvantaged WOSBs are expected to submit an offer on the set-aside part(s) of the requirement at a fair market price. The proposed rule would allow for small businesses to submit an offer on the set-aside portion, non-set-aside portion, or both. This approach would replace the more cumbersome process currently found at Federal Acquisition Regulation (FAR) § 19.502–3 that requires small businesses to first submit responsive

offers on the non-set-aside portion in order to be considered for the set-aside portion. The FAR's partial set-aside process has proven to be unnecessarily complicated, which has resulted in its underutilization over time.

• *Processes for using contract reserves.* The proposed rule established a process for agencies to reserve awards for small businesses under a multiple award contract awarded pursuant to full and open competition if the requirement cannot be broken into discrete components to support a partial set-aside and market research shows that either: at least two small businesses could perform on a part of the contract, or at least one small business could perform all of the contract. The proposed rule provided that orders must be set-aside for small businesses under a reserved contract if the ''rule of two'' or any alternative set-aside requirements provided in SBA's small business programs have been met.

• *Processes for order set-asides.* The proposed rule laid out processes to permit agencies, when awarding multiple award contracts pursuant to full and open competition without either partial set-asides or reserves, to make commitments to set aside orders, or preserve the right to consider set-asides, when the ''rule of two'' is met. The contracting officer would state in the solicitation and resulting contract what process would be used—*e.g.,* automatic application of order set-asides or preservation of right to consider order set-asides. These alternatives would maximize agencies' flexibility in exercising their discretion to determine when and how best to use set-asides under multiple award contracts.

• *On Ramps/Off Ramps.* The proposed rule added new coverage to SBA's regulations addressing on ramps and off ramps—*i.e.,* mechanisms for allowing small businesses to enter and exit a contract during the performance period. Specifically, the proposed rule provided that for multiple award contracts that had been set-aside, if a small business becomes other than small (*e.g.,* due to a merger or acquisition), it must be ''off ramped.'' With all other multiple award contracts, the decision regarding how to apply and use ''on ramp/off-ramp'' provisions would be at the discretion of the contracting agency.

• *Required Documentation.* The proposed rule would require that the contracting officer document the contract file to provide an explanation if the contracting officer decided *not* to use any of the section 1331 tools in connection with the award of a multiple award contract when at least one of these authorities could have been used—i.e., partial contract set-aside, contract reserve, or contract clause that commits the agency to setting aside orders, or preserving the right to set aside orders, when the ''rule of two'' is met. In addition, where an agency commits to using or preserving the right to use set-asides for orders under multiple award contracts that have not been set-aside, partially set-aside or reserved, the agency must document the file whenever a task order or delivery order is not set-aside for a small business.

• *Review by SBA's procurement center representatives (PCRs).* The proposed rule provided that SBA's PCR may review acquisitions involving the award of multiple award contracts or orders issued against such contracts that are not set aside for small businesses or where no awards have been reserved for small businesses, consistent with the PCRs' longstanding responsibility to assist small business concerns in obtaining a fair share of Federal Government contracting opportunities. At the same time, the proposed rule made clear that the ultimate decision of whether to apply a section 1331 tool to any given procurement action is at the discretion of the contracting officer.

• *Application of size standards to multiple award contracts.* Under SBA's current rules, a predominant North American Industry Classification System (NAICS) code and size standard is required for all contracts, as well as for all orders. SBA has seen some instances in which an agency assigns multiple NAICS codes to a multiple award contract and a business may be small for one or some of the NAICS codes, but not all, and the agency receives credit for an award to a small business even though the business is not small for the NAICS code assigned (or the NAICS code that should have been assigned) to a particular order. In response, the proposed rule provided several alternatives to ensure every contract and every order issued against a contract contains a NAICS code with a corresponding size standard and that coding for orders more accurately reflects the size of the business for the work being performed. For example, a contracting officer could divide a multiple award contract for divergent goods and services into discrete categories (which could be by contract line item numbers, special item numbers, functional areas, sectors, or any other means for identifying various parts of a requirement identified by the contracting officer), each of which is assigned a NAICS code with a corresponding size standard. Under this option, the NAICS code and associated size standard assigned to the order must be pulled from the named NAICS code and size standard certified at the base contract level. Alternatively, the contracting officer could assign one NAICS code and corresponding size standard to the multiple award contract if all of the orders issued against that contract can also be classified under that same NAICS code and corresponding size standard.

• *Limitation on subcontracting.* When an order is set-aside—under a contract awarded pursuant to full and open competition or under a contract reserve, or is issued against a set-aside or partial-set aside multiple award contract, the contractor must comply with the limitation on subcontracting (and the non-manufacturer rule) for that order.

• *Agreements.* With respect to ''Agreements'' including Blanket Purchase Agreements (BPAs) (except for BPAs issued against a GSA Schedule contract), Basic Agreements, Basic Ordering Agreements, or any other Agreement for which a contracting officer sets aside or reserves awards to any type of small business, the proposed rule would require that a concern qualify as small at the time of its initial offer (or other formal response to a solicitation), which includes price, for the Agreement. Because an Agreement is not a contract, the concern would also be required to qualify as small for each order issued pursuant to the Agreement in order to be considered small for the order and in order for an agency to receive small business goaling credit for the order.

Additional details regarding the proposed rule may be found at 77 FR 29130–29165 (May 16, 2012).

Based on the comments received on the proposed rule (which are discussed in greater detail below) and additional deliberations, SBA has adopted the proposed changes described above with some refinements, including the following:

• *Contract reserves.* The final rule amends the procedures related to reserves to clarify that contracting officers may, but are not required to, set forth targets in the contract showing the dollar value of awards to small businesses.

• *Limitations on subcontracting.* The final rule generally retains the requirement in the proposed rule stating that when an order is set aside under a contract awarded pursuant to full and open competition or a contract reserve, the contractor must comply with the limitations on subcontracting and non-manufacturer rule for that order. The final rule modifies the proposed rule's

handling for orders made under total or partial set-aside contracts. In these cases, the contractor must meet the limitations on subcontracting (as well as the nonmanufacturer rule) in each performance period of the contract—*e.g.,* the base term and each option period as defined in the contract's period of performance. However, the rule gives contracting officers the discretion, on a contract-by-contract basis, to require compliance at the order level.

• *PCRs.* SBA has clarified in the final rule that PCRs will only review multiple award contracts where the agency has not set-aside all or part of the acquisition or reserved the acquisition for small businesses.

• *On Ramps/Off Ramps.* In the final rule, SBA provided greater discretion to the contracting officers on the use of ''on ramps/off ramps.'' Specifically, the final rule states that if a small business awarded a total or partial set-aside multiple award contract becomes other than small as a result of a merger or acquisition, it is up to the contracting officer to decide whether to terminate, or ''off-ramp'' the contractor. However, any awards issued to such a contractor will not count as an award to a small business.

• *PCRs.* SBA has clarified in the final rule that PCRs will only review multiple award contracts where the agency has not set-aside all or part of the acquisition or reserved the acquisition for small businesses.

Of particular note, the final rule, like the proposed rule, preserves the discretion that section 1331 vests in agencies to decide whether or not to use any of the enumerated set-aside and reserve tools. There is nothing in the rule that compels an agency to award a multiple award contract with a partial set-aside, contract reserve, or contract clause that commits (or preserves the right) to set aside orders when the ''rule of two'' is met. The rule only requires that agencies consider these tools before awarding the multiple award contract and, if they choose not to use any of them, document the rationale. Agencies have the discretion to forego using the section 1331 tools even if the requirements could be met; they simply need to explain how their planned action is consistent with the best interests of the agency and the agency's overarching responsibility to provide maximum practicable opportunities for small businesses (*e.g.,* agency met its small business goal in the last year; agency has a history of successfully awarding significant amounts of work to small businesses for the stated requirements under multiple award contracts without set-asides and has received substantial value from being able to select from among small and other than small businesses as needs arise; agency can get better overall value by using the fair opportunity process without restriction for the stated requirements and has developed a strategy with the help of its Office of Small Disadvantaged Business Utilization (OSDBU) or Office of Small Business Programs (OSBP) that involves use of order set-asides whenever the ''rule of two'' is met on a number of multiple award contracts for other requirements). Once an agency has exercised its discretion to use one of the section 1331 tools, it must honor the commitment when placing orders. For example, if an agency inserts a clause in a multiple award contract awarded pursuant to full and open competition stating that it will set aside orders when the ''rule of two'' is met, it must do so. Alternatively, if the agency preserves the right to set aside orders, they are not required to set aside an order every time the ''rule of two'' can be met, but should document the file with an explanation when they do not do so.

In sum, this final rule will provide adequate tools and assurances that agencies will maximize small business participation on multiple award contracts without compromising the greater flexibility and leverage agencies have in conducting procurements through multiple award contracts.

SBA acknowledges that these changes will require a significant planning and implementation effort that will require changes to the central government procurement data systems, such as the Federal Procurement Data System (FPDS), and also each agency's system or systems. A change of this magnitude is estimated to take as many as five years to be fully implemented across the myriad of interdependent government systems. The funding for this initiative, both for the agencies and the Integrated Acquisition Environment (IAE), will need to be addressed across government. The Federal Acquisition Institute and the Defense Acquisition University will also have to revise curriculum and agencies will have to engage in an extensive retraining effort of their acquisition workforce.

B. Consolidation of Contract Requirements

In addition to the provisions relating to multiple award contracts, the Jobs Act amended the Small Business Act to include provisions relating to contract consolidation and bundling. Contract bundling and consolidation have been used in the Federal government for many years now. The Jobs Act amended the Small Business Act to provide for certain policies to further highlight when agencies conduct contract bundling, including requiring that agencies publish on Web sites a list of bundled contracts and rationale for each such bundled contract. The Jobs Act also requires agencies that bundle requirements to include in their solicitation for multiple award contracts above the substantial bundling threshold a provision soliciting offers from any responsible source, including responsible small business concerns and teams or joint ventures of small business concerns. Finally, the Jobs Act also amended the Small Business Act to address consolidation. (Although contract consolidation was addressed in 10 U.S.C. 2383 for DoD, it had never before been addressed in the Small Business Act.)

The proposed rule built on much of DoD's existing guidance regarding consolidation and explained that an agency may not conduct an acquisition that is a consolidation of contract requirements unless the senior procurement executive (SPE) or chief acquisition officer (CAO): (1) justifies the consolidation by showing that the benefits of the consolidated acquisition substantially exceed the benefits of each possible alternative approach that would involve a lesser degree of consolidation and (2) identifies the negative impact on small businesses. The proposed rule also required SBA's PCR to work with the agency's small business specialist and OSDBU or OSBP to identify bundled or consolidated requirements and promote set-asides and reserves.

The final rule adopts the proposed rule with certain refinements (mostly technical in nature) as discussed in the section below.

II. Summary of and Response to Comments

On May 16, 2012, SBA published its proposed rule implementing the Jobs Act provisions described above (77 FR 29130). SBA received comments from over 25 respondents on this proposed rule. In addition, SBA requested and received comments from various Federal agencies. In total, SBA received over 120 comments on the various issues set forth in the proposed rule. Most of the comments supported SBA's rule and believed that it was a major step toward increasing Federal procurement opportunities for small businesses. The comments relating to specific sections of the rule are discussed in further detail below.

A. Small Business Teaming Arrangements (13 CFR 121.103 & 125.1)

In its proposed rule, SBA explained that it was proposing to amend its size regulations to address both bundling and contract consolidation as well as multiple award contracts. The Small Business Act, at 15 U.S.C. 644(e)(4), specifically states that for bundled contracts, a small business concern may submit an offer that provides for the use of a particular team of subcontractors for the performance of the contract and the agency must evaluate the offer in the same manner as other offers. Further, the Act states that if a small business concern forms a team for this purpose (*i.e.,* enters into a formal written Small Business Teaming Arrangement), this must not affect its status as a small business concern for any other purpose. The purpose of this section is to encourage small businesses to form teams to compete on larger contracts for which, by definition, a small business is not on its own able to compete. Therefore, SBA proposed to amend § 121.103 by creating an exception to affiliation for teams of small businesses for bundled contracts that are multiple award contracts.

SBA also proposed a definition for the term ''Small Business Teaming Arrangement'' in § 125.1. SBA proposed that a Small Business Teaming Arrangement is when two or more small businesses form a joint venture or enter into a written agreement where one small business acts as the prime and the other small business or small businesses are the subcontractors. The proposed rule required the agreement be in writing and submitted to the contracting officer as part of the proposal so that he/she understands that a small business team has submitted the proposal.

SBA received several comments in response to this proposal. Several of the respondents supported this exception to affiliation for teams on bundled contracts and thought that such teaming may be an incentive for small businesses.

However, one respondent thought that a small business team could subcontract out all the work to a large business on a small business reserve for a bundled contract and not perform any of the work itself. On a full and open contract, there is no limitation on the amount of work that a large business can subcontract. Consequently, there is no reason to limit a small business team's ability to subcontract. On the other hand, where a contract or order is set aside for small business, the general limitation on subcontracting rules would apply.

This same respondent thought SBA should limit the size of these teams by either number of combined employees or some other measurable criteria. This respondent did not believe it was fair for a small business to have a large business on its team. In response to this comment, SBA notes that the requirement for the teaming arrangement is that it must be comprised solely of small businesses. The proposed rule had explicitly stated that each team member must be small under the size standard corresponding to the NAICS code assigned to the contract. Therefore, SBA does not agree with this comment that a small business can have a large business on its team. In addition, SBA does not believe it is necessary to limit the team's size. These teams are forming to compete against large businesses on bundled (very large) contracts. Limiting a team's size could affect its ability to compete.

One respondent believed that SBA should allow the small business to team with Ability One (*www.abilityone.org*). As SBA explained in the proposed rule, however, the purpose of this rule is to encourage small businesses to team together to perform on a contract. SBA does not believe that allowing the small business to form a team with Ability One, which is not a small business, would promote or be beneficial to small businesses in Federal contracting.

One respondent believed that it was overly restrictive to require that the teaming arrangement set forth percentages of work that team members will perform and recommended that SBA allow team members to set forth the percentages *or other allocations* of work in the agreement. SBA agrees that small business team arrangements should have this type of flexibility and has amended the final rule accordingly.

Similarly, another respondent believed that small businesses should be allowed to modify the terms of the teaming arrangement. SBA agrees and notes that there is nothing in the rule that prevents a small business from doing so, as long as the team continues to meet the definition and requirements set forth in regulations, the modification is consistent with any terms in the solicitation or contract, and the contracting officer approves the modification.

One respondent believed that SBA's regulation only permitted a small business team to submit an offer on a bundled contract and that the regulations did not permit an individual small business that could perform the requirement itself, without the team, to submit an offer on a bundled contract. This is not the case; any business can submit an offer in response to a bundled acquisition.

B. NAICS Codes (13 CFR 121.402)

In its proposed rule, SBA had proposed to amend § 121.402 to explain how small business size standards would be assigned to multiple award contracts and orders issued against such contracts. Specifically, the proposed rule provided that a contracting officer could: (1) assign one NAICS code and corresponding size standard to the multiple award contract if all of the orders issued against that contract can also be classified under that same NAICS code and corresponding size standard; or (2) divide a multiple award contract for divergent goods and services into discrete categories, each of which is assigned a NAICS code with a corresponding size standard. Thus, an agency could assign multiple NAICS codes to a multiple award contract only if the agency could divide the contract into different categories (*e.g.,* Contract Line Item Number (CLIN), Special Item Number (SIN), functional area (FA)) and then compete or award orders in that category. The NAICS code assigned to the order would be the same as the NAICS code assigned to the category (*e.g.,* CLIN) in the contract. Regardless of which method the contracting officer uses to assign a NAICS code, the proposed rule required that every contract and every order issued against a contract must contain a NAICS code with a corresponding size standard.

With respect to assigning a NAICS code to an order in cases like those involving a GSA Multiple Award Schedule contract, where an agency can issue an order against multiple categories on a multiple award contract, the contracting officer would be required to select the single NAICS code from the contract that best represents the principal nature of the acquisition for that order (*i.e.,* usually the component that accounts for the greatest percentage of contract value). That would mean if the agency is buying services and supplies with the order, but the greatest percentage of the order value is for services, the agency would assign a services NAICS code for the order. In such a case, a firm that qualifies as small for a supply/manufacturing contract but is other than small for a services contract could not be considered a small business for the order.

SBA notes that it had considered at least one alternative to this proposed rule where an order contains items/services from multiple NAICS codes and size standards assigned to a multiple award contract. Specifically, SBA

considered requiring that a business meet only the smallest size standard corresponding to any NAICS code of any of the combined items/services (line items) to be procured under the contract. Any order issued against the contract, regardless of the NAICS code assigned to the order, would then be considered an order placed with a small business. SBA specifically requested comments on this alternative.

SBA received several comments on these proposals. One respondent supported the approach set forth in the proposed rule, but disagreed strongly with the alternative considered. Two respondents believed it would be too burdensome on contracting officers to assign several NAICS codes to a solicitation and contract. These respondents thought that managing various NAICS codes and size standards under one contract would impose too much of an administrative burden and therefore, one of the respondents suggested having a maximum of three NAICS codes per multiple award contract. One respondent thought this proposal could negatively impact the construction industry because contracting officers do not have the expertise to create the discrete categories. Another respondent did not believe that a contracting officer could assign multiple NAICS codes to SINs (used on the GSA MAS contract) since SIN descriptions are broad and may cover a number of different services/product categories.

SBA believes that if the requirement can be broken down into discrete requirements, it would not be difficult to then assign a NAICS code to each discrete component. As discussed above, this is a necessary fix to a larger problem that is currently occurring on the schedule, where multiple NAICS codes are often assigned to a multiple award contract solicitation and a business concern may be small for one or some of the NAICS codes, but not all. In such a case, agencies are receiving small business credit on an order for an award to a ''small business'' where a firm qualifies as small for any NAICS code assigned to the contract, even though the business is not small for the NAICS code assigned or that should have been assigned to that particular order. SBA believes this should not occur. As a result, SBA believes that any potential or perceived burden created by assigning NAICS codes to discrete components of a contract is outweighed by the need to ensure that actual small businesses receive the awards so intended for them.

Several respondents stated that these changes should not be implemented until the changes to FPDS are made. These respondents did not believe the current FPDS system supported the application of various NAICS codes to one contract and thought that perhaps the NAICS on the contract should be left blank and only NAICS codes for the orders should be assigned in the system. The General Services Administration has stated that there will need to be significant changes to the government-wide system that will take a substantial amount of time and funding. The Integrated Acquisition Environment is reviewing the required changes.

SBA also received comments concerning the assignment of NAICS codes to task or delivery orders. One respondent supported this proposal. Another respondent stated that we should not require NAICS codes for each task or delivery order because it will take too much time to execute, increase the amount of data for the government to manage and therefore increase the contracting officer's workload. SBA does not agree. According to SBA's current regulations, every contract and order for a long term contract is to be assigned a NAICS code with a corresponding size standard. Thus, this is not a substantive change. This provision of the rule merely clarifies that this requirement applies to all contracts and orders. Also, SBA does not believe it will take too much time or effort to select one of the NAICS codes already assigned to the contract and apply it to the order.

SBA has implemented the proposed rule as final. SBA has not implemented as final the alternative discussed in the preamble concerning NAICS codes. While the changes in NAICS code assignments will improve the reliability of the data, leading to greater transparency, SBA acknowledges that these changes will require a significant planning and implementation effort. Not only will the changes in NAICS code assignment levels impact central government procurement data systems, such as the FPDS, they will also impact systems at each agency—frequently multiple systems within a single agency. Identifying the impacts to systems and planning for this level of change is a significant undertaking that will require analyses of interdependencies to ensure efficient and cost-effective implementation. A change of this magnitude is estimated to take as many as five years to fully implement across the myriad of interdependent government systems. The Federal Acquisition Institute and the Defense Acquisition University will have to revise curriculum and agencies will have to engage in an extensive retraining effort of their acquisition workforce. The funding for this initiative, both for the agencies and the IAE, will need to be addressed across government.

C. Recertification (13 CFR 121.404)

SBA also proposed to amend § 121.404, which addresses when the size status of a small business concern is determined. In order to provide certainty in the procurement process, SBA's regulations require that size will generally be determined at one specific point in time—the date a business concern self-certifies its size status as part of its initial offer including price. When a business represents that it is small, it is then considered small for the life of that specific contract. The concern is not required to again certify that it qualifies as small for that contract unless it has been awarded a long term contract (*i.e.,* the contract exceeds five years) or there is a merger, acquisition, or novation. If the contract is greater than five years, then the contractor must recertify its small business size status no more than 120 days prior to the end of the fifth year of the contract or prior to exercising any option thereafter.

SBA proposed to clarify *only two* issues that have been raised over the past few years relating to this recertification rule, which has been in effect for several years. First, while the regulations clearly required a business that was acquired by another entity to recertify its size status after the acquisition, such a requirement was not as clear where a business that had previously certified itself to be small acquired another business. SBA proposed that re-certification should be required in either case since the acquisition may render the concern other than small for the particular contract. Second, SBA proposed to clarify that recertification is required when a participant in a joint venture is involved in a merger or acquisition, regardless of whether the participant is the acquired concern or the acquiring concern.

One respondent believed that a business should not have to recertify if it is acquired by or merges with another business because it will hurt the market value of the small business. This respondent believes that SBA should allow two small businesses to merge and should create a new size standard for those two merged businesses. Another respondent did not believe a business should have to recertify if it has been acquired because that company would have eventually grown to be large and been allowed to keep the contract and not recertify. This

respondent notes that a business is essentially penalized when it has been acquired but not when it grows ''naturally''. One respondent believes that a large business should not be allowed to purchase a small business and keep the contract award. One respondent supported recertification if there is an acquisition or merger by one party to a joint venture, but questioned how the recertification rule would apply to a large business in a mentor-protégé relationship.

SBA believes that if a business is acquired or merges, or acquires another company, then it should recertify its size because when such events occur, there is an increased likelihood that the business is other than small. SBA does not believe it should create a new size standard for these types of acquisitions or mergers. If, after the acquisition, the business meets the size standard corresponding to the NAICS code assigned to the contract, then it is small. Finally, this could impact a mentor-protégé joint venture if the small business protégé becomes other than small. In that case, the mentor-protégé joint venture would not be considered small from that point forward or for that order.

In addition, SBA proposed that, in general, all of the same rules concerning when size is determined apply to multiple award contracts. For multiple award contracts, SBA will determine size at the time of initial offer submitted in response to the solicitation for the contract, based upon the size standard set forth in the solicitation for that contract. If the contract is divided into categories (CLINs, SINs, FAs, sectors or the equivalent), then each such category will have a NAICS code and corresponding size standard. A business will have to represent its size status for each of those NAICS codes at the time of initial offer for the multiple award contract. When the agency places an order against the contract, it must assign to the order a NAICS code with the corresponding size standard, using one of the NAICS codes assigned to the contract which best describes the principal purpose of the good or service being acquired under the order. If the business concern represented it was small for that NAICS code at the time of contract award, then it will be considered small for that order with the same NAICS code. SBA also stated in the proposed rule that a contracting officer may always, on his or her own initiative, require a business concern to recertify its size status at the time of each order, but the regulations do not require that in every instance.

SBA had also considered requiring businesses to recertify their size for long-term orders (*i.e.,* orders greater than five years). SBA was concerned that if an agency issues a long-term order just prior to a business recertifying its status as other-than-small on a multiple award contract, then the long-term order will be counted as an award to a small business for an indefinite amount of time. However, SBA was unsure how often this situation occurs and requested comments specifically on whether small businesses should be required to recertify their size and status for long-term orders.

SBA received several comments on these proposals. One respondent stated that contracting officers should not be permitted to request recertification on every order since it could create confusion; rather, the contracting officer should rely on the contractor's status at the time of submission of the offer for the Blanket Purchase Agreement (BPA) or contract. Another respondent thought that small businesses should be required to recertify their size only on long-term orders, but not on every order issued against a multiple award contract because it would be too cumbersome. In contrast, two respondents believed that businesses that are no longer small, for any reason, should be required to immediately recertify and any order should not be counted as an award to a small business.

In addition, three respondents believed that businesses should be required to recertify their size for each order and if the company is large, the order should not be counted as an award to a small business. These respondents stated that at this time, they do not believe agencies follow SBA's current recertification rule. They believed that requiring recertification for each order is not unduly burdensome.

One respondent represented a group of small businesses that had mixed opinions on this issue. Some of its members believe that size should be determined at the time of offer for each order and the contracting officer should be allowed to award the contract if the business is not small (but the award would not count toward the agency's small business goals). The respondent's other members believe that size should be determined at the time of submission of the offer for a contract, since that has always been SBA's policy, and SBA should continue to allow contracting officers the discretion to request recertification on the order.

SBA has reviewed all of these comments and believes that requiring a business to certify its size at the time of offer for a multiple award contract, and not for each order issued against the contract, strikes the right balance and is consistent with SBA's current policy. If the contract were not a multiple award contract, then the business would represent its size at the time of offer and if it were small, it would be considered small for the life of the contract up to and including the fifth year. This policy should be the same for multiple award contracts. If a business is small for a size standard assigned to a NAICS code at the time of offer for a multiple award contract, then it is small for all orders with that same NAICS code and size standard for the life of the contract up to and including the fifth year of the multiple award contract. The exceptions for mergers, acquisitions, long-term contracts, and requests for recertification at the discretion of the contracting officer would apply for multiple award contracts as they do for all other contracts. Although some did not agree that contracting officers should have the discretion to request recertification at the order level, SBA notes that this is currently permitted in the regulations and has been upheld by SBA's Office of Hearings and Appeals (*see Size Appeal of Quantum Professional Services, Inc.,* SBA No. SIZ–5207 (2011), available at *www.oha.gov* (''[A]pplicable regulations permit a size protest to be filed either upon award of an ID/IQ base contract, or upon award of an individual task order if the procuring agency requires recertification of size status for that order.''). SBA does not have a basis to change this current policy. However, recertification for an order applies only to the size or socioeconomic status for the order, and does not apply to the firm's overall size or socioeconomic status for the underlying contract.

With respect to the respondents that believe agencies are not following these requirements, SBA notes that it works with the procuring agencies on these issues. SBA can initiate a size protest at any time, so information can be submitted to SBA for possible action (*see* 13 CFR 121.1004(b), 121.1001). In addition, SBA can notify procuring agencies of errors or anomalies in the data that procuring agencies submit to SBA for purposes of the goaling report.

One respondent believed that SBA deleted an important requirement concerning recertification—the requirement that where a concern grows to be other than small, the procuring agency may exercise the options and still count the award as an award to small business unless certain exceptions apply. SBA did not delete this sentence. Since we were not changing that

sentence, SBA did not need to put it in the **Federal Register** proposed rule. However, to avoid any confusion, SBA has added the sentence in the final rule below.

Finally, one respondent noted that SBA's regulations use the term ''recertification'' and the FAR uses the term ''rerepresentation.'' The respondent believes the two should be consistent. SBA agrees that there appears to be a disconnect between the two terms as used in the FAR and SBA's regulations. SBA is looking into the issue and will work closely with the FAR Council to ensure that the intent of this final rule is clear.

D. Agreements (13 CFR 121.404)

SBA also proposed amending § 121.404 to address size status for ''Agreements,'' such as Blanket Purchase Agreements (BPAs), Basic Agreements (BAs) or Basic Ordering Agreements (BOAs). These Agreements are not considered contracts under the FAR. *See* FAR 16.702(a)(2) (''A basic agreement is not a contract.''). However, SBA has seen examples where agencies are setting aside such Agreements for small businesses. Consequently, SBA proposed an amendment to its regulations to address this practice. Specifically, SBA proposed that if such an Agreement is set-aside, SBA would determine size at the time of the response to the solicitation for the Agreement in order to ensure that only small businesses receive the Agreement. In addition, because such an Agreement is not considered a contract (acceptance and execution of the order is the contract action), the business concern must also qualify as small at the time it submits its offer or otherwise responds to a solicitation for each order under the Agreement in order for the procuring agency to count the award of the order as an award to small business for purposes of goaling. If agencies were permitted to set-aside BPAs, BOAs and other Agreements to small businesses without having to verify size, then it is not clear that small businesses would actually be receiving the awards and it is not clear that the small business would have to meet the Small Business Act's provisions concerning subcontracting limitations, for example, which we believe creates a loophole. The only exception SBA proposed for Agreements was for BPAs issued against the GSA MAS contracts. Because the business represents its status at the time of award of the GSA Schedule contract, SBA did not believe there is a need for the business to represent its size again for the BPA.

SBA received two comments on this section of the proposed rule. One respondent agreed that there has been an increase in the use of BPAs and that size should be determined at the time of solicitation for the BPA. However, the respondent disagreed with SBA's proposal to waive size certification requirements for contractors awarded a BPA against the GSA Schedule since such contracts have a term of at least five years. In contrast, another respondent believed that we should not require certification at the time of each order for a BPA because it seemed excessive and unnecessary considering the large volume of orders generated against a BPA. This respondent believed that SBA should require size certification at the time of proposal submission only.

SBA does not believe that size needs to be determined at the time of the BPA issued against a GSA Schedule because size has already been determined at the time of submission of the offer for the GSA Schedule contract. Requiring additional certifications other than those already required under this rule would be a burden. With respect to requiring certifications at the time of each order for a BPA that is not issued against a GSA Schedule, SBA agrees that it could be a burden and is unnecessary since the business will have been required to represent its size at the time of submission of the offer for the BPA. However, SBA notes that the procuring agency contracting officer may request a size certification at the time of submission of the offer for the order, if he or she so chooses, in accordance with SBA's current size regulations.

E. Bundling and Consolidation (13 CFR 125.2)

Part 125 of SBA's regulations addresses SBA's small business prime contracting program, subcontracting program, the Certificate of Competency (COC) program and the performance of work requirements (limitations on subcontracting). Encompassed in these regulations are issues such as bundling and Procurement Center Representative reviews. SBA proposed reorganizing this part and including a definitions section.

One important proposed definition related to contract consolidation. SBA had implemented the Jobs Act and defined that term to mean a solicitation for a single contract or a multiple award contract to satisfy two or more requirements of the Federal agency for goods or services that have been provided to or performed for the Federal agency under two or more separate contracts each of which was lower in cost than the total cost of the contract for which the offers are solicited, the total cost of which exceeds $2 million (including options). SBA notes that the $2 million price is a statutory threshold (*see* 15 U.S.C. 657q), not subject to amendment by the SBA. SBA received one comment supporting this definition.

In addition, SBA's proposed rule, at § 125.2(d), addressed contract consolidation and bundling and added new provisions set forth in the Jobs Act. Specifically, the proposed regulation explained that an agency may not conduct an acquisition that is a consolidation of contract requirements with a total value of more than $2 million unless the SPE or CAO justifies the consolidation and identifies the negative impact on small businesses. The Jobs Act states that the agency can justify the action if the benefits of the consolidated acquisition substantially exceed the benefits of each possible alternative approach that would involve a lesser degree of consolidation. SBA received one comment supporting the clarification that agencies are responsible for determining the impact on small businesses when requirements have been consolidated.

In the proposed rule, SBA explained that the Jobs Act does not define the terms ''substantially exceed'' or ''benefits'' for contract consolidation. SBA had therefore proposed to use the definitions for those terms currently set forth in the bundling regulations in part 125. SBA received one comment on this proposal. According to this respondent, the definition of ''substantially exceed'' would provide an opportunity to consolidate or bundle even more contracts into a large, single bundled or consolidated acquisition whenever possible so that the cost savings will result in an amount determined to substantially exceed other alternatives. In response to this comment, SBA notes that the Jobs Act specifically permits agencies to justify consolidating or bundling contract requirements if the benefits of the acquisition strategy substantially exceed the benefits of each of the possible alternative contracting approaches identified (*see* 15 U.S.C. 657q(c)(2)(A)). Therefore, SBA has implemented the statutory provisions in the final rule.

In addition, SBA had proposed regulations to address the Jobs Act requirement that agencies post their rationale for any bundled requirement. SBA actually published a direct rule implementing this Jobs Act requirement at 76 FR 63542 (Oct. 13, 2011), which was effective November 28, 2011. According to the Jobs Act and

implementing rule, an agency must publish on its Web site a list and rationale for each bundled requirement on which the agency solicited offers or issued an award. With the proposed rule, however, SBA encouraged agencies to post the list and rationale prior to the time the agency solicits offers, rather than wait until awards have been made. In the proposed rule, SBA noted that DoD is already posting such a notice at least 30 days prior to issuance of a bundled solicitation. Specifically, DFARS 205.205–70, ''Notification of bundling of DoD contracts,'' states that a contracting officer must publish in FedBizOpps.gov a notification of the intent to bundle all DoD funded acquisitions that involve bundling, including the measurably substantial benefits that are expected to be derived as a result of the bundling. The contracting officer must post the requirement at least 30 days prior to the release of the solicitation or 30 days before placing an order. 48 CFR 205.205–70. SBA believed that the DoD policy is a good one, and proposed to implement it Governmentwide.

SBA received two comments on this proposal. Two respondents supported the rule and believed that the bundling rationale should be posted prior to the release of the solicitation. One respondent did not believe this would be burdensome since the decision is already made and it would make the agencies consider the effects on small businesses more so than if they posted after award. The other respondent believed that posting prior to issuing the solicitation would allow small businesses the opportunity to review the rationale. SBA agrees with these comments and has adopted the proposed rule as final.

F. Procurement Center Representatives (PCRs) (13 CFR 125.2)

In the proposed rule, SBA addressed in part 125 the general objective of SBA's contracting programs, which is to assist small businesses in obtaining a fair share of Federal Government prime contracts, subcontracts, orders, and property sales. Specifically, in proposed § 125.2(b), SBA set forth its responsibilities during the procuring agency's acquisition planning and stated that at the earliest stage possible, SBA's PCRs must work with the buying activity or agency by reviewing acquisitions and ensuring that the buying activity has complied with all applicable statutory and regulatory small business requirements. SBA's PCRs work with the procuring agency's small business specialist (SBS) and the procuring agency's OSDBU or OSBP to identify bundled or consolidated requirements, and promote set-asides and reserves.

SBA received one comment supporting this provision. SBA received two comments stating that the paragraph requiring that agencies ensure they are structuring procurement requirements to facilitate competition by and among small business concerns, including the various categories of small business concerns, could be interpreted to exclude Native-owned companies. SBA has amended the rule to clarify that when structuring procurement requirements, agencies must facilitate competition among small businesses, including small businesses owned and controlled by service-disabled veteran-owned small business concerns, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals (*including those owned by ANCs, Indian Tribes and NHOs*), and small business concerns owned and controlled by women.

G. Section 1331 Authorities (13 CFR 125.1 & 125.2)

Most of the comments SBA received concerned the new authorities set forth in section 1331 of the Jobs Act. The respondents largely supported SBA's rule, but sought more clarification on certain issues. These are discussed by topic below.

1. Definition of Multiple Award Contract (13 CFR 125.1)

The section 1331 authorities apply to ''multiple award contracts.'' As SBA stated in the preamble to the proposed rule, the FAR permits agencies to issue several awards to different offerors that submitted an acceptable response to the same solicitation for an IDIQ contract. *See* FAR subpart 16.5 (48 CFR subpart 16.5). In fact, the FAR states that the contracting officer must give preference to making ''multiple awards'' of IDIQ contracts under a single solicitation for the same or similar supplies or services to two or more offerors. FAR 16.504(c) (48 CFR 16.504(c)). Hence, these types of contracts are referred to as multiple award contracts. The FAR, however, does not define the term.

In order to provide clarity and certainty about the applicability of section 1331 to multiple award contracts, SBA proposed to define the term to mean: (1) a Multiple Award Schedule contract issued by GSA (*e.g.,* GSA Schedule Contract) or agencies granted Multiple Award Schedule contract authority by GSA (*e.g.,* Department of Veterans Affairs) as described in FAR part 38 and subpart 8.4 (48 CFR part 38 and subpart 8.4); (2) a multiple award task-order or delivery-order contract issued in accordance with FAR subpart 16.5 (48 CFR subpart 16.5), including Governmentwide acquisition contracts; and (3) any other indefinite-delivery, indefinite-quantity contract entered into with two or more sources pursuant to the same solicitation.

SBA's proposed rule expressly includes the GSA Multiple Award Schedules (MAS) Program within the scope of the definition of the term ''multiple award contract.'' This was consistent with the interim FAR rule, which is co-signed by GSA, the manager of the MAS Program. 76 FR 68032. That interim rule amended FAR subpart 8.4 (48 CFR subpart 8.4) to make clear that the Jobs Act provisions apply to that part and states that order set-asides may be used in connection with the placement of orders and blanket purchase agreements under the MAS Program.

SBA received several comments on this proposed definition. All but one of these comments supported the definition proposed. Most of the respondents believed that including a specific reference to the GSA MAS Program provided clarity and was especially important in light of the increased use of such contract vehicles over the years. Only one respondent believed that SBA should delete all references to the GSA MAS program from its rule. This respondent stated that GSA should be charged with incorporating the principles of SBA's final rule into the GSA Schedule ordering procedures, to the maximum extent practicable.

SBA has reviewed these comments and believes it is necessary to include the GSA MAS program under the definition of multiple award contract. SBA set forth all of the reasons for this inclusion in the preamble to the proposed rule, including the fact that the statute defines the term multiple award contract to include *all* such contracts; there is no exception for the GSA MAS program. Further, since the Jobs Act amends the Small Business Act, we believe that SBA should address this issue in its rule. However, since GSA is charged with implementing the MAS Program, it will also need to implement regulations or guidance on this issue.

2. Types of Section 1331 Authorities (13 CFR 125.2)

In the proposed rule, SBA explained that there are three types of section 1331 authorities for multiple award contracts:

(1) set-asides for part or parts of a multiple award contract for small business; (2) reserves of one or more awards on multiple award contracts that are established through full and open competition; and (3) set-asides of orders against multiple award contracts awarded pursuant to full and open competition that have not been set-aside or partially set-aside, nor include a reserve for small businesses. The proposed rule defined the term ''partial set-aside'' and ''reserve'' and also set forth the mechanics of how such partial set-asides and reserves would work.

Two respondents suggested SBA clarify that this authority is discretionary. However, one of these respondents thought SBA should provide guidelines for the exercise of the discretion, otherwise it will differ from agency to agency and it will be too unpredictable for small and large businesses. Two respondents requested that SBA explain further the interplay of these discretionary authorities with the ''rule of two'' set-aside authority. Specifically, one respondent stated that SBA should clarify that when the ''rule of two'' is met for a solicitation that will result in multiple award contracts, the contracting officer must set it aside. One respondent stated that SBA should explain that *Delex Systems, Inc.,* B–400403, Oct. 8, 2008, 2008 CPD ¶ 181 (publicly available at *www.gao.gov/decisions/bidpro/40043.htm*) is still valid. In *Delex Systems, Inc.,* GAO held that the small business set-aside provisions of FAR 19.502–2(b) apply to competitions for task and delivery orders issued under multiple award contracts.

Both the proposed and final rule explain that if a contracting officer has conducted market research on an acquisition that will result in multiple award *contracts,* and has a reasonable expectation that at least two small businesses can provide the service or supplies and award will be made at fair market price, the contracting officer shall set-aside the contract for small business (or 8(a), HUBZone, SDVO SBC or WOSB/EDWOSB). Section 1331 did not change the mandatory requirement of a set-aside for a contract if the ''rule of two'' is met.

Therefore, section 1331 will come into play only on a multiple award acquisition if the ''rule of two'' cannot be determined through market research prior to the issuance of a solicitation. At that time, in order to ensure that small businesses have the maximum practicable opportunity to participate in contracting, the contracting officer has the discretion to utilize at least one of the three section 1331 authorities—partial set-aside, reserve, or set-aside of orders under a full and openly competed contract. The FAR has already been amended, at FAR 19.502–4 (48 CFR 19.502–4), ''Multiple-Award Contracts and Small Business Set-Asides,'' to address this discretionary authority.

With respect to partial set-asides, currently the FAR requires the small business to submit an offer on the non-set-aside portion as well as the set-aside portion and requires the contracting officer to award the non-set-aside portion first and negotiate with eligible concerns on the set-aside portion only after all awards have been made on the non-set-aside portion. *See* FAR 19.502–3(c) (48 CFR 19.502–3(c)). SBA proposed that small businesses would not be required to submit offers for both the set-aside and non-set-aside portions of the solicitation and the contracting officer would no longer be required to conduct negotiations only with those offerors who have submitted responsive offers on the non-set-aside portion. The small business could submit an offer for both or either the set-aside and non-set-aside portions.

One respondent stated that it agreed with SBA's new partial set-aside provisions. One respondent did not agree with allowing a ''large'' small business to submit an offer on both the set-aside and non-set-aside portion. This respondent believes this will hurt both small and large businesses. SBA does not agree with this comment. A small business should have the flexibility to submit an offer on either or both the set-aside or non-set-aside portion of the contract and to structure its offer(s) accordingly. SBA believes this provides the maximum practicable opportunity for small businesses to participate in Federal contracting.

Several respondents also thought SBA should further clarify the difference between a partial set-aside and a reserve and provide examples in the regulations and FAR, as well as examples in addition to the ones provided in the proposed rule, to explain the two authorities. SBA does not believe that the examples need to be placed in its regulations but intends to issue further guidance along with the final rule on this issue. SBA has provided the following discussion that explains these different types of authorities.

As stated in the proposed rule, a partial set-aside occurs when market research indicates that the ''rule of two'' (*i.e.,* the contracting officer has a reasonable expectation that it will receive at least two offers from small businesses and award can be made at fair market price) will not be met for the entire contract's requirement (*e.g., each* CLIN or SIN). However, the procurement can be broken into smaller, discrete portions such that the ''rule of two'' can be met and applied for some of those discrete components or categories (*e.g.,* one or more CLINs). Under a partial set-aside, orders placed against the multiple award contract must be set-aside and competed amongst only small businesses for the portion of the contract that has been set-aside; however, the contracting officer may state in the solicitation that small businesses can also compete against other-than-small businesses for the non-set-aside portion if they also submitted an offer on the non-set-aside portion.

SBA notes that it considered an additional definition for a partial set-aside. SBA has seen instances where an agency issues one solicitation that is entirely set-aside for some or all of the various categories of small businesses. The solicitation is divided into categories where one is for HUBZone small businesses, another is for SDVO SBCs, etc. The agency then states an intention to issue orders against the various categories so that only the HUBZone small businesses would be competing against each other, etc. SBA believes that this could be another type of partial set-aside, where the multiple award contract is set-aside in part for the different small business programs. SBA requested comments on this alternative and did not receive any. At this time, SBA is not implementing this alternative as SBA believes that the intent of section 1331 was to afford contracting officers maximum discretion to select among all qualified SBA program participants and afford the agency the opportunity of using that contracting vehicle to help it meet its small business goals.

In comparison, SBA's proposed rule explained that a reserve is separate and distinct from a partial set-aside and is used when an acquisition for a multiple award contract cannot be broken into discrete components or portions. A reserve will be conducted using full and open competition and:

- The contracting officer's market research and recent past experience evidence that at least two small businesses could perform one part of the requirement, but the contracting officer was unable to divide the requirement into smaller discrete categories such that the solicitation could have been partially set-aside; or
- The contracting officer's market research and recent past experience evidence that at least one small business can perform the entire requirement, but there is not a reasonable expectation of

receiving at least two offers from small business concerns at fair market price for all the work contemplated throughout the term of the contract; and

• The contracting officer states an intention in the solicitation to make one or more awards to any one type of small business concern (*e.g.,* small business, 8(a), HUBZone, SDVO SBC, WOSB or EDWOSB) for the portion of the requirements they can perform and compete any orders solely amongst the specified type of small business concern in accordance with that program's specific procedures. In the alternative, the contracting officer states an intention to make several awards to several different types of small businesses (*e.g.,* one to 8(a), one to HUBZone, one to SDVO SBC, one to WOSB or EDWOSB) and compete the orders solely amongst all of the small businesses for the portion of the requirements they can perform.

The purpose of the reserve is to acknowledge that requirements cannot always be identified specifically at the contract level, but can be at the order level. The reserve ensures that small businesses will receive a contract under a multiple award contract scenario. If small businesses are awarded a contract and are capable of performing at the order level, then the contracting officer can compete the order amongst only the small business or small businesses.

In addition to the above, in the proposed rule SBA had specifically requested comments on whether the procuring agency should state in the solicitation and contract where there is a reserve that a certain percentage of the orders must be awarded to small businesses (*e.g.,* a minimum of 30% of the contract's total dollar value will be awarded to small businesses) and, if so, whether this option could be used in connection with not requiring the agency to compete orders solely amongst small businesses if the ''rule of two'' is met.

SBA received four comments on this issue. One respondent stated that there should be a minimum total dollar value to be awarded to small business on reserves, such as 30%. Another respondent believed that the solicitation should state what types of orders (nature of work, corresponding NAICS code, dollar value, location of work) may be set-aside for small businesses under a reserve because that would help both large and small businesses decide whether or not to submit an offer. Two respondents did not believe that SBA should require that the solicitation set forth a minimum dollar value to be awarded to small businesses because such a minimum would restrict a contracting officer's flexibility in awarding orders with the best solution. One of these respondents thought that SBA could require the solicitation to set forth a target value to be awarded to small business, but that there should be no penalty or legally enforceable right or ground of protest if the target is not met.

SBA agrees with the comments that the contracting officer needs flexibility in awarding orders. Therefore, SBA has amended the rule to state that contracting officers may, but are not required to, set forth targets in the contract showing the dollar value of awards to small businesses.

In addition, one respondent believed that allowing reserves lets an agency circumvent the requirements for a partial set-aside and a large business would expend time and money in preparing proposals and not submit offers at the order level. This respondent did not believe reserves were ''fair.''

SBA notes that the Jobs Act specifically states that contracting officers may ''reserve'' awards in a multiple award contract acquisition for small businesses, and that a ''reserve'' is something in addition to a set-aside or a partial set-aside. SBA has defined the term reserve in a way that distinguishes this type of acquisition from a partial set-aside and provides the contracting officer with the flexibility he/she needs to structure the acquisition. Reserves are currently being used in the Federal marketplace. There has been no study to show that reserves prevent large businesses from competing, being awarded contracts or receiving orders. In fact, the purpose of the reserve is to ensure that a small business receives a fair share of an acquisition that is clearly too large for a set-aside. Therefore, we do not believe that reserves are ''unfair'' to large businesses.

In addition, SBA had proposed that a reserve can occur on a bundled contract where a Small Business Teaming Arrangement will submit an offer or receive a contract award. In that case, the individual members of the Small Business Teaming Arrangement will not be affiliated for the bundled contract, the small business subcontracting limitations or nonmanufacturer rule will apply (as applicable) to each order, and the cooperative efforts of the team members will be able to meet the subcontracting limitations requirement. Under such a reserve, the Small Business Teaming Arrangement would be competing on the orders with all awardees.

SBA received one comment supporting this type of reserve for a bundled acquisition. SBA has therefore implemented the proposed rule as final.

Finally, the contracting officer may decide to not use either a partial set-aside or a reserve. The contracting officer would have a third alternative to consider—the set-aside of orders issued against full and openly competed multiple award contracts. The contracting officer would need to state in the solicitation and contract, using FAR clause 52.219–13 (48 CFR 52.219–13), Notice of Set-Aside of Orders, that the procuring agency intends to set aside orders for small businesses. This third alternative obviously works only if there are small business awardees on the multiple award contract. This third alternative can be used to set aside orders against multiple award contracts such as GSA Schedule contracts.

The following provides a comparison of the three authorities to be considered during acquisition planning:

• *Partial Set-Aside*

○ The acquisition can be broken into smaller, discrete portions such as CLINs, SINs, FAs.

○ Market research shows that the ''rule of two'' will not be met for the entire acquisition.

○ The ''rule of two'' can be met for some of the smaller, discrete portions of the requirement.

○ The contracting officer will issue the solicitation as a small business partial set-aside, 8(a) partial set-aside, HUBZone partial set-aside, SDVO SBC partial set-aside, WOSB partial set-aside or EDWOSB partial set-aside.

○ The orders will be competed amongst only small businesses awarded the partial set-aside.

○ The small businesses may be able to compete against other-than-small businesses for the non-set-aside portion if they also submitted an offer on that portion.

• *Reserve*

○ The acquisition cannot be broken into smaller, discrete portions because the requirements cannot be clearly identified until the individual task orders are drafted.

○ Market research shows that two or more awards can be made to small businesses that can perform part of the requirement, but not all of it. The contracting officer will issue the solicitation as a small business reserve (and may state an intention to issue awards to several different types of small businesses under a small business reserve such as one to 8(a), one to HUBZone, one to SDVO SBC, one to WOSB or EDWOSB); an 8(a) reserve; a HUBZone reserve; an SDVO SBC reserve; a WOSB reserve; or an EDWOSB reserve. If the ''rule of two'' is met on the order, the order is competed solely amongst the small businesses,

8(a) Participants, HUBZone SBCs, SDVO SBCs, WOSBs, or EDWOSBs that received the reserve.

○ In the alternative, market research shows that at least one small business can perform the entire requirement, but there is no reasonable expectation of receiving at least two offers from small businesses at fair market price for the entire requirement. The contracting officer will issue the solicitation as a small business reserve; an 8(a) reserve; a HUBZone reserve; an SDVO SBC reserve; a WOSB reserve; or an EDWOSB reserve. The orders can be issued directly to the one small business awardee.

○ For bundled acquisitions that have been justified, market research shows that the ''rule of two'' will not be met for the entire requirement and that no small business can perform it because it is bundled. However, the contracting officer can issue the solicitation as a reserve for a Small Business Teaming Arrangement and an award can be made to a Small Business Teaming Arrangement. The orders are then competed amongst all awardees.

• *Set-Aside of Orders*

○ Market research shows that goods or services can be acquired by using an already established multiple award contract.

○ Market research shows that the ''rule of two'' will be met for the requirement of an individual order.

○ The contracting officer can set-aside the order for small businesses, 8(a) Participants, HUBZone SBCs, SDVO SBCs, WOSBs, or EDWOSBs in accordance with the program's requirements (e.g., the offer and acceptance requirements for an 8(a) award).

SBA received one comment stating that because the use of these authorities is subject to broad interpretation, SBA should monitor how agencies use them with the Chief Acquisition Officers (CAO) Council. This respondent believes that monitoring this will let us determine whether additional regulatory or other guidance is needed. SBA agrees and intends to monitor the use of these authorities.

Finally, one respondent questioned whether FPDS will be updated to reflect the new procurement method of a reserve. SBA understands that the government is updating FPDS to reflect these new authorities, which are already implemented in the FAR.

Respondents have questioned whether orders may be set aside for certain socioeconomic categories under contracts that have already been set aside for a broader socioeconomic category—e.g., whether an order can be set aside for HUBZone SBCs under a total small business set-aside multiple award contract. SBA believes that such an outcome would be unfair to the other small business concerns that competed for and obtained the contract. We also believe that the current differences in program requirements, such as the differences in limitations on subcontracting and the nonmanufacturer rule among the programs, make such an approach impractical. However, we note that SBA will be exploring the differences in performance requirements among the various programs when it implements Section 1651 of the National Defense Authorization Act of 2013.

3. Documentation

SBA explained in the proposed rule that when exercising his or her discretion to decide among the three section 1331 authorities, a contracting officer need not follow any particular order of precedence—that is, the contracting officer is *not* required to consider partial set-asides first, and then reserves and then the set-aside of orders. In other words, if an agency could do a partial set-aside or set-aside orders under a full and openly competed contract, there is no preference for doing the former over the latter. Rather, all three should be considered as part of acquisition planning, and if more than one option is available, the agency should give careful consideration to the option that works best for the agency.

As stated above, whether the agency ultimately uses any of the three authorities is left to the agency's discretion. However, the agency is ultimately held accountable for taking all reasonable steps to meet its small business goals. In other words, when utilizing this discretion, the procuring agency and contracting officer must consider the statutory requirements and small business contracting goals that are designed to help ensure that small businesses receive a fair proportion of all awards. Consequently, SBA proposed that if the contracting officer decides not to partially set aside or reserve a multiple award contract, or set aside orders against a multiple award contract that is full and openly competed when it could have, then the contracting officer must explain the decision and document it in the contract file.

SBA explained that the requirement to document a decision not to utilize small businesses is already in the FAR and therefore not a new requirement. However, this change would result in new documentation requirements for orders under multiple award contracts. Agencies must consider small business utilization during acquisition planning. Specifically, agencies must include in the acquisition plan all of the prospective sources of supplies or services that can meet the need, giving consideration to small business and addressing the extent and results of the market research. FAR 7.105(b)(1) (48 CFR 7.105(b)(1)). Further, the acquisition plan must explain how the proposed action benefits the Government, including when ''[o]rdering through an indefinite delivery contract facilitates access to small disadvantaged business concerns, 8(a) contractors, women-owned small business concerns, HUBZone small business concerns, veteran-owned small business concerns, or service-disabled veteran-owned small business concerns.'' FAR 7.105(b)(5)(B)(ii) (48 CFR 7.105(b)(5)(B)(ii)).

Finally, agencies must document their decision to not proceed with a set-aside pursuant to FAR 19.501(c) (48 CFR 19.501(c)), which states that: ''The contracting officer shall perform market research and document why a small business set-aside is inappropriate when an acquisition is not set aside for small business, unless an award is anticipated to a small business under the 8(a), HUBZone, service-disabled veteran-owned, or WOSB programs.''

SBA requested comments on this proposal and whether the contracting officer's documentation for deciding not to partially set-aside, reserve contracts, or commit to setting aside or preserving the right to set aside orders on a multiple award contract should be approved at a higher level and/or posted online concurrent with the issuance of the solicitation. In addition, SBA requested comments on what the documentation in the file should demonstrate.

SBA received several comments on this issue. At least seven respondents supported the requirement that contracting officers document the decision not to use one of these authorities since it would demonstrate that meaningful consideration was given to using small businesses. Two respondents did not believe that the documentation should be based on whether the agency met its goals the previous year. Two respondents believed that agencies that did not meet their goals in the previous year should be held to higher standards or a more stringent documentation requirement. One respondent believed that SBA should check agency contract files for those agencies that fail to meet their goals and review the rationale.

One respondent believed that the documentation should either be coordinated with the agency's OSDBU or OSBP, while another stated it should not be approved at a higher level because the action to use these authorities is discretionary. In comparison, one respondent stated the head of the contracting agency should be required to approve the use of any ''carve-outs'' of multiple award contracts for small businesses. Two respondents believed that the documentation should be posted online and one disagreed with this proposal.

One respondent stated that while the requirement to document the decision may serve a purpose in promoting compliance, it acts as a limitation on what is supposed to be a discretionary tool. Therefore, this respondent believed that SBA should rely on current FAR provisions to address this. Similarly, one respondent thought the documentation could be too much of a burden on contracting officers.

Two respondents addressed what the documentation could state. One stated that high costs could be a sufficient rationale for not using the authority and another believed that whatever is sufficient for an acquisition plan would be fine.

The majority of respondents believe, and SBA agrees, that the contracting officer should be required to document the decision to not use one of the authorities and that this is not a burden on contracting officers since they are always required to consider the use of small businesses during acquisition planning. In addition, we believe that the rule needs to specifically address this fact in order to avoid any confusion on this issue. However, because this authority is discretionary, we do not believe that agencies should be required to post their rationale online, receive approval from higher authorities, or be held to a higher standard if they failed to meet their small business goals the prior year. We believe that requiring agencies to document the decision is sufficient to ensure that the contracting officer and program managers considered the use of small businesses.

H. GSA Multiple Award Schedule Program

In the proposed rule, SBA explained that when setting aside orders against a GSA MAS contract, certain regulations in FAR Part 8.4 (48 CFR part 8.4) must be followed. For example, the FAR states that agencies must survey at least three schedule contractors through the GSA Advantage! (*http://www.gsaadvantage.gov/*), or request quotations from at least three schedule contractors for acquisitions valued below the simplified acquisition threshold. SBA does not believe that this requirement conflicts with the set-aside ''rule of two'' requirement; rather, the two requirements can be reconciled. SBA explained that the agency would first apply the ''rule of two'' to determine whether a set-aside is appropriate; however, the agency can request quotes from more than two small businesses. The same is true for acquisitions above the simplified acquisition threshold, where the FAR requires the ordering activity contracting officer to post a request for quotes (RFQ) on e-Buy (*http://www.gsa.gov/portal/content/104675*) or provide the RFQ to as many schedule contractors as practicable, consistent with market research appropriate to the circumstances. Agencies would not be required to document the circumstances for restricting consideration to less than three small business schedule contractors based on one of the reasons in FAR 8.405 (48 CFR 8.405).

One respondent stated that the ''rule of two'' does not apply first when considering an order using the GSA Schedule. This respondent believes that a contracting officer would first select the GSA Schedule that is applicable and then determine whether the ''rule of two'' could apply. This same respondent believes that the number of orders against the GSA Schedule will decrease as a result of this rule because companies that are now small under the GSA Schedule may not qualify as small under the rule.

SBA believes that contracting officers must give appropriate consideration to the utilization of small businesses during acquisition planning. This consideration could help determine which contracting vehicle or acquisition method to utilize. SBA does not believe that the number of orders against the GSA MAS program will decrease as a result of this rule. Rather, we believe it will increase. In fact, data shows that one in every five request for quotes issued in E-Buy are set-aside for small business and that since April 2011, the number of set-asides on the GSA Schedule have increased threefold. Agencies realize they are able to use the GSA MAS program for strategic sourcing purposes while at the same time setting aside orders for small business to maximize participation of small businesses in Federal contracting and assist in meeting the govermentwide small business goal.

Another respondent asked SBA to clarify whether a particular program's requirements apply to these section 1331 authorities, such as set-asides of orders against the GSA Schedule and the requirement for an offer and acceptance in the 8(a) program. SBA had proposed that a task or delivery order contract, multiple award contract, or order issued against a multiple award contract that is set-aside exclusively for 8(a) Program Participants, partially set-aside for 8(a) Program Participants or reserved solely for one or more 8(a) Program Participants must follow the established 8(a) procedures, which would include an offering to and acceptance by SBA of a requirement into the 8(a) program. This is consistent with the FAR's implementation of the Jobs Act, which states at sections 8.405–5 and 16.505 (48 CFR 8.405–5 and 16.505) that the specific program eligibility requirements identified in part 19 (48 CFR part 19) apply to set-asides of orders (as well as reserves and partial set-asides). SBA has adopted this proposed rule as final.

Another respondent asked SBA to clarify whether 8(a) joint ventures that become new legal entities are recognized by the GSA MAS program for 8(a) set-asides if only one party to the legal entity is a schedule contract holder. The answer is no, that entity would not be eligible for an award. This is pursuant to GSA's rules, not SBA's 8(a) rules. According to GSA's Web site, if there is a contractor teaming arrangement, then all parties to the team must be schedule contract holders. *See http://www.gsa.gov/portal/content/200553.* If the joint venture is a new legal entity, then that joint venture would need to be a schedule contract holder.

I. On Ramps/Off Ramps

SBA had also proposed that agencies consider the use of ''on and off ramp'' provisions when using set-asides, partial set-asides, or reserves for multiple award contracts. These provisions are used by some agencies as a means of ensuring that there are a sufficient number of small business contract awardees for a multiple award contract that was set-aside. Agencies use ''on ramp'' provisions to award new contracts to small businesses under a multiple award contract where some of the current awardees are no longer small as a result of a size recertification and there has been a decreased pool of small business awardees from which to purchase. Agencies use ''off ramp'' provisions to remove or terminate a contractor that has recertified its status as other-than-small and therefore is no longer eligible to receive new orders as a small business.

SBA received several comments on these provisions of the proposed rule.

One respondent stated that they supported the proposal because it ensures that contracting officers can respond to the changing market capabilities of small businesses. Two of the respondents believed that any small business that is no longer small and is ''off ramped'' should be allowed to be ''on ramped'' to the non-set-aside portion of the multiple award contract. Another two respondents believed that businesses that are no longer small should be allowed to retain the contract, but that any orders issued against the contract would not count toward the agency's small business goal. One respondent questioned whether the rule allowed a small business to migrate from a set-aside to the unrestricted portion and stated that if that is the case, then large businesses would never get an award.

SBA believes that it would be a decision of the contracting agency as to whether and how a business would move to the non-set-aside portion of a multiple award contract if it did not initially submit an offer for the non-set-aside portion. We believe that if the contracting officer has an ''on ramp'' provision for the non-set-aside portion and the business submits an offer, it could receive the contract award.

In addition, SBA believes that if a business has recertified that it is other than small because there was a merger or acquisition or the contract exceeded five years, it is best left to the contracting agency to determine continuation of the contract. However, the agency cannot receive credit towards it goals for dollars or orders awarded to such a concern after recertification. A concern that has recertified as other than small will also not be eligible for orders that are set aside for small business concerns.

J. Limitations on Subcontracting/ Nonmanufacturer Rule

SBA had proposed amendments to the limitations on subcontracting requirements set forth in § 125.6 to explain that the period of performance for each order issued against a multiple award contract will be used to determine compliance with the limitations on subcontracting requirements. SBA proposed amendments to the regulations governing the 8(a) BD program (13 CFR 124.510), HUBZone program (13 CFR 126.601, 126.700), and SDVO program (13 CFR 125.15) to state the same.

In the proposed rule, SBA explained that it considered two options with respect to application of the limitations on subcontracting requirements for multiple award contracts: (1) on an order by order basis; or (2) in the aggregate at any point in time over the course of the contract. SBA believed that requiring the limitations on subcontracting to apply on an order by order basis for a multiple award contract (if the contract is a set-aside, partial set-aside or reserve, or if the order was set-aside) is the best approach to allow contracting officers to monitor such compliance, but that allowing a small business to meet this requirement in the aggregate at certain points in time provides greater flexibility to both the small business and procuring activity.

SBA noted that for 8(a) contracts, it retained a provision that permits SBA to waive this requirement and allow an 8(a) BD Participant to meet the subcontracting limitations for the combined total of all orders issued to date at the end of any six-month period where the District Director makes a written determination that larger amounts of subcontracting are essential during certain stages of performance, provided that there are written assurances from both the 8(a) BD Participant and the procuring activity that the contract will ultimately comply with the requirements of this section. SBA retained this ''waiver'' in the proposed rule because it affords additional business development opportunities for 8(a) BD Participants. SBA welcomed comments on whether the ''waiver'' should remain solely for 8(a) contracts, or whether the requirements should be the same for all programs.

SBA received several comments on this proposal. Many of the commenters believed that the limitations on subcontracting and nonmanufacturer rule should not apply on an order-by-order basis and stated that there were alternatives, but did not provide any. These respondents did not believe the small business could perform these requirements for each order and that would limit competition on the task orders. Four of the respondents agreed that SBA should retain the waiver provision that is currently set forth in the rule for the 8(a) BD program, and that SBA should apply it to all of its programs. One respondent believed that SBA should analyze the results from the FAR interim rule, which requires a small business to meet the limitations on subcontracting on an order-by-order basis to determine its impact on small businesses and the GSA Schedule small business holders.

Based on the comments received, SBA has clarified that for total or partial set-aside contracts, the contractor must meet the limitations on subcontracting and nonmanufacturer rule in each period of the contract—*i.e.,* the base term and each option period. However, the rule also gives contracting officers the discretion, on a contract-by-contract basis, to require compliance at the order level for these types of contracts. In addition, SBA has also clarified that where an order is set aside (under a full and open contract or reserve), the contractor must comply with the limitations on subcontracting and nonmanufacturer rule for that order.

SBA has retained a provision that permits the SBA to waive the order-by-order requirement and allow an 8(a) BD Participant to exceed the subcontracting limitations during a period of performance where the District Director makes a written determination that larger amounts of subcontracting are essential during certain stages of performance, provided that there are written assurances from both the 8(a) BD Participant and the procuring activity that the contract will ultimately comply with the limitations of subcontracting requirements prior to contract completion. SBA retained this provision only for the 8(a) program because it is a business development program and SBA conducts annual reviews on its Participants to assess compliance. SBA is not required to conduct such reviews for small businesses in its other programs.

In addition, and with respect to the limitations on subcontracting, SBA had proposed that a contracting officer must document a small business concern's compliance with the performance of work requirements as part of the small business's performance evaluation. This means that if the small business meets the applicable performance of work requirements, its efforts must be documented. This also means that if a small business fails to comply with the applicable limitations on subcontracting for the program, the contracting officer must document this failure. Contracting officers must use this information, which will be available to all contracting officers on the Past Performance Information Retrieval System (PPIRS), when evaluating compliance on future contract awards. The FAR requires agencies to post contractor evaluations in the PPIRS database, which now serves as the single authorized application to retrieve contractor performance information.

SBA explained in the proposed rule that if a small business fails to meet the subcontracting limitations requirement set forth in the contract, the contracting officer could take action to protect the government's interests, such as a Cure Notice, Show Cause notice, Termination for Convenience, or in the extreme, may

terminate the contract for default pursuant to FAR 49.401 (48 CFR 49.401). SBA also stated that if the small business can establish or the contracting officer determines that the failure to perform is excusable (*e.g.,* arose out of causes beyond the control and without the fault or negligence of the contractor), then a termination for default would be unnecessary.

SBA received two comments on this proposal. One respondent stated that if a contracting officer enters information into PPIRS about a small business's failure to meet the limitations on subcontracting or nonmanufacturer rule requirements, there should be a chance for the small business to respond or cure its failure. FAR 42.1503(b) (48 CFR 42.1503(b)) addresses past performance and explains that ''[a]gency evaluations of contractor performance prepared under this subpart shall be provided to the contractor as soon as practicable after completion of the evaluation. Contractors shall be given a minimum of 30 days to submit comments, rebutting statements, or additional information.''

Another respondent stated that while it agrees the contracting officer should document the small business's failure to meet the limitations on subcontracting or nonmanufacturer rule requirements, the contracting officer should be required to explain whether there was a good faith effort by the business to meet the requirement. This respondent believed SBA should consider the good faith effort requirements set forth in FAR 19.705–7 (48 CFR 19.705–7), concerning subcontracting plans. SBA believes that whether the contractor makes a good faith effort should be part of the rebutting statements or additional information a small business provides to the contracting officer as a result of the past performance evaluation. Otherwise, the contracting officer would not know if the small business made good faith efforts.

K. Amendments to Parts 124, 125, 126 and 127

SBA had also proposed amendments to the various parts of its regulations that cover specific procurement programs: part 124 (8(a) BD Program); part 125 (SDVO SBC Program); part 126 (HUBZone Program); and part 127 (WOSB Program). For example, SBA had proposed amending each of these parts to include multiple award contracts as types of contracts available for set-asides, partial set-asides and reserves under these programs and to address status protests and appeals relating to multiple award contracts or orders issued against multiple award contracts, and the limitations on subcontracting and nonmanufacturer rule requirements. SBA received only one comment supporting application of the ''recertification rule'' (the recertification requirements used to determine size) to its status programs. Therefore, SBA has adopted these proposed regulations as final in this rule, with one exception.

In the proposed rule, SBA proposed amending the WOSB Program regulations to address application of the contracting thresholds for that program with respect to multiple award contracts. SBA's proposed regulations explained that the thresholds for the WOSB Program would apply to each order issued against the multiple award contract, rather than the estimated contract value for the multiple award contract, and rather than the total value of all orders issued against the multiple award contract. However, recently, the President signed into law the National Defense Authorization Act for Fiscal Year 2013 (NDAA), Public Law 112–239. Section 1697 of the NDAA removed the statutory limitation on the dollar amount of a contract that women-owned small businesses can compete for under the WOSB Program. As a result, contracting officers may now set-aside contracts under the WOSB Program at any dollar level, as long as the other requirements for a set-aside under the program are met. Therefore, SBA has removed the limitations on the anticipated award price of a for a WOSB or EDWOSB set-aside.

L. Other

SBA also received several comments that it believes are outside the scope of this rulemaking. For example, SBA received one comment requesting that SBA report accurately the prime and subcontract amounts awarded to legitimate small business in its goaling report. SBA notes that agencies report each award over $25,000 to FPDS, which is the government's official system for collecting, developing and disseminating procurement data. SBA then uses the information in FPDS to monitor agencies' achievements against goals throughout the year.

Another respondent stated that prime contractors and GSA Schedule holders do not meet the required subcontracting plans and there are no consequences for these large businesses. SBA notes that MAS contract holders that are large businesses are required to have a subcontracting plan. In fact, GSA has a Web page listing those awardees that are required to have such a plan in its Subcontracting Directory for Small Businesses, with contact information. *See http://www.gsa.gov/portal/service/SubContractDir/category/102831/hostUri/portal.*

One respondent stated that SBA's regulations should state that AbilityOne has priority over small business set-asides. The AbilityOne Program is a statutory initiative that assists people who are blind or have other significant disabilities to find employment by working with nonprofit agencies that sell products and services to the Federal government. SBA believes that this issue is covered by the FAR and it is unnecessary to amend its regulations to address this policy.

Compliance with Executive Orders 12866, 12988, 13132, 13563, the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

OMB has determined that this rule is a ''significant'' regulatory action under Executive Order 12866. SBA set forth its Regulatory Impact Analysis in the proposed rule and received one comment on it.

Regulatory Impact Analysis

1. Necessity of Regulation

This regulatory action implements the Small Business Jobs Act of 2010, Public Law 111–240. Specifically, it implements the following sections of the Jobs Act: section 1311 (definition of multiple award contract); section 1312 (publication on Web site a list and rationale for bundled contracts); section 1313 (consolidation of contracts definitions, policy, limitations on use, determination on necessary and justified); and section 1331 (reservation of multiple award contracts and orders against multiple award contracts for small businesses). Those sections of the Jobs Act address small business set-asides and reserves of multiple award contracts and orders issued pursuant to such contracts, as well as bundling and contract consolidation.

In addition, SBA's current regulations address bundling with respect to multiple award contracts as well as set-asides of its various programs, in general. However, the regulations did not provide the specific guidance needed by the contracting community, which is set forth in this rule.

One respondent believed that in some instances concerning the GSA Schedule, SBA should not implement the Jobs Act in its regulations, but should let GSA implement those provisions. SBA does not agree. The Jobs Act amended the Small Business Act. SBA is charged with implementing the provisions of the Small Business Act to promote small

business in government contracting. Therefore, SBA continues to believe that it is necessary and beneficial to address these recent amendments to the Small Business Act in its regulations to ensure consistency and clarity on these issues as they relate to small businesses. This is especially true since these provisions of the Jobs Act are creating new procurement mechanisms for contracting officers to use to award small businesses contracts and orders issued against contracts.

2. Alternative Approaches to Proposed Rule

SBA considered numerous alternatives when drafting this regulation, which had been set forth in the preamble. In addition, SBA reviewed all of the comments received on the proposed rule and considered any alternative set forth in a comment. These alternatives are discussed above, as well. For example, SBA considered various approaches with respect to application of its programs to multiple award contracts. As noted in the discussion above, the proposed and final rule states that agencies may partially set-aside or reserve awards of multiple award contracts (and set-aside orders issued against multiple award contracts) for small businesses even if the agency did not meet its prior fiscal year's small business goals or is currently not meeting its goals. SBA had explored other options when drafting this rule (*e.g.,* should the contracting officer be required to partially set-aside a multiple award contract if the agency is failing to currently meet its goals) and considered the comments received.

Other examples of alternatives considered are discussed in the preamble above (*e.g.,* teaming arrangements, application of NAICS codes).

3. What are the potential benefits and costs of this regulatory action?

The potential benefits of this rule are increasing small business participation in Federal prime contracts by limiting a procuring agency's use of bundled and consolidated contracts, ensuring small businesses have opportunities with respect to justified bundled and consolidated contracts, and ensuring that small businesses have greater access to multiple award contracts, including orders issued against such contracts. Currently, there is some guidance for agencies regarding application of the SBA's programs to multiple award contracts and orders issued against such contracts, which is set forth in the FAR. This final rule provides needed clarification on this issue.

In addition, Congress established an annual goal that 23 percent of the dollar value of prime contracts awarded by the Federal government must be awarded to small business. In fiscal year (FY) 2011, small business received 21.64% of federal dollars; in FY 2010, small businesses received 22.65% of federal dollars; in FY 2009, small businesses received 21.89% of federal dollars; and in FY 2008, small businesses received 21.50% of federal dollars. Although it is getting close, the Federal government is still not meeting this statutory goal. One benefit of this rule is to provide needed mechanisms and guidance.

However, we do note that once implemented as final, it is likely that changes would need to be made to the System for Award Management (SAM). For example, modifications will need to be made to the Government's contract award database, the Federal Procurement Data System-NG (FPDS–NG). We understand that this process will take some time and the Government will incur a cost for these changes to the system.

Executive Order 13563

This executive order directs agencies to, among other things: (a) afford the public a meaningful opportunity to comment through the Internet on proposed regulations, with a comment period that should generally consist of not less than 60 days; (b) provide for an ''open exchange'' of information among government officials, experts, stakeholders, and the public; and (c) seek the views of those who are likely to be affected by the rulemaking, even before issuing a notice of proposed rulemaking. As far as practicable or relevant, SBA considered these requirements in developing this rule, as discussed below.

1. Did the agency use the best available techniques to quantify anticipated present and future costs when responding to E.O. 12866 (e.g., identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes)?

Yes, the agency utilized the most recent data available on the Federal Procurement Data System (FYs 2011 and 2010 data).

2. Public participation: Did the agency: (a) afford the public a meaningful opportunity to comment through the Internet on any proposed regulation, with a comment period that should generally consist of not less than 60 days; (b) provide for an ''open exchange'' of information among government officials, experts, stakeholders, and the public; (c) provide timely online access to the rulemaking docket on Regulations.gov; and (d) seek the views of those who are likely to be affected by rulemaking, even before issuing a notice of proposed rulemaking?

The Jobs Act imposes a specific statutory time by which SBA must issue a final regulation. SBA and OFPP worked with DoD, GSA and NASA to implement these provisions relating to multiple award contracts in an interim final rule in the FAR. The FAR interim final rule provides some, but all the guidance needed by procuring officials on this issue. Therefore, to provide this needed guidance quickly, SBA issued the proposed rule with a 60-day comment period suggested by the executive order. SBA received numerous comments on the rule and made changes to this final rule in response to comments received.

In addition, we note that SBA had taken other steps to encourage public participation in its rulemaking. Specifically, SBA had conducted a ''listening tour'' to discuss the issues presented in the Jobs Act with interested members of the public. SBA toured 13 cities, transcribed the input from the public and requested and received written comments (comments could be submitted to SBA employees or to *www.regulations.gov*). *See* 76 FR 12395 (March 7, 2011); 76 FR 16703 (March 25, 2011); 76 FR 26948 (May 10, 2011). Further, we note that as the sole agency that is charged with representing the interests of small businesses, SBA receives calls every day from small business owners and procurement officials discussing the very issues set forth in the Jobs Act. SBA gave appropriate consideration to the various suggestions, recommendations and relevant information received from these sources when drafting the proposed and final rule.

The Jobs Act required SBA to consult with other agencies, such as GSA, when drafting the proposed regulations, and SBA has done so. SBA met with several procuring agencies to discuss the effects of the Jobs Act on each agency, and in particular its effects on the GSA Schedule. Specifically, the SBA met with agency Offices of Small Business

Programs, Chief Acquisition Officers, and Senior Procurement Executives. SBA also gathered input and ideas from various agencies on their procurement practices, which were used when drafting these rules. In addition, after the rule was issued as proposed, SBA again requested comments from the various agencies. SBA received comments from several agencies, which are discussed in the preamble above.

3. Flexibility: Did the agency identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public?

Yes, the agency considered several approaches, as discussed in the preamble. We believe the final rule provides flexibility to procuring agencies with respect to application of the SBA's programs to multiple award contracts.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminates ambiguity, and reduce burden. As discussed above in Section IV of the preamble, the action does not have retroactive or preemptive effect.

Executive Order 13132

This final rule does not have federalism implications as defined in the Executive Order. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

Paperwork Reduction Act (PRA), 44 U.S.C. Chapter 35

For purposes of the Paperwork Reduction Act, 44 U.S.C. Chapter 35, SBA has determined that this final rule will not impose any new reporting or recordkeeping requirements. Small business must already represent their status at the time of submission of initial offer. This final rule only seeks to clarify when such businesses represent their status for multiple award contracts and orders issued against multiple award contracts.

In addition, in accordance with FAR 4.1202, 52.204–8, 52.219–1 and 13 CFR part 121, concerns must submit paper or electronic representations or certifications in connection with prime contracts and subcontracts. The Jobs Act requires that each offeror or applicant for a Federal contract, subcontract, or grant shall contain a certification concerning the small business size and status of a business concern seeking the Federal contract, subcontract or grant.

Regulatory Flexibility Act, 5 U.S.C. 601–612

In the proposed rule, SBA stated that it believed the rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.* Accordingly, SBA prepared an Initial Regulatory Flexibility Analysis (IRFA) addressing the impact of this Rule. The IRFA examined the objectives and legal basis for the proposed rule; the kind and number of small entities that may be affected; the projected recordkeeping, reporting, and other requirements; whether there are any Federal rules that may duplicate, overlap, or conflict with the proposed rule; and whether there are any significant alternatives to the proposed rule. SBA did not receive any comments on the IRFA and therefore has adopted it as final for this rule.

1. What are the reasons for, and objectives of, this final rule?

This regulatory action implements several sections of the Small Business Jobs Act of 2010, Public Law 111–240. These sections of the Jobs Act address small business set-asides and reserves of multiple award contracts and orders issued pursuant to such contracts, as well as bundling and contract consolidation.

The objective of the rule is to implement these statutory changes by further defining terms and expanding on the concepts set forth in the Jobs Act.

2. What is the legal basis for this final rule?

Small Business Jobs Act of 2010, Public Law 111–240.

3. What is SBA's description and estimate of the number of small entities to which the rule will apply?

This rule addresses the application of all of SBA's small business programs on multiple award contracts and addresses the limitations on bundled and consolidated contracts. As of February 2011, there were over 348,000 small business registered in the Central Contractor Registration (CCR) with a Dynamic Small Business Search Supplemental (DSBS) page. (CCR and DSBS are now part of the System for Awards Management (SAM).) According to the FAR 4.11, prospective vendors must be registered in CCR prior to the award of a contract; basic agreement, basic ordering agreement, or blanket purchase agreement. Therefore, CCR and DSBS (now SAM) are the primary databases used by Federal contracting officers when conducting market research and it shows the small businesses that will be affected by this rule, since those are the small businesses that conduct or would like to conduct business with the Federal Government.

SBA notes that not all of these small businesses have received multiple award contracts in the past and therefore, the number of affected small businesses could be less. However, SBA believes that this rule will open the door to many more Federal procurement opportunities to small businesses, including opportunities for orders against the GSA Schedule. Therefore, SBA believes that all small businesses could be impacted by this rule.

4. What are the projected reporting, recordkeeping, Paperwork Reduction Act and other compliance requirements?

The SBA does not believe that there are any new recordkeeping requirements. The rule does provide that businesses will need to report their size status at the time of contract award for a multiple award contract. As stated above in the discussion of the Paperwork Reduction Act, this is essentially the same reporting that is done now. The rule merely clarifies this requirement. However, the business will need to represent its status for a single or multiple NAICS codes in order to be deemed a small business for the orders issued against the multiple award contract and each order will contain a NAICS code.

In addition, the SBA has a new compliance requirement with respect to the limitations on subcontracting. Under the limitations on subcontracting, a small business must perform a certain percentage of the work itself and it limited as to how much work it can subcontract. The limitations on subcontracting will apply to each performance period under the contractor to specific orders, depending on either the type of multiple award contract awarded or the contracting officer's determination.

5. What relevant Federal rules may duplicate, overlap, or conflict with this rule?

This final rule may conflict with current FAR and General Services Administration regulations. In fact, one respondent commented that SBA should provide a detailed analysis as to how the SBA and FAR rules differ. SBA believes that as a result of this final rule, the FAR will need to be amended. SBA

consulted with the FAR Councils and GSA prior to issuing the proposed and final rule. However, as noted in the discussion in the preamble, SBA attempted to draft the regulations to avoid unnecessary conflicts. For example, the FAR and GSA define the term ''teaming'' to mean something in particular. Rather than define the term ''teaming'' to conflict with those rules, SBA defined the term ''Small Business Teaming Arrangement.''

6. What significant alternatives did SBA consider that accomplish the stated objectives and minimize any significant economic impact on small entities?

One of the major parts of this rule is size status for multiple award contracts and orders issued against multiple award contracts, including the GSA Schedule. SBA requires that the small business represent its status at the time of submission of initial offer for the multiple award contract and that representation would generally be good for up to five years, including for all orders issued against that multiple award contract with the same or higher size standard. SBA had considered both in the proposed and final rule in response to comments received that a business concern represent its size status at the time of submission of initial offer and on each and every order issued against a multiple award contract. SBA believes this would be too much of a burden on small businesses. SBA believes its final rule imposes less of a burden yet still ensures that an agency's goals truly reflect awards to small businesses.

The other alternatives are discussed in the preamble as well as the Regulatory Impact Analysis.

List of Subjects

13 CFR Part 121

Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Small businesses.

13 CFR Part 124

Administrative practice and procedure, Government procurement, Minority businesses, Reporting and recordkeeping requirements, Small business, Technical assistance.

13 CFR Part 125

Government contracts, Government procurement, Reporting and recordkeeping requirements, Small businesses, Technical assistance.

13 CFR Part 126

Administrative practice and procedure, Government procurement, Penalties, Reporting and recordkeeping requirements, Small business.

13 CFR Part 127

Government procurement, Reporting and recordkeeping requirements, Small businesses.

Accordingly, for the reasons stated in the preamble, SBA amends 13 CFR parts 121, 124, 125, 126, and 127 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. The authority citation for 13 CFR part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 638, 662, and 694a(9).

■ 2. Amend § 121.103 by:
■ a. Adding new paragraph (b)(9);
■ b. Revising paragraph (h)(3)(i)(A); and
■ c. Revising paragraph (h)(3)(i)(B) to read as follows:

§ 121.103 How does SBA determine affiliation?

* * * * *

(b) * * *

(9) In the case of a solicitation of offers for a bundled contract with a reserve (as defined in § 125.1), a small business concern prime contractor may enter into a Small Business Teaming Arrangement with one or more other small business concerns and submit an offer as a small business for a Federal procurement without regard to affiliation, so long as each team member is small under the size standard corresponding to the NAICS code assigned to the contract and there is a written, signed teaming or joint venture agreement amongst the small business concerns. *See* § 125.1 for the definition of Small Business Teaming Arrangement. With respect to Small Business Teaming Arrangements that are joint ventures, *see* § 121.103(h) for specific requirements and limitations.

* * * * *

(h) * * *

(3) * * *

(i) * * *

(A) The procurement qualifies as a bundled or consolidated requirement, at any dollar value, within the meaning of § 125.2(d) of this chapter; or

(B) The procurement is other than bundled or consolidated requirement within the meaning of § 125.2(d) of this chapter, and:

* * * * *

■ 3. Amend § 121.402 by:
■ a. Revising paragraph (b);
■ b. Redesignating paragraphs (c), (d) and (e) as (d), (e), and (f), respectively; and
■ c. Adding a new paragraph (c) to read as follows:

§ 121.402 What size standards are applicable to Federal Government Contracting Programs?

* * * * *

(b) The procuring agency contracting officer, or authorized representative, designates the proper NAICS code and corresponding size standard in a solicitation, selecting the single NAICS code which best describes the principal purpose of the product or service being acquired. Except for multiple award contracts as set forth in paragraph (c) of this section, every solicitation, including a request for quotations, must contain only one NAICS code and only one corresponding size standard.

(1) Primary consideration is given to the industry descriptions in the U.S. NAICS Manual, the product or service description in the solicitation and any attachments to it, the relative value and importance of the components of the procurement making up the end item being procured, and the function of the goods or services being purchased.

(2) A procurement is usually classified according to the component which accounts for the greatest percentage of contract value. Acquisitions for supplies must be classified under the appropriate manufacturing or supply NAICS code, not under a Wholesale Trade or Retail Trade NAICS code. A concern that submits an offer or quote for a contract, order, or subcontract where the NAICS code assigned to the contract, order, or subcontract is one for supplies, and furnishes a product it did not itself manufacture or produce, is categorized as a nonmanufacturer and deemed small if it has 500 or fewer employees and meets the requirements of § 121.406(b).

(c) *Multiple Award Contracts* (*see* definition at § 125.1).

(1) For a Multiple Award Contract, the contracting officer must:

(i) Assign the solicitation a single NAICS code and corresponding size standard which best describes the principal purpose of the acquisition as set forth in paragraph (b) of this section, only if the NAICS code will also best describe the principal purpose of each order to be placed under the Multiple Award Contract. If a service NAICS code has been assigned to the Multiple Award Contract, then a service NAICS code must be assigned to the solicitation for the order, including an order for services that also requires some supplies; or

(ii) Divide the solicitation into discrete categories (such as Contract Line Item Numbers (CLINs), Special Item Numbers (SINs), Sectors, Functional Areas (FAs), or the equivalent), and assign each discrete category the single NAICS code and corresponding size standard that best describes the principal purpose of the goods or services to be acquired under that category (CLIN, SIN, Sector, FA or equivalent) as set forth in paragraph (b) of this section. A concern must meet the applicable size standard for each category (CLIN, SIN, Sector, FA or equivalent) for which it seeks an award as a small business concern.

(2)(i) The contracting officer must assign a single NAICS code for each order issued against a Multiple Award Contract. When placing an order under a Multiple Award Contract with multiple NAICS codes, the contracting officer must assign the NAICS code and corresponding size standard that best describes the principle purpose of each order. In cases like the GSA Schedule, where an agency can issue an order against multiple SINs with different NAICS codes, the contracting officer must select the single NAICS code that best represents the acquisition.

(ii) With respect to an order issued against a multiple award contract, an agency will receive small business credit for goaling only if the business concern awarded the order has represented its status as small for the underlying multiple award contract for the same NAICS code as that assigned to the order, provided recertification has not been required or occurred for the contract or order.

* * * * *

■ 4. Amend § 121.404 by:
■ a. Revising the heading;
■ b. Revising paragraph (a);
■ c. Amending paragraph (b) by removing ''date of certification by SBA'' and adding in its place ''date the Director of the Division of Program Certification and Eligibility or the Associate Administrator for Business Development requests a formal size determination in connection with a concern that is otherwise eligible for program certification.''
■ d. Revising paragraph (f);
■ e. Revising the introductory text to paragraph (g);
■ f. Amending paragraph (g)(2) by redesignating it as paragraph (g)(2)(i) and adding a new paragraph (g)(2)(ii);
■ g. Revising the first sentence in paragraph (g)(3) introductory text;
■ h. Revising the second sentence in paragraph (g)(3)(iv);
■ i. Removing paragraph (g)(3)(vi);
■ j. Redesignating paragraph (g)(4) as (g)(5); and
■ k. Adding a new paragraph (g)(4), to read as follows:

§ 121.404 When is the size status of a business concern determined?

(a) SBA determines the size status of a concern, including its affiliates, as of the date the concern submits a written self-certification that it is small to the procuring activity as part of its initial offer (or other formal response to a solicitation), which includes price.

(1) With respect to Multiple Award Contracts and orders issued against a Multiple Award Contract:

(i) SBA determines size at the time of initial offer (or other formal response to a solicitation), which includes price, for a Multiple Award Contract based upon the size standard set forth in the solicitation for the Multiple Award Contract if a single NAICS codes is assigned as set forth in § 121.402(c)(i)(A). If a business is small at the time of offer for the Multiple Award Contract, it is small for each order issued against the contract, unless a contracting officer requests a new size certification in connection with a specific order.

(ii) SBA determines size at the time of initial offer (or other formal response to a solicitation), which includes price, for a Multiple Award Contract based upon the size standard set forth for each discrete category (*e.g.,* CLIN, SIN, Sector, FA or equivalent) for which a business concern submits an offer and represents it is small for the Multiple Award Contract as set forth in § 121.402(c)(i)(B). If the business concern submits an offer for the entire Multiple Award Contract, SBA will determine whether it meets the size standard for each discrete category (CLIN, SIN, Sector, FA or equivalent). If a business is small at the time of offer for a discrete category on the Multiple Award Contract, it is small for each order issued against that category with the same NAICS code and corresponding size standard, unless a contracting officer requests a new size certification in connection with a specific order.

(iii) SBA will determine size at the time of initial offer (or other formal response to a solicitation), which includes price, for an order issued against a Multiple Award Contract if the contracting officer requests a new size certification for the order.

(2) With respect to ''Agreements'' including Blanket Purchase Agreements (BPAs) (except for BPAs issued against a GSA Schedule Contract), Basic Agreements, Basic Ordering Agreements, or any other Agreement that a contracting officer sets aside or reserves awards to any type of small business, a concern must qualify as small at the time of its initial offer (or other formal response to a solicitation), which includes price, for the Agreement. Because an Agreement is not a contract, the concern must also qualify as small for each order issued pursuant to the Agreement in order to be considered small for the order and for an agency to receive small business goaling credit for the order.

* * * * *

(f) For purposes of architect-engineering or two-step sealed bidding procurements, a concern must qualify as small as of the date that it certifies that it is small as part of its initial bid or proposal (which may or may not include price).

(g) A concern that represents itself as a small business and qualifies as small at the time of its initial offer (or other formal response to a solicitation), which includes price, is considered to be a small business throughout the life of that contract. This means that if a business concern is small at the time of initial offer for a Multiple Award Contract (*see* § 121.1042(c) for designation of NAICS codes on a Multiple Award Contract), then it will be considered small for each order issued against the contract with the same NAICS code and size standard, unless a contracting officer requests a new size certification in connection with a specific order. Where a concern grows to be other than small, the procuring agency may exercise options and still count the award as an award to a small business. However, the following exceptions apply:

* * * * *

(2)(i) * * *

(ii) Recertification is required:

(A) When a concern acquires or is acquired by another concern;

(B) From both the acquired concern and the acquiring concern if each has been awarded a contract as a small business; and

(C) From a joint venture when an acquired concern, acquiring concern, or merged concern is a participant in a joint venture that has been awarded a contract or order as a small business.

* * * * *

(3) For the purposes of contracts (including Multiple Award Contracts) with durations of more than five years (including options), a contracting officer must request that a business concern recertify its small business size status no more than 120 days prior to the end of the fifth year of the contract, and no

more than 120 days prior to exercising any option thereafter. * * *

* * * * *

(iv) * * * The NAICS code and size standard assigned to an order must correspond to a NAICS code and size standard assigned to the underlying long-term contract and must be assigned in accordance with §§ 121.402(b) and (c). * * *

* * * * *

(4) The requirements in paragraphs (g)(1), (2), and (3) of this section apply to Multiple Award Contracts. However, if the Multiple Award Contract was set-aside for small businesses, partially set-aside for small businesses, or reserved for small business, then in the case of a contract novation, or merger or acquisition where no novation is required, where the resulting contractor is now other than small, the agency cannot count any new orders issued pursuant to the contract, from that point forward, towards its small business goals. This includes set-asides, partial set-asides, and reserves for 8(a) BD Participants, HUBZone SBCs, SDVO SBCs, and ED/WOSBs.

* * * * *

■ 5. Amend § 121.406 by revising paragraphs (a) introductory text and paragraph (d) to read as follows:

§ 121.406 How does a small business concern qualify to provide manufactured products or other supply items under a small business set-aside, service-disabled veteran-owned small business set-aside, WOSB or EDWOSB set-aside, or 8(a) contract?

(a) *General.* In order to qualify as a small business concern for a small business set-aside, service-disabled veteran-owned small business set-aside, WOSB or EDWOSB set-aside, 8(a) contract, partial set-aside, reserve, or set-aside of orders against a multiple award contract to provide manufactured products or other supply items, an offeror must either:

* * * * *

(d) *Simplified Acquisition Procedures and Orders Set-Aside Against Full and Openly Competed Multiple Award Contracts.* Where the procurement of supplies or manufactured items is processed under Simplified Acquisition Procedures as defined in FAR 13.101 (48 CFR 13.101), or an order for supplies or manufactured items is set-aside against a full and openly competed multiple award contract, and the anticipated cost will not exceed $25,000, the offeror does not have to supply the end product of a small business concern. However, the product acquired must be manufactured or produced in the United States, and the small business offeror must meet the requirements of paragraph (b)(1)(i) through(b)(1)(iv) of this section. The offeror need not itself be the manufacturer of any of the items acquired.

* * * * *

■ 6. Amend § 121.1001 by:

■ a. Revising paragraph (a)(1) introductory text to read as follows; and

■ b. Amending paragraph (b)(9) by removing the phrase ''Central Contractor Registration database'' and adding in its place ''System for Award Management (SAM) (or any successor system)''.

§ 121.1001 Who may initiate a size protest or request a formal size determination?

(a) *Size Status Protests.* (1) For SBA's Small Business Set-Aside Program, including the Property Sales Program, or any instance in which a procurement or order has been restricted to or reserved for small businesses or a particular group of small businesses (including a partial set-aside), the following entities may file a size protest in connection with a particular procurement, sale or order:

* * * * *

■ 7. Amend § 121.1004 by revising paragraphs (a)(1), (a)(2) and (a)(3) introductory text to read as follows:

§ 121.1004 What time limits apply to size protests?

(a) *Protests by entities other than contracting officers or SBA*—(1) *Sealed bids or sales (including protests on partial set-asides and reserves of Multiple Award Contracts and set-asides of orders against Multiple Award Contracts).* A protest must be received by the contracting officer prior to the close of business on the 5th day, exclusive of Saturdays, Sundays, and legal holidays, after bid opening for

(i) The contract; or

(ii) An order issued against a Multiple Award Contract if the contracting officer requested a new size certification in connection with that order.

(2) *Negotiated procurement (including protests on partial set-asides and reserves of Multiple Award Contracts and set-asides of orders against Multiple Award Contracts).* A protest must be received by the contracting officer prior to the close of business on the 5th day, exclusive of Saturdays, Sundays, and legal holidays, after the contracting officer has notified the protestor of the identity of the prospective awardee for

(i) The contract; or

(ii) An order issued against a Multiple Award Contract if the contracting officer requested a new size certification in connection with that order.

(3) *Long-Term Contracts.* For contracts with durations greater than five years (including options), including all existing long-term contracts, Multi-agency contracts, Governmentwide Acquisition Contracts and Multiple Award Contracts:

* * * * *

■ 8. Amend § 121.1103 by:

■ a. Revising paragraph (a); and

■ b. Amending paragraph (b)(1) by removing the phrase ''business days'' and adding in its place ''calendar days''.

§ 121.1103 What are the procedures for appealing a NAICS code or size standard designation?

(a)(1) Any interested party adversely affected by a NAICS code designation may appeal the designation to OHA. An interested party would include a business concern seeking to change the NAICS code designation in order to be considered a small business for the challenged procurement, regardless of whether the procurement is reserved for small businesses or unrestricted. The only exception is that, for a sole source contract reserved under SBA's 8(a) Business Development program (*see* part 124 of this chapter), only SBA's Associate Administrator for Business Development may appeal the NAICS code designation.

(2) A NAICS code appeal may include an appeal involving the applicable size standard, such as where more than one size standard corresponds to the selected NAICS code, or a question relating to the size standard in effect at the time the solicitation was issued or amended.

* * * * *

§ 121.1204 [Amended]

■ 9. Amend § 121.1204(b)(iv) by removing ''For contracts'' and adding in its place ''For contracts or orders''.

PART 124—8(a) BUSINESS DEVELOPMENT/SMALL DISADVANTAGED BUSINESS STATUS DETERMINATIONS

■ 10. Revise the authority citation for 13 CFR part 124 to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(j), 637(a), 637(d), 644 and Pub. L. 99–661, Pub. L. 100–656, sec. 1207, Pub. L. 101–37, Pub. L. 101–574, section 8021, Pub. L. 108–87, and 42 U.S.C. 9815.

■ 11. Amend § 124.501 by adding a sentence after the first sentence in paragraph (a) to read as follows:

§ 124.501 What general provisions apply to the award of 8(a) contracts?

(a) * * * This includes set-asides, partial set-asides and reserves of

Multiple Award Contracts and set-asides of orders issued against Multiple Award Contracts. * * *

* * * * *

■ 12. Amend § 124.503 by:
■ a. Revising the heading in paragraph (h);
■ b. Revising paragraphs (h)(1);
■ c. Revising the heading and first sentence in paragraph (h)(2); and
■ d. Adding new paragraph (h)(3); and
■ e. Amending paragraph (j)(2)(i) by removing the phrase ''ORCA'' and adding in its place ''System for Award Management (SAM) (or any successor system)'':

§ 124.503 How does SBA accept a procurement for award through the 8(a) BD program?

* * * * *

(h) *Task or Delivery Order Contracts, including Multiple Award Contracts.*

(1) *Contracts set-aside for exclusive competition among 8(a) Participants.*

(i) A task or delivery order contract, Multiple Award Contract, or order issued against a Multiple Award Contract that is set-aside exclusively for 8(a) Program Participants, partially set-aside for 8(a) Program Participants or reserved solely for 8(a) Program Participants must follow the established 8(a) competitive procedures. This includes an offering to and acceptance into the 8(a) program, SBA eligibility verification of the apparent successful offerors prior to contract award, compliance with the performance of work requirements set forth in § 124.510, and compliance with the nonmanufacturer rule (*see* § 121.406(b)), if applicable.

(ii) An agency is not required to offer or receive acceptance of individual orders into the 8(a) BD program if the task or delivery order contract or Multiple Award Contract was set-aside exclusively for 8(a) Program Participants, partially set-aside for 8(a) Program Participants or reserved solely for 8(a) Program Participants, and the individual order is to be competed among all 8(a) contract holders.

(iii) A concern awarded a task or delivery order contract or Multiple Award Contract that was set-aside exclusively for 8(a) Program Participants, partially set-aside for 8(a) Program Participants or reserved solely for 8(a) Program Participants may generally continue to receive new orders even if it has grown to be other than small or has exited the 8(a) BD program, and agencies may continue to take credit toward their prime contracting goals for orders awarded to 8(a) Participants. However, agencies may not take SDB or small business credit for an order where the concern has been asked by the procuring agency to recertify its size, 8(a) or SDB status and is unable to do so (*see* § 121.404(g)), or where ownership or control of the concern has changed and SBA has granted a waiver to allow performance to continue (*see* § 124.515).

(iv) An agency may issue a sole source award against a Multiple Award Contract that has been set-aside exclusively for 8(a) Program Participants, partially set-aside for 8(a) Program Participants or reserved solely for 8(a) Program Participants if the required dollar thresholds for sole source awards are met. Where an agency seeks to award an order on a sole source basis (i.e., to one particular 8(a) contract holder without competition among all 8(a) contract holders), the agency must offer and SBA must accept the order into the 8(a) program on behalf of the identified 8(a) contract holder.

(2) *Allowing orders issued to 8(a) Participants under Multiple Award Contracts that were not set-aside for exclusive competition among eligible 8(a) Participants to be considered 8(a) awards.* In order for an order issued to an 8(a) Participant and placed against a Multiple Award Contract to be considered an 8(a) award, where the Multiple Award contract was not initially set-aside, partially set-aside or reserved for exclusive competition among 8(a) Participants, the following conditions must be met: * * *

* * * * *

(3) *Reserves.* A procuring activity must offer and SBA must accept a requirement that is reserved for 8(a) Participants (*i.e.,* an acquisition where the contracting officer states an intention to make one or more awards to only 8(a) Participants under full and open competition). However, a contracting officer does not have to offer the requirement to SBA where the acquisition has been reserved for small businesses, even if the contracting officer states an intention to make one or more awards to several types of small business including 8(a) Participants since any such award to 8(a) Participants would not be considered an 8(a) contract award.

* * * * *

■ 13. Amend § 124.504 by:
■ a. Revising paragraph (a) to read as follows; and
■ b. Amending paragraph (c)(3) by removing ''reserved for'' and adding in its place ''in''.

§ 124.504 What circumstances limit SBA's ability to accept a procurement for award as an 8(a) contract?

* * * * *

(a) *Prior intent to award as a small business set-aside, or use the HUBZone, Service Disabled Veteran-Owned Small Business, or Women-Owned Small Business programs.* The procuring activity issued a solicitation for or otherwise expressed publicly a clear intent to award the contract as a small business set-aside, or to use the HUBZone, Service Disabled Veteran-Owned Small Business, or Women-Owned Small Business programs prior to offering the requirement to SBA for award as an 8(a) contract. However, the AA/BD may permit the acceptance of the requirement under extraordinary circumstances.

* * * * *

■ 14. Amend § 124.505 by revising the section heading to read as follows:

''§ 124.505 When will SBA appeal the terms or conditions of a particular 8(a) contract or a procuring activity decision not to use the 8(a) BD program?''

* * * * *

§ 124.506 [Amended]

■ 15. Amend § 124.506(a)(3) by removing the second sentence.

§ 124.510 [Amended]

■ 16. Amend § 124.510 by revising paragraph (c) to read as follows:

§ 124.510 What percentage of work must a Participant perform on an 8(a) contract?

* * * * *

(c) *Indefinite delivery and indefinite quantity contracts.* (1) *Total Set-Aside Contracts.* The Participant must perform the required percentage of work and comply with the nonmanufacturer rule for each performance period of the contract—i.e., during the base term and then during each option period thereafter. However, the contracting officer, in his or her discretion, may require the Participant to perform the applicable amount of work or comply with the nonmanufacturer rule for each order.

(2) *Partial Set-Aside Contracts.* For orders awarded under a partial small business set-aside, the concern must perform the required percentage of work and comply with the nonmanufacturer rule for each performance period of the contract—i.e., during the base term and then during each option period thereafter. However, the contracting officer, in his or her discretion, may require the Participant to perform the applicable amount of work or comply with the nonmanufacturer rule for each order awarded under a partial set aside contract. For orders awarded under the non-set-aside portion, the concern need not comply with any limitations on

subcontracting or nonmanufacturer rule requirements

(3) *Orders.* For orders that are set aside under full and open contracts or reserves, the Participant must perform the applicable amount of work or comply with the nonmanufacturer rule for each order.

(4) The applicable SBA District Director may waive the provisions in paragraphs (c)(1) and (c)(2) of this section requiring a Participant to meet the applicable performance of work requirement for each period of performance or for each order. Instead, the District Director may permit the Participant to subcontract in excess of the limitations on subcontracting where the District Director makes a written determination that larger amounts of subcontracting are essential during certain stages of performance. However, the 8(a) Participant and procuring activity's contracting officer must provide written assurances that the Participant will ultimately comply with the requirements of this section prior to contract completion. The procuring activity's contracting officer does not have the authority to waive the provisions of this section requiring a Participant to meet the applicable performance of work requirements, even if the agency has a Partnership Agreement with SBA.

(5) Where the Participant does not ultimately comply with the performance of work requirements by the end of the contract, SBA will not grant future waivers for the Participant. Further, the contracting officer must document an 8(a) Participant's performance of work requirements as part of its performance evaluation in accordance with the procedures set forth in FAR 42.1502. The contracting officer must also evaluate compliance for future contract awards in accordance with the procedures set forth in FAR 9.104–6.

PART 125—GOVERNMENT CONTRACTING PROGRAMS

■ 17. The authority citation for 13 CFR part 125 is amended to read as follows:

Authority: 15 U.S.C. 632(p), (q); 634(b)(6), 637, 644, 657f, and 657q.

■ 18. Revise § 125.1 to read as follows:

§ 125.1 What definitions are important to SBA's Government Contracting Programs?

(a) *Chief Acquisition Officer* means the employee of a Federal agency designated as such pursuant to section 16(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(a)).

(b) *Commercial off-the-shelf item* has the same definition as set forth in 41 U.S.C. 101 (as renumbered) and Federal Acquisition Regulation (FAR) 2.101 (48 U.S.C. 2.101).

(c) *Consolidation of contract requirements, consolidated contract, or consolidated requirement* means a solicitation for a single contract or a Multiple Award Contract to: (1) Satisfy two or more requirements of the Federal agency for goods or services that have been provided to or performed for the Federal agency under two or more separate contracts each of which was lower in cost than the total cost of the contract for which the offers are solicited, the total cost of which exceeds $2 million (including options); or (2) Satisfy requirements of the Federal agency for construction projects to be performed at two or more discrete sites.

(d) *Contract,* unless otherwise noted, has the same definition as set forth in FAR 2.101 (48 U.S.C. 2.101) and includes orders issued against Multiple Award Contracts and orders competed under agreements where the execution of the order is the contract (*e.g.,* a Blanket Purchase Agreement (BPA), a Basic Agreement (BA), or a Basic Ordering Agreement (BOA)).

(e) *Contract bundling, bundled requirement, bundled contract, or bundling* means the consolidation of two or more procurement requirements for goods or services previously provided or performed under separate smaller contracts into a solicitation of offers for a single contract or a Multiple Award Contract that is likely to be unsuitable for award to a small business concern (but may be suitable for award to a small business with a Small Business Teaming Arrangement) due to:

(1) The diversity, size, or specialized nature of the elements of the performance specified;

(2) The aggregate dollar value of the anticipated award;

(3) The geographical dispersion of the contract performance sites; or

(4) Any combination of the factors described in paragraphs (e)(1), (2), and (3) of this section.

(f) *Cost of the contract* means all allowable direct and indirect costs allocable to the contract, excluding profit or fees.

(g) *Cost of contract performance incurred for personnel* means direct labor costs and any overhead which has only direct labor as its base, plus the concern's General and Administrative rate multiplied by the labor cost.

(h) *Cost of manufacturing* means costs incurred by the business concern in the production of the end item being acquired, including the costs associated with crop production. These are costs associated with producing the item being acquired, including the direct costs of fabrication, assembly, or other production activities, and indirect costs which are allocable and allowable. The cost of materials, as well as the profit or fee from the contract, are excluded.

(i) *Cost of materials* means costs of the items purchased, handling and associated shipping costs for the purchased items (which includes raw materials), commercial off-the-shelf items (and similar common supply items or commercial items that require additional manufacturing, modification or integration to become end items), special tooling, special testing equipment, and construction equipment purchased for and required to perform on the contract. In the case of a supply contract, cost of materials includes the acquisition of services or products from outside sources following normal commercial practices within the industry.

(j) *General Services Administration (GSA) Schedule Contract* means a Multiple Award Contract issued by GSA and includes the Federal Supply Schedules and other Multiple Award Schedules.

(k) *Multiple Award Contract* means a contract that is:

(1) A Multiple Award Schedule contract issued by GSA (*e.g.,* GSA Schedule Contract) or agencies granted Multiple Award Schedule contract authority by GSA (*e.g.,* Department of Veterans Affairs) as described in FAR part 38 and subpart 8.4;

(2) A multiple award task-order or delivery-order contract issued in accordance with FAR subpart 16.5, including Governmentwide acquisition contracts; or

(3) Any other indefinite-delivery, indefinite-quantity contract entered into with two or more sources pursuant to the same solicitation.

(l) *Office of Small and Disadvantaged Business Utilization (OSDBU) or the Office of Small Business Programs (OSBP)* means the office in each Federal agency having procurement powers that is responsible for ensuring that small businesses receive a fair proportion of Federal contracts in that agency. The office is managed by a Director, who is responsible and reports directly to the head of the agency or deputy to the agency (except that for DoD, the Director reports to the Secretary or the Secretary's designee).

(m) *Personnel* means individuals who are ''employees'' under § 121.106 of this chapter, except for purposes of the HUBZone program, where the definition of ''employee'' is found in § 126.103 of this chapter.

(n) *Partial set-aside (or partially set-aside)* means, for a Multiple Award Contract, a contracting vehicle that can be used when: market research indicates that a total set-aside is not appropriate; the procurement can be broken up into smaller discrete portions or discrete categories such as by Contract Line Items, Special Item Numbers, Sectors or Functional Areas or other equivalent; and two or more small business concerns, 8(a) BD Participants, HUBZone SBCs, SDVO SBCs, WOSBs or EDWOSBs are expected to submit an offer on the set-aside part or parts of the requirement at a fair market price.

(o) *Reserve* means, for a Multiple Award Contract,

(1) An acquisition conducted using full and open competition where the contracting officer makes—

(i) Two or more contract awards to any one type of small business concern (*e.g.,* small business, 8(a), HUBZone, SDVO SBC, WOSB or EDWOSB) and competes any orders solely amongst the specified types of small business concerns if the ''rule of two'' or any alternative set-aside requirements provided in the small business program have been met;

(ii) Several awards to several different types of small businesses (*e.g.,* one to 8(a), one to HUBZone, one to SDVO SBC, one to WOSB or EDWOSB) and competes any orders solely amongst all of the small business concerns if the ''rule of two'' has been met; or

(iii) One contract award to any one type of small business concern (*e.g.,* small business, 8(a), HUBZone, SDVO SBC, WOSB or EDWOSB) and subsequently issues orders directly to that concern.

(2) An award on a bundled contract to one or more small businesses with a Small Business Teaming Arrangement.

(p) ''*Rule of Two*'' refers to the requirements set forth in §§ 124.506, 125.2(f), 125.19(c), 126.607(c) and 127.503 of this chapter that there is a reasonable expectation that the contracting officer will obtain offers from at least two small businesses and award will be made at fair market price.

(q) *Senior Procurement Executive (SPE)* means the employee of a Federal agency designated as such pursuant to section 16(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(c)).

(r) *Separate contract* means a contract or order (including those placed against a GSA Schedule Contract or an indefinite delivery, indefinite quantity contract) that has previously been performed by any business, including an other-than-small business or small business concern.

(s) *Separate smaller contract* means a contract that has previously been performed by one or more small business concerns or was suitable for award to one or more small business concerns.

(t) *Single contract* means any contract or order (including those placed against a GSA Schedule Contract or an indefinite delivery, indefinite quantity contract) resulting in one or more awardee(s).

(u) *Small Business Teaming Arrangement* means an arrangement where:

(1) Two or more small business concerns have formed a joint venture to act as a potential prime contractor (for the definition of and exceptions to affiliation for joint ventures, *see* § 121.103); or

(2) A potential small business prime contractor agrees with one or more other small business concerns to have them act as its subcontractors under a specified Government contract. A Small Business Teaming Arrangement between a prime and its small business subcontractor(s) must exist through a written agreement between the parties that is specifically referred to as a ''Small Business Teaming Arrangement'' or ''Small Business Teaming Agreement'' and which sets forth the different responsibilities, roles, and percentages (or other allocations) of work as it relates to the acquisition.

(i) A Small Business Teaming Arrangement can include two business concerns in a mentor-protégé relationship so long as both the mentor and the protégé are small or the protégé is small and the concerns have received an exception to affiliation pursuant to § 121.103(h)(3)(ii) or 121.103(h)(3)(iii) of this chapter.

(ii) The agreement must be provided to the contracting officer as part of the proposal.

(v) *Subcontract or subcontracting* means, except for purposes of § 125.3, that portion of the contract performed by a business concern, other than the business concern awarded the contract, under a second contract, purchase order, or agreement for any parts, supplies, components, or subassemblies which are not available commercial off-the-shelf items, and which are manufactured in accordance with drawings, specifications, or designs furnished by the contractor, or by the government as a portion of the solicitation. Raw castings, forgings, and moldings are considered as materials, not as subcontracting costs. Where the prime contractor has been directed by the Government as part of the contract to use any specific source for parts, supplies, or components subassemblies, the costs associated with those purchases will be considered as part of the cost of materials, not subcontracting costs.

(w) *Substantial bundling* means any bundling that meets or exceeds the following dollar amounts (if the acquisition strategy contemplates Multiple Award Contracts or multiple award orders issued against a GSA Schedule Contract or a task or delivery order contract awarded by another agency, these thresholds apply to the cumulative estimated value of the Multiple Award Contracts or orders, including options):

(1) $8.0 million or more for the Department of Defense;

(2) $6.0 million or more for the National Aeronautics and Space Administration, the General Services Administration, and the Department of Energy; and

(3) $2.5 million or more for all other agencies.

■ 19. Amend § 125.2 by:

■ a. Revising the section heading;

■ b. Revising paragraphs (a), (b), (c), (d) and (e) to read as follows; and

■ c. Amending paragraph (f)(2)(i) by removing ''ORCA certifications'' and adding in its place ''certifications in the System for Award Management (SAM) (or successor system)'':

§ 125.2 What are SBA's and the procuring agency's responsibilities when providing contracting assistance to small businesses?

(a) *General.* The objective of the SBA's contracting programs is to assist small business concerns, including 8(a) BD Participants, HUBZone small business concerns, Service Disabled Veteran-Owned Small Business Concerns, Women-Owned Small Businesses and Economically Disadvantaged Women-Owned Small Businesses, in obtaining a fair share of Federal Government prime contracts, subcontracts, orders, and property sales. Therefore, these regulations apply to all types of Federal Government contracts, including Multiple Award Contracts, and contracts for architectural and engineering services, research, development, test and evaluation. Small business concerns must receive any award (including orders, and orders placed against Multiple Award Contracts) or contract, part of any such award or contract, and any contract for the sale of Government property, regardless of the place of performance, which SBA and the procuring or disposal agency determine to be in the interest of:

(1) Maintaining or mobilizing the Nation's full productive capacity;

(2) War or national defense programs;

(3) Assuring that a fair proportion of the total purchases and contracts for property, services and construction for the Government in each industry category are placed with small business concerns; or

(4) Assuring that a fair proportion of the total sales of Government property is made to small business concerns.

(b) *SBA's responsibilities in the acquisition planning process.*

(1) *SBA Procurement Center Representative (PCR) Responsibilities.*

(i) *PCR Review.*

(A) SBA has PCRs who are generally located at Federal agencies and buying activities that have major contracting programs. At the SBA's discretion, PCRs will review all acquisitions that are not set-aside or reserved for small businesses above or below the Simplified Acquisition Threshold, to determine whether a set-aside or sole source award to a small business under one of SBA's programs is appropriate and to identify alternative strategies to maximize the participation of small businesses in the procurement. This review includes acquisitions that are Multiple Award Contracts where the agency has not set-aside all or part of the acquisition or reserved the acquisition for small businesses. It also includes acquisitions where the agency has not set-aside orders placed against Multiple Award Contracts for small business concerns.

(B) PCRs will work with the cognizant Small Business Specialist (SBS) and agency OSDBU or OSBP as early in the acquisition process as practicable to identify proposed solicitations that involve bundling, and with the agency acquisition officials to revise the acquisition strategies for such proposed solicitations, where appropriate, to increase the probability of participation by small businesses, including small business contract teams and Small Business Teaming Arrangements, as prime contractors.

(C) In conjunction with their duties to promote the set-aside of procurements for small business, PCRs may identify small businesses that are capable of performing particular requirements.

(D) PCRs will also ensure that any Federal agency decision made concerning the consolidation of contract requirements considers the use of small businesses and ways to provide small businesses with maximum opportunities to participate as prime contractors and subcontractors in the acquisition or sale of real property.

(E) PCRs will review whether, for bundled and consolidated contracts that are recompeted, the amount of savings and benefits was achieved under the prior bundling or consolidation of contract requirements, that such savings and benefits will continue to be realized if the contract remains bundled or consolidated, or such savings and benefits would be greater if the procurement requirements were divided into separate solicitations suitable for award to small business concerns.

(ii) *PCR Recommendations in General.* The PCR must recommend to the procuring activity alternative procurement methods that would increase small business prime contract participation if a PCR believes that a proposed procurement includes in its statement of work goods or services currently being performed by a small business and is in a quantity or estimated dollar value the magnitude of which renders small business prime contract participation unlikely; will render small business prime contract participation unlikely (*e.g.,* ensure geographical preferences are justified); is for construction and seeks to package or consolidate discrete construction projects; or if a PCR does not believe a bundled or consolidated requirement is necessary and justified. Such alternatives may include:

(A) Breaking up the procurement into smaller discrete procurements, especially construction acquisitions that can be procured as separate projects;

(B) Breaking out one or more discrete components, for which a small business set-aside may be appropriate;

(C) Reserving one or more awards for small businesses when issuing Multiple Award Contracts;

(D) Using a partial set-aside;

(E) Stating in the solicitation for a Multiple Award Contract that the orders will be set-aside for small businesses; and

(F) Where the bundled or consolidated requirement is necessary and justified, the PCR will work with the procuring activity to tailor a strategy that preserves small business contract participation to the maximum extent practicable.

(iii) *PCR Recommendations for Small Business Teaming Arrangements and Subcontracting.* The PCR will work to ensure that small business participation is maximized both at the prime contract level such as through Small Business Teaming Arrangements and through subcontracting opportunities. This may include the subcontracting considerations in source selections set forth in § 125.3(g), as well as the following:

(A) Reviewing an agency's oversight of its subcontracting program, including its overall and individual assessment of a contractor's compliance with its small business subcontracting plans. The PCR will furnish a copy of the information to the SBA Commercial Market Representative (CMR) servicing the contractor;

(B) Recommending that the solicitation and resultant contract specifically state the small business subcontracting goals that are expected of the contractor awardee;

(C) Recommending that the small business subcontracting goals be based on total contract dollars instead of, or in addition to, subcontract dollars;

(D) Recommending that separate evaluation factors be established for evaluating the offerors' proposed approach to small business subcontracting participation in the subject procurement, the extent to which the offeror has met its small business subcontracting goals on previous contracts; and/or the extent to which the offeror actually paid small business subcontractors within the specified number of days;

(E) Recommending that a contracting officer include an evaluation factor in a solicitation which evaluates an offeror's commitment to pay small business subcontractors within a specified number of days after receipt of payment from the Government for goods and services previously rendered by the small business subcontractor. The contracting officer will comparatively evaluate the proposed timelines. Such a commitment shall become a material part of the contract. The contracting officer must consider the contractor's compliance with the commitment in evaluating performance, including for purposes of contract continuation (such as exercising options);

(F) For bundled and consolidated requirements, recommending that a separate evaluation factor with significant weight be established for evaluating the offeror's proposed approach to small business utilization, the extent to which the offeror has met its small business subcontracting goals on previous contracts; and the extent to which the other than small business offeror actually paid small business subcontractors within the specified number of days;

(G) For bundled or consolidated requirements, recommending the solicitation state that the agency must evaluate offers from teams of small businesses the same as other offers, with due consideration to the capabilities and past performance of all proposed subcontractors. It may also include

recommending that the agency reserve at least one award to a small business prime contractor with a Small Business Teaming Arrangement;

(H) For Multiple Award Contracts and multiple award requirements above the substantial bundling threshold, recommending or requiring that the solicitation state that the agency will solicit offers from small business concerns and small business concerns with Small Business Teaming Arrangements;

(I) For consolidated contracts, ensuring that agencies have provided small business concerns with appropriate opportunities to participate as prime contractors and subcontractors and making recommendations on such opportunities as appropriate; and

(J) Recommending paragraphs (B) through (I) above apply to an ordering agency placing an order against a Multiple Award Contract or Agreement.

(2) *SBA Breakout PCR (BPCR) Responsibilities.*

(i) BPCRs are assigned to major contracting centers. A major contracting center is a center that, as determined by SBA, purchases substantial dollar amounts of other than commercial items, and which has the potential to achieve significant savings as a result of the assignment of a BPCR.

(ii) BPCRs advocate full and open competition in the Federal contracting process and recommend the breakout for competition of items and requirements which previously have not been competed. They may appeal the failure by the buying activity to act favorably on a recommendation in accord with the appeal procedures in paragraph (b)(3) of this section. BPCRs also review restrictions and obstacles to competition and make recommendations for improvement. Other authorized functions of a BPCR are set forth in 48 CFR 19.403(c) (FAR 19.403(c)) and Section 15(l) of the Small Business Act (15 U.S.C. 644(l)).

(3) *Appeals of PCR and Breakout PCR (BPCR) Recommendations.* In cases where there is disagreement between a PCR or BPCR and the contracting officer over the suitability of a particular acquisition for a small business set-aside, partial set-aside or reserve, whether or not the acquisition is a bundled, substantially bundled or consolidated requirement, the PCR or BPCR may initiate an appeal to the head of the contracting activity. If the head of the contracting activity agrees with the contracting officer, SBA may appeal the matter to the Secretary of the Department or head of the agency. The time limits for such appeals are set forth in FAR 19.505 (48 CFR 19.505).

(c) *Procuring Agency Responsibilities.*

(1) *Requirement to Foster Small Business Participation.* The Small Business Act requires each Federal agency to foster the participation of small business concerns as prime contractors and subcontractors in the contracting opportunities of the Government regardless of the place of performance of the contract. In addition, Federal agencies must ensure that all bundled and consolidated contracts contain the required analysis and justification and provide small business concerns with appropriate opportunities to participate as prime contractors and subcontractors. Agency acquisition planners must:

(i) Structure procurement requirements to facilitate competition by and among small business concerns, including small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, 8(a) BD small business concerns (including those owned by ANCs, Indian Tribes and NHOs), and small business concerns owned and controlled by women;

(ii) Avoid unnecessary and unjustified bundling of contracts or consolidation of contract requirements that inhibits or precludes small business participation in procurements as prime contractors;

(iii) Follow the limitations on use of consolidated contracts;

(iv) With respect to any work to be performed the amount of which would exceed the maximum amount of any contract for which a surety may be guaranteed against loss under 15 U.S.C. 694b, to the extent practicable, place contracts so as to allow more than one small business concern to perform such work; and

(v) Provide SBA the necessary information relating to the acquisition under review at least 30 days prior to issuance of a solicitation. This includes providing PCRs (to the extent allowable pursuant to their security clearance) copies of all documents relating to the acquisition under review, including, but not limited to, the performance of work statement/statement of work, technical data, market research, hard copies or their electronic equivalents of Department of Defense (DoD) Form 2579 or equivalent, and other relevant information. The DoD Form 2579 or equivalent must be sent electronically to the PCR (or if a PCR is not assigned to the procuring activity, to the SBA Office of Government Contracting Area Office serving the area in which the buying activity is located).

(2) *Requirement for market research.* Each agency, as part of its acquisition planning, must conduct market research to determine the type and extent of foreseeable small business participation in the acquisition. In addition, each agency must conduct market research and any required analysis and justifications before proceeding with an acquisition strategy that could lead to a bundled, substantially bundled, or consolidated contract. The purpose of the market research and analysis is to determine whether the bundling or consolidation of the requirements is necessary and justified and all statutory requirements for such a strategy have been met. Agencies should be as broad as possible in their search for qualified small businesses, using key words as well as NAICS codes in their examination of the System for Award Management (SAM) and the Dynamic Small Business Search (DSBS), and must not place unnecessary and unjustified restrictions when conducting market research (*e.g.,* requiring that small businesses prove they can provide the best scientific and technological sources) when determining whether to set-aside, partially set-aside, reserve or sole source a requirement to small businesses. During the market research phase, the acquisition team must consult with the applicable PCR (or if a PCR is not assigned to the procuring activity, the SBA Office of Government Contracting Area Office serving the area in which the buying activity is located) and the activity's Small Business Specialist.

(3) *Proposed Acquisition Strategy.* A procuring activity must provide to the applicable PCR (or to the SBA Office of Government Contracting Area Office serving the area in which the buying activity is located if a PCR is not assigned to the procuring activity) at least 30 days prior to a solicitation's issuance:

(i) A copy of a proposed acquisition strategy (*e.g.,* DoD Form 2579, or equivalent) whenever a proposed acquisition strategy:

(A) Includes in its description goods or services the magnitude of the quantity or estimated dollar value of which would render small business prime contract participation unlikely;

(B) Seeks to package or consolidate discrete construction projects;

(C) Is a bundled or substantially bundled requirement; or

(D) Is a consolidation of contract requirements;

(ii) A written statement explaining why, if the proposed acquisition strategy involves a bundled or consolidated requirement, the procuring activity believes that the bundled or consolidated requirement is necessary and justified; the analysis required by

paragraph (d)(2)(i) of this section; the acquisition plan; any bundling information required under paragraph (d)(3) of this section; and any other relevant information. The PCR and agency OSDBU or OSBP, as applicable, must then work together to develop alternative acquisition strategies identified in paragraph (b)(1) of this section to enhance small business participation;

(iii) All required clearances for the bundled, substantially bundled, or consolidated requirement; and

(iv) A written statement explaining why—if the description of the requirement includes goods or services currently being performed by a small business and the magnitude of the quantity or estimated dollar value of the proposed procurement would render small business prime contract participation unlikely, or if a proposed procurement for construction seeks to package or consolidate discrete construction projects—

(A) The proposed acquisition cannot be divided into reasonably small lots to permit offers on quantities less than the total requirement;

(B) Delivery schedules cannot be established on a basis that will encourage small business participation;

(C) The proposed acquisition cannot be offered so as to make small business participation likely; or

(D) Construction cannot be procured through separate discrete projects.

(4) *Procuring Agency Small Business Specialist (SBS) Responsibilities.*

(i) As early in the acquisition planning process as practicable—but no later than 30 days before the issuance of a solicitation, or prior to placing an order without a solicitation—the procuring activity must coordinate with the procuring activity's SBS when the acquisition strategy contemplates an acquisition meeting the dollar amounts set forth for substantial bundling. If the acquisition strategy contemplates Multiple Award Contracts or orders under the GSA Multiple Award Schedule Program or a task or delivery order contract awarded by another agency, these thresholds apply to the cumulative estimated value of the Multiple Award Contracts or orders, including options. The procuring activity is not required to coordinate with its SBS if the contract or order is entirely set-aside for small business concerns, or small businesses under one of SBA's small business programs, as authorized under the Small Business Act.

(ii) The SBS must notify the agency OSDBU or OSBP if the agency's acquisition strategy or plan includes bundled or consolidated requirements that the agency has not identified as bundled, or includes unnecessary or unjustified bundling of requirements. If the strategy involves substantial bundling, the SBS must assist in identifying alternative strategies that would reduce or minimize the scope of the bundling.

(iii) The SBS must coordinate with the procuring activity and PCR on all required determinations and findings for bundling and/or consolidation, and acquisition planning and strategy documentation.

(5) *OSDBU and OSBP Oversight Functions.* The Agency OSDBU or OSBP must:

(i) Conduct annual reviews to assess the:

(A) Extent to which small businesses are receiving their fair share of Federal procurements, including contract opportunities under programs administered under the Small Business Act;

(B) Adequacy of the bundling or consolidation documentation and justification; and

(C) Adequacy of actions taken to mitigate the effects of necessary and justified contract bundling or consolidation on small businesses (*e.g.,* review agency oversight of prime contractor subcontracting plan compliance under the subcontracting program);

(ii) Provide a copy of the assessment under paragraph (c)(5)(i) of this section to the agency head and SBA's Administrator;

(iii) Identify proposed solicitations that involve significant bundling of contract requirements, and work with the agency acquisition officials and the SBA to revise the procurement strategies for such proposed solicitations to increase the probability of participation by small businesses as prime contractors through Small Business Teaming Arrangements;

(iv) Facilitate small business participation as subcontractors and suppliers, if a solicitation for a substantially bundled contract is to be issued;

(v) Assist small business concerns to obtain payments, required late payment interest penalties, or information regarding payments due to such concerns from an executive agency or a contractor, in conformity with chapter 39 of Title 31 or any other protection for contractors or subcontractors (including suppliers) that is included in the FAR or any individual agency supplement to such Government-wide regulation;

(vi) Cooperate, and consult on a regular basis with the SBA with respect to carrying out these functions and duties;

(vii) Make recommendations to contracting officers as to whether a particular contract requirement should be awarded to any type of small business. The Contracting Officer must document any reason not to accept such recommendations and include the documentation in the appropriate contract file; and

(viii) Coordinate on any acquisition planning and strategy documentation, including bundling and consolidation determinations at the agency level.

(6) *Communication on Achieving Goals.* All Senior Procurement Executives, senior program managers, Directors of OSDBU or Directors of OSBP must communicate to their subordinates the importance of achieving small business goals and ensuring that a fair proportion of awards are made to small businesses.

(d) *Contract Consolidation and Bundling.*

(1) *Limitation on the Use of Consolidated Contracts.*

(i) An agency may not conduct an acquisition that is a consolidation of contract requirements unless the Senior Procurement Executive or Chief Acquisition Officer for the Federal agency, before carrying out the acquisition strategy:

(A) Conducts adequate market research;

(B) Identifies any alternative contracting approaches that would involve a lesser degree of consolidation of contract requirements;

(C) Makes a written determination, which is coordinated with the agency's OSDBU/OSBP, that the consolidation of contract requirements is necessary and justified;

(D) Identifies any negative impact by the acquisition strategy on contracting with small business concerns; and

(E) Ensures that steps will be taken to include small business concerns in the acquisition strategy.

(ii) A Senior Procurement Executive or Chief Acquisition Officer may determine that an acquisition strategy involving a consolidation of contract requirements is necessary and justified.

(A) A consolidation of contract requirements may be necessary and justified if the benefits of the acquisition strategy substantially exceed the benefits of each of the possible alternative contracting approaches identified under paragraph (d)(1)(i)(B).

(B) The benefits may include cost savings and/or price reduction, quality improvements that will save time or improve or enhance performance or efficiency, reduction in acquisition

cycle times, better terms and conditions, and any other benefits that individually, in combination, or in the aggregate would lead to: benefits equivalent to 10 percent of the contract or order value (including options) where the contract or order value is $94 million or less; or benefits equivalent to 5 percent of the contract or order value (including options) or $9.4 million, whichever is greater, where the contract or order value exceeds $94 million.

(C) Savings in administrative or personnel costs alone do not constitute a sufficient justification for a consolidation of contract requirements in a procurement unless the expected total amount of the cost savings, as determined by the Senior Procurement Executive or Chief Acquisition Officer, is expected to be substantial in relation to the total cost of the procurement. To be substantial, such administrative or personnel cost savings must be at least 10 percent of the contract value (including options).

(iii) Each agency must ensure that any decision made concerning the consolidation of contract requirements considers the use of small businesses and ways to provide small businesses with opportunities to participate as prime contractors and subcontractors in the acquisition.

(iv) If the consolidated requirement is also considered a bundled requirement, then the contracting officer must instead follow the provisions regarding bundling set forth in paragraphs (d)(2) through (7) of this section.

(2) *Limitation on the Use of Contract Bundling.*

(i) When the procuring activity intends to proceed with an acquisition involving bundled or substantially bundled procurement requirements, it must document the acquisition strategy to include a determination that the bundling is necessary and justified, when compared to the benefits that could be derived from meeting the agency's requirements through separate smaller contracts.

(ii) A bundled requirement is necessary and justified if, as compared to the benefits that the procuring activity would derive from contracting to meet those requirements if not bundled, it would derive measurably substantial benefits. The procuring activity must quantify the identified benefits and explain how their impact would be measurably substantial. The benefits may include cost savings and/or price reduction, quality improvements that will save time or improve or enhance performance or efficiency, reduction in acquisition cycle times, better terms and conditions, and any other benefits that individually, in combination, or in the aggregate would lead to:

(A) Benefits equivalent to 10 percent of the contract or order value (including options), where the contract or order value is $94 million or less; or

(B) Benefits equivalent to 5 percent of the contract or order value (including options) or $9.4 million, whichever is greater, where the contract or order value exceeds $94 million.

(iii) Notwithstanding paragraph (d)(2)(ii) of this section, the Senior Procurement Executives or the Under Secretary of Defense for Acquisition and Technology (for other Defense Agencies) in the Department of Defense and the Deputy Secretary or equivalent in civilian agencies may, on a non-delegable basis, determine that a bundled requirement is necessary and justified when:

(A) There are benefits that do not meet the thresholds set forth in paragraph (d)(2)(ii) of this section but, in the aggregate, are critical to the agency's mission success; and

(B) The procurement strategy provides for maximum practicable participation by small business.

(iv) The reduction of administrative or personnel costs alone must not be a justification for bundling of contract requirements unless the administrative or personnel cost savings are expected to be substantial, in relation to the dollar value of the procurement to be bundled (including options). To be substantial, such administrative or personnel cost savings must be at least 10 percent of the contract value (including options).

(v) In assessing whether cost savings and/or a price reduction would be achieved through bundling, the procuring activity and SBA must compare the price that has been charged by small businesses for the work that they have performed and, where available, the price that could have been or could be charged by small businesses for the work not previously performed by small business.

(vi) The substantial benefit analysis set forth in paragraph (d)(2)(ii) of this section is still required where a requirement is subject to a Cost Comparison Analysis under OMB Circular A–76.

(3) *Limitations on the Use of Substantial Bundling.* Where a proposed procurement strategy involves a Substantial Bundling of contract requirements, the procuring agency must, in the documentation of that strategy, include a determination that the anticipated benefits of the proposed bundled contract justify its use, and must include, at a minimum:

(i) The analysis for bundled requirements set forth in paragraph (d)(2)(i) of this section;

(ii) An assessment of the specific impediments to participation by small business concerns as prime contractors that will result from the substantial bundling;

(iii) Actions designed to maximize small business participation as prime contractors, including provisions that encourage small business teaming for the substantially bundled requirement;

(iv) Actions designed to maximize small business participation as subcontractors (including suppliers) at any tier under the contract or contracts that may be awarded to meet the requirements; and

(v) The identification of the alternative strategies that would reduce or minimize the scope of the bundling, and the rationale for not choosing those alternatives (*i.e.,* consider the strategies under paragraph (b)(1)(ii) of this section).

(4) *Significant Subcontracting Opportunities in Justified Consolidated, Bundled and Substantially Bundled Requirements.*

(i) Where a justified consolidated, bundled, or substantially bundled requirement offers a significant opportunity for subcontracting, the procuring agency must designate the following factors as significant factors in evaluating offers:

(A) A factor that is based on the rate of participation provided under the subcontracting plan for small business in the performance of the contract; and

(B) For the evaluation of past performance of an offeror, a factor that is based on the extent to which the offeror attained applicable goals for small business participation in the performance of contracts.

(ii) Where the offeror for such a contract qualifies as a small business concern, the procuring agency must give to the offeror the highest score possible for the evaluation factors identified above.

(5) *Notification to Current Small Business Contractors of Intent to Bundle.* The procuring activity must notify each small business which is performing a contract that it intends to bundle that requirement with one or more other requirements at least 30 days prior to the issuance of the solicitation for the bundled or substantially bundled requirement. The procuring activity, at that time, should also provide to the small business the name, phone number and address of the applicable SBA PCR (or if a PCR is not assigned to the

procuring activity, the SBA Office of Government Contracting Area Office serving the area in which the buying activity is located). This notification must be documented in the contract file.

(6) *Notification to Public of Rationale for Bundled Requirement.* The head of a Federal agency must publish on the agency's Web site a list and rationale for any bundled requirement for which the agency solicited offers or issued an award. The notification must be made within 30 days of the agency's data certification regarding the validity and verification of data entered in that Federal Procurement Data Base to the Office of Federal Procurement Policy. However, to foster transparency in Federal procurement, the agency is encouraged to provide such notification before issuance of the solicitation.

(7) *Notification to SBA of Recompeted Bundled or Consolidated Requirement.* For each bundled or consolidated contract that is to be recompeted (even if additional requirements have been added or deleted) the procuring agency must notify SBA's PCR as soon as possible but no later than 30 days prior to issuance of the solicitation of:

(i) The amount of savings and benefits achieved under the prior bundling or consolidation of contract requirements;

(ii) Whether such savings and benefits will continue to be realized if the contract remains bundled or consolidated; and

(iii) Whether such savings and benefits would be greater if the procurement requirements were divided into separate solicitations suitable for award to small business concerns.

(e) *Multiple Award Contracts.*

(1) *General.*

(i) The contracting officer must set-aside a Multiple Award Contract if the requirements for a set-aside are met. This includes set-asides for small businesses, 8(a) Participants, HUBZone SBCs, SDVO SBCs, WOSBs or EDWOSBs.

(ii) The contracting officer in his or her discretion may partially set-aside or reserve a Multiple Award Contract, or set aside, or preserve the right to set aside, orders against a Multiple Award Contract that was not itself set aside for small business. The ultimate decision of whether to use any of the above-mentioned tools in any given procurement action is a decision of the contracting agency.

(iii) The procuring agency contracting officer must document the contract file and explain why the procuring agency did not partially set-aside or reserve a Multiple Award Contract, or set-aside orders issued against a Multiple Award Contract, when these authorities could have been used.

(2) *Total Set-aside of Multiple Award Contracts.*

(i) The contracting officer must conduct market research to determine whether the ''rule of two'' can be met. If the ''rule of two'' can be met, the contracting officer must follow the procedures for a set-aside set forth in paragraph (f) of this section.

(ii) The contracting officer must assign a NAICS code to the solicitation for the Multiple Award Contract and each order pursuant to § 121.402(c) of this chapter. *See* § 121.404 for further determination on size status for the Multiple Award Contract and each order issued against that contract.

(iii) When drafting the solicitation for the contract, agencies should consider an ''on-ramp'' provision that permits the agency to refresh the awards by adding more small business contractors throughout the life of the contract. Agencies should also consider the need to ''off-ramp'' existing contractors that no longer qualify as small for the size standard corresponding to the NAICS code assigned to the contract (*e.g.,* termination for convenience).

(iv) A business must comply with the applicable limitations on subcontracting provisions (*see* § 125.6) and the nonmanufacturer rule (*see* § 121.406(b)), if applicable, during each performance period of the contract (e.g., the base term and each subsequent option period). However, the contracting officer, in his or her discretion, may require the contractor perform the applicable amount of work or comply with the nonmanufacturer rule for each order awarded under the contract.

(3) *Partial Set-asides of Multiple Award Contracts.*

(i) A contracting officer may partially set-aside a multiple award contract when: market research indicates that a total set-aside is not appropriate; the procurement can be broken up into smaller discrete portions or discrete categories such as by Contract Line Items, Special Item Numbers, Sectors or Functional Areas or other equivalent; and two or more small business concerns, 8(a) BD Participants, HUBZone SBCs, SDVO SBCs, WOSBs or EDWOSBs are expected to submit an offer on the set-aside part or parts of the requirement at a fair market price. A contracting officer has the discretion, but is not required, to set-aside the discrete portions or categories for different small businesses participating in SBA's small business programs (*e.g.,* CLIN 0001, 8(a) set-aside; CLIN 0002, HUBZone set-aside; CLIN 0003, SDVO SBC set-aside; CLIN 0004, WOSB set-aside; CLIN 0005 EDWOSB set-aside; CLIN 0006, small business set-aside). If the contracting officer decides to partially set-aside a Multiple Award Contract, the contracting officer must follow the procedures for a set-aside set forth in paragraph (f) of this section for the part or parts of the contract that have been set-aside.

(ii) The contracting officer must assign a NAICS code and corresponding size standard to the solicitation for the Multiple Award Contract and each order issued against the Multiple Award Contract pursuant to § 121.402(c) of this chapter. *See* § 121.404 for further determination on size status for the Multiple Award Contract and each order issued against that contract.

(iii) A contracting officer must state in the solicitation that the small business will not compete against other-than-small businesses for any order issued against that part or parts of the Multiple Award Contract that are set-aside.

(iv) A contracting officer must state in the solicitation that the small business will be permitted to compete against other-than-small businesses for an order issued against the portion of the Multiple Award Contract that has not been partially set-aside if the small business submits an offer for the non-set-aside portion. The business concern will not have to comply with the limitations on subcontracting (*see* § 125.6) and the nonmanufacturer rule for any order issued against the Multiple Award Contract if the order is competed and awarded under the portion of the contract that is not set-aside.

(v) When drafting the solicitation for the contract, agencies should consider an ''on ramp'' provision that permits the agency to refresh these awards by adding more small business contractors to that portion of the contract that was set-aside throughout the life of the contract. Agencies should also consider the need to ''off ramp'' existing contractors that no longer qualify as small for the size standard corresponding to the NAICS code assigned to the contract (*e.g.,* termination for convenience).

(vi) The small business must submit one offer that addresses each part of the solicitation for which it wants to compete. A small business (or 8(a) Participant, HUBZone SBC, SDVO SBC or ED/WOSB) is not required to submit an offer on the part of the solicitation that is not set-aside. However, a small business may choose to submit an offer on the part or parts of the solicitation that have been set-aside and/or on the parts that have not been set-aside.

(vii) A small business must comply with the applicable limitations on

subcontracting provisions (*see* § 125.6) and the nonmanufacturer rule (*see* § 121.406(b)), if applicable, during each performance period of the contract (e.g., during the base term and then during option period thereafter). However, the contracting officer, in his or her discretion, may require the contractor perform the applicable amount of work or comply with the nonmanufacturer rule for each order awarded under the contract.

(4) *Reserves of Multiple Award Contracts Awarded in Full and Open Competition.* (i) A contracting officer may reserve one or more awards for small business where:

(A) The market research and recent past experience evidence that—

(*1*) At least two small businesses, 8(a) BD Participants, HUBZone SBCs, SDVO SBCs, WOSBs or EDWOSBs could perform one part of the requirement, but the contracting officer was unable to divide the requirement into smaller discrete portions or discrete categories by utilizing individual Contract Line Items (CLINs), Special Item Numbers (SINs), Functional Areas (FAs), or other equivalent; or

(*2*) At least one small business, 8(a) BD Participant, HUBZone SBC, SDVO SBC, WOSB or EDWOSB can perform the entire requirement, but there is not a reasonable expectation of receiving at least two offers from small business concerns, 8(a) BD Participants, HUBZone SBCs, SDVO SBCs, WOSBs or EDWOSBs at a fair market price for all the work contemplated throughout the term of the contract; or

(B) The contracting officer makes:

(1) Two or more contract awards to any one type of small business concern (*e.g.,* small business, 8(a), HUBZone, SDVO SBC, WOSB or EDWOSB) and competes any orders solely amongst the specified types of small business concerns if the ''rule of two'' or any alternative set-aside requirements provided in the small business program have been met;

(2) Several awards to several different types of small businesses (*e.g.,* one to 8(a), one to HUBZone, one to SDVO SBC, one to WOSB or EDWOSB) and competes any orders solely amongst all of the small business concerns if the ''rule of two'' has been met; or

(3) One contract award to any one type of small business concern (*e.g.,* small business, 8(a), HUBZone, SDVO SBC, WOSB or EDWOSB) and subsequently issues orders directly to that concern.

(ii) If the contracting officer decides to reserve a multiple award contract established through full and open competition, the contracting officer must assign a NAICS code to the solicitation for the Multiple Award Contract and each order issued against the Multiple Award Contract pursuant to § 121.402(c) of this chapter. *See* § 121.404 for further determination on size status for the Multiple Award Contract and each order issued against that contract.

(iii) A contracting officer must state in the solicitation that if there are two or more contract awards to any one type of small business concern (*e.g.,* small business, 8(a), HUBZone, SDVO SBC, WOSB or EDWOSB), the agency may compete any orders solely amongst the specified types of small business concerns if the ''rule of two'' or an alternative set-aside requirement provided in the small business program have been met.

(iv) A contracting officer must state in the solicitation that if there are several awards to several different types of small businesses (*e.g.,* one to 8(a), one to HUBZone, one to SDVO SBC, one to WOSB or EDWOSB), the agency may compete any orders solely amongst all of the small business concerns if the ''rule of two'' has been met.

(v) A contracting officer must state in the solicitation that if there is only one contract award to any one type of small business concern (*e.g.,* small business, 8(a), HUBZone, SDVO SBC, WOSB or EDWOSB), the agency may issue orders directly to that concern for work that it can perform.

(vi) A contracting officers may, but is not required to, set forth targets in the contract showing the estimated dollar value or percentage of the total contract to be awarded to small businesses.

(vii) A small business offeror must submit one offer that addresses each part of the solicitation for which it wants to compete.

(viii) Small businesses are permitted to compete against other-than-small businesses for an order issued against the Multiple Award Contract if agency issued the small business a contract for those supplies or services.

(ix) A business must comply with the applicable limitations on subcontracting provisions (*see* § 125.6) and the nonmanufacturer rule (*see* § 121.406(b)), if applicable, for any order issued against the Multiple Award Contract if the order is set aside or awarded on a sole source basis. However, a business need not comply with the limitations on subcontracting provisions (*see* § 125.6) and the nonmanufacturer rule for any order issued against the Multiple Award Contract if the order is competed amongst small and other-than-small business concerns.

(5) *Reserve of Multiple Award Contracts that are Bundled.*

(i) If the contracting officer decides to reserve a multiple award contract established through full and open competition that is a bundled contract, the contracting officer must assign a NAICS code to the solicitation for the Multiple Award Contract and each order issued against the Multiple Award Contract pursuant to § 121.402(c) of this chapter. *See* § 121.404 for further determination on size status for the Multiple Award Contract and each order issued against that contract.

(ii) The Small Business Teaming Arrangement must comply with the applicable limitations on subcontracting provisions (*see* § 125.6) and the nonmanufacturer rule (*see* § 121.406(b)), if applicable, on all orders issued against the Multiple Award Contract, although the cooperative efforts of the team members will be considered in determining whether the subcontracting limitations requirement is met (*see* § 125.6(j)).

(iii) Team members of the Small Business Teaming Arrangement will not be affiliated for the specific solicitation or contract (*see* § 121.103(b)(8)).

(6) *Set-aside of orders against Full and Open Multiple Award Contracts.*

(i) Notwithstanding the fair opportunity requirements set forth in 10 U.S.C. 2304c and 41 U.S.C. 253j, the contracting officer has the authority to set-aside orders against Multiple Award Contracts that were competed on a full and open basis.

(ii) The contracting officer may state in the solicitation and resulting contract for the Multiple Award Contract that:

(A) Based on the results of market research, orders issued against the Multiple Award Contract will be set-aside for small businesses or any subcategory of small businesses whenever the ''rule of two'' or any alternative set-aside requirements provided in the small business program have been met; or

(B) The agency is preserving the right to consider set-asides using the ''rule of two'' or any alternative set-aside requirements provided in the small business program, on an order-by-order basis.

(iii) For the acquisition of orders valued at or below the simplified acquisition threshold (SAT), the contracting officer may set-aside the order for small businesses, 8(a) BD Participants, HUBZone SBCs, SDVO SBCs, WOSBs or EDWOSBs in accordance with the relevant program's regulations. For the acquisition of orders valued above the SAT, the contracting officer shall first consider whether there

is a reasonable expectation that offers will be obtained from at least two 8(a) BD Participants, HUBZone SBCs, SDVO SBCs, WOSBs or EDWOSBs in accordance with the program's regulations, before setting aside the requirement as a small business set-aside. There is no order of precedence among the 8(a) BD, HUBZone, SDVO SBC or WOSB programs.

(iv) The contracting officer must assign a NAICS code to the solicitation for each order issued against the Multiple Award Contract pursuant to § 121.402(c) of this chapter. *See* § 121.404 for further determination on size status for each order issued against that contract.

(v) A business must comply with applicable limitations on subcontracting provisions (*see* § 125.6) and the nonmanufacturer rule (*see* § 121.406(b)), if applicable in the performance of each order that is set-aside against the contract.

(7) *Tiered evaluation of offers, or cascading.* An agency cannot create a tiered evaluation of offers or ''cascade'' unless it has specific statutory authority to do so. This is a procedure used in negotiated acquisitions when the contracting officer establishes a tiered or cascading order of precedence for evaluating offers that is specified in the solicitation, which states that if no award can be made at the first tier, it will evaluate offers at the next lower tier, until award can be made. For example, unless the agency has specific statutory authority to do so, an agency is not permitted to state an intention to award one contract to an 8(a) BD Participant and one to a HUBZone SBC, but only if no awards are made to 8(a) BD Participants.

* * * * *

■ 20. Amend § 125.3 by:
■ a. Revising the section heading; and
■ b. Adding a new paragraph (i) to read as follows:

§ 125.3 What types of subcontracting assistance are available to small businesses?

* * * * *

(i) *Subcontracting consideration in bundled and consolidated contracts.*

(1) For bundled requirements, the agency must evaluate offers from teams of small businesses the same as other offers, with due consideration to the capabilities of all proposed subcontractors.

(2) For substantial bundling, the agency must design actions to maximize small business participation as subcontractors (including suppliers) at any tier under the contract or contracts that may be awarded to meet the requirements.

(3) For significant subcontracting opportunities in consolidated contracts, bundled requirements, and substantially bundled requirements, *see* § 125.2(d)(4).

■ 21. Amend § 125.4 by revising the section heading to read as follows:

§ 125.4 What is the Government property sales assistance program?

* * * * *

■ 22. Amend § 125.5 by:
■ a. Revising the section heading;
■ b. Revising paragraphs (a)(1) and (a)(2);
■ c. Revising paragraphs (b)(1)(i), (b)(1)(ii), and (b)(1)(iii);
■ d. Amending paragraph (b)(1)(v)(A) by removing ''SIC'' and adding in its place ''NAICS'';
■ e. Amending paragraph (b)(1)(v)(C) by adding ''or reserve'' after ''In the case of a set-aside'';
■ f. Revising the first sentence in paragraph (c)(1);
■ g. Revising paragraph (h) introductory text;
■ h. Revising the first sentence in paragraph (i)(2);
■ i. Revising paragraph (l)(1)(iii); and
■ j. Amending paragraph (m) by adding a sentence at the end of the paragraph.

§ 125.5 What is the Certificate of Competency Program?

(a) *General.* (1) The Certificate of Competency (COC) Program is authorized under section 8(b)(7) of the Small Business Act (15 U.S.C. 637(b)(7)). A COC is a written instrument issued by SBA to a Government contracting officer, certifying that one or more named small business concerns possess(es) the responsibility to perform a specific Government procurement (or sale) contract, which includes Multiple Award Contracts and orders placed against Multiple Award Contracts, where responsibility type issues are used to determine award or establish the competitive range. The COC Program is applicable to all Government procurement actions, including Multiple Award Contracts and orders placed against Multiple Award Contracts where the contracting officer has used any issues of capacity or credit (responsibility) to determine suitability for an award. With respect to Multiple Award Contracts, contracting officers generally determine responsibility at the time of award of the contract. However, if a contracting officer makes a responsibility determination as set forth in paragraph (a)(2) of this section for an order issued against a Multiple Award Contract, the contracting officer must refer the matter to SBA for a COC. The COC procedures apply to all Federal procurements, regardless of the location of performance or the location of the procuring activity.

(2) A contracting officer must refer a small business concern to SBA for a possible COC, even if the next apparent successful offeror is also a small business, when the contracting officer:

(i) Denies an apparent successful small business offeror award of a contract or order on the basis of responsibility (including those bases set forth in paragraphs (a)(1)(ii) and (iii) of this section);

(ii) Refuses to consider a small business concern for award of a contract or order after evaluating the concern's offer on a non-comparative basis (e.g., a pass/fail, go/no go, or acceptable/unacceptable) under one or more responsibility type evaluation factors (such as experience of the company or key personnel or past performance); or

(iii) Refuses to consider a small business concern for award of a contract or order because it failed to meet a definitive responsibility criterion contained in the solicitation.

* * * * *

(b) *COC Eligibility.* (1) The offeror seeking a COC has the burden of proof to demonstrate its eligibility for COC review.

(i) To be eligible for a COC, an offeror must qualify as a small business under the applicable size standard in accordance with part 121 of this chapter.

(ii) To be eligible for a COC, an offeror must have agreed to comply with applicable limitations on subcontracting requirements if the acquisition was set-aside or reserved (*see* § 125.6). Whether an offeror has agreed to comply with the limitations on subcontracting is a matter of proposal acceptability or responsiveness. Whether an offeror will be able to comply with the limitations on subcontracting is a matter of responsibility.

(iii) A nonmanufacturer making an offer on a contract for supplies that is set-aside, partially set-aside or reserved for small business (where the small business will be competing against other small businesses for orders) must furnish end items that have been manufactured in the United States by a small business. A waiver of this requirement may be requested under §§ 121.1201 through 121.1205 of this chapter for either the type of product being procured or the specific contract at issue.

* * * * *

(c) *Referral of nonresponsibility determination to SBA.* (1) The

contracting officer must refer the matter in writing to the SBA Government Contracting Area Office (Area Office) serving the area in which the headquarters of the offeror is located. * * *

* * * * *

(h) *Notification of intent to issue on a contract or order with a value between $100,000 and $25 million.* Where the Director determines that a COC is warranted, he or she will notify the contracting officer (or the procurement official with the authority to accept SBA's decision) of the intent to issue a COC, and of the reasons for that decision, prior to issuing the COC. At the time of notification, the contracting officer or the procurement official with the authority to accept SBA's decision has the following options:

* * * * *

(i) * * *

(2) SBA Headquarters will furnish written notice to the Director, OSDBU or OSBP of the procuring agency, with a copy to the contracting officer, that the case file has been received and that an appeal decision may be requested by an authorized official.

* * * * *

(l) * * *

(iii) The COC has been issued for more than 60 days (in which case SBA may investigate the business concern's current circumstances and the reason why the contract has not been issued).

* * * * *

(m) * * * Where SBA issues a COC with respect to a referral in paragraph (a)(2)(ii) or (a)(2)(iii) of this section, the contracting officer is not required to issue an award to that offeror if the contracting officer denies the contract for reasons unrelated to responsibility.

■ 23. Amend § 125.6 by:

■ a. Revising the section heading;

■ b. Revising paragraph (a);

■ c. Removing paragraph (e);

■ d. Redesignating paragraphs (f), (g), (h), and (i) as (e), (f), (g), and (h) respectively;

■ e. Revising newly designated paragraph (f);

■ f. Adding a new paragraph (i); and

■ g. Adding a new paragraph (j) to read as follows:

§ 125.6 What are the prime contractor performance requirements (limitations on subcontracting)?

(a) In order to be awarded a full or partial small business set-aside contract, an 8(a) contract, or a WOSB or EDWOSB contract pursuant to part 127 of this chapter, a small business concern must agree that:

* * * * *

(f) The period of time used to determine compliance for a total or partial set-aside contract will be the base term and then each subsequent option period. For an order set aside under a full and open contract or a full and open contract with reserve, the agency will use the period of performance for each order to determine compliance unless the order is competed amongst small and other-than-small businesses (in which case the subcontracting limitations will not apply). However, the contracting officer, in his or her discretion, may require the concern to perform the applicable amount of work or comply with the nonmanufacturer rule for each order awarded under a total or partial set aside contract.

* * * * *

(i) Where an offeror is exempt from affiliation under § 121.103(b)(8) of this chapter and qualifies as a small business concern for a reserve of a bundled contract, the performance of work requirements set forth in this section apply to the cooperative effort of the small business team members of the Small Business Teaming Arrangement, not its individual members.

(j) The contracting officer must document a small business concern's performance of work requirements as part of the small business' performance evaluation in accordance with the procedures set forth in FAR 42.1502. The contracting officer must also evaluatecompliance for future contract awards in accordance with the procedures set forth in FAR 9.104–6.

■ 24. Amend § 125.8 by revising paragraph (b) to read as follows:

§ 125.8 What definitions are important in the Service-Disabled Veteran-Owned (SDVO) Small Business Concern (SBC) Program?

* * * * *

(b) *Interested Party* means the contracting activity's contracting officer, SBA, any concern that submits an offer for a specific sole source or set-aside SDVO contract or order (including Multiple Award Contracts), or any concern that submitted an offer in full and open competition and its opportunity for award will be affected by a reserve of an award given to a SDVO SBC.

* * * * *

■ 25. Revise § 125.14 to read as follows:

§ 125.14 What are SDVO contracts?

SDVO contracts, including Multiple Award Contracts (*see* § 125.1), are those awarded to an SDVO SBC through any of the following procurement methods:

(a) Sole source awards to an SDVO SBC;

(b) Set-aside awards, including partial set-asides, based on competition restricted to SDVO SBCs;

(c) Awards based on a reserve for SDVO SBCs in a solicitation for a Multiple Award Contract (*see* § 125.1); or

(d) Orders set-aside for SDVO SBCs against a Multiple Award Contract, which had been awarded in full and open competition.

■ 26. Amend § 125.15 by adding new paragraphs (d) and (e) to read as follows:

§ 125.15 What requirements must an SDVO SBC meet to submit an offer on a contract? *

* * * * *

(d) *Multiple Award Contracts.*

(1) *Total Set-Aside Contracts.* The SDVO SBC must comply with the applicable limitations on subcontracting provisions (*see* § 125.6) and the nonmanufacturer rule (*see* § 121.406(b)), if applicable, in the performance of a contract totally set-aside for SDVO SBCs. However, the contracting officer, in his or her discretion, may require the concern to perform the applicable amount of work or comply with the nonmanufacturer rule for each order awarded under the contract.

(2) *Partial Set-Aside Contracts.* For orders awarded under a partial set-aside contract, the SDVO SBC must comply with the applicable limitations on subcontracting provisions (*see* § 125.6) and the nonmanufacturer rule (*see* § 121.406(b)), if applicable, during each performance period of the contract—e.g., during the base term and then during each option period thereafter. For orders awarded under the non-set-aside portion, the SDVO SBC need not comply with any limitations on subcontracting or nonmanufacturer rule requirements. However, the contracting officer, in his or her discretion, may require the concern to perform the applicable amount of work or comply with the nonmanufacturer rule for each order awarded under the contract.

(3) *Orders.* The SDVO SBC must comply with the applicable limitations on subcontracting provisions (*see* § 125.6) and the nonmanufacturer rule (*see* § 121.406(b)), if applicable, in the performance of each individual order that has been set-aside for SDVO SBCs.

(4) *Reserves.* The SDVO SBC must comply with the applicable limitations on subcontracting provisions (*see* § 125.6) and the nonmanufacturer rule (*see* § 121.406(b)), if applicable, in the performance of an order that is set aside for SDVO SBCs. However, the SDVO SBC will not have to comply with the

limitations on subcontracting provisions and the nonmanufacturer rule for any order issued against the Multiple Award Contract if the order is competed amongst SDVO SBCs and one or more other-than-small business concerns.

(e) *Recertification.* (1) A concern that represents itself and qualifies as an SDVO SBC at the time of initial offer (or other formal response to a solicitation), which includes price, including a Multiple Award Contract, is considered an SDVO SBC throughout the life of that contract. This means that if an SDVO SBC is qualified at the time of initial offer for a Multiple Award Contract, then it will be considered an SDVO SBC for each order issued against the contract, unless a contracting officer requests a new SDVO SBC certification in connection with a specific order. Where a concern later fails to qualify as an SDVO SBC, the procuring agency may exercise options and still count the award as an award to an SDVO SBC. However, the following exceptions apply:

(i) Where an SDVO contract is novated to another business concern, the concern that will continue performance on the contract must certify its status as an SDVO SBC to the procuring agency, or inform the procuring agency that it does not qualify as an SDVO SBC, within 30 days of the novation approval. If the concern is not an SDVO SBC, the agency can no longer count the options or orders issued pursuant to the contract, from that point forward, towards its SDVO goals.

(ii) Where a concern that is performing an SDVO SBC contract acquires, is acquired by, or merges with another concern and contract novation is not required, the concern must, within 30 days of the transaction becoming final, recertify its SDVO SBC status to the procuring agency, or inform the procuring agency that it no longer qualifies as an SDVO SBC. If the contractor is not an SDVO SBC, the agency can no longer count the options or orders issued pursuant to the contract, from that point forward, towards its SDVO goals. The agency and the contractor must immediately revise all applicable Federal contract databases to reflect the new status.

(iii) Where there has been an SDVO SBC status protest on the solicitation or contract, *see* § 125.27(e) for the effect of the status determination on the contract award.

(2) For the purposes of contracts (including Multiple Award Contracts) with durations of more than five years (including options), a contracting officer must request that a business concern recertify its SDVO SBC status no more than 120 days prior to the end of the fifth year of the contract, and no more than 120 days prior to exercising any option.

(3) A business concern that did not certify itself as an SDVO SBC, either initially or prior to an option being exercised, may recertify itself as an SDVO SBC for a subsequent option period if it meets the eligibility requirements at that time.

(4) Recertification does not change the terms and conditions of the contract. The limitations on subcontracting, nonmanufacturer and subcontracting plan requirements in effect at the time of contract award remain in effect throughout the life of the contract.

(5) Where the contracting officer explicitly requires concerns to recertify their status in response to a solicitation for an order, SBA will determine eligibility as of the date the concern submits its self-representation as part of its response to the solicitation for the order.

(6) A concern's status may be determined at the time of a response to a solicitation for an Agreement and each order issued pursuant to the Agreement.

§ 125.19 [Amended]

■ 27. Amend § 125.19 by removing ''ORCA certifications'' and adding in its place ''certifications in System for Award Management (SAM) (or any successor system)'' in paragraph (b)(2)(i).

■ 28. Amend § 125.22 by revising the section heading to read as follows:

§ 125.22 May SBA appeal a contracting officer's decision not to make a procurement available for award as an SDVO contract?

* * * * *

■ 29. Amend § 125.24 by revising paragraph (b) to read as follows:

§ 125.24 Who may protest the status of an SDVO SBC?

* * * * *

(b) For all other procurements, including Multiple Award Contracts (*see* § 125.1), any interested party may protest the apparent successful offeror's SDVO SBC status.

PART 126—HUBZONE PROGRAM

■ 30. The authority citation for part 126 is amended to read as follows:

Authority: 15 U.S.C. 632(a), 632(j), 632(p), 644 and 657a.

■ 31. Amend § 126.103 by revising the definition of the term ''Interested party'' to read as follows:

§ 126.103 What definitions are important in the HUBZone program?

* * * * *

Interested party means any concern that submits an offer for a specific HUBZone sole source or set-aside contract (including Multiple Award Contracts) or order, any concern that submitted an offer in full and open competition and its opportunity for award will be affected by a price evaluation preference given a qualified HUBZone SBC, any concern that submitted an offer in a full and open competition and its opportunity for award will be affected by a reserve of an award given to a qualified HUBZone SBC, the contracting activity's contracting officer, or SBA.

* * * * *

■ 32. Revise § 126.307 to read as follows:

§ 126.307 Where will SBA maintain the List of qualified HUBZone SBCs?

Qualified HUBZone SBCs are identified by running a search on the Dynamic Small Business Search at *http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm*. In addition, requesters may obtain a copy of the List by writing to the D/HUB at U.S. Small Business Administration, 409 3rd Street SW., Washington, DC 20416 or at *hubzone@sba.gov*.

■ 33. Revise § 126.600 to read as follows:

§ 126.600 What are HUBZone contracts?

HUBZone contracts, including Multiple Award Contracts (*see* § 125.1), are those awarded to a qualified HUBZone SBC through any of the following procurement methods:

(a) Sole source awards to qualified HUBZone SBCs;

(b) Set-aside awards, including partial set-asides, based on competition restricted to qualified HUBZone SBCs;

(c) Awards to qualified HUBZone SBCs through full and open competition after a price evaluation preference is applied to an other than small business in favor of qualified HUBZone SBCs;

(d) Awards based on a reserve for HUBZone SBCs in a solicitation for a Multiple Award Contract (*see* § 125.1); or

(e) Orders set-aside for HUBZone SBCs against a Multiple Award Contract, which had been awarded in full and open competition.

■ 34. Amend § 126.601 by adding new paragraphs (g) and (h) to read as follows:

§ 126.601 What additional requirements must a qualified HUBZone SBC meet to bid on a contract?

* * * * *

(g) *Multiple Award Contracts*—(1) *Total Set-Aside Contracts.* The qualified HUBZone SBC must comply with the applicable limitations on subcontracting provisions (*see* § 126.700) and the nonmanufacturer rule (*see* § 126.601), if applicable, in the performance of a contract totally set-aside for HUBZone SBCs. However, the contracting officer, in his or her discretion, may require the concern to perform the applicable amount of work or comply with the nonmanufacturer rule for each order awarded under the contract.

(2) *Partial Set-Aside Contracts.* For orders awarded under a partial set-aside contract, the qualified HUBZone SBC must comply with the applicable limitations on subcontracting provisions (*see* § 126.700) and the nonmanufacturer rule (*see* § 126.601), if applicable, during each performance period of the contract—e.g., during the base term and then during each subsequent option thereafter. For orders awarded under the non-set-aside portion, the qualified HUBZone SBC need not comply with any limitations on subcontracting or nonmanufacturer rule requirements. However, the contracting officer, in his or her discretion, may require the concern to perform the applicable amount of work or comply with the nonmanufacturer rule for each order awarded under the contract.

(3) *Orders.* The qualified HUBZone SBC must comply with the applicable limitations on subcontracting provisions (*see* § 126.700) and the nonmanufacturer rule (*see* § 126.601), if applicable, in the performance of each individual order that has been set-aside for HUBZone SBCs.

(4) *Reserves.* The qualified HUBZone SBC must comply with the applicable limitations on subcontracting provisions (*see* § 126.700) and the nonmanufacturer rule (*see* § 126.601), if applicable, in the performance of an order that is set aside for HUBZone SBCs. However, the qualified HUBZone SBC will not have to comply with the limitations on subcontracting provisions and the nonmanufacturer rule for any order issued against the Multiple Award Contract if the order is competed amongst qualified HUBZone SBCs and one or more other-than-small business concerns.

(h) *Recertification of Status for an Award.* (1) A concern that is a qualified HUBZone SBC at the time of initial offer and contract award, including a Multiple Award Contract, is considered a HUBZone SBC throughout the life of that contract. This means that if a HUBZone SBC is certified at the time of initial offer and contract award for a Multiple Award Contract, then it will be considered a HUBZone SBC for each order issued against the contract, unless a contracting officer requests a new HUBZone SBC certification in connection with a specific order. Where a concern is later decertified, the procuring agency may exercise options and still count the award as an award to a HUBZone SBC. However, the following exceptions apply:

(i) Where a HUBZone contract (or a contract awarded through full and open competition based on the HUBZone price evaluation preference) is novated to another business concern, the concern that will continue performance on the contract must certify its status as a HUBZone SBC to the procuring agency, or inform the procuring agency that it does not qualify as a HUBZone SBC, within 30 days of the novation approval. If the concern cannot certify that it qualifies as a HUBZone SBC, the agency can no longer count the options or orders issued pursuant to the contract, from that point forward, towards its HUBZone goals.

(ii) Where a concern that is performing a HUBZone contract acquires, is acquired by, or merges with another concern and contract novation is not required, the concern must, within 30 days of the transaction becoming final, recertify its HUBZone SBC status to the procuring agency, or inform the procuring agency that it has been decertified or no longer qualifies as a HUBZone SBC. If the contractor is unable to recertify its status as a HUBZone SBC, the agency can no longer count the options or orders issued pursuant to the contract, from that point forward, towards its HUBZone goals. The agency must immediately revise all applicable Federal contract databases to reflect the new status.

(iii) Where there has been a HUBZone status protest on the solicitation or contract, *see* § 126.803(d) for the effect of the status determination on the contract award.

(2) For the purposes of contracts (including Multiple Award Contracts) with durations of more than five years (including options), a contracting officer must request that a business concern recertify its HUBZone SBC status no more than 120 days prior to the end of the fifth year of the contract, and no more than 120 days prior to exercising any option.

(3) A business concern that did not certify itself as a HUBZone SBC, either initially or prior to an option being exercised, may recertify itself as a HUBZone SBC for a subsequent option period if it meets the eligibility requirements at that time.

(4) Recertification does not change the terms and conditions of the contract. The limitations on subcontracting, nonmanufacturer and subcontracting plan requirements in effect at the time of contract award remain in effect throughout the life of the contract.

(5) Where the contracting officer explicitly requires concerns to recertify their status in response to a solicitation for an order, SBA will determine eligibility as of the date the concern submits its self-representation as part of its response to the solicitation for the order and at the time of award.

(6) A concern's status may be determined at the time of submission of its initial response to a solicitation for and award of an Agreement and each order issued pursuant to the Agreement.

■ 35. Revise § 126.602 to read as follows:

§ 126.602 Must a qualified HUBZone SBC maintain the employee residency percentage during contract performance?

(a) Qualified HUBZone SBCs eligible for the program pursuant to § 126.200(b) must meet the HUBZone residency requirement at all times while certified in the program. However, the qualified HUBZone SBC may ''attempt to maintain'' (*see* § 126.103) the required percentage of employees who reside in a HUBZone during the performance of any HUBZone contract awarded to the concern on the basis of its HUBZone status, except as set forth in paragraph (d).

(b) For indefinite delivery, indefinite quantity contracts, including Multiple Award Contracts, the qualified HUBZone SBC must attempt to maintain the residency requirement during the performance of each order that is set-aside for HUBZone SBCs.

(c) A qualified HUBZone SBC eligible for the program pursuant to § 126.200(a) must have at least 35% of its employees engaged in performing a HUBZone contract residing within any Indian reservation governed by one or more of the concern's Indian Tribal Government owners, or residing within any HUBZone adjoining any such Indian reservation. To monitor compliance, SBA will conduct program examinations, pursuant to §§ 126.400 through 126.403, where appropriate.

(d) Every time a qualified HUBZone SBC submits an offer and is awarded a HUBZone contract, it must meet all of the HUBZone Program's eligibility requirements, including the employee residency requirement at the time it submits its initial offer and up until and including the time of award. This means that if a HUBZone SBC is performing on a HUBZone contract and submits an

offer for another HUBZone contract, it can no longer attempt to maintain the HUBZone residency requirement; rather, it must meet the requirement at the time it submits its initial offer and up until and including the time of award.

§ 126.607 [Amended]

■ 36. Amend § 126.607 by removing ''ORCA certifications'' and adding in its place ''certifications in the System for Award Management (SAM) (or any successor system)'' in paragraph (b)(2)(i).

■ 37. Amend § 126.610 by revising the section heading to read as follows:

§ 126.610 May SBA appeal a contracting officer's decision not to make a procurement available for award as a HUBZone contract?

* * * * *

■ 38. Amend § 126.613 by:

■ a. Adding a new sentence at the end of paragraph (a)(1); and

■ b. Adding an Example 4 in paragraph (a).

§ 126.613 How does a price evaluation preference affect the bid of a qualified HUBZone SBC in full and open competition?

(a) * * *

(1) * * * This does not apply if the HUBZone SBC will receive the contract as part of a reserve for HUBZone SBCs.

* * * * *

Example 4: In a full and open competition, a qualified HUBZone SBC submits an offer of $98 and a large business submits an offer of $93. The contracting officer has stated in the solicitation that one contract will be reserved for a HUBZone SBC. The contracting officer would not apply the price evaluation preference when determining which HUBZone SBC would receive the contract reserved for HUBZone SBCs, but would apply the price evaluation preference when determining the awardees for the non-reserved portion.

* * * * *

§ 126.614 [Removed and reserved]

■ 39. Remove and reserve § 126.614.

■ 40. Amend § 126.800 by revising paragraph (b) to read as follows:

§ 126.800 Who may protest the status of a qualified HUBZone SBC?

* * * * *

(b) For all other procurements, including Multiple Award Contracts (*see* § 125.1), SBA, the contracting officer, or any other interested party may protest the apparent successful offeror's qualified HUBZone SBC status.

PART 127—WOMEN–OWNED SMALL BUSINESS FEDERAL CONTRACT ASSISTANCE PROGRAM

■ 41. The authority for 13 CFR part 127 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 637(m), and 644.

■ 42. Revise § 127.101 to read as follows:

§ 127.101 What type of assistance is available under this part?

This part authorizes contracting officers to restrict competition to eligible Economically Disadvantaged Women-Owned Small Businesses (EDWOSBs) for certain Federal contracts or orders in industries in which the Small Business Administration (SBA) determines that WOSBs are underrepresented in Federal procurement. It also authorizes contracting officers to restrict competition to eligible WOSBs for certain Federal contracts or orders in industries in which SBA determines that WOSBs are substantially underrepresented in Federal procurement and has waived the economically disadvantaged requirement.

■ 43. Amend § 127.102 by:

■ a. Removing the definitions for ''Central Contractor Registration (CCR)'' and ''ORCA'';

■ b. Adding the definition for ''System for Award Management (SAM) (or any successor system)'' to read as follows; and

■ c. Revising the definitions for ''*EDWOSB requirement*'', ''*Interested party*'', ''*System for Award Management (SAM) (or any successor system)*'', ''*WOSB requirement*'', to read as follows:

§ 127.102 What are the definitions of the terms used in this part?

* * * * *

EDWOSB requirement means a Federal requirement for services or supplies for which a contracting officer has restricted competition to eligible EDWOSBs, including Multiple Award Contracts, partial set-asides, reserves, and orders set-aside for EDWOSBs issued against a Multiple Award Contract.

* * * * *

Interested party means any concern that submits an offer for a specific EDWOSB or WOSB requirement (including Multiple Award Contracts), any concern that submitted an offer in a full and open competition and its opportunity for award will be affected by a reserve of an award given a WOSB or EDWOSB, the contracting activity's contracting officer, or SBA.

* * * * *

System for Award Management (SAM) (or any successor system) means a federal system that consolidates various federal procurement systems (*e.g.,* Central Contractor Registration (CCR), Federal Agency Registration (Fedreg), Online Representations and Certifications Application (ORCA), Excluded Parties List System (EPLS)) and the Catalog of Federal Domestic Assistance into one system.

* * * * *

WOSB requirement means a Federal requirement for services or supplies for which a contracting officer has restricted competition to eligible WOSBs, including Multiple Award Contracts, partial set-asides, reserves, and orders set-aside for WOSBs issued against a Multiple Award Contract.

■ 44. Amend § 127.300 by:

■ a. Revising paragraph (a) to read as follows;

■ b. Amending paragraph (b) by removing ''CCR database'' and adding in its place ''SAM (or any successor system)'';

■ c. Amending paragraph (d)(1) by removing ''ORCA'' and adding in its place ''SAM (or any successor system)''; and

■ d. Amending paragraph (f)(1) by removing ''on ORCA'' and adding in its place ''in SAM (or any successor system)'':

§ 127.300 How does a concern self-certify as an EDWOSB or WOSB?

(a) *General.* At the time a concern submits an offer on a specific contract (including a Multiple Award Contract) or order reserved for competition among EDWOSBs or WOSBs under this Part, it must be registered in the System for Award Management (SAM) (or any successor system), have a current representation posted on SAM (or any successor system) that it qualifies as an EDWOSB or WOSB, and have provided the required documents to the WOSB Program Repository, or if the repository is unavailable, be prepared to submit the documents to the contracting officer if selected as the apparent successful offeror.

* * * * *

§ 127.301 [Amended]

■ 45. Amend § 127.301 by removing ''on ORCA'' and adding in its place ''in SAM (or any successor system)'' in paragraph (a)(1), and by removing ''ORCA'' and adding in its place ''SAM (or any successor system) in paragraph (a)(2).

§ 127.302 [Amended]

■ 46. Amend § 127.302 by removing ''ORCA'' and adding in its place ''SAM (or any successor system)'' in the introductory language.

§ 127.303 [Amended]

■ 47. Amend § 127.303 by removing ''on CCR'' and adding in its place ''in SAM (or any successor system)'' in paragraph (b)(3).

■ 48. Amend § 127.400 by revising paragraphs (a) and (b) to read as follows:

§ 127.400 What is an eligibility examination?

(a) *Purpose of examination.* Eligibility examinations are investigations that verify the accuracy of any certification made or information provided as part of the certification process (including third-party certifications) or in connection with an EDWOSB or WOSB requirement. In addition, eligibility examinations may verify that a concern meets the EDWOSB or WOSB eligibility requirements at the time of the examination. SBA will, in its sole discretion, perform eligibility examinations at any time after a concern self-certifies in SAM (or any successor system) that it is an EDWOSB or WOSB. SBA may conduct the examination, or parts of the examination, at one or all of the concern's offices.

(b) *Determination on conduct of an examination.* SBA may consider protest allegations set forth in a protest in determining whether to conduct an examination of a concern pursuant to subpart D of this part, notwithstanding a dismissal or denial of a protest pursuant to § 127.604. SBA may also consider information provided to the D/GC by a third-party that questions the eligibility of a WOSB or EDWOSB that has certified its status in SAM in determining whether to conduct an eligibility examination.

■ 49. Amend § 127.401 by revising the first sentence paragraph (a) to read as follows:

§ 127.401 What is the difference between an eligibility examination and an EDWOSB or WOSB status protest pursuant to subpart F of this part?

(a) *Eligibility examination.* An eligibility examination is the formal process through which SBA verifies and monitors the accuracy of any certification made or information provided as part of the certification process or in connection with an EDWOSB or WOSB requirement. * * *

* * * * *

§ 127.403 [Amended]

■ 50. Amend § 127.403 by removing ''CCR and ORCA'' and adding in its place ''SAM (or any successor system)''.

§ 127.404 [Amended]

■ 51. Amend § 127.404 by removing ''the CCR and ORCA'' and adding in its place ''SAM (or any successor system)'' in paragraph (b)(1).

■ 52. Amend § 127.503 by:

■ a. Revising paragraphs (a)(1), (a)(2), (b)(1) and (b)(2) to read as follows;

■ b. Amending paragraphs (d)(2)(i) and (e) by removing ''ORCA certifications'' and replacing it with ''certifications in SAM (or any successor system)''; and

■ c. Revising paragraph (f) to read as follows.

§ 127.503 When is a contracting officer authorized to restrict competition under this part?

(a) * * *

(1) Two or more EDWOSBs will submit offers for the contract; and

(2) Contract award may be made at a fair and reasonable price.

* * * * *

(b) * * *

(1) Two or more WOSBs will submit offers (this includes EDWOSBs, which are also WOSBs); and

(2) Contract award may be made at a fair and reasonable price.

* * * * *

(f) *Recertification.* (1) A concern that represents itself and qualifies as a WOSB or EDWOSB at the time of initial offer (or other formal response to a solicitation), which includes price, including a Multiple Award Contract, is considered a WOSB or EDWOSB throughout the life of that contract. This means that if a WOSB/EDWOSB is qualified at the time of initial offer for a Multiple Award Contract, then it will be considered an WOSB/EDWOSB for each order issued against the contract, unless a contracting officer requests a new WOSB or EDWOSB certification in connection with a specific order. Where a concern later fails to qualify as a WOSB/EDWOSB, the procuring agency may exercise options and still count the award as an award to a WOSB/EDWOSB. However, the following exceptions apply:

(i) Where a WOSB/EDWOSB contract is novated to another business concern, the concern that will continue performance on the contract must certify its status as a WOSB/EDWOSB to the procuring agency, or inform the procuring agency that it does not qualify as a WOSB/EDWOSB, within 30 days of the novation approval. If the concern cannot certify its status as a WOSB/EDWOSB, the agency may no longer be able to count the options or orders issued pursuant to the contract, from that point forward, towards its women-owned small business goals.

(ii) Where a concern that is performing a WOSB/EDWOSB contract acquires, is acquired by, or merges with another concern and contract novation is not required, the concern must, within 30 days of the transaction becoming final, recertify its WOSB/EDWOSB status to the procuring agency, or inform the procuring agency that it no longer qualifies as a WOSB/EDWOSB. If the concern is unable to recertify its status as a WOSB/EDWOSB, the agency may no longer be able to count the options or orders issued pursuant to the contract, from that point forward, towards its women-owned small business goals. The agency and the contractor must immediately revise all applicable Federal contract databases to reflect the new status if necessary.

(iii) Where there has been a WOSB or EDWOSB status protest on the solicitation or contract, *see* § 127.604(f) for the effect of the status determination on the contract award.

(2) For the purposes of contracts (including Multiple Award Contracts) with durations of more than five years (including options), a contracting officer must request that a business concern recertify its WOSB/EDWOSB status no more than 120 days prior to the end of the fifth year of the contract, and no more than 120 days prior to exercising any option.

(3) A business concern that did not certify itself as a WOSB/EDWOSB, either initially or prior to an option being exercised, may recertify itself as a WOSB/EDWOSB for a subsequent option period if it meets the eligibility requirements at that time.

(4) Recertification does not change the terms and conditions of the contract. The limitations on subcontracting, nonmanufacturer and subcontracting plan requirements in effect at the time of contract award remain in effect throughout the life of the contract.

(5) Where the contracting officer explicitly requires concerns to recertify their status in response to a solicitation for an order, SBA will determine eligibility as of the date the concern submits its self-representation as part of its response to the solicitation for the order.

(6) A concern's status may be determined at the time of a response to a solicitation for an Agreement and each order issued pursuant to the Agreement.

§ 127.504 [Amended]

■ 53. Amend § 127.504(a) by removing ''on ORCA'' and replacing it with ''in SAM (or any successor system)'' in paragraph (a) and by removing ''on CCR and ORCA'' and adding in its place ''in SAM (or any successor system)'' in paragraph (a)(2).

■ 54. Amend § 127.506 by:

■ a. Revising the introductory text and paragraph (a) to read as follows; and

■ b. Amending paragraph (b) by removing ''on the CCR and the ORCA'' and adding in its place ''in SAM (or any successor system)''.

§ 127.506 May a joint venture submit an offer on an EDWOSB or WOSB requirement?

A joint venture may submit an offer on an EDWOSB or WOSB requirement if the joint venture meets all of the following requirements:

(a) Except as provided in § 121.103(h)(3) of this chapter, the combined annual receipts or employees of the concerns entering into the joint venture must meet the applicable size standard corresponding to the NAICS code assigned to the contract or order;

* * * * *

■ 55. Amend § 127.508 by revising the section heading to read as follows:

§ 127.508 May SBA appeal a contracting officer's decision not to make a requirement available for award as a WOSB Program contract? * * *

* * * * *

■ 56. Amend § 127.600 by revising the first sentence of the introductory text to read as follows:

§ 127.600 Who may protest the status of a concern as an EDWOSB or WOSB?

An interested party may protest the EDWOSB or WOSB status of an apparent successful offeror on an EDWOSB or WOSB requirement or contract. * * *

§ 127.604 [Amended]

■ 57. Amend § 127.604 by removing the phrase ''on the CCR and the ORCA'' and adding in its place ''in SAM (or any successor system)'' in paragraph (e).

Dated: August 22, 2013.

Karen G. Mills,

Administrator.

[FR Doc. 2013–22064 Filed 10–1–13; 8:45 am]

BILLING CODE 8025–01–P



FEDERAL REGISTER

Vol. 78 Wednesday,
No. 191 October 2, 2013

Part VI

The President

Proclamation 9026—National Hunting and Fishing Day, 2013

Federal Register
Vol. 78, No. 191
Wednesday, October 2, 2013

Presidential Documents

Title 3—

The President

Proclamation 9026 of September 27, 2013

National Hunting and Fishing Day, 2013

By the President of the United States of America

A Proclamation

Through hunting and fishing, in traditions handed down from generation to generation, families strengthen their bonds and individuals forge connections with the great outdoors. They rise before dawn to cast a line on a misty stream or wait patiently in a stand as a forest awakes. Parents help toddlers reel in their first catch, and young hunters master the call of a wild turkey. On National Hunting and Fishing Day, we celebrate these longstanding traditions and recommit to preserving the places in which they flourish.

Working across all levels of government and alongside nonprofits, private organizations, and conservation advocates, my Administration launched the America's Great Outdoors Initiative. This program engages Americans at the grassroots level to protect and restore our cherished lands and waters and to help reconnect all Americans, regardless of their age or background, to the outdoors. Anglers and hunters have played an integral role, living up to their legacy as some of our Nation's strongest defenders of wild places.

In addition to its significance as a time-honored tradition, outdoor recreation supports millions of jobs. Hunting and fishing form a large part of this essential industry, bolstering tourism, strengthening America's economy, and funding conservation through fishing licenses or duck stamps.

Today, as we reflect on the value hunting and fishing bring to our lives—from fortified family bonds to a renewed appreciation for nature—let us ensure future generations will have the same opportunity to take part in this experience.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 28, 2013, as National Hunting and Fishing Day. I call upon all Americans to observe this day with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of September, in the year of our Lord two thousand thirteen, and of the Independence of the United States of America the two hundred and thirty-eighth.



[FR Doc. 2013–24355
Filed 10–1–13; 11:15 am]
Billing code 3295–F4

Reader Aids

Federal Register

Vol. 78, No. 191

Wednesday, October 2, 2013

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.fdsys.gov.**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **www.ofr.gov.**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

Reminders. Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at **http://www.regulations.gov.**

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, OCTOBER

60177–60652..... 1
60653–61152..... 2

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

Proposed Rules:
51.....60784

3 CFR

Proclamations:
9024.....60177
9025.....60179
9026.....61151

5 CFR

532.....60181, 60182
890.....60653

12 CFR

1002.....60382
1024.....60382
1026.....60382

13 CFR

121.....61114
124.....61114
125.....61114
126.....61114
127.....61114

14 CFR

39 .....60182, 60185, 60186, 60188, 60656, 60658, 60660, 60667, 60670, 60673, 60676, 60679, 60681
71.....60683

Proposed Rules:
39 .....60798, 60800, 60804, 60807
71 .....60235, 60236, 60237
73.....60238

17 CFR

232.....60684

Proposed Rules:
229.....60560
249.....60560

19 CFR

10.....60191
24.....60191
162.....60191
163.....60191
178.....60191

Proposed Rules:
351.....60240

20 CFR

718.....60686
725.....60686

24 CFR

3282.....60193

27 CFR

9 .....60686, 60690, 60693

29 CFR

552.....60454

30 CFR

250.....60208

31 CFR

Ch. 11.....60695

33 CFR

165 .....60216, 60218, 60220, 60222, 60698

40 CFR

49.....60700
52.....60225, 60704
81.....60704
180 .....60707, 60709, 60715, 60720
300.....60721

Proposed Rules:
300.....60809

42 CFR

Proposed Rules:
121.....60810

49 CFR

107.....60726, 60745
109.....60755
130.....60745
171.....60745
172.....60745
173 .....60745, 60763, 60766
174.....60745
177.....60745
178.....60745
179.....60745
180.....60745
350.....60226
381.....60226
383.....60226
384.....60226
385.....60226
386.....60226
387.....60226
392.....60226

50 CFR

17 .....60608, 60766, 61004

Proposed Rules:
17 .....60813, 61046, 61082

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**

Last List September 23, 2013

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.