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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.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 71, 83, and 93

[Docket No. APHIS–2007–0038]

RIN 0579–AC74

Viral Hemorrhagic Septicemia; Interstate Movement and Import Restrictions on Certain Live Fish

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule; withdrawal.

SUMMARY: We are withdrawing an interim rule that established regulations to restrict the interstate movement and importation into the United States of live fish that are susceptible to viral hemorrhagic septicemia, a highly contagious disease of certain fresh and saltwater fish. We are taking this action after considering the comments we received following the publication of the interim rule, which subsequently delayed the effective date of the interim rule indefinitely.

DATES: The interim rule published on September 9, 2008 (73 FR 52173–52189, Docket No. APHIS–2007–0038), and delayed in documents published on October 28, 2008 (73 FR 63867, Docket No. APHIS–2007–0038), and January 2, 2009 (74 FR 1, Docket No. APHIS–2007–0038), is withdrawn effective January 16, 2015.

FOR FURTHER INFORMATION CONTACT: Dr. Lynn Creekmore, Senior Staff Veterinary Medical Officer, Surveillance, Preparedness and Response Services, VS, APHIS, 2150 Centre Avenue, Building B, Fort Collins, CO 80526; 970–494–7354; or Dr. Christa L. Speekmann, Senior Staff Officer, National Import Export Services, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 851–3365.

SUPPLEMENTARY INFORMATION:

Background

Viral hemorrhagic septicemia (VHS) is a highly contagious disease of certain fresh and saltwater fish, caused by a rhabdovirus. It is listed as a notifiable disease by the World Organization for Animal Health. The pathogen produces variable clinical signs in fish including lethargy, skin darkening, exophthalmia, pale gills, a distended abdomen, and external and internal hemorrhaging. The development of the disease in infected fish can result in substantial mortality. Other infected fish may not show any clinical signs or die, but may be lifelong carriers and shed the virus.

Federal Order

The Animal Health Protection Act (AHPA, 7 U.S.C. 8301–8317) authorizes the Secretary of Agriculture to prohibit or restrict the importation or movement in interstate commerce of any animal, article, or means of conveyance if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction or dissemination of any pest or disease of livestock into or within the United States.

In response to outbreaks of VHS in wild fish populations in the Great Lakes, the Administrator determined that it was necessary, in order to prevent the spread of VHS into aquaculture facilities, to prohibit or restrict the interstate movement and importation of VHS-regulated species of live fish. Accordingly, on October 24, 2006, the Animal and Plant Health Inspection Service (APHIS) issued a Federal Order prohibiting the importation of VHS-susceptible species of live fish from two Canadian provinces (Ontario and Quebec) into the United States and the interstate movement of the same species of live fish from the eight States bordering the Great Lakes (Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin). Subsequent modifications to the Federal Order were made in response to additional information provided by States, Tribes, and other interested stakeholders in order to alleviate impacts on industry and related businesses in the Great Lakes region while still protecting against the spread of VHS. The Federal Order was meant to be a temporary measure to be replaced in time by a rule.

Taking into consideration the information we received, on September 9, 2008, we published an interim rule [1] in the **Federal Register** (73 FR 52173–52189, Docket No. APHIS–2007–0038) to codify the Federal Order by amending 9 CFR parts 71, 83, and 93 to establish regulations to restrict the interstate movement and the importation into the United States of certain live fish species that are susceptible to VHS. We announced that the provisions of the interim rule would become effective November 10, 2008, and that we would consider all comments on the interim rule received on or before November 10, 2008, and all comments on the environmental assessment for the interim rule received on or before October 9, 2008.

Delay of Effective Date

After the publication of the interim rule, we received comments that addressed a variety of issues, including the feasibility of implementing certain requirements.

Based on our review of those comments, on October 28, 2008, we published a document in the **Federal Register** (73 FR 63867, Docket No. APHIS–2007–0038) announcing that we were delaying the effective date of the interim rule from November 10, 2008, until January 9, 2009, while retaining November 10, 2008, as the close of the comment period for the interim rule and October 9, 2008, as the close of the comment period for the environmental assessment.

On January 2, 2009, we published a document in the **Federal Register** (74 FR 1, Docket No. APHIS–2007–0038) announcing that we were delaying the effective date of the interim rule indefinitely to provide APHIS with time to make adjustments to the interim rule that we considered necessary for the rule to be successfully implemented.

After completing a risk assessment of the disease and evaluating surveillance and the latest science, we determined that the Federal Order, which had become duplicative with State regulations, could safely be removed as

[1] To view the interim rule, related documents, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2007-0038.*

long as States maintain existing VHS regulations and other practices to reduce risk. Therefore, on April 14, 2014, APHIS announced that the VHS Federal Order first issued in October 2006 would be rescinded on June 2, 2014.

Accordingly, we are also withdrawing the September 9, 2008, interim rule. APHIS will continue to work with our stakeholders to provide guidance and promote sound biosecurity practices to prevent the spread of VHS and other aquatic animal diseases of concern.

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 12th day of January 2015.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2015–00594 Filed 1–15–15; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 736, 740, 746 and 748

[Docket No. 150102002–5002–01]

RIN 0694–AG42

Cuba: Providing Support for the Cuban People

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations to create License Exception Support for the Cuban People (SCP) to authorize the export and reexport of certain items to Cuba that are intended to improve the living conditions of the Cuban people; support independent economic activity and strengthen civil society in Cuba; and improve the free flow of information to, from, and among the Cuban people. It also amends existing License Exception Consumer Communications Devices (CCD) by eliminating the donation requirement, thereby authorizing sales of certain communications items to eligible end users in Cuba. Additionally, it amends License Exception Gift Parcels and Humanitarian Donations (GFT) to authorize exports of multiple gift parcels in a single shipment. Lastly, this rule establishes a general policy of approval for exports and reexports to Cuba of items for the environmental protection of U.S. and international air quality, and waters, and coastlines. These actions are among those announced by the President on December 17, 2014, aimed at supporting the ability of the Cuban people to gain greater control over their own lives and determine their country's future.

DATES: This rule is effective January 16, 2015.

FOR FURTHER INFORMATION CONTACT: Foreign Policy Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, Phone: (202) 482–4252.

SUPPLEMENTARY INFORMATION:

Background

The United States maintains a comprehensive embargo on trade with Cuba. Pursuant to that embargo, all items that are subject to the Export Administration Regulations (EAR) require a license for export or reexport to Cuba unless authorized by a license exception. The Bureau of Industry and Security (BIS) administers export and reexport restrictions on Cuba consistent with the goals of that embargo and with relevant law. Accordingly, BIS may issue specific or general authorizations for specific types of transactions that support the goals of United States policy while the embargo remains in effect.

On December 17, 2014, the President announced that the United States is taking historic steps to chart a new course in bilateral relations with Cuba and to further engage and empower the Cuban people. The President explained that these steps build upon actions taken since 2009 that have been aimed at supporting the ability of the Cuban people to gain greater control over their own lives and determine their country's future. Today, the Commerce and Treasury Departments are taking coordinated actions to implement this policy.

The President's announcement necessitates changes to the EAR related to exports and reexports to promote more effectively positive change in Cuba, consistent with U.S. support for the Cuban people and in line with U.S. national security interests. This rule implements those changes by adding license exceptions and revising licensing policy as appropriate.

This rule enables the export and reexport to Cuba of items intended to empower the nascent Cuban private sector by supporting private economic activity. Items include building materials for use by the private sector to construct or renovate privately-owned buildings including privately-owned residences, businesses, places of worship and buildings for private sector social or recreational use; goods for use by private sector entrepreneurs such as auto mechanics, barbers and hairstylists and restaurateurs; and tools and equipment for private sector agricultural activity. It is intended to facilitate Cuban citizens' lower-priced access to certain goods to improve their living standards and gain greater economic independence from the state. It also enables the export and reexport to Cuba of items to further support civil society in Cuba.

Additionally, this rule enables the export to Cuba of certain items intended to contribute to the ability of the Cuban people to communicate with one another and with people in the United States and the rest of the world. Those exports include commercial sales of items for the establishment and upgrade of communications-related systems as well as certain consumer communications devices, related software, applications, and hardware. Such exports are consistent with Department of Commerce authorities including with Section 1705(e) of the Cuban Democracy Act (22 U.S.C. 6004(e)), which authorizes export of ''[t]elecommunications facilities . . . in such quantity and of such quality as may be necessary to provide efficient and adequate telecommunications services between the United States and Cuba.''

This rule also enables more donations to the Cuban people by simplifying the process to export and reexport gift parcels to Cuba. Lastly, this rule establishes licensing policy relating to environmental protection and makes technical and conforming changes to the EAR.

The Department of the Treasury's Office of Foreign Assets Control (OFAC) is also making changes to its regulations to implement the President's December 17, 2014, policy announcement.

Specific Changes Made by This Rule

Creation of License Exception Support for the Cuban People (SCP)

This rule creates a new § 740.21 of the EAR—License Exception Support for the Cuban People (SCP). Prior to publication of this rule, the export or reexport to Cuba of items now eligible under this new license exception generally required a license from BIS.

To support improved living conditions and support independent economic activity in Cuba, License Exception SCP authorizes the export and reexport of commercially sold or donated:

- Building materials, equipment, and tools for use by the private sector to construct or renovate privately-owned

buildings, including privately-owned residences, businesses, places of worship and buildings for private sector social or recreational use;

• Tools and equipment for private sector agricultural activity; and

• Tools, equipment, supplies, and instruments for use by private sector entrepreneurs. Note that this provision will, for example, allow the export of such items to private sector entrepreneurs, such as auto mechanics, barbers and hairstylists and restaurateurs.

Items eligible for export and reexport to Cuba pursuant to this portion of License Exception SCP are limited to those designated as EAR99 (*i.e.,* items subject to the EAR but not specified in any Export Control Classification Number (ECCN)) or controlled on the Commerce Control List (CCL) only for anti-terrorism reasons.

To strengthen civil society in Cuba, License Exception SCP authorizes the export and reexport to Cuba of certain *donated* items for use in scientific, archaeological, cultural, ecological, educational, historic preservation, or sporting activities. The activities may not relate to the development, production, use, operation, installation, maintenance, repair, overhaul or refurbishing of any item enumerated or otherwise described on the United States Munitions List (22 CFR part 121) or on the Commerce Control List (Supplement No. 1 to part 774 of the EAR) unless the only reason for control that applies to that item as set forth in the ECCN that controls that item is anti-terrorism.

Additionally, License Exception SCP authorizes the *temporary* export of certain items by persons departing the United States for their use in scientific, archeological, cultural, ecological, educational, historic preservation, or sporting activities or for their use in their professional research. The activities or research may not relate to the development, production, use, operation, installation, maintenance, repair, overhaul or refurbishing of any item enumerated or otherwise described on the United States Munitions List (22 CFR part 121) or on the Commerce Control List (Supplement No. 1 to part 774 of the EAR) unless the only reason for control that applies to that item as set forth in the ECCN that controls that item is anti-terrorism. The research must be directly related to the traveler's profession, professional background or area of expertise, including area of graduate-level full-time study. Items authorized for temporary export must be returned to the United States within two years unless consumed in Cuba, or the exporter has applied for and obtained, prior to the expiration of the two year period, a license from BIS authorizing the items to remain in Cuba longer than two years.

License Exception SCP also authorizes the export and reexport to Cuba of certain items to human rights organizations, individuals, or non-governmental organizations that promote independent activity intended to strengthen civil society. Items eligible for the civil society portion of License Exception SCP are limited to those designated as EAR99 or items on the CCL for which the only reason for control is anti-terrorism.

To improve the free flow of information to, from, and among the Cuban people, License Exception SCP authorizes the export and reexport to Cuba of certain items for telecommunications, including access to the Internet, use of Internet services, infrastructure creation and upgrades. Lastly, License Exception SCP authorizes the export and reexport to Cuba of certain items for use by news media personnel and U.S. news bureaus engaged in the gathering and dissemination of news to the general public. Items eligible for export and reexport to Cuba pursuant to this portion of the license exception SCP are limited to those designated as EAR99 or controlled on the CCL only for anti-terrorism reasons.

Expansion of License Exception Consumer Communications Devices (CCD)

This rule revises License Exception Consumer Communications Devices (CCD) in § 740.19 of the EAR to remove the donation requirement and update the list of eligible items. License Exception CCD was created in 2009 at the direction of the President to help enhance the free flow of information to and from Cuba (74 FR 45985, September 8, 2009). This license exception authorizes export and reexport of consumer communications devices (commodities such as computers, communications equipment and related items, including personal computers, mobile phones, televisions, radios and digital cameras) that are widely available for retail purchase and that are commonly used to exchange information and facilitate interpersonal communications, as well as certain telecommunications and information security-related software. Prior to publication of this rule, License Exception CCD authorized the export or reexport only of donated items, which limited the incentive to send these items to Cuba. This rule removes the donation requirement in License Exception CCD, thereby allowing export or reexport of eligible items for commercial sale or donation to eligible recipients in Cuba.

This rule makes several minor technical revisions to some of those paragraphs in order to track more precisely current technical specifications for certain items and to state explicitly that some items must be consumer items to be eligible for this license exception.

This rule revises the references to ECCN 5A992 in CCD paragraphs (b)(5)—monitors, (b)(6)—printers, (b)(7)—modems, (b)(10)—mobile phones and related items, (b)(11)—memory devices, and (b)(12)—information security, to read ECCN 5A992.c. Paragraph .c refers to ''commodities'' regarding which ''BIS has received an encryption registration or that have been classified as mass market encryption commodities in accordance with § 742.15(b) of the EAR.'' The inclusion of this paragraph more precisely describes the devices listed in those CCD paragraphs that are eligible for this license exception.

This rule adds a reference to ECCN 5A992.c to paragraph (b)(1) because most modern personal computers generally would be classified under that ECCN due to their encryption capability. This rule also removes the reference to 0.02 weighted teraflops from paragraph (b)(1) because virtually all personal computers manufactured currently have a higher adjusted peak performance level than 0.02 weighted teraflops.

This rule adds a reference to ECCN 5A991.b.4 to paragraph (b)(7) because certain modems that are widely used in consumer communications (*e.g.,* DSL and ADSL modems) would be classified under ECCN 5A991.b.4.

This rule revises the reference to ECCN 5D992 to read 5D992.c in CCD paragraphs (b)(12)—information security and (b)(17)—software for items in paragraphs (b)(1) through (b)(16). The inclusion of paragraph .c, which covers '''[s]oftware''' for which ''BIS has received an encryption registration or that have been classified as mass market encryption software in accordance with § 742.15(b) of the EAR,'' more precisely describes the mass market devices listed in those CCD paragraphs that are eligible for this license exception.

The other provisions of the license exception remain unchanged.

Expansion of License Exception Gift Parcels and Humanitarian Donations (GFT)

This rule revises License Exception Gift Parcels and Humanitarian Donations (GFT) in § 740.12 of the EAR

to remove the note that excludes from eligibility consolidated shipments of multiple parcels for delivery to individuals residing in a foreign country. Due to this note, parties exporting multiple gift parcels in a single shipment have been required to obtain individual validated licenses. Although the requirement is not limited to Cuba, in recent years BIS has received gift parcel consolidation license applications only for Cuba, which are routinely approved. Individuals who wish to send gift parcels to Cuba have had to search for parties that have received consolidation licenses, resulting in an unintended disincentive to donate eligible items to the Cuban people. Removing the note allows export and reexport of multiple gift parcels in a single shipment pursuant to License Exception GFT. All the other terms and conditions of the license exception remain unchanged.

New Licensing Policy for Environmental Protection

This rule amends the licensing policy for Cuba in § 746.2 of the EAR to add a general policy of approval for exports and reexports of items necessary for the environmental protection of U.S. and international air quality, waters, and coastlines (including items related to renewable energy or energy efficiency). Because environmental threats are not limited by national borders, circumstances may warrant the export and reexport of certain items to Cuba to protect U.S. national interests or international interests. Although the existing Cuba licensing policy in the EAR includes the flexibility to authorize environmental protection-related transactions, this revision notifies the public of the U.S. policy interest in considering applications for such authorizations.

Technical and Conforming Changes

This rule removes from the EAR General Order No. 4 in Supplement No. 1 to Part 736, § 748.8(d), and paragraph (d) of Supplement No. 2 to Part 748. Those three provisions addressed aspects of licenses or license applications for consolidated shipments of gift parcels that individually were eligible for License Exception GFT. Because this rule makes the consolidated shipments eligible for the same license exception that applies to the individual gift parcels, the consolidated shipment licenses and the information in General Order No. 4, § 748.8(d) and Supplement No. 2 to Part 748 paragraph (d) are no longer needed.

Section 746.2(b) addresses licensing policy for Cuba. This rule revises text in § 746.2(b)(2) and (b)(4) to account for transactions that are now eligible for new License Exception SCP.

This rule adds new License Exception SCP to the list of available License Exceptions for Cuba in § 746.2 of the EAR.

Export Administration Act

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 7, 2014, 79 FR 46959 (August 11, 2014), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number. This rule involves a collection of information approved under OMB control number 0694–0088—Simplified Network Application Processing+ System (SNAP+) and the Multipurpose Export License Application, which carries an annual estimated burden of 31,833 hours. BIS believes that this rule will have no material impact on that burden. To the extent that it has any impact, this rule could impact the burden in two ways. First, this rule might reduce the burden because it makes some transactions that would otherwise require a license eligible for a license exception. Second, although this rule does not impose any new license requirements, it creates less restrictive licensing policies (*i.e.,* the policies under which the decision to approve or deny a license application is made) for exports and reexports for environmental protection. These less restrictive policies might increase the number of license applications submitted to BIS because applicants might be more optimistic about obtaining approval. BIS believes that reduction in the number of license applications resulting from increased license exception availability is likely to more than offset any increase in the number of license applications resulting from less restrictive licensing policy because the former involves a large number of small transactions whereas the less restrictive license policy impacts a smaller number of larger value transactions. Moreover, the benefit to license applicants in the form of greater likelihood of approval justifies any additional burden.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget, by email at *jseehra@omb.eop.gov* or by fax to (202) 395–7285 and to William Arvin at *william.arvin@bis.doc.gov.*

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States (*See* 5 U.S.C. 553(a)(1)). This rule is a part of a foreign policy initiative to change the nature of the relationship between Cuba and the United States announced by the President on December 17, 2014. Delay in implementing of this rule to obtain public comment would undermine the foreign policy objectives that the rule is intended to implement. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not

required to be given for this rule under 5 U.S.C. 553, or by any other law, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

List of Subjects

15 CFR Part 736

Exports.

15 CFR Parts 740 and 748

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 746

Exports, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 15 CFR Chapter VII, Subchapter C is amended as follows:

PART 736—[AMENDED]

■ 1. The authority citation for 15 CFR part 736 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 2151 note; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; Notice of May 7, 2014, 79 FR 26589 (May 9, 2014); Notice of August 7, 2014, 79 FR 46959 (August 11, 2014); Notice of November 7, 2014, 79 FR 67035 (November 12, 2014).

Supplement No. 1 to Part 736—[Amended]

■ 2. In Supplement No. 1 to Part 736, paragraph (d) General Order No. 4 is removed and reserved.

PART 740—[AMENDED]

■ 3. The authority citation for 15 CFR part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

§ 740.12—[Amended]

■ 4. Section 740.12 is amended by removing the note to paragraph (a).

■ 5. Section 740.19 is amended by:

■ a. Revising paragraph (a);

■ b. Revising paragraph (b);

■ c. Removing paragraph (c); and

■ d. Redesignating paragraph (d) as paragraph (c).

The revisions read as follows:

§ 740.19 Consumer Communications Devices (CCD).

(a) *Authorization.* This License Exception authorizes the export or reexport of commodities and software, either sold or donated, as described in paragraph (b) to Cuba subject to the conditions in paragraph (c) of this section. This section does not authorize U.S.-owned or -controlled entities in third countries to engage in reexports of foreign-produced commodities to Cuba for which no license would be issued by the Treasury Department pursuant to 31 CFR 515.559. Cuba is the only eligible destination under this License Exception.

(b) *Eligible Commodities and Software.* Commodities and software eligible for export or reexport under this section are:

(1) Consumer computers designated EAR99 or classified under Export Control Classification Numbers (ECCN) 5A992.c or 4A994.b;

(2) Consumer disk drives and solid state storage equipment classified under ECCN 5A992 or designated EAR99;

(3) Input/output control units (other than industrial controllers designed for chemical processing) designated EAR99;

(4) Graphics accelerators and graphics coprocessors designated EAR99;

(5) Monitors classified under ECCN 5A992.c or designated EAR99;

(6) Printers classified under ECCN 5A992.c or designated EAR99;

(7) Modems classified under ECCNs 5A991.b.2, 5A991.b.4., or 5A992.c or designated EAR99;

(8) Network access controllers and communications channel controllers classified under ECCN 5A991.b.4 or designated EAR99;

(9) Keyboards, mice and similar devices designated EAR99;

(10) Mobile phones, including cellular and satellite telephones, personal digital assistants, and subscriber information module (SIM) cards and similar devices classified under ECCNs 5A992.c or 5A991 or designated EAR99;

(11) Memory devices classified under ECCN 5A992.c or designated EAR99;

(12) Consumer ''information security'' equipment, ''software'' (except ''encryption source code'') and peripherals classified under ECCNs 5A992.c or 5D992.c or designated EAR99;

(13) Digital cameras and memory cards classified under ECCN 5A992 or designated EAR99;

(14) Television and radio receivers classified under ECCN 5A992 or designated EAR99;

(15) Recording devices classified under ECCN 5A992 or designated EAR99;

(16) Batteries, chargers, carrying cases and accessories for the equipment described in this paragraph that are designated EAR99; and

(17) Consumer ''software'' (except ''encryption source code'') classified under ECCNs 4D994, 5D991 or 5D992.c or designated EAR99 to be used for equipment described in paragraphs (b)(1) through (b)(16) of this section.

* * * * *

■ 6. Section 740.21 is added to read as follows:

§ 740.21 Support for the Cuban People (SCP).

(a) *Introduction.* This License Exception authorizes certain exports and reexports to Cuba that are intended to support the Cuban people by improving their living conditions and supporting independent economic activity; strengthening civil society in Cuba; and improving the free flow of information to, from, and among the Cuban people.

(b) *Improving living conditions and supporting independent economic activity.* This paragraph authorizes the export or reexport to Cuba of items designated as EAR99, or controlled on the Commerce Control List (CCL) (Supplement No. 1 to Part 774 of the EAR) only for anti-terrorism reasons (*i.e.,* anti-terrorism must be the only reason for control that applies to the item as set forth in the Export Control Classification Number (ECCN) that controls the item). If any other reason for control applies to the item, it is not authorized for export or reexport by this paragraph. The item may be either for commercial sale or donated. The item must be within one or more of the following categories:

(1) Building materials, equipment, and tools for use by the private sector to construct or renovate *privately-owned* buildings, including privately-owned residences, businesses, places of worship and buildings for private sector social or recreational use;

(2) Tools and equipment for private sector agricultural activity; or

(3) Tools, equipment, supplies, and instruments for use by private sector entrepreneurs.

(c) *Strengthening civil society.* This paragraph authorizes the export or reexport to Cuba of certain items for use in specified activities that can strengthen civil society. The items authorized pursuant this paragraph are limited to those designated as EAR99 or controlled only for anti-terrorism reasons on the CCL (*i.e.,* anti-terrorism must be the only reason for control that applies to the item as set forth in the ECCN that controls the item). If any

other reason for control applies to the item, it is not authorized for export or reexport by this paragraph. The export or reexport must be within one or more of the following categories:

(1) The export or reexport to Cuba of *donated* items for use in scientific, archaeological, cultural, ecological, educational, historic preservation, or sporting activities. The activities may not relate to the ''development,'' ''production,'' ''use,'' operation, installation, maintenance, repair, overhaul or refurbishing of any item enumerated or otherwise described on the United States Munitions List (22 CFR part 121) or of any item enumerated or otherwise described on the Commerce Control List (Supplement No. 1 to Part 774 of the EAR) unless the only reason for control that applies to that item as set forth in the ECCN that controls that item is anti-terrorism.

(2) The *temporary* export to Cuba of items by persons departing the United States for their use in scientific, archeological, cultural, ecological, educational, historic preservation, or sporting activities, or for their use in the traveler's professional research. The following limitations shall apply:

(i) The research must be directly related to traveler's profession, professional background or area of expertise, including area of graduate-level full-time study.

(ii) The activities or research may not relate to the ''development,'' ''production,'' ''use,'' operation, installation, maintenance, repair, overhaul or refurbishing of any item enumerated or otherwise described on the United States Munitions List (22 CFR part 121) or of any item enumerated or otherwise described on the Commerce Control List (Supplement No. 1 to Part 774 of the EAR) unless the only reason for control that applies to that item as set forth in the ECCN that controls that item is anti-terrorism.

(iii) Items authorized for temporary export by this paragraph must be returned to the United States within two years of the date of export from the United States unless:

(A) The items are consumed in Cuba; or

(B) The exporter applies for and receives a license from BIS, prior to the expiration of the two year period, authorizing the items to remain in Cuba for longer than two years.

(iv) Paragraph (c)(2) of this section does not authorize exports if, at the time of the export, the exporter has ''knowledge'' that the item exported will remain in Cuba for more than two years.

(3) The export or reexport to Cuba of items to human rights organizations, individuals or non-governmental organizations that promote independent activity intended to strengthen civil society.

(d) *Improving communications.* This paragraph authorizes the export or reexport to Cuba of certain items intended to improve the free flow of information to, from, and among the Cuban people. The items authorized pursuant to this paragraph are limited to those designated as EAR99 or controlled only for anti-terrorism reasons on the CCL (*i.e.,* anti-terrorism must be the only reason for control that applies to the item as set forth in the ECCN that controls the item). If any other reason for control applies to the item, it is not authorized for export or reexport by this paragraph. The export or reexport must be within one or more of the following categories:

(1) The export or reexport to Cuba of items, either sold or donated, for telecommunications, including access to the Internet, use of Internet services, infrastructure creation and upgrades.

(2) The export or reexport to Cuba of items for use by news media personnel engaged in the gathering and dissemination of news to the general public and who are:

(i) Regularly employed as journalists by a news reporting organization;

(ii) Regularly employed as supporting broadcast or technical personnel;

(iii) Freelance journalists with a record of previous journalistic experience working on a freelance journalistic project; or

(iv) Broadcast or technical personnel with a record of previous broadcast or technical experience who are supporting a freelance journalist working on a freelance journalistic project.

(3) The export or reexport to Cuba of items for use by U.S. news bureaus engaged in the gathering and dissemination of news to the general public.

PART 746—[AMENDED]

■ 7. The authority citation for 15 CFR part 746 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 287c; Sec 1503, Pub. L. 108–11, 117 Stat. 559; 22 U.S.C. 6004; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p 168; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Presidential Determination 2007–7 of December 7, 2006, 72 FR 1899 (January 16, 2007); Notice of May 7, 2014, 79 FR 26589 (May 9, 2014); Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

■ 8. Section 746.2 is amended by:

■ a. Adding a paragraph (a)(1)(xiv);

■ b. Revising paragraph (b)(2);

■ c. Revising paragraph (b)(4)(i);

■ d. Revising paragraph (b)(4)(ii); and

■ e. Adding a paragraph (b)(6) to read as follows:

§ 746.2 Cuba.

(a) * * *

(1) * * *

(xiv) License Exception Support for the Cuban People (SCP) (*see* § 740.21 of the EAR).

* * * * *

(b) * * *

(2) Telecommunications items may be authorized for export or reexport to Cuba on a case-by-case basis.

* * * * *

(4) * * *

(i) Applications for licenses for exports of certain commodities and software may be approved to human rights organizations, or to individuals and non-governmental organizations that promote independent activity intended to strengthen civil society in Cuba when such exports do not give rise to U.S. national security or counter-terrorism concerns. Applicants may donate or sell the commodities or software to be exported. Reexport to other end-users or end-uses is not authorized.

(ii) Commodities and software may be approved for export to U.S. news bureaus in Cuba whose primary purpose is the gathering and dissemination of news to the general public.

* * * * *

(6) Applications for exports or reexports of items necessary for the environmental protection of U.S. and international air quality, waters, or coastlines (including items related to renewable energy or energy efficiency) will generally be approved.

* * * * *

PART 748—[AMENDED]

■ 7. The authority citation for 15 CFR part 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

§ 748.8—[Amended]

■ 8. In § 748.8, remove and reserve paragraph (d).

Supplement No. 2 to Part 748—[Amended]

■ 9. In Supplement No. 2 to part 748, remove and reserve paragraph (d).

Dated: January 12, 2015.

Penny Pritzker,

Secretary of Commerce.

[FR Doc. 2015–00590 Filed 1–15–15; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 515

Cuban Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is amending the Cuban Assets Control Regulations to implement policy changes announced by the President on December 17, 2014 to further engage and empower the Cuban people. These amendments facilitate travel to Cuba for authorized purposes, facilitate the provision by travel agents and airlines of authorized travel services and the forwarding by certain entities of authorized remittances, raise the limit on certain categories of remittances to Cuba, allow U.S. financial institutions to open correspondent accounts at Cuban financial institutions to facilitate the processing of authorized transactions, authorize certain transactions with Cuban nationals located outside of Cuba, and allow a number of other activities related to, among other areas, telecommunications, financial services, trade, and shipping. These amendments also implement certain technical and conforming changes.

DATES: *Effective:* January 16, 2015.

FOR FURTHER INFORMATION CONTACT: Assistant Director for Licensing, tel.: 202/622–2480, Assistant Director for Policy, tel.: 202/622–6746, Assistant Director for Regulatory Affairs, tel: 202/622–4855, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202/622–2490, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622–2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treasury.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

The Department of the Treasury issued the Cuban Assets Control Regulations, 31 CFR part 515 (the ''Regulations''), on July 8, 1963, under the Trading With the Enemy Act (50 U.S.C. App. 5 *et seq.*). OFAC has amended the Regulations on numerous occasions. Notably, on September 3, 2009, OFAC amended the Regulations to implement measures announced by the President on April 13, 2009 to promote democracy and human rights in Cuba by easing travel restrictions to facilitate greater contact between separated family members in the United States and Cuba and by increasing the flow of remittances and information to the Cuban people. On January 28, 2011, OFAC further amended the Regulations to implement certain policy changes announced by the President on January 14, 2011 designed to increase people-to-people contact, support civil society in Cuba, enhance the free flow of information to, from, and among the Cuban people, and help promote their independence from Cuban authorities. These amendments allowed for greater licensing of travel to Cuba for educational, cultural, religious, and journalistic activities and expanded licensing of remittances to Cuba. These amendments also modified regulations regarding authorization of transactions with Cuban nationals who have taken up permanent residence outside of Cuba and implemented certain technical and conforming changes.

OFAC is now amending the Regulations to implement certain policy changes announced by the President on December 17, 2014 to further engage and empower the Cuban people. These amendments facilitate travel to Cuba for authorized purposes, facilitate the provision by travel agents and airlines of authorized travel services and the forwarding by certain entities of authorized remittances, raise the limit on remittances to Cuba, allow U.S. financial institutions to open correspondent accounts at Cuban financial institutions to facilitate the processing of authorized transactions, authorize certain transactions with Cuban nationals outside of Cuba, and allow a number of other activities related to, among other areas, telecommunications, financial services, trade, and shipping. These amendments also implement certain technical and conforming changes.

Travel to Cuba for authorized purposes. OFAC is amending sections 515.533, 515.545, 515.560 through 515.567, and 515.574 through 515.576 to authorize travel-related transactions and other transactions incident to activities within the 12 existing travel categories in OFAC's regulations—such as for educational activities (including people-to-people travel), journalistic and religious activities, professional meetings, and humanitarian projects—without the need for case-by-case specific licensing, while continuing not to authorize travel for tourist activities, which is prohibited by statute. The authorizations contain certain restrictions appropriate to each category of activities.

Travel services. OFAC is amending section 515.572 to permit persons subject to U.S. jurisdiction, including travel agents and airlines, to provide authorized travel and carrier services, and certain entities to forward authorized remittances, under conditions set forth below, without the need for specific licenses from OFAC.

Remittances. OFAC is amending section 515.570 to raise from $500 to $2,000 per quarter the limits on remittances that may be sent to Cuban nationals, and to generally authorize, as is done now, as appropriate, on a case-by-case basis, without limitation, remittances for humanitarian projects, support for the Cuban people, and development of private business in Cuba. Section 515.560(c) is amended to raise to $10,000 the total amount of remittances that a traveler may carry to Cuba.

Credit and debit cards, per diem, and importation of certain goods and services. OFAC is amending section 515.560 and adding a new section 515.584 to authorize the use of U.S. credit and debit cards in Cuba for travel-related and other transactions consistent with section 515.560 and to allow U.S. financial institutions to enroll merchants and to process such transactions. OFAC also is amending section 515.560 to eliminate the *per diem* limitation on authorized travelers' spending in Cuba, and to permit authorized travelers to import no more than $400 worth of goods from Cuba (including up to $100 in alcohol or tobacco products).

Certain micro-financing, business, and commercial import activities. OFAC is amending section 515.575 to authorize certain micro-financing

activities and entrepreneurial and business training, such as for private businesses and agricultural operations. OFAC is adding new section 515.582 to authorize commercial imports of certain specified goods and services produced by independent Cuban entrepreneurs.

Certain financial transactions. OFAC is adding a general license in new section 515.584 to authorize depository institutions to open correspondent accounts at Cuban financial institutions to facilitate the processing of authorized transactions and to permit U.S. financial institutions to reject and process certain funds transfer transactions.

Regulatory interpretation of ''cash in advance.'' OFAC is amending section 515.533 to revise the regulatory interpretation of ''cash in advance'' from ''cash before shipment'' to ''cash before transfer of title and control'' to allow expanded financing options for authorized exports to Cuba.

Telecommunications. In order to better provide efficient and adequate telecommunications services between the United States and Cuba, OFAC is amending section 515.542 to generally authorize transactions that establish mechanisms to provide commercial telecommunications services linking third countries and Cuba and in Cuba. OFAC is amending section 515.578 to authorize persons subject to U.S. jurisdiction to provide additional services incident to internet-based communications and related to certain exportations and reexportations of communications items.

Certain transactions with Cuban nationals located outside of Cuba. OFAC is adding new section 515.585 to authorize U.S.-owned or -controlled entities in third countries to provide, with some limitations, goods and services to Cuban nationals in third countries. OFAC is amending section 515.505 to unblock accounts of Cuban nationals who have permanently relocated outside of Cuba. OFAC is amending section 515.579 to authorize funds transfers through the United States for the personal expenditures of employees, grantees, and contractors, and persons who share a common dwelling as a family member of such employees, grantees, and contractors, of third-country official missions in Cuba or any intergovernmental organization in which the United States is a member or holds observer status in Cuba. OFAC is adding new section 515.581 to authorize persons subject to U.S. jurisdiction to sponsor and participate in third-country professional meetings and conferences that are attended by Cuban nationals, and new section 515.583 to permit the provision of certain goods and services to Cuban national sailors sequestered aboard ships in U.S. ports.

Official government business. OFAC is amending section 515.562 to expand an existing authorization to cover all Cuba-related transactions by employees, grantees, and contractors of the U.S. Government, foreign governments, and certain international organizations in their official capacities.

Cuban official missions. To facilitate the reestablishment of diplomatic relations with Cuba, OFAC is adding new section 515.586 to authorize transactions with Cuban official missions and their employees in the United States.

Other transactions. OFAC is adding new section 515.580 to authorize insurance companies to offer global insurance policies that cover third-country nationals traveling to Cuba. OFAC is amending section 515.550 to authorize foreign vessels to enter the United States after engaging in certain trade with Cuba.

Public Participation

Because the amendments of the Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the Regulations are contained in 31 CFR part 501 (the ''Reporting, Procedures and Penalties Regulations''). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects in 31 CFR Part 515

Administrative practice and procedure, Banking, Blocking of assets, Cuba, Remittances, Reporting and recordkeeping requirements, Travel restrictions.

For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control amends 31 CFR part 515 as set forth below:

PART 515—CUBAN ASSETS CONTROL REGULATIONS

■ 1. The authority citation for part 515 continues to read as follows:

Authority: 18 U.S.C. 2332d; 22 U.S.C. 2370(a), 6001–6010, 7201–7211; 31 U.S.C. 321(b); 50 U.S.C. App 1–44; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 104–114, 110 Stat. 785 (22 U.S.C. 6021–6091); Pub. L. 105–277, 112 Stat. 2681; Pub. L. 111–8, 123 Stat. 524; Pub. L. 111–117, 123 Stat. 3034; E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748; Proc. 3447, 27 FR 1085, 3 CFR, 1959–1963 Comp., p. 157; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614.

Subpart B—Prohibitions

§ 515.207 [Amended]

■ 2. In § 515.207, revise the Note to the section to read as follows:

* * * * *

Note to § 515.207: For the waiver of the prohibitions contained in this section for vessels engaged in certain trade with Cuba, see § 515.550.

Subpart C—General Definitions

■ 3. Revise § 515.307 to read as follows:

§ 515.307 Unblocked national.

Any person licensed pursuant to § 515.505 as an *unblocked national* shall, while so licensed, be regarded as a person who is not a national of any designated foreign country.

■ 4. In § 515.329, revise the section heading and introductory text to read as follows:

§ 515.329 Person subject to the jurisdiction of the United States; person subject to U.S. jurisdiction.

The terms *person subject to the jurisdiction of the United States* and *person subject to U.S. jurisdiction* include:

* * * * *

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

■ 5. Revise § 515.505 to read as follows:

§ 515.505 Certain Cuban nationals unblocked.

(a) *General license unblocking certain persons.* The following persons are licensed as unblocked nationals, as that term is defined in § 515.307 of this part:

(1) Any individual national of Cuba who:

(i) Has taken up residence in the United States; and

(ii) Is a United States citizen; is a lawful permanent resident alien of the

United States; has applied to become a lawful permanent resident alien of the United States and has an adjustment of status application pending; or is lawfully present and intending to lawfully remain in the United States on a permanent basis; and

(iii) Is not a prohibited official of the Government of Cuba, as defined in § 515.337 of this part, or a prohibited member of the Cuban Communist Party, as defined in § 515.338 of this part.

(2) Any individual national of Cuba who has taken up permanent residence outside of Cuba, provided that the required documentation specified in paragraph (c) of this section is obtained and the individual is not a prohibited official of the Government of Cuba, as defined in § 515.337 of this part, or a prohibited member of the Cuban Communist Party, as defined in § 515.338 of this part; and

(3) Any entity that otherwise would be a national of Cuba solely because of the interest therein of one or more persons licensed in this paragraph (a) as an unblocked national.

Note to § 515.505(a): An individual unblocked pursuant to this paragraph does not become blocked again merely by leaving the United States or the country in which he or she has taken up permanent residence. An individual unblocked national remains unblocked unless and until the individual thereafter becomes domiciled in or a permanent resident of Cuba.

(b) *General license unblocking blocked accounts.* Banking institutions, as defined in § 515.314, including U.S. registered brokers or dealers in securities and U.S. registered money transmitters, are authorized to unblock any blocked account, as defined in § 515.319, that had been previously blocked solely because of the interest therein of one or more persons licensed in paragraph (a) of this section as unblocked nationals.

(c) *Required documentation.* In determining whether an individual national of Cuba qualifies as an unblocked national under paragraph (a)(2) of this section, persons subject to U.S. jurisdiction must obtain evidence demonstrating that the individual satisfies the requirements of that paragraph. Such evidence may include copies of documents issued by government authorities demonstrating citizenship or lawful permanent residence in a third country. These could include, depending on the information provided in the document in question, a passport, voter registration card, permanent resident alien card, national identity card, or other similar documents. Where such documents are unavailable, persons subject to U.S. jurisdiction may also rely on evidence that the individual has been resident for the past two years without interruption in a single country outside of Cuba, or a sworn statement or other evidence that the individual does not intend to, or would not be welcome to, return to Cuba.

(d) For the purposes of paragraph (a)(1) of this section, the term ''lawfully present and intending to lawfully remain in the United States on a permanent basis'' includes an individual with a pending application for asylum or who has been paroled into the United States under Cuban Parole or Cuban Medical designations. It does not include anyone present in the United States in a non-immigrant status.

Note to § 515.505: See § 515.571 for the authorization of certain limited transactions incident to travel to, from, and within the United States by Cuban nationals who are present in the United States in a non-immigrant status or pursuant to other non-immigrant travel authorization issued by the U.S. government.

■ 6. Amend § 515.533 by revising the the section heading and paragraph (a)(2), redesignating the Note to paragraph (b) as the Note to § 515.533(b) and revising it, revising paragraphs (d) and (e), and removing paragraphs (f) and (g) to read as follows:

§ 515.533 Exportations from the United States to Cuba; reexportations of 100% U.S.-origin items to Cuba; negotiation of executory contracts.

(a) * * *

(2) Only the following payment and financing terms may be used:

(i) Payment of cash in advance. For the purposes of this section, the term ''payment of cash in advance'' shall mean payment before the transfer of title to, and control of, the exported items to the Cuban purchaser; or

(ii) Financing by a banking institution located in a third country provided the banking institution is not a designated national, a U.S. citizen, a U.S. permanent resident alien, or an entity organized under the laws of the United States or any jurisdiction within the United States (including any foreign branch of such an entity). Such financing may be confirmed or advised by a U.S. banking institution.

* * * * *

Note to § 515.533(b): This paragraph does not authorize transactions related to travel to, from, or within Cuba. See paragraph (d) for a general license addressing such transactions, and paragraph (e) with respect to specific licenses.

* * * * *

(d) *General license for travel-related transactions incident to sales of certain items.* The travel-related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to the conduct of market research, commercial marketing, sales negotiation, accompanied delivery, or servicing in Cuba of items consistent with the export or reexport licensing policy of the Department of Commerce are authorized, provided that the traveler's schedule of activities does not include free time or recreation in excess of that consistent with a full-time schedule.

(e) *Specific licenses.* Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) and such other transactions as are related to the exportation and reexportation of items to Cuba when such transactions do not qualify for the general license under paragraph (d) of this section.

■ 7. Revise § 515.542 to read as follows:

§ 515.542 Mail and telecommunications-related transactions.

(a) All transactions, including payments, incident to the receipt or transmission of mail between the United States and Cuba by persons subject to U.S. jurisdiction are authorized.

(b) All transactions, including payments, incident to the provision of telecommunications services related to the transmission or the receipt of telecommunications involving Cuba, including the entry into and performance under roaming service agreements with telecommunications services providers in Cuba, by persons subject to U.S. jurisdiction are authorized. This paragraph does not authorize any transactions addressed in paragraphs (c) or (d) of this section, nor does it authorize the entry into or performance of a contract with or for the benefit of any particular individual in Cuba.

(c) All persons subject to U.S. jurisdiction are authorized to enter into, and make payments under, contracts with telecommunications service providers, or particular individuals in Cuba, for telecommunications services provided to particular individuals in Cuba, provided that such individuals in Cuba are not prohibited officials of the Government of Cuba, as defined in § 515.337 of this part, or prohibited members of the Cuban Communist Party, as defined in § 515.338 of this part. The authorization in this paragraph includes payment for activation, installation, usage (monthly, pre-paid, intermittent, or other), roaming, maintenance, and termination fees.

(d) *General license for telecommunications facilities.* Transactions, including payments, incident to the establishment of facilities, including fiber-optic cable and satellite facilities, to provide telecommunications services linking the United States or third countries and Cuba, including facilities to provide telecommunications services in Cuba, are authorized.

(e) Any entity subject to U.S. jurisdiction relying on paragraph (b), (c), or (d) of this section shall notify OFAC in writing within 30 days after commencing or ceasing to offer such services, as applicable, and shall furnish by January 15 and July 15 of each year semiannual reports providing the total amount of all payments made to Cuba or a third country related to any of the services authorized by this section during the prior six months. These notifications and reports must be captioned ''Section 515.542 Notification'' or ''Section 515.542 Report'' and faxed to 202/622–6931 or mailed to the Office of Foreign Assets Control, *Attn:* Regulatory Affairs Division, 1500 Pennsylvania Avenue NW., Annex, Washington, DC 20220.

(f) For purposes of this section, the term ''telecommunications services'' includes data, telephone, telegraph, internet connectivity, radio, television, news wire feeds, and similar services, regardless of the medium of transmission, including transmissions by satellite.

(g) Nothing in this section authorizes the exportation or reexportation of any items to Cuba. For the rules related to authorization of exports and reexports to Cuba, see §§ 515.533 and 515.559.

(h) Nothing in this section authorizes transactions related to travel to, from, or within Cuba.

Note 1 to § 515.542: For an authorization of travel-related transactions that are directly incident to the conduct of market research, commercial marketing, sales negotiation, accompanied delivery, or servicing in Cuba of items consistent with the export or reexport policy of the Department of Commerce, see § 515.533(d). For an authorization of travel-related transactions that are directly incident to participation in professional meetings, including where such meetings are for the market research for, commercial marketing of, sales negotiation for, accompanied delivery of, servicing of, or performance under contracts for the provision of telecommunications services, or the establishment of facilities to provide telecommunications services, authorized by paragraphs (b), (c), or (d) of this section, see § 515.564(a).

Note 2 to § 515.542: For an authorization of certain internet-related services, see § 515.578.

■ 8. Amend § 515.545 by revising paragraph (b) and adding new paragraph (c) to read as follows:

§ 515.545 Transactions related to information and informational materials.

* * * * *

(b) *General license.* The travel-related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to the exportation, importation, or transmission of information or informational materials as defined in § 515.332 are authorized, provided that the traveler's schedule of activities does not include free time or recreation in excess of that consistent with a full-time schedule.

(c) *Specific licenses.* Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) and such other transactions as are related to information and informational materials that do not qualify for the general license under paragraph (b) of this section.

* * * * *

■ 9. Revise § 515.548 to read as follows:

§ 515.548 Services rendered by Cuba to United States aircraft.

The receipt of services from Cuba and payment to Cuba of charges for services rendered by Cuba in connection with overflights of Cuba or emergency landings in Cuba by aircraft registered in the United States or owned or controlled by, or chartered to, persons subject to U.S. jurisdiction are authorized.

■ 10. Revise § 515.549 to read as follows:

§ 515.549 Bank accounts and other property of non-Cuban decedents in Cuba on or after July 8, 1963.

Specific licenses may be issued authorizing the administration of the estates of non-Cuban decedents who died in Cuba on or after July 8, 1963, provided that any distribution to a blocked national of Cuba is made by deposit in a blocked account in a domestic bank in the name of the blocked national.

■ 11. Revise § 515.550 to read as follows:

§ 515.550 Certain vessel transactions authorized.

Unless a vessel is otherwise engaging or has otherwise engaged in transactions that would prohibit entry pursuant to § 515.207, § 515.207 shall not apply to a vessel that is:

(a) Engaging or has engaged in trade with Cuba authorized pursuant to § 515.533 or § 515.559;

(b) Engaging or has engaged in trade with Cuba that is exempt from the prohibitions of this part (see § 515.206);

(c) Engaging or has engaged in the exportation or re-exportation to Cuba from a third country of agricultural commodities, medicine, or medical devices that would be designated as EAR99 under the Export Administration Regulations (15 CFR part 730 *et seq.*), if they were located in the United States; or

(d) A foreign vessel that has entered a port or place in Cuba while carrying students, faculty, and staff that are authorized to travel to Cuba pursuant to § 515.565(a).

Note to § 515.550(d): This general license does not authorize vessels to transport persons between the United States and Cuba. See § 515.572(c).

■ 12. Amend § 515.559 by revising the section heading, removing and reserving paragraph (b)(2), adding new paragraphs (d) and (e), redesignating the Note to § 515.559 as Note 1 to § 515.559, and by revising it, and by adding new Note 2 to § 515.559 to read as follows:

§ 515.559 Certain export and import transactions by U.S.-owned or -controlled foreign firms.

* * * * *

(b) * * *

(2) [Reserved]

* * * * *

(d) *General license.* Travel-related transactions set forth in § 515.560(c) and such other transactions as are directly incident to market research, commercial marketing, sales negotiation, accompanied delivery, or servicing of exports that are consistent with the licensing policy under paragraph (a) of this section are authorized, provided that the traveler's schedule of activities does not include free time or recreation in excess of that consistent with a full-time schedule.

(e) *Specific licenses.* Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) and such other transactions as are related to certain transactions by U.S.-owned or -controlled foreign firms with Cuba that do not qualify for the general license under paragraph (d) of this section.

Note 1 to § 515.559: For authorization of the reexportation of U.S.-origin items, see § 515.533. Transactions by U.S.-owned or -controlled foreign firms directly incident to the exportation of information or informational materials or the donation of food to nongovernmental entities or individuals in Cuba are exempt from the prohibitions of this part. See § 515.206. For the waiver of the prohibitions contained in § 515.207 with respect to vessels transporting

shipments of items pursuant to this section, see § 515.550.

Note 2 to § 515.559: See § 515.585 for provisions related to certain transactions by U.S.-owned or -controlled firms in third countries with certain Cuban nationals.

■ 13. Amend § 515.560 by revising paragraph (a), (c)(2), (c)(3), (c)(4)(i), (c)(5), (d) introductory text, removing and reserving paragraph (e), and adding Notes 1, 2, and 3 to § 515.560 to read as follows:

§ 515.560 Travel-related transactions to, from, and within Cuba by persons subject to U.S. jurisdiction.

(a) The travel-related transactions listed in paragraph (c) of this section may be authorized either by a general license or on a case-by-case basis by a specific license for travel related to the following activities (see the referenced sections for the applicable general and specific licensing criteria):

(1) Family visits (see § 515.561);

(2) Official business of the U.S. government, foreign governments, and certain intergovernmental organizations (see § 515.562);

(3) Journalistic activity (see § 515.563);

(4) Professional research and professional meetings (see § 515.564);

(5) Educational activities (see § 515.565);

(6) Religious activities (see § 515.566);

(7) Public performances, clinics, workshops, athletic and other competitions, and exhibitions (see § 515.567);

(8) Support for the Cuban people (see § 515.574);

(9) Humanitarian projects (see § 515.575);

(10) Activities of private foundations or research or educational institutes (see § 515.576);

(11) Exportation, importation, or transmission of information or informational materials (see § 515.545); and

(12) Certain export transactions that may be considered for authorization under existing Department of Commerce regulations and guidelines with respect to Cuba or engaged in by U.S.-owned or -controlled foreign firms (see §§ 515.533 and 515.559).

* * * * *

(c) * * *

(2) *Living expenses in Cuba.* All transactions ordinarily incident to travel within Cuba, including payment of living expenses and the acquisition in Cuba of goods for personal consumption there, are authorized.

(3) *Importation of Cuban merchandise.* The purchase or other acquisition in Cuba and importation as accompanied baggage into the United States of merchandise with a value not to exceed $400 per person are authorized, provided that no more than $100 of the merchandise consists of alcohol or tobacco products and the merchandise is imported for personal use only. The importation of Cuban-origin information and informational materials is exempt from the prohibitions of this part, as described in § 515.206. The importation of certain other specified goods and services is authorized in § 515.582.

(4) * * *

(i) The total of all remittances authorized by § 515.570(a) through (d) does not exceed $10,000; and

* * * * *

(5) *Processing certain financial instruments.* All transactions incident to the processing and payment of credit cards, debit cards, stored value cards, checks, drafts, travelers' checks, and similar instruments used or negotiated in Cuba by any person authorized pursuant to this part to engage in financial transactions in Cuba are authorized. Persons subject to U.S. jurisdiction may rely on the traveler with regard to compliance with this paragraph, provided that such persons do not know or have reason to know that a transaction is not authorized by this section.

Note to § 515.560(c)(5): Please see § 515.584 for additional provisions related to the processing and payment of credit and debit card transactions.

(d) A blocked Cuban national permanently resident in Cuba who is departing the United States may carry currency as follows:

* * * * *

(e) [Reserved]

* * * * *

Note 1 to § 515.560: Each person relying on the general authorization in this section must retain specific records related to the authorized travel transactions. See §§ 501.601 and 501.602 of this chapter for applicable recordkeeping and reporting requirements.

Note 2 to § 515.560: This section authorizes the provision of health insurance-, life insurance-, and travel insurance-related services to authorized travelers, as well as the receipt of emergency medical services and the making of payments related thereto.

Note 3 to § 515.560: The export or reexport to Cuba of items subject to the Export Administration Regulations (15 CFR *et seq.*) may require separate authorization from the Department of Commerce.

■ 14. Revise § 515.561 to read as follows:

§ 515.561 Family visits.

(a) *General license.* Persons subject to the jurisdiction of the United States and persons traveling with them who share a common dwelling as a family with them are authorized to engage in the travel-related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to visiting a close relative, as defined in § 515.339, who is a national of Cuba; a person ordinarily resident in Cuba; a person located in Cuba pursuant to the authorizations in § 515.565(a)(1) through (4) (educational activities), provided that the authorized traveler will be in Cuba for more than 60 days; or a person located in Cuba pursuant to the authorization in § 515.562 (official government business).

Note to § 515.561(a): Each person relying on the general authorization in this paragraph must retain specific records related to the authorized travel transactions. See §§ 501.601 and 501.602 of this chapter for applicable recordkeeping and reporting requirements.

(b) *Specific licenses.* Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) and such other transactions as are related to family visits that do not qualify for the general license under paragraph (a) of this section.

(c) An entire group does not qualify for the general license in paragraph (a) of this section merely because some members of the group qualify individually.

■ 15. Revise § 515.562 to read as follows:

§ 515.562 Official business of the U.S. government, foreign governments, and certain intergovernmental organizations.

(a) The travel-related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to activities in their official capacities by persons who are employees, contractors, or grantees of the United States Government, any foreign government, or any intergovernmental organization of which the United States is a member or holds observer status, and who are traveling on the official business of their government or intergovernmental organization, are authorized.

(b) All transactions otherwise prohibited by this part that are for the conduct of the official business of the United States Government or of any intergovernmental organization of which the United States is a member, or holds observer status, by employees, grantees, or contractors thereof, are authorized.

Note to § 515.562(a) and (b): Each person relying on the general authorization in this paragraph must retain specific records related to the authorized travel transactions. For example, grantees or contractors relying on the authorization in this section must retain a copy of their grant or contract with the United States Government, foreign government, or intergovernmental organization. See §§ 501.601 and 501.602 of this chapter for applicable recordkeeping and reporting requirements.

(c) An entire group does not qualify for the general license in paragraph (a) of this section merely because some members of the group qualify individually.

(d) *Specific licenses.* Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) and such other transactions as are related to official government business that do not qualify for the general licenses under paragraph (a) or (b) of this section.

■ 16. Revise § 515.563 to read as follows:

§ 515.563 Journalistic activities in Cuba.

(a) *General license.* The travel-related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to journalistic activities in Cuba are authorized, provided that:

(1) The traveler is at least one of the following:

(i) Regularly employed as a journalist by a news reporting organization;

(ii) Regularly employed as supporting broadcast or technical personnel;

(iii) A freelance journalist with a record of previous journalistic experience working on a freelance journalistic project; or

(iv) Broadcast or technical personnel with a record of previous broadcast or technical experience, who are supporting a freelance journalist working on a freelance journalistic project; and

(2) The traveler's schedule of activities does not include free time or recreation in excess of that consistent with a full-time schedule.

Note to § 515.563(a): Each person relying on the general authorization in this paragraph must retain specific records related to the authorized travel transactions. See §§ 501.601 and 501.602 of this chapter for applicable recordkeeping and reporting requirements.

(b) An entire group does not qualify for the general license in paragraph (a) of this section merely because some members of the group qualify individually.

(c) *Specific licenses.* Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) and such other transactions as are related to journalistic activity in Cuba that do not qualify for the general license under paragraph (a) of this section.

■ 17. Revise § 515.564 to read as follows:

§ 515.564 Professional research and professional meetings in Cuba.

(a) *General license*

(1) *Professional research.* The travel-related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to professional research are authorized, provided that:

(i) The purpose of the research directly relates to the traveler's profession, professional background, or area of expertise, including area of graduate-level full-time study;

(ii) The traveler does not engage in recreational travel, tourist travel, travel in pursuit of a hobby, or research for personal satisfaction only; and

(iii) The traveler's schedule of activities does not include free time or recreation in excess of that consistent with a full-time schedule of professional research.

Example to § 515.564(a)(1): The making of a documentary film in Cuba would qualify for the general license in this section if it is a vehicle for presentation of the research conducted pursuant to this section.

Note to § 515.564(a)(1): A person does not qualify as engaging in professional research merely because that person is a professional who plans to travel to Cuba.

(2) *Professional meetings.* The travel-related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to travel to Cuba to attend professional meetings or conferences in Cuba are authorized, provided that:

(i) The purpose of the meeting or conference is not the promotion of tourism in Cuba;

(ii) The purpose of the meeting directly relates to the traveler's profession, professional background, or area of expertise, including area of graduate-level full-time study;

(iii) The traveler does not engage in recreational travel, tourist travel, or travel in pursuit of a hobby; and

(iv) The traveler's schedule of activities does not include free time or recreation in excess of that consistent with a full-time schedule of attendance at professional meetings or conferences.

Note to § 515.564(a): Each person relying on the general authorization in this paragraph must retain specific records related to the authorized travel transactions. See §§ 501.601 and 501.602 of this chapter for applicable recordkeeping and reporting requirements.

(b) An entire group does not qualify for the general license in paragraph (a) of this section of this section merely because some members of the group qualify individually.

Example to § 515.564(b): A musicologist travels to Cuba to research Cuban music pursuant to the general license for professional research set forth in paragraph (a) of this section. Others who are simply interested in music may not engage in travel-related transactions with the musicologist in reliance on this general license. For example, an art historian who plays in the same band with the musicologist would not qualify for the general license.

(c) *Specific licenses.* Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) and such other transactions as are related to professional research or professional meetings in Cuba that do not qualify for the general license under paragraph (a) of this section.

■ 18. Revise § 515.565 to read as follows:

§ 515.565 Educational activities.

(a) *General license for educational activities.* Persons subject to U.S. jurisdiction, including U.S. academic institutions and their faculty, staff, and students, are authorized to engage in the travel-related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to:

(1) Participation in a structured educational program in Cuba as part of a course offered for credit by a U.S. graduate or undergraduate degree-granting academic institution that is sponsoring the program;

(2) Noncommercial academic research in Cuba specifically related to Cuba and for the purpose of obtaining an undergraduate or graduate degree;

(3) Participation in a formal course of study at a Cuban academic institution, provided the formal course of study in Cuba will be accepted for credit toward the student's graduate or undergraduate degree;

(4) Teaching at a Cuban academic institution related to an academic program at the Cuban institution, provided that the individual is regularly employed by a U.S. or other non-Cuban academic institution;

(5) Sponsorship, including the payment of a stipend or salary, of a Cuban scholar to teach or engage in other scholarly activity at the sponsoring U.S. academic institution (in

addition to those transactions authorized by the general license contained in § 515.571). Such earnings may be remitted to Cuba as provided in § 515.570 or carried on the person of the Cuban scholar returning to Cuba as provided in § 515.560(d)(3);

Note to § 515.565(a)(5): See § 515.571(a) for authorizations related to certain banking transactions by Cuban nationals.

(6) Educational exchanges sponsored by Cuban or U.S. secondary schools involving secondary school students' participation in a formal course of study or in a structured educational program offered by a secondary school or other academic institution and led by a teacher or other secondary school official. This includes participation by a reasonable number of adult chaperones to accompany the secondary school students to Cuba.

(7) Sponsorship or co-sponsorship of noncommercial academic seminars, conferences, and workshops related to Cuba or global issues involving Cuba and attendance at such events by faculty, staff, and students of a participating U.S. academic institution;

(8) The organization of, and preparation for, activities described in paragraphs (a)(1) through (a)(7) of this section by members of the faculty and staff of the sponsoring U.S. academic institution or secondary school; or

(9) Facilitation by an organization that is a person subject to U.S. jurisdiction, or a member of the staff of such an organization, of licensed educational activities in Cuba on behalf of U.S. academic institutions or secondary schools, provided that:

(i) The organization is directly affiliated with one or more U.S. academic institutions or secondary schools;

(ii) The organization facilitates educational activities that meet the requirements of one or more of the general licenses set forth in § 515.565(a)(1), (a)(2), (a)(3), and (a)(6); and

(iii) The educational activities the organization facilitates in Cuba must, by prior agreement, be accepted for credit by the affiliated U.S. academic institution or approved by the affiliated secondary school.

Note 1 to § 515.565(a): U.S. academic institutions or secondary schools engaging in activities authorized pursuant to this section are permitted to open and maintain accounts at Cuban financial institutions for the purpose of accessing funds in Cuba for transactions authorized pursuant to this section.

Note 2 to § 515.565(a): This paragraph authorizes all members of the faculty and staff (including adjunct faculty and part-time staff) of the sponsoring U.S. academic institution to participate in the activities described in this paragraph. A student currently enrolled in a U.S. academic institution is authorized pursuant to this paragraph to participate in the academic activities in Cuba described above through any sponsoring U.S. academic institution.

(b) *General license for people-to-people travel.* The travel-related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to educational exchanges not involving academic study pursuant to a degree program are authorized, provided that:

(1) The exchanges take place under the auspices of an organization that is a person subject to U.S. jurisdiction and that sponsors such exchanges to promote people-to-people contact;

(2) Travel-related transactions pursuant to this authorization must be for the purpose of engaging, while in Cuba, in a full-time schedule of activities intended to enhance contact with the Cuban people, support civil society in Cuba, or promote the Cuban people's independence from Cuban authorities;

(3) Each traveler has a full-time schedule of educational exchange activities that will result in meaningful interaction between the traveler and individuals in Cuba;

(4) An employee, paid consultant, or agent of the sponsoring organization accompanies each group traveling to Cuba to ensure that each traveler has a full-time schedule of educational exchange activities; and

(5) The predominant portion of the activities engaged in by individual travelers is not with individuals or entities acting for or on behalf of a prohibited official of the Government of Cuba, as defined in 31 CFR 515.337 of this part, or a prohibited member of the Cuban Communist Party, as defined in 31 CFR 515.338 of this part.

Example to § 515.565(b): An organization wishes to sponsor and organize educational exchanges not involving academic study pursuant to a degree program for individuals to learn side-by-side with Cuban individuals in areas such as environmental protection or the arts. The travelers will have a full-time schedule of educational exchange activities that will result in meaningful interaction between the travelers and individuals in Cuba. The organization's activities qualify for the general license.

Note to § 515.565(b): An organization that sponsors and organizes trips to Cuba in which travelers engage in individually selected and/or self-directed activities would not qualify for the general license. Authorized trips are expected to be led by the organization and to have a full-time schedule of activities in which the travelers will participate.

Note to § 515.565(a) and (b): Each person relying on the general authorizations in these paragraphs, including entities sponsoring travel pursuant to the authorization in § 515.565(b), must retain specific records related to the authorized travel transactions. See §§ 501.601 and 501.602 of this chapter for applicable recordkeeping and reporting requirements.

(c) Transactions related to activities that are primarily tourist-oriented, including self-directed educational activities that are intended only for personal enrichment, are not authorized pursuant to this section.

(d) *Specific licenses.* Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) and such other transactions as are related to educational activities that do not qualify for the general licenses under paragraph (a) or (b) of this section.

■ 19. Revise § 515.566 to read as follows:

§ 515.566 Religious activities in Cuba.

(a) *General license.* Persons subject to U.S. jurisdiction, including religious organizations located in the United States and members and staff of such organizations, are authorized to engage in the travel-related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to engaging in religious activities in Cuba, provided that the travel-related transactions pursuant to this authorization must be for the purpose of engaging, while in Cuba, in a full-time schedule of religious activities.

Note to § 515.566(a): Each person relying on the general authorization in this paragraph must retain specific records related to the authorized travel transactions. See §§ 501.601 and 501.602 of this chapter for applicable recordkeeping and reporting requirements.

(b) Financial and material donations to Cuba or Cuban nationals are not authorized by this section.

Note to § 515.566(b): See § 515.570 regarding authorized remittances to religious organizations in Cuba and for other purposes. See § 515.533 regarding the exportation of items from the United States to Cuba.

(c) *Specific licenses.* Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) and such other transactions as are related to religious activities that do not qualify for the general license under paragraph (a) of this section.

Note to § 515.566: Religious organizations engaging in activities authorized pursuant to this section are permitted to open and maintain accounts at Cuban financial institutions for the purpose of accessing funds in Cuba for transactions authorized pursuant to this section.

■ 20. Revise § 515.567 to read as follows:

§ 515.567 Public performances, clinics, workshops, athletic and other competitions, and exhibitions.

(a) *General license for amateur and semi-professional international sports federation competitions.* The travel-related transactions set forth in § 515.560(c) and such other transactions as are directly incident to athletic competition by amateur or semi-professional athletes or athletic teams traveling to participate in athletic competition in Cuba are authorized, provided that:

(1) The athletic competition in Cuba is held under the auspices of the international sports federation for the relevant sport;

(2) The U.S. participants in the athletic competition are selected by the U.S. federation for the relevant sport; and

(3) The competition is open for attendance, and in relevant situations, participation, by the Cuban public.

(b) *General license for public performances, clinics, workshops, other athletic or non-athletic competitions, and exhibitions.* The travel-related transactions set forth in § 515.560(c) and such other transactions as are directly incident to participation in a public performance, clinic, workshop, athletic competition not covered by paragraph (a) of this section, non-athletic competition, or exhibition in Cuba by participants in such activities are authorized, provided that:

(1) The event is open for attendance, and in relevant situations participation, by the Cuban public;

(2) All U.S. profits from the event after costs are donated to an independent nongovernmental organization in Cuba or a U.S.-based charity, with the objective, to the extent possible, of promoting people-to-people contacts or otherwise benefiting the Cuban people; and

(3) Any clinics or workshops in Cuba must be organized and run, at least in part, by the authorized traveler.

Example to § 515.567(a) and (b): An amateur baseball team wishes to travel to Cuba to compete against a Cuban team in a baseball game in Cuba. The game will *not* be held under the auspices of the international sports federation for baseball. The baseball team's activities therefore would not qualify for the general license in paragraph (a). The game will, however, be open to the Cuban public and any profits after costs from the game will be donated to an independent non-governmental organization in Cuba. The baseball team's activities would qualify for the general license in paragraph (b).

Note to § 515.567(a) and (b): Each person relying on the general authorizations in these paragraphs must retain specific records related to the authorized travel transactions. See §§ 501.601 and 501.602 of this chapter for applicable recordkeeping and reporting requirements.

(c) An entire group does not qualify for the general license in paragraph (a) or (b) of this section merely because some members of the group qualify individually.

(d) *Specific licenses.* Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) and such other transactions as are related to public performances, clinics, workshops, athletic and other competitions, and exhibitions that do not qualify for the general licenses under paragraphs (a) or (b) of this section.

■ 21. Amend § 515.569 by adding a Note to § 515.569 to read as follows:

§ 515.569 Foreign passengers' baggage.

* * * * *

Note to § 515.569: Pursuant to § 515.560(c)(3), a person other than a citizen or resident of the United States arriving in the United States on a trip that included Cuba is authorized to import as accompanied baggage alcohol or tobacco products purchased or otherwise acquired in Cuba with a value not to exceed $100 for personal use only. See § 515.560(c)(3).

■ 22. Amend § 515.570 by revising paragraphs (b), (d), and (g), adding new paragraph (h), redesignating the Note to § 515.570 as Note 1 to § 515.570 and revising it, and adding new Note 2 to § 515.570 to read as follows:

§ 515.570 Remittances.

* * * * *

(b) *Periodic remittances authorized.* Persons subject to the jurisdiction of the United States are authorized to make periodic remittances to Cuban nationals, provided that:

(1) The remitter's total remittances pursuant to paragraph (b) of this section to any one Cuban national do not exceed $2,000 in any consecutive three-month period;

(2) The remittances are not made from a blocked source;

(3) The recipient is not a prohibited official of the Government of Cuba, as defined in § 515.337 of this part, or a prohibited member of the Cuban Communist Party, as defined in § 515.338 of this part;

(4) The remittances are not made for emigration-related purposes. Remittances for emigration-related purposes are addressed by paragraph (e) of this section; and

(5) The remitter, if an individual, is 18 years of age or older.

* * * * *

(d) *Remittances to students in Cuba pursuant to an educational license authorized.* Persons subject to the jurisdiction of the United States who are 18 years of age or older are authorized to make remittances to close relatives, as defined in § 515.339 of this part, who are students in Cuba pursuant to the general license authorizing certain educational activities in § 515.565(a) or a specific license issued pursuant to § 515.565(d), provided that the remittances are not made from a blocked source and are for the purpose of funding transactions authorized by the general licenses in § 515.565(a) or the specific license issued pursuant to § 515.565(d) under which the student is traveling.

* * * * *

(g) *Remittances to certain individuals and independent non-governmental organizations in Cuba.* Remittances by persons subject to U.S. jurisdiction to individuals and independent non-governmental entities in Cuba, including pro-democracy groups and civil society groups, and to members of such groups or organizations, are authorized for the following purposes, provided that the remittances are not made from a blocked source:

(1) To support humanitarian projects in or related to Cuba that are designed to directly benefit the Cuban people, as set forth in § 515.575(b);

(2) To support the Cuban people through activities of recognized human rights organizations, independent organizations designed to promote a rapid, peaceful transition to democracy, and activities of individuals and non-governmental organizations that promote independent activity intended to strengthen civil society in Cuba; and

(3) To support the development of private businesses, including small farms.

(h) *Specific licenses.* Specific licenses may be issued on a case-by-case basis authorizing the following:

(1) Remittances by persons subject to U.S. jurisdiction to a person in Cuba, directly or indirectly, for transactions to facilitate non-immigrant travel by an individual in Cuba to the United States under circumstances where humanitarian need is demonstrated,

including illness or other medical emergency.

(2) Remittances from a blocked account to a Cuban national in excess of the amount specified in paragraph (f)(2) of this section.

Note 1 to § 515.570: This section does not authorize investment with respect to Cuba.

Note 2 to § 515.570: For the rules relating to the carrying of remittances to Cuba, see § 515.560(c)(4). See § 515.572 for an authorization related to the collection or forwarding of certain remittances to Cuba.

■ 23. Amend § 515.571 by revising the introductory text to paragraph (a), revising paragraph (a)(3) and the introductory text to paragraph (a)(5), adding a new Note to § 515.571(a)(5), adding a new Note to § 515.571(a), revising the introductory text to paragraph (b), and revising the Note to § 515.571 to read as follows:

§ 515.571 Certain transactions incident to travel to, from, and within the United States by Cuban nationals.

(a) Except as provided in paragraph (c) of this section, the following transactions by or on behalf of a Cuban national who is present in the United States in a non-immigrant status or pursuant to other non-immigrant travel authorization issued by the U.S. government are authorized:

* * * * *

(3) All transactions on behalf of aircraft or vessels incident to flights or voyages between the United States and Cuba, provided that the carrier services are authorized pursuant to § 515.572. This paragraph does not authorize the carriage of any merchandise into the United States except accompanied baggage; and

* * * * *

(5) All transactions ordinarily incident to the Cuban national's presence in the United States in a non-immigrant status or other non-immigrant travel authorization issued by the U.S. government.

* * * * *

Note to § 515.571(a)(5): This paragraph authorizes depository institutions to open and maintain accounts for a Cuban national who is present in the United States in a non-immigrant status or pursuant to other non-immigrant travel authorization for the duration of the Cuban national's stay in the United States in such status, and to close such accounts prior to the departure of the Cuban national from the United States. Accounts that are not closed prior to the departure of such a Cuban national from the United States must be blocked and reported as such.

Note to § 515.571(a): This paragraph authorizes the provision or receipt of emergency medical services and making or receipt of payment related thereto.

(b) Payments and transfers of credit in the United States from blocked accounts in domestic banking institutions held in the name of a Cuban national who is present in the United States in a non-immigrant status or pursuant to other non-immigrant travel authorization issued by the U.S. government to or upon the order of such Cuban national are authorized provided that:

* * * * *

Note to § 515.571: For the authorization of certain transactions by Cuban nationals who become U.S. citizens; are lawful permanent resident aliens of the United States; have applied to become a lawful permanent resident alien of the United States and have an adjustment of status application pending; or are lawfully present and intending to lawfully remain in the United States on a permanent basis, see § 515.505 of this part.

■ 24. Revise § 515.572 to read as follows:

§ 515.572 Authorization to provide travel services, carrier services, and remittance forwarding services.

(a) *General licenses*—(1) *Authorization to provide travel services.* Persons subject to U.S. jurisdiction are authorized to provide travel services in connection with travel-related transactions involving Cuba authorized pursuant to this part.

(2) *Authorization to provide carrier services.* Persons subject to U.S. jurisdiction are authorized to provide carrier services by aircraft to, from, or within Cuba in connection with travel or transportation to Cuba of persons, baggage, or cargo authorized pursuant to this part.

Note to § 515.572(a)(2): Carriage to or from Cuba of any item subject to the Export Administration Regulations (15 CFR part 730 *et seq.*) may also require separate authorization from the Department of Commerce. See § 515.533.

(3) *Authorization to provide remittance forwarding services.* Banking institutions, as defined in § 515.314, including U.S.-registered brokers or dealers in securities and U.S.-registered money transmitters, are authorized to provide services in connection with the collection or forwarding of remittances authorized pursuant to this part.

Note to § 515.572(a): Section 515.564 authorizes employees, officials, consultants, or agents of persons subject to U.S. jurisdiction providing travel or carrier services or remittance forwarding services authorized pursuant to this part to engage in the travel-related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to travel to Cuba for professional meetings in Cuba, such as those related to safety and security of flights to and from Cuba, or necessary to arrange for travel or carrier services or remittance forwarding to Cuba.

(b) *Required reports and recordkeeping.* (1) Persons subject to U.S. jurisdiction providing services authorized pursuant to this section must retain for at least five years from the date of the transaction a certification from each customer indicating the section of this part that authorizes the person to travel or send remittances to Cuba. In the case of a customer traveling under a specific license, a copy of the license must be maintained on file with the person subject to U.S. jurisdiction providing services authorized pursuant to this section.

(2) The names and addresses of individual travelers or remitters, the number and amount of each remittance, and the name and address of each recipient, as applicable, must be retained on file with all other information required by § 501.601 of this chapter. These records must be furnished to the Office of Foreign Assets Control on demand pursuant to § 501.602 of this chapter.

(c) *Specific licenses.* Specific licenses may be issued on a case-by-case basis authorizing the provision of travel-, carrier-, or remittance forwarding-services other than those authorized by paragraph (a) of this section, including the transportation of authorized travelers by vessels.

■ 25. Amend § 515.573 by revising the introductory text to paragraph (a), revising paragraph (c), removing paragraph (d), and adding new Note to § 515.573 to read as follows:

§ 515.573 Transactions by news organizations.

(a) All transactions necessary for the establishment and operation of news bureaus in Cuba whose primary purpose is the gathering and dissemination of news to the general public are authorized, including such other transactions as are incident to the following:

* * * * *

(c) The hiring and employment of Cuban nationals in Cuba to provide reporting services or other services related to the gathering and dissemination of news is authorized.

Note to § 515.573: The export or reexport to Cuba of items subject to the Export Administration Regulations (15 CFR part 730 *et seq.*) may require separate authorization from the Department of Commerce.

■ 26. Revise § 515.574 to read as follows:

§ 515.574 Support for the Cuban People.

(a) *General license.* The travel-related transactions set forth in § 515.560(c) and other transactions that are intended to provide support for the Cuban people are authorized, provided that:

(1) The activities are of:

(i) Recognized human rights organizations;

(ii) Independent organizations designed to promote a rapid, peaceful transition to democracy; or

(iii) Individuals and non-governmental organizations that promote independent activity intended to strengthen civil society in Cuba; and

(2) The traveler's schedule of activities does not include free time or recreation in excess of that consistent with a full-time schedule.

Note to § 515.574(a): Each person relying on the general authorization in this paragraph must retain specific records related to the authorized travel transactions. See §§ 501.601 and 501.602 of this chapter for applicable recordkeeping and reporting requirements.

(b) An entire group does not qualify for the general license in paragraph (a) of this section merely because some members of the group qualify individually.

(c) *Specific licenses.* Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) and such other transactions as are related to support for the Cuban people that do not qualify for the general license under paragraph (a) of this section.

■ 27. Revise § 515.575 to read as follows:

§ 515.575 Humanitarian projects.

(a) *General license.* Transactions, including the travel-related transactions set forth in § 515.560(c), that are related to the humanitarian projects in or related to Cuba that are designed to directly benefit the Cuban people as set forth in paragraph (b) are authorized, provided that the traveler's schedule of activities does not include free time or recreation in excess of that consistent with a full-time schedule.

Note to § 515.575(a): Each person relying on the general authorization in this paragraph must retain specific records related to the authorized travel transactions. See §§ 501.601 and 501.602 of this chapter for applicable recordkeeping and reporting requirements.

(b) *Authorized humanitarian projects.* The following projects are authorized by paragraph (a) of this section: medical and health-related projects; construction projects intended to benefit legitimately independent civil society groups; environmental projects; projects involving formal or non-formal educational training, within Cuba or off-island, on the following topics: entrepreneurship and business, civil education, journalism, advocacy and organizing, adult literacy, or vocational skills; community-based grassroots projects; projects suitable to the development of small-scale private enterprise; projects that are related to agricultural and rural development that promote independent activity; microfinancing projects, except for loans, extensions of credit, or other financing prohibited by § 515.208; and projects to meet basic human needs.

Example to § 515.575(b): A U.S. group of medical professionals that specializes in disease treatment wishes to support a community in Cuba by providing the latest techniques and literature in disease education and prevention directly to the Cuban people. Provided that the medical professionals in the group maintain a full-time schedule related to disease education and prevention, these activities qualify for the general license.

(c) An entire group does not qualify for the general license in paragraph (a) of this section merely because some members of the group qualify individually.

(d) *Specific licenses.* Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) and such other transactions as are related to humanitarian projects that do not qualify for the general license under paragraph (a) of this section.

■ 28. Revise § 515.576 to read as follows:

§ 515.576 Activities of private foundations or research or educational institutes.

(a) *General license.* The travel-related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to activities by private foundations or research or educational institutes with an established interest in international relations to collect information related to Cuba for noncommercial purposes are authorized, provided that the traveler's schedule of activities does not include free time or recreation in excess of that consistent with a full-time schedule.

Example to § 515.576(a): A private research foundation that produces essays on international relations issues wishes to send a team made up of its employees and consultants to Cuba to collect information for a current study of the relationship that countries in the Western Hemisphere have with European countries. Provided that all of the employees and consultants on the team maintain a full-time schedule of activities relating to the collection of information for the study, these activities qualify for the general license.

Note to § 515.576(a): Each person relying on the general authorization in this paragraph must retain specific records related to the authorized travel transactions. See §§ 501.601 and 501.602 of this chapter for applicable recordkeeping and reporting requirements.

(b) An entire group does not qualify for the general license in paragraph (a) of this section merely because some members of the group qualify individually.

(c) *Specific licenses.* Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) and such other transactions as are related to activities of private foundations or research or educational institutes that do not qualify for the general license under paragraph (a) of this section.

■ 29. Revise § 515.578 to read as follows:

§ 515.578 Exportation and reexportation of certain internet-based services.

(a) Except as provided in paragraph (b) of this section, the following transactions are authorized:

(1) *Certain internet-based services.* The exportation or reexportation, directly or indirectly, from the United States or by a person subject to U.S. jurisdiction to Cuba of services incident to the exchange of communications over the internet, such as instant messaging, chat and email, social networking, sharing of photos and movies, web browsing, blogging, web hosting provided that it is not for the promotion of tourism, and domain name registration services.

(2) *Services related to certain exportations and reexportations.* To the extent not authorized by paragraph (a)(1) of this section or by § 515.533, the exportation or reexportation of services, including software design, business consulting, and information technology management services (including cloud storage), that are related to the following items, or of services to install, repair (including repair training), or replace such items:

(i) *Items subject to the EAR.* In the case of items subject to the Export Administration Regulations (EAR) (15 CFR part 730 *et seq.*), items exported or reexported to Cuba pursuant to 15 CFR 740.19 (License Exception Consumer Communication Devices (CCD));

(ii) *Items not subject to the EAR because they are of foreign origin and are located outside the United States.* In the case of items not subject to the EAR because they are of foreign origin and are located outside the United States

that are exported, reexported, or provided, directly or indirectly, by a person subject to U.S. jurisdiction to Cuba pursuant to a specific license issued under § 515.559, items that are of a type described in License Exception CCD provided that the items would be designated EAR99 if they were located in the United States or would meet the criteria for classification under the relevant ECCN specified in License Exception CCD if they were subject to the EAR; and

(iii) *Software not subject to the EAR because it is described in 15 CFR 734.3(b)(3).* In the case of software not subject to the EAR because it is described in 15 CFR 734.3(b)(3) that is exported, reexported, or provided, directly or indirectly, by a person subject to U.S. jurisdiction to Cuba, software that is of a type described in License Exception CCD.

(3) *Importation into the United States of certain items previously exported to Cuba.* The importation into the United States of items described in paragraph (2)(i)–(iii) of this section by an individual entering the United States, directly or indirectly, from Cuba.

(4) *Exportation, reexportation, or provision of no cost services that are widely available to the public.* The exportation or reexportation, directly or indirectly, from the United States or by persons subject to U.S. jurisdiction, to a prohibited official of the Government of Cuba, as defined in § 515.337 of this part, or a prohibited member of the Cuban Communist Party, as defined in § 515.338 of this part, or to organizations administered or controlled by the Government of Cuba or the Cuban Communist Party, of services described in paragraph (a)(1) of this section or services related to items exported or reexported pursuant to License Exception CCD, provided that such services are widely available to the public at no cost to the user.

Note 1 to § 515.578(a): The export or reexport to Cuba of items subject subject to the Export Administration Regulations (15 CFR part 730 *et seq.*) may require separate authorization from the Department of Commerce.

Note 2 to § 515.578(a): For an authorization of transactions related to the provision of telecommunications services, see § 515.542.

(b) This section does not authorize:

(1) The direct or indirect exportation or reexportation of services with knowledge or reason to know that such services are intended for a prohibited official of the Government of Cuba, as defined in § 515.337 of this part, or a prohibited member of the Cuban Communist Party, as defined in § 515.338 of this part, or to organizations administered or controlled by the Government of Cuba or the Cuban Communist Party, except for the services specified in paragraph (a)(4) of this section.

(2) The direct or indirect exportation of any items to Cuba.

Note to § 515.578(b)(2): For provisions related to transactions ordinarily incident to the exportation or reexportation of items, including software, to Cuba, see §§ 515.533 and 515.559.

(c) *Specific licenses.* Specific licenses may be issued on a case-by-case basis for the exportation of other internet-based services.

■ 30. Revise § 515.579 to read as follows:

§ 515.579 Funds transfers for third-country official missions and certain intergovernmental organizations.

(a) Depository institutions, as defined in § 515.333, are authorized to process funds transfers for the operating expenses or other official business in Cuba of third-country official missions or any intergovernmental organization in which the United States is a member or holds observer status.

(b) Depository institutions, as defined in § 515.333, are authorized to process funds transfers and maintain accounts for the personal expenditures of the employees, grantees, and contractors, or persons who share a common dwelling as a family member of such employees, grantees, and contractors, of third-country official missions or any intergovernmental organization in which the United States is a member or holds observer status in Cuba.

■ 31. Add § 515.580 to read as follows:

§ 515.580 Global insurance policies covering individuals traveling to Cuba.

Persons subject to U.S. jurisdiction are authorized to issue or provide coverage for global health, life, or travel insurance policies for individuals ordinarily resident in a country outside of Cuba who travel to or within Cuba. Persons subject to U.S. jurisdiction are authorized to service those policies and pay claims arising from events that occurred while the individual was traveling in, or to or from, Cuba.

Note to § 515.580: Certain insurance-related services for persons subject to U.S. jurisdiction traveling to, from, or within Cuba are authorized pursuant to § 515.560. See Note 2 to § 515.560.

■ 32. Add § 515.581 to read as follows:

§ 515.581 Transactions related to conferences in third countries authorized.

Persons subject to U.S. jurisdiction are authorized to sponsor, provide services in connection with, and participate in conferences or other similar events in a third country that are attended by Cuban nationals, provided that the conference or other similar event does not relate to tourism in Cuba.

Note to § 515.581: The export or reexport to Cuba of technology subject to the Export Administration Regulations (15 CFR part 730 *et seq.*) may require separate authorization from the Department of Commerce.

■ 33. Add § 515.582 to read as follows:

§ 515.582 Importation of certain goods and services produced by independent Cuban entrepreneurs.

Persons subject to U.S. jurisdiction are authorized to engage in all transactions, including payments, necessary to import certain goods and services produced by independent Cuban entrepreneurs as determined by the State Department as set forth on the State Department's Section 515.582 List, located at *http://www.state.gov/e/eb/tfs/spi/.*

Note 1 to § 515.582: As of the date of publication in the **Federal Register** of the final rule including this provision, January 16, 2015, the State Department's Section 515.582 List has not yet been published on its Web site. The State Department's Section 515.582 list also will be published in the **Federal Register**, as will any changes to the list.

Note 2 to § 515.582: Imports authorized by this section are not subject to the limitations set forth in § 515.560(c).

■ 34. Add § 515.583 to read as follows:

§ 515.583 Provision of certain goods and services to Cuban nationals sequestered aboard vessels in U.S. ports.

The provision of goods and services ordinarily incident and necessary to the personal maintenance of Cuban nationals who are prohibited from disembarking from vessels in U.S. ports is authorized.

■ 35. Add § 515.584 to read as follows:

§ 515.584 Certain financial transactions involving Cuba.

(a) *Correspondent accounts.* Depository institutions, as defined in § 515.333, are authorized to engage in all transactions necessary to establish and maintain correspondent accounts at a financial institution that is a national of Cuba, provided that such accounts are used only for transactions authorized pursuant to, or exempt from, this part.

Note to § 515.584(a): This section does not authorize the establishment and maintenance of accounts in the United States or with a person subject to U.S. jurisdiction by, on behalf of, or for the benefit of, Cuba or a Cuban national.

(b) *Testing arrangements.* Depository institutions are authorized to set up testing arrangements and exchange authenticator keys with any financial institution that is a national of Cuba for transactions authorized pursuant to, or exempt from, this part.

(c) *Credit and debit cards.* All transactions incident to the processing and payment of credit and debit cards involving travel-related and other transactions consistent with § 515.560 are authorized.

(d) *Wire transfers.* Any depository institution, as defined in § 515.333, that is a person subject to U.S. jurisdiction is authorized to:

(1) Reject funds transfers originating and terminating outside the United States where neither the originator nor the beneficiary is a person subject to U.S. jurisdiction and provided that a prohibited official of the Government of Cuba, as defined in § 515.337 of this part, or a prohibited member of the Cuban Communist Party, as defined in § 515.338 of this part, does not have an interest in the transfer; and

(2) Provided that neither the originator nor the beneficiary is a person subject to U.S. jurisdiction, process funds transfers originating and terminating outside the United States relating to transactions that would be authorized pursuant to this part if the originator or beneficiary were a person subject to U.S. jurisdiction.

■ 36. Add § 515.585 to read as follows:

§ 515.585 Certain transactions by U.S.-owned or -controlled firms in third countries with certain Cuban nationals.

Any U.S.-owned or -controlled partnership, association, corporation, or other organization in a third country is authorized to provide goods and services to a Cuban national who is an individual located outside of Cuba, provided that the transaction does not involve a commercial exportation, directly or indirectly, of goods or services to or from Cuba.

Note 1 to § 515.585: This section does not authorize U.S.-owned or -controlled firms in third countries to export to Cuba commodities produced in the authorized trade territory. See § 515.559.

Note 2 to § 515.585: This section does not authorize U.S.-owned or -controlled firms in third countries to reexport to Cuba U.S.-origin items. See § 515.533.

Note 3 to § 515.585: This section does not authorize any transaction prohibited by § 515.204, including the purchase or sale of Cuban-origin goods.

Note 4 to § 515.585: The export or reexport to Cuba of items subject to the Export Administration Regulations (15 CFR part 730 *et seq.*) requires separate authorization from the Department of Commerce.

■ 37. Add § 515.586 to read as follows:

§ 515.586 Cuban official missions in the United States.

(a) The provision of goods or services in the United States to the official missions of the Government of Cuba to the United States and to international organizations in the United States and payment for such goods or services are authorized, provided that:

(1) The goods or services are for the conduct of the official business of the missions, or for personal use of the employees, or persons who share a common dwelling as a family member of such an employee, of the missions, and are not for resale;

(2) The transaction does not involve the purchase, sale, financing, or refinancing of real property; and

(3) The transaction is not otherwise prohibited by law.

(b) The provision of goods or services in the United States to the employees, or persons who share a common dwelling as a family member of such an employee, of the official missions of the Government of Cuba to the United States and to international organizations in the United States and payment for such goods or services are authorized, provided that:

(1) The goods or services are for personal use of the employees, or persons who share a common dwelling as a family member of such an employee, of the missions, and are not for resale; and

(2) The transaction is not otherwise prohibited by law.

(c) Depository institutions, as defined in § 515.333, are authorized to operate accounts for, or extend credit to, the official missions of the Government of Cuba to the United States, and the official missions of the Government of Cuba to international organizations in the United States, and employees thereof, subject to the limitations in paragraphs (a) and (b) of this section and provided that any depository institution making use of the authorization in this section must submit a report to the Department of the Treasury, Office of Foreign Assets Control, Washington, DC 20220, no later than 30 days following the establishment of the account. Such report shall include the name and address of the depository institution, the name of the account holder, and the account number.

Dated: January 13, 2015.

John E. Smith,

Acting Director, Office of Foreign Assets Control.

Approved: January 13, 2015.

David S. Cohen,

Under Secretary, Office of Terrorism and Financial Intelligence, Department of the Treasury.

[FR Doc. 2015–00632 Filed 1–15–15; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2014–1066]

Drawbridge Operation Regulation; Atchafalaya River, Morgan City, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from drawbridge regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the regulation governing the operation of the Morgan City(Berwick Bay) Railroad Bridge across the Atchafalaya River, mile 17.5 (Gulf Intracoastal Waterway (Morgan City-Port Allen Alternate Route) mile 0.3) in Morgan City, St. Mary's Parish, Louisiana. This deviation provides for the bridge to remain closed to navigation for four consecutive hours in the morning and three hours in the afternoon with an opening in the middle to pass vessels. This will last for six consecutive days. The purpose of the closure is to conduct scheduled maintenance and repairs to the drawbridge.

DATES: This deviation is effective from 7 a.m. to 11 a.m. and then again from 1 p.m. through 4 p.m. daily from January 26 through January 31, 2015.

ADDRESSES: The docket for this deviation, [USCG–2014–1066] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this 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 temporary

deviation, call or email Jim Wetherington, Bridge Administration Branch, Coast Guard, telephone (504) 671–2128, email *james.r.wetherington@uscg.mil.* If you have questions on viewing the docket, call Cheryl F. Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The BNSF Railway Company requested a temporary deviation from the normal operation of the drawbridge in order to perform the installation of new generators and the removal of the old festoon cable. These repairs and scheduled maintenance are necessary for the continued operation of the bridge. This deviation allows the draw of the Morgan City (Berwick Bay) Railroad Bridge across the Atchafalaya River, mile 17.5 (Gulf Intracoastal Waterway (Morgan City-Port Allen Alternate Route) mile 0.3), to remain closed to navigation for four consecutive hours in the morning and three hours in the afternoon with an opening in the middle to pass vessels. The deviation is effective from 7 a.m. to 11 a.m. and then again from 1 p.m. through 4 p.m. daily from January 26 through January 31, 2015.

Broadcast Notice to Mariners will be used to update mariners of any changes in this deviation.

The bridge has a vertical clearance of 4 feet above high water in the closed-to-navigation position and 73 feet above high water in the open-to-navigation position. Navigation on the waterway consists of tugs with tows, oil industry related work boats and crew boats, commercial fishing vessels and some recreational craft. In accordance with 33 CFR 117.5, the draw of the bridge shall open on signal. The Morgan City-Port Allen Landside route through Amelia, LA is the alternate route.

BNSF and the Coast Guard have coordinated the closure with waterway users, industry, and other Coast Guard units. This date and this schedule were chosen to minimize the significant effects on vessel traffic.

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

Dated: January 9, 2015.

David M. Frank,

Bridge Administrator, Eighth Coast Guard District.

[FR Doc. 2015–00592 Filed 1–15–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2014–1073]

Drawbridge Operation Regulation; Gulf Intracoastal Waterway, Galveston, TX

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from drawbridge regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the operation of the Galveston Causeway Railroad Vertical Lift Bridge across the Gulf Intracoastal Waterway, mile 357.2 west of Harvey Locks, at Galveston, Galveston County, Texas. The deviation is necessary in order to conduct maintenance on the bridge. This deviation allows the bridge to remain temporarily closed to navigation for 5 hours on two consecutive days during day light hours and will operate normally at all other times.

DATES: This deviation is effective from 7 a.m. through noon, daily, on February 2 and February 3, 2015.

ADDRESSES: The docket for this deviation, [USCG–2014–1073] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. 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 temporary deviation, call or email Jim Wetherington, Bridge Administration Branch, Coast Guard; telephone 504–671–2128, email *james.r.wetherington@uscg.mil.* If you have questions on viewing the docket, call Cheryl F. Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The BNSF Railway Company requested a temporary deviation from the operating schedule of the Galveston Causeway Railroad Vertical Lift Bridge across the Gulf Intracoastal Waterway, mile 357.2 west of Harvey Locks, at Galveston, Galveston County, Texas.

The bridge has a vertical clearance of 8.0 feet above mean high water, elevation 3.0 feet NAVD88, in the closed-to-navigation position and 73 feet above mean high water in the open-to-navigation position. In accordance with 33 CFR 117.5, the draw shall open on signal for the passage of vessels.

This temporary deviation allows the vertical lift bridge to remain closed to navigation from 7 a.m. through noon, daily, February 2 and February 3, 2015. During this time, the bridge owner will complete tie replacement, surfacing, and signal work. If the vessel can safely pass without an opening, the vessel may pass at the slowest safe speed. The bridge can open in case of emergency.

Navigation at the site of the bridge consists mainly of tows with barges and some recreational pleasure craft. Based on known waterway users, as well as coordination with those waterway users, it has been determined that this closure will not have a significant effect on these vessels. No alternate routes are available.

In accordance with 33 CFR 117.35, the draw bridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation.

This deviation from the operating regulations is authorized under 33 CFR 117.35

Dated: January 9, 2015.

David M. Frank,

Bridge Administrator, Eighth Coast Guard District.

[FR Doc. 2015–00593 Filed 1–15–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Parts 2, 6, and 7

[Docket No. PTO–T–2013–0026]

RIN 0651–AC88

Miscellaneous Changes to Trademark Rules of Practice and the Rules of Practice in Filings Pursuant to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (''Office'') is revising the Trademark Rules of Practice and the Rules of Practice in Filings Pursuant to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks to benefit the

public by providing greater clarity as to certain requirements relating to representation before the Office, applications for registration, examination procedures, amendment of applications, publication and post publication procedures, appeals, petitions, post registration practice, correspondence in trademark cases, classification of goods and services, and procedures under the Madrid Protocol. For the most part, the rule changes are intended to codify existing practice.

DATES: This rule is effective February 17, 2015.

FOR FURTHER INFORMATION CONTACT: Cynthia C. Lynch, Office of the Deputy Commissioner for Trademark Examination Policy, by email at *TMPolicy@uspto.gov,* or by telephone at (571) 272–8742.

SUPPLEMENTARY INFORMATION:

Executive Summary: Purpose: The rule changes benefit the public by providing more comprehensive and specific guidance regarding certain requirements relating to representation before the Office, applications for registration, examination procedures, amendment of applications, publication and post publication procedures, appeals, petitions, post registration practice, correspondence in trademark cases, classification of goods and services, and procedures under the Madrid Protocol. For the most part, the rule changes codify existing practice.

Summary of Major Provisions: As stated above, the Office is revising the rules in parts 2, 6, and 7 of title 37 of the Code of Federal Regulations to codify current Office practice and provide sufficient detail regarding miscellaneous requirements relating to representation before the Office, applications for registration, examination procedures, amendment of applications, publication and post publication procedures, appeals, petitions, post registration practice, correspondence in trademark cases, classification of goods and services, and procedures under the Madrid Protocol.

Costs and Benefits: This rulemaking is not economically significant under Executive Order 12866 (Sept. 30, 1993).

Proposed Rule and Request for Comments:

A proposed rule was published in the **Federal Register** on January 23, 2014, at 79 FR 3750, and in the *Official Gazette* on April 8, 2014. The Office received comments from two intellectual property organizations and one attorney. These comments are posted on the Office's Web site at *http://www.uspto.gov/trademarks/law/FR_Comments_Misc_Changes.jsp*, and are addressed below.

References below to ''the Act,'' ''the Trademark Act,'' or ''the statute'' refer to the Trademark Act of 1946, 15 U.S.C. 1051 *et seq.,* as amended. References to ''TMEP'' or ''*Trademark Manual of Examining Procedure''* refer to the October 2014 edition.

Comments and Responses

The Office received many positive comments in favor of the rule changes and appreciates the public support. To streamline this Notice, such comments expressing support are not individually set forth and no specific responses to such comments are provided.

Applications for Registration

Comment: One commenter agreed with the proposal to remove existing § 2.38(b), but expressed concern regarding any possible effect the rule may have on existing registrations issued pursuant to sections 66(a) and 44(e) of the Act that were not required to indicate if the applied-for mark was being used by one or more related companies, rather than the applicant. Therefore, the commenter encouraged the Office to include a statement that registrations issued under previous versions of § 2.38(b) shall not be vulnerable to challenge due to the omission of information concerning use of the mark solely by related companies whose use inures to the benefit of the applicant under section 5 of the Act.

Response: As noted by the commenter, evidence of use of the mark in commerce is not required for registrations issued pursuant to sections 66(a) or 44(e) of the Act. Accordingly, the requirement under current § 2.38(b) that an applicant indicate when the applied-for mark is not being used by the applicant but is instead being used by one or more related companies whose use inures to the benefit of the applicant is not applicable to registrations issued pursuant to sections 66(a) or 44(e) of the Act. Because such requirement did not apply to registrations issued pursuant to sections 66(a) or 44(e) of the Act, the Office does not believe it is necessary to include a statement regarding the omission of such information in an application under sections 66(a) or 44(e) of the Act under the current rule.

Examination of Application and Action by Applicants

Comment: One commenter inquired as to whether the amendment to add new § 2.62(c) would affect the Office's current practice of encouraging informal communication between applicants (or their representatives) and examining attorneys regarding issues that are capable of resolution by examiner's amendment, and encouraged the Office to investigate potential means for allowing formal responses to be submitted via email.

Response: The Office continues to encourage informal communication between applicants (or their representatives) and examining attorneys regarding issues that are capable of resolution by examiner's amendment, and the revision to § 2.62 in no way affects the Office's position on such informal communications. In addition, the Office is continually investigating alternative procedures that may assist both examining attorneys and applicants (or their representatives) in expediting the examination process.

Comment: Another commenter noted that under proposed § 2.63(a)(2), if a petition to the Director under § 2.146 is denied, the applicant is granted six months from the ''date'' of the Office action that repeated the requirement(s), or thirty days from the date of the decision on the petition, whichever is later, to comply with the repeated requirement(s). By contrast, the commenter noted that under proposed § 2.63(c), if a petition to the Director under § 2.146 is denied, the applicant is granted six months from the ''date of issuance'' of the Office action that repeated the requirement(s), or made it final, or thirty days from the date of the decision on the petition, whichever date is later, to comply with the requirement(s). The commenter suggested that, in order to ensure clarity, the language in proposed §§ 2.63(a)(2) and 2.63(c) be made consistent.

Response: As both the applicable response deadlines after a denial of a petition to the Director under § 2.146 and the statement that a requirement that is the subject of a petition decided by the Director may not subsequently be the subject of an appeal to the Trademark Trial and Appeals Board (TTAB) are set out in new § 2.63(c), such information has been removed from § 2.63(a)(2).

Amendment of Application

Comment: One commenter noted that a process to allow an applicant to request an amendment not specifically listed in § 2.77(a) between the issuance of the notice of allowance and the filing of the statement of use should be available, but the denial of a petition because the issues require review by the examining attorney introduces uncertainty and delay into the process. The commenter therefore encouraged

the Office to consider adopting a process similar to the on-line process currently available to request an amendment between publication of the application for opposition and issuance of the notice of allowance.

Response: Under amended § 2.77(b), if the Director determines that a proposed post-notice of allowance and pre-statement of use amendment does not require review by the examining attorney, the petition will be granted, and the amendment entered into the record. If the Director determines that the proposed post-notice of allowance and pre-statement of use amendment requires review by the examining attorney, the petition will be denied, and the applicant may resubmit the proposed amendment with the statement of use. In the case of proposed amendments submitted after the issuance of the notice of allowance but prior to the submission of a statement of use, regardless of jurisdiction with the examining attorney, an Office action detailing a refusal or requirement that may arise from a proposed amendment cannot issue at that time because it would create a response deadline that differed from the statement of use filing deadline. The complexity of tracking these two different concurrent deadlines presents system problems for the Office and could create confusion for applicants, examining attorneys, and the TTAB that may lead to files being mistakenly abandoned for failure to file a timely response or statement of use and missed opportunities for appealing final requirements and refusals. Additionally, because an examining attorney cannot issue a refusal or requirement after the issuance of the notice of allowance but before the filing of the statement of use, if the Director determined that a proposed amendment required review by an examining attorney and granted the petition, an applicant might mistakenly believe that the proposed amendment has been granted because of the delay in issuing an Office action detailing the issues with the proposed amendment until after the submission of the statement of use. As written, proposed § 2.77(b) will expedite the entry of acceptable amendments, facilitate clarity, and provide the applicant with the most accurate and timely information regarding the status of a proposed amendment.

Publication and Post Publication

Comment: One commenter expressed its support for the proposed revision to § 2.81(b) to remove the list of items that will be included on the notice of allowance to allow greater flexibility in the format of the notice of allowance for changes that may occur in conjunction with the Office's ''Trademarks Next Generation'' information-technology initiative, but encouraged the Office to seek stakeholder input before making substantial changes to the current format of the notice of allowance.

Response: The Office continues to welcome stakeholder input regarding the ''Trademarks Next Generation'' information technology initiative and will provide sufficient notice prior to revising forms.

Madrid Protocol

Comment: One commenter stated the proposed amendment to § 7.11(a)(3)(ii) was not consistent with the *Common Regulations under the Madrid Agreement Concerning the International Registration of Marks and the Protocol Relating to that Agreement* (as in force on January 1, 2013) (hereinafter ''Common Regulations''), and that under the Common Regulations, the requirement for both black-and-white and color reproductions of the mark applies to all applications, whether filed on paper or electronically.

Response: Based on the concern raised by the commenter about consistency with the Common Regulations, the Office will explore the matter further and is withdrawing the proposed amendment to § 7.11(a)(3)(ii) at this time.

Comment: Another commenter stated that the structure of § 7.23 should be revisited, as the rule appears to apply only to assignments, while Article 9 of the Madrid Protocol and Rule 25 of the Common Regulations apply broadly to all possible ownership changes, including following the death of the holder, judicial decisions, and mergers. In those contexts, the requirement for a ''good-faith effort'' to obtain the signature of the former owner should be revisited.

Response: While § 7.23 refers to ''assignments,'' both in the title and in the body, the Office interprets this term broadly to encompass not only assignments but also other types of conveyances, such as mergers and court-ordered changes. This corresponds with the practice in the Office's Assignment Recordation Branch, where the term ''assignments'' is used in the title of the unit and in documentation, but is interpreted to include not only assignments but also other types of conveyances, such as changes of name and security interests. In order to ensure clarity, the Office has revised § 7.23(a)(5) to indicate that, when the holder no longer exists, the assignee does not have to make a good-faith effort to obtain the assignor's signature.

Comment: Another commenter stated that the amendment to § 7.23(a)(6) does not cover all possible scenarios under which an interested party would be qualified to request a change of ownership through the Office, which appears contrary to Common Regulations Rules 25(1)(b) and 25(2)(a)(iv). Furthermore, the commenter alleged that § 7.23(a)(6) is redundant and should be expunged since § 7.23(a)(4) mentions entitlement requirements, and the Common Regulations do not impose the limitations set forth in § 7.23(a)(6) on an assignee of an international registration to be able to record an assignment through the Office.

Response: While the International Bureau permits requests for changes of ownership to be presented through the office of a contacting party, the Office is not required to do so. The rule change broadens the ability of U.S. trademark owners, who otherwise could not obtain the signature of the former holder after a good-faith effort, to update ownership information with the International Bureau. While the revised rule could not be invoked by parties with no connection to the Office (*e.g.,* a U.S. domestic application/registration or request for extension of protection), those parties have a remedy. They have the option to file a petition to the Director and, upon a showing of extraordinary circumstances, request a waiver of the requirements of § 7.23(a)(6). Since there are transferees who do not qualify to invoke the amended rule, § 7.23(a)(6) is not redundant.

Comment: One commenter addressed the proposed amendment to § 7.24(b)(5)(ii) to require that a request, submitted through the Office, to record a restriction, or the release of a restriction, that is the result of an agreement between the holder of the international registration and the party restricting the holder's right of disposal must include a statement indicating that, after making a good-faith effort, the signature of the holder of the international registration could not be obtained for the request to record the restriction, or release of the restriction, and such statement must be signed and verified or supported by declaration under § 2.20. The commenter noted that the proposed amendment appears to be acceptable in so far as it purports to implement Common Regulations Rule 20(1)(b), but alleged that the current provisions of § 7.24 are not in compliance with the Common Regulations because § 7.24(a) offers the

opportunity to record a restriction through the Office only if the party who obtained the restriction is a national of, is domiciled in, or has a real and effective industrial or commercial establishment in the U.S. The commenter believes that Common Regulations Rule 20(1)(a) dictates that whether or not the holder is a U.S. subject should control.

Response: While Common Regulations Rule 20(1)(a) permits the office of any contracting party of the holder to inform the International Bureau that the holder's right to dispose of an international registration has been restricted, it does not require the office of the contracting party to do so. Accordingly, the Office is not required to inform the International Bureau that the holder's right to dispose of an international registration has been restricted.

Comment: One commenter stated that the rationale for the amendment to § 7.24(b)(7), to indicate that a request to record a restriction, or the release of a restriction, must include an indication that the restriction, or the release of the restriction, of the holder's right of disposal of the international registration applies to the designation to the U.S. or an international registration that was originally based on a U.S. application or registration was unclear. The commenter asked if there was a need for equal treatment in two very distinct situations, such as restriction on the right to dispose of an international registration having effect in the U.S. and an international registration having no such effect, which would not be a remedy. The commenter suggested amending § 7.24(a)(2) to refer to the holder of the international registration instead of the party who obtained the restriction, or deleting or amending § 7.24(b)(4).

Response: While the International Bureau permits requests to record the holder's right to dispose of an international registration to be presented through an office of a contracting party, the Office is not required to do so. The proposed rule change broadens the ability of U.S. trademark owners, who otherwise could not obtain the signature of the holder after a good-faith effort, to record the restriction of the right to dispose with the International Bureau. While the proposed rule could not be invoked by a party with no connection to the Office (*e.g.,* U.S. domestic application/registration or request for extension of protection), such a party has a remedy. The party has the option to file a petition to the Director and, upon a showing of extraordinary circumstances, request a waiver of the requirements of § 7.24(b)(7).

Discussion of Rule Changes

Representation by Attorneys or Other Authorized Persons

Rule 2.17(d)(1)

The Office is amending § 2.17(d)(1) to remove the reference to the number of powers of attorney that can be filed via the Trademark Electronic Application System (''TEAS'') for existing applications or registrations that have the identical owner and attorney. Prior to this amendment, the TEAS Revocation of Attorney/Domestic Representative and/or Appointment of Attorney/Domestic Representative form indicated that up to 300 applications or registrations could be amended per request. The amendment is intended to remove outdated information, and allows for greater flexibility for future enhancements to TEAS.

Rule 2.19(b)

The Office is amending § 2.19(b) to require compliance with § 11.116, rather than § 10.40, as part 10 of this chapter has been removed and reserved (78 FR 20180 (April 3, 2013)) and § 11.116 now sets out the requirements for terminating representation.

Applications for Registration

Rule 2.22(a)(19)

The Office is amending § 2.22(a)(19) to indicate that if a TEAS Plus applicant owns one or more registrations for the same mark shown in the application, and the last listed owner of the prior registration(s) differs from the owner of the application, the application must include a claim of ownership for the prior registration(s) in order to be entitled to the reduced filing fee under § 2.6(a)(1)(iii). This limits the circumstances under which a TEAS Plus applicant is required to claim ownership of a prior registration and is consistent with the revision to the claim of ownership requirements in § 2.36.

Rule 2.36

The Office is amending § 2.36 to indicate that an applicant is only required to claim ownership of prior registrations for the same or similar marks if the owner listed in the application differs from the owner last listed in the Office's database for such prior registrations. This is consistent with existing practice.

Rule 2.38

The Office is amending § 2.38(b) to remove the requirement that an application indicate that, if the applied-for mark is not being used by the applicant but is being used by one or more related companies whose use inures to the benefit of the applicant under section 5 of the Act, such fact must be indicated in the application.

The Office is re-designating § 2.38(c) as § 2.38(b), as the requirement in current § 2.38(b) is being removed.

Examination of Application and Action by Applicants

Rule 2.62(c)

The Office is adding new § 2.62(c) to specify that responses to Office actions must be filed through TEAS, transmitted by facsimile, mailed, or delivered by hand, and that responses sent by email will not be accorded a date of receipt. This is consistent with existing practice.

Rule 2.63

The Office is amending the title of § 2.63 from ''Reexamination'' to ''Action after response,'' as revised § 2.63 incorporates a discussion of reexamination, the filing of petitions and appeals, and abandonments.

The Office is amending § 2.63(a) to clarify that after submission of a response by the applicant, the examining attorney will review all statutory refusal(s) and/or requirement(s) in light of the response. This is consistent with TMEP section 713.

The Office is adding § 2.63(a)(1) to clarify that the applicant may respond to a non-final action that maintains any requirement(s) or substantive refusal(s) by filing a timely response to the examiner's action. This is consistent with TMEP section 713. To ensure clarity, the Office is adding a cross-reference to § 2.62(a).

The Office is adding § 2.63(a)(2) to clarify that the applicant may respond to a non-final action that maintains any requirement(s) by filing a petition to the Director under § 2.146 if the subject matter of the requirement(s) is appropriate for petition. This is consistent with TMEP sections 713 and 1702. In addition, as both the applicable response deadlines after a denial of a petition to the Director under § 2.146 and the statement that a requirement that is the subject of a petition decided by the Director may not subsequently be the subject of an appeal to the TTAB are set out in new § 2.63(c), such information has been removed from § 2.63(a)(2).

The Office is amending § 2.63(b) to clarify that the examining attorney may make final a refusal or requirement upon review of a response. This is consistent with current § 2.64(a) and

TMEP sections 713 and 714.03. To ensure clarity, the Office is updating the wording to remove a reference to ''request for reconsideration'' because § 2.63(a) discusses responses to non-final actions, and the Office uses ''request for reconsideration'' to refer to responses after final actions.

The Office is adding § 2.63(b)(1) to clarify that the applicant may respond to a final action that maintains any substantive refusal(s) by filing an appeal to the TTAB under §§ 2.141 and 2.142. This is consistent with TMEP section 1501.01. To ensure clarity, the Office is updating the wording to explicitly state that the applicant may additionally respond by filing a timely request for reconsideration under § 2.63(b)(3) that seeks to overcome any substantive refusal(s) or outstanding requirement(s) maintained in the final action. This is consistent with TMEP section 715.03.

The Office is adding § 2.63(b)(2) to clarify that the applicant may respond to a final action that withdraws all substantive refusals but maintains any requirement(s) either by filing an appeal to the TTAB under §§ 2.141 and 2.142 or by filing a petition to the Director under § 2.146, if the subject matter of the requirement(s) is procedural, and therefore appropriate for petition. This is consistent with current § 2.63(b) and TMEP sections 1501.01 and 1704. To ensure clarity, the Office is updating the wording to explicitly state that the applicant may additionally respond by filing a timely request for reconsideration under § 2.63(b)(3) that seeks to comply with any outstanding requirement(s) maintained in the final action. This is consistent with TMEP section 715.03.

The Office is adding § 2.63(b)(3) to clarify that the applicant may file a request for reconsideration of the final action prior to the expiration of the time for filing an appeal to the TTAB or a petition to the Director, and that the request does not stay or extend the time for filing an appeal or petition. This is consistent with current § 2.64(b) and TMEP section 715.03. To ensure clarity, the Office is updating the wording to indicate that the request for reconsideration should seek to overcome any substantive refusal(s) and/or comply with any outstanding requirement(s), and that the Office will enter amendments accompanying requests for reconsideration if the amendments comply with the rules of practice and the Act. This is consistent with TMEP sections 715.02 and 715.03. In addition, the proposed language indicating that the request for reconsideration must be properly signed is being removed from § 2.63(b)(3), as this requirement is already specified in § 2.193(e)(2).

The Office is adding § 2.63(b)(4) to clarify that the filing of a request for reconsideration that does not result in the withdrawal of all refusals and requirements, without the filing of a timely appeal or petition, will result in abandonment of the application for incomplete response. This is consistent with section 12(b) of the Act and current § 2.65(a).

The Office is adding § 2.63(c) to clarify both that if a petition to the Director under § 2.146 is denied, the applicant will have until six months from the date of issuance of the Office action that repeated the requirement(s), or made it final, or thirty days from the date of the decision on the petition, whichever date is later, to comply with the requirement(s), and that a requirement that is the subject of a petition decided by the Director subsequently may not be the subject of an appeal to the TTAB. This is consistent with current § 2.63(b) and TMEP sections 1501.01 and 1702.

The Office is adding § 2.63(d) to clarify that if an amendment to allege use is filed during the six-month response period after issuance of a final action, the examining attorney will examine the amendment, but the filing of the amendment does not stay or extend the time for filing an appeal to the TTAB or a petition to the Director. This is consistent with current § 2.64(c)(1) and TMEP sections 711 and 1104.

Rule 2.64

The Office is removing and reserving § 2.64 and is incorporating updated final action procedures into revised § 2.63.

Rule 2.65

The Office is amending § 2.65(a) both to clarify that an application will be deemed abandoned if an applicant fails to respond, or respond completely, to an Office action within six months of the issuance date, but a timely petition to the Director or notice of appeal to the TTAB, if appropriate, is considered to be a response that avoids abandonment, and to revise the reference to § 2.63(b) so as to reference § 2.63(a) and (b). The clarification is consistent with TMEP section 718.03, and the revision to the reference accounts for the amendment to § 2.63, which sets out the conditions for a petition under § 2.146 in § 2.63(a) and (b) instead of only § 2.63(b). To ensure clarity, the Office is adding a cross-reference to § 2.63(b)(4).

The Office is adding § 2.65(a)(1) to clarify that if an applicant fails to timely respond to an Office action, but all refusals and/or requirements are expressly limited to certain goods and/or services, the application will be abandoned only as to those goods and/or services. This is consistent with current § 2.65(a) and TMEP section 718.02(a).

The Office is adding § 2.65(a)(2) to clarify that an applicant may, in certain situations, be granted thirty days, or to the end of the response period set forth in the action, whichever is longer, to provide information omitted from a response before the examining attorney considers the issue of abandonment. In order to ensure clarity, certain wording in the rule has been changed from passive to active voice. This is consistent with current § 2.65(b) and TMEP section 718.03(b).

The Office is amending § 2.65(b) to clarify that an application will be abandoned if an applicant expressly abandons the application pursuant to § 2.68. This is consistent with TMEP section 718.01.

The Office is amending § 2.65(c) to clarify that an application under section 1(b) of the Act will be abandoned if the applicant fails to file a timely statement of use under § 2.88 or a request for an extension of time for filing a statement of use under § 2.89. This is consistent with section 1(d)(4) of the Act and TMEP sections 1108.01 and 1109.04.

Rule 2.68

The Office is amending § 2.68(a) to indicate that, consistent with existing practice, a request for abandonment or withdrawal may not subsequently be withdrawn. This is intended to provide applicants, registration owners, and the public assurance of the accuracy of the status of applications or registrations after filings are received by the Office.

The Office is amending § 2.68(b) for clarity by moving the ''in any proceeding before the Office'' clause to the end of the sentence.

Amendment of Application

Rule 2.77(b)

The Office is amending § 2.77(b) to indicate that amendments not listed in § 2.77(a) may be entered in the application in the time period between issuance of the notice of allowance and submission of a statement of use only with the express permission of the Director, after consideration on petition under § 2.146. This is consistent with TMEP sections 1107 and 1505.01(d), which currently require a waiver of § 2.77 on petition. If the Director determines that the amendment requires review by the examining attorney, the petition will be denied and the

amendment may be resubmitted with the statement of use.

Publication and Post Publication

Rule 2.81(b)

The Office is amending § 2.81(b) to remove the list of items that will be included on the notice of allowance. This change will allow greater flexibility in the format of the notice of allowance for changes that may occur in conjunction with the Office's ''Trademarks Next Generation'' information-technology initiative. As a matter of practice, at this time, the Office plans to continue to maintain the current format of the notice of allowance.

Rule 2.84(b)

The Office is amending § 2.84(b) to clarify that an application that is not the subject of an inter partes proceeding before the TTAB may be amended after the mark has been published for opposition, but before the certificate of registration has been issued under section 1(a), 44, or 66(a) of the Act, or before the notice of allowance has been issued in an application under section 1(b) of the Act, if the amendment meets the requirements of §§ 2.71, 2.72, and 2.74. This is consistent with existing practice.

Appeals

Rule 2.142(f)

The Office is amending § 2.142(f)(3) and (f)(6) to remove the references to § 2.64, as the Office is removing and reserving § 2.64, with the sections of § 2.64 relevant to § 2.142(f)(3) and (f)(6) incorporated into revised § 2.63.

Rule 2.145(a)

The Office is amending § 2.145(a) to add registrants who have filed an affidavit or declaration under section 71 of the Act and are dissatisfied with a decision of the Director to the list of parties eligible to appeal to the U.S. Court of Appeals for the Federal Circuit. This is consistent with TMEP section 1613.18(d).

Rule 2.146

The Office is amending § 2.146(a)(1) and (g) to replace references to § 2.63(b) with references to § 2.63(a) and (b), as the amended rules will list conditions for a petition under § 2.146 in § 2.63(a) and (b) instead of only § 2.63(b). In addition, in order to ensure clarity, the Office is amending § 2.146(g) to replace a reference to § 2.65 with a reference to § 2.65(a).

Post Registration

Rule 2.171(b)(2)(i)

The Office is amending § 2.171(b)(2)(i) to clarify that when the Office receives notification from the International Bureau of the World Intellectual Property Organization that an international registration has been divided due to a change in ownership with respect to some but not all of the goods and/or services, the Office will update Office records to reflect the change in ownership, divide out the assigned goods and/or services from the registered extension of protection (parent registration), and publish notice of the parent registration in the *Official Gazette.* The Office does not record the partial change of ownership in the Assignment Recordation Branch (formerly Assignment Services Branch), and only issues an updated certificate for the parent registration to the owner upon payment of the fee required by § 2.6. This is consistent with existing practice.

Rule 2.172

The Office is amending § 2.172 to clarify that a surrender for cancellation may not subsequently be withdrawn. This is consistent with existing practice.

Rule 2.185(a)

The Office is amending § 2.185(a) to indicate that deficiencies in renewal applications may be corrected after notification from the Office. This is consistent with existing practice.

General Information and Correspondence in Trademark Cases

Rule 2.198(a)(1)

The Office is amending § 2.198(a)(1) by adding § 2.198(a)(1)(viii) to include affidavits under section 71 of the Act in the list of documents excluded from the Office's Priority Mail Express® (formerly Express Mail®) procedure. This is consistent with the handling of corresponding affidavits under section 8 of the Act. In connection with this addition, the Office is revising § 2.198(a)(1)(vi) and § 2.198(a)(1)(vii) for clarity.

Classification of Goods and Services

Rule 6.1(5)

The Office is amending § 6.1(5) to add the wording ''or veterinary'' to the entry ''dietetic food and substances adapted for medical use'' in the listing of goods for International Class 5. This is consistent with the current heading for the international class as established by the Committee of Experts of the Nice Union and set forth in the *International Classification of Goods and Services for the Purposes of the Registration of Marks* published annually by the World Intellectual Property Organization on its Web site.

Madrid Protocol

Rule 7.23(a)

The Office had proposed to amend § 7.23(a)(5) to require that a request to record an assignment of an international registration submitted through the Office include a statement that, after making a good-faith effort, the assignee could not obtain the assignor's signature for the request to record the assignment and that the statement be signed and verified or supported by declaration under § 2.20. In order to ensure clarity, the Office is revising the amendment to § 7.23(a)(5) to require that a request to record an assignment of an international registration submitted through the Office include a statement that either the assignee could not obtain the assignor's signature for the request to record the assignment because the holder no longer exists, or, after a good-faith effort, the assignee could not obtain the assignor's signature for the request to record the assignment. This revision will ensure that, when possible, assignees make a good-faith effort to obtain the assignor's signature before invoking this rule and requesting the Office to forward the assignment document to the International Bureau.

The Office is amending § 7.23(a)(6) to indicate that a request to record an assignment of an international registration submitted through the Office must include an indication that the assignment applies to the designation to the United States (''U.S.'') or an international registration that was originally based on a U.S. application or registration. This revision is intended to ensure that an assignee of an international registration based on a U.S. registration or application is treated the same as an assignee of a designation to the U.S. Prior to this revision, the owner of an international registration based on a U.S. registration or application was required to file a petition to waive § 7.23(a)(6).

Rule 7.24(b)

The Office had proposed to amend § 7.24(b)(5)(ii) to require that a request, submitted through the Office, to record a restriction, or the release of a restriction, that is the result of an agreement between the holder of the international registration and the party restricting the holder's right of disposal must include a statement indicating that, after making a good-faith effort, the

signature of the holder of the international registration could not be obtained for the request to record the restriction, or release of the restriction, and such statement must be signed and verified or supported by declaration under § 2.20. In order to ensure clarity, the Office is revising the amendment to § 7.24(b)(5)(ii) to require, for a request to record the restriction or release of the restriction, a statement either that the holder of the international registration could not obtain the signature of the party restricting the holder's right of disposal because the party restricting the holder's right of disposal no longer exists, or, that after a good-faith effort, the holder of the international registration could not obtain the signature of the party restricting the holder's right of disposal. This revision will ensure that, when possible, holders of international registrations make a good-faith effort to obtain the signature of the party restricting the holder's right of disposal before invoking this rule and requesting the Office to forward the document to the International Bureau.

The Office is amending § 7.24(b)(7) to indicate that a request to record a restriction, or the release of a restriction, must include an indication that the restriction, or the release of the restriction, of the holder's right of disposal of the international registration applies to the designation to the U.S. or an international registration that was originally based on a U.S. application or registration. This revision is intended to ensure that an assignee of an international registration based on a U.S. registration or application is treated the same as an assignee of a designation to the U.S. Prior to this revision, the owner of an international registration based on a U.S. registration or application was required to file a petition to waive § 7.24(b)(7).

Rule 7.25(a)

The Office is amending § 7.25(a) to add §§ 2.21, 2.76, 2.88, and 2.89 to the list of sections in part 2 not applicable to an extension of protection under section 66(a) of the Act. This is consistent with existing practice as these sections in part 2 only concern applications under sections 1 or 44 of the Act.

Rule 7.31

The Office is amending § 7.31 by revising the introductory text and § 7.31(a)(3) to require that a request to transform an extension of protection to the U.S. into a U.S. application specify the goods and/or services to be transformed. This revision is intended to ensure that the Office transforms an accurate listing of goods and/or services.

The Office is redesignating current § 7.31(a)(3) as § 7.31(a)(4) and current § 7.31(a)(4) as new § 7.31(a)(5) because current § 7.31(a)(3) is being revised to require that a request to transform an extension of protection to the U.S. into a U.S. application specify the goods and/or services to be transformed.

Rulemaking Considerations

Administrative Procedure Act: The changes in this rulemaking involve rules of agency practice and procedure, and/or interpretive rules. *See Nat'l Org. of Veterans' Advocates* v. *Sec'y of Veterans Affairs,* 260 F.3d 1365, 1375 (Fed. Cir. 2001) (rule that clarifies interpretation of a statute is interpretive); *Bachow Commc'ns Inc.* v. *FCC,* 237 F.3d 683, 690 (D.C. Cir. 2001) (rules governing an application process are procedural under the Administrative Procedure Act); *Inova Alexandria Hosp.* v. *Shalala,* 244 F.3d 342, 350 (4th Cir. 2001) (rules for handling appeals were procedural where they did not change the substantive standard for reviewing claims).

Accordingly, prior notice and opportunity for public comment for the rule changes are not required pursuant to 5 U.S.C. 553(b) or (c), or any other law. *See Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), does not require notice and comment rulemaking for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice,'' quoting 5 U.S.C. 553(b)(A)). However, the Office chose to seek public comment before implementing the rule to benefit from the public's input.

Regulatory Flexibility Act: As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 or any other law, neither a Regulatory Flexibility Act analysis, nor a certification under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), is required. *See* 5 U.S.C. 603.

In addition, for the reasons set forth herein, the Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b). This rule involves changes to rules of agency practice and procedure. The primary impact of the rule is to provide greater clarity as to certain requirements relating to representation before the Office, applications for registration, examination procedures, amendment of applications, publication and post publication procedures, appeals, petitions, post registration practice, correspondence in trademark cases, classification of goods and services, and procedures under the Madrid Protocol. For the most part, the rule changes are intended to codify existing practice. The burdens, if any, to all entities, including small entities, imposed by these rule changes will be minor. Additionally, in a number of instances, the rule changes will lessen the burdens on applicants. Therefore, this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12866: This rule has been determined not to be significant for purposes of Executive Order 12866.

Executive Order 13563 (Improving Regulation and Regulatory Review): The Office has complied with Executive Order 13563 (Jan. 18, 2011). Specifically, the Office has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rule changes; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) provided the public with a meaningful opportunity to participate in the regulatory process, including soliciting the views of those likely affected prior to issuing a notice of proposed rulemaking, and provided on-line access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes, to the extent applicable.

Executive Order 13132: This rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the Office will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the

Government Accountability Office. The changes in this rule are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this rule change is not expected to result in a ''major rule'' as defined in 5 U.S.C. 804(2).

Unfunded Mandate Reform Act of 1995: The Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) requires that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This rule will have no such effect on State, local, and tribal governments or the private sector.

Paperwork Reduction Act: This rule involves information collection requirements which are subject to review by the U.S. Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The Office has determined that there will be no new information collection requirements or impacts to existing information collection requirements associated with this rule. The collections of information involved in this rule have been reviewed and previously approved by OMB under control numbers 0651–0009, 0651–0050, 0651–0051, 0651–0054, 0651–0055, 0651–0056, and 0651–0061.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects

37 CFR Part 2

Administrative practice and procedure, Trademarks.

37 CFR Part 6

Administrative practice and procedure, Classification, Trademarks.

37 CFR Part 7

Administrative practice and procedure, International registration, Trademarks.

For the reasons given in the preamble and under the authority contained in 15 U.S.C. 1123 and 35 U.S.C. 2, as amended, the Office amends parts 2, 6, and 7 of title 37 as follows:

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

■ 1. The authority citation for 37 CFR part 2 continues to read as follows:

Authority: 15 U.S.C. 1123, 35 U.S.C. 2, unless otherwise noted.

■ 2. Amend § 2.17 by revising paragraph (d)(1) to read as follows:

§ 2.17 Recognition for representation.

* * * * *

(d) * * *

(1) The owner of an application or registration may appoint a practitioner(s) qualified to practice under § 11.14 of this chapter to represent the owner for all existing applications or registrations that have the identical owner name and attorney through TEAS.

* * * * *

■ 3. Amend § 2.19 by revising paragraph (b) introductory text to read as follows:

§ 2.19 Revocation or withdrawal of attorney.

* * * * *

(b) *Withdrawal of attorney.* If the requirements of § 11.116 of this chapter are met, a practitioner authorized to represent an applicant, registrant, or party to a proceeding in a trademark case may withdraw upon application to and approval by the Director or, when applicable, upon motion granted by the Trademark Trial and Appeal Board. The practitioner should file the request to withdraw soon after the practitioner notifies the client of his/her intent to withdraw. The request must include the following:

* * * * *

■ 4. Amend § 2.22 by revising paragraph (a)(19) to read as follows:

§ 2.22 Filing requirements for a TEAS Plus application

(a) * * *

(19) If the applicant owns one or more registrations for the same mark, and the owner(s) last listed in Office records of the prior registration(s) for the same mark differs from the owner(s) listed in the application, a claim of ownership of the registration(s) identified by the registration number(s), pursuant to § 2.36; and

* * * * *

■ 5. Revise § 2.36 to read as follows:

§ 2.36 Identification of prior registrations.

Prior registrations of the same or similar marks owned by the applicant should be identified in the application if the owner(s) last listed in Office records of the prior registrations differs from the owner(s) listed in the application.

■ 6. Amend § 2.38 by revising paragraph (b) and removing paragraph (c) to read as follows:

§ 2.38 Use by predecessor or by related companies.

* * * * *

(b) The Office may require such details concerning the nature of the relationship and such proofs as may be necessary and appropriate for the purpose of showing that the use by related companies inures to the benefit of the applicant and does not affect the validity of the mark.

■ 7. Amend § 2.62 by adding paragraph (c) to read as follows:

§ 2.62 Procedure for filing response.

* * * * *

(c) *Form.* Responses must be filed through TEAS, transmitted by facsimile, mailed, or delivered by hand, as set out in § 2.190(a). Responses sent via email will not be accorded a date of receipt.

■ 8. Revise § 2.63 to read as follows:

§ 2.63 Action after response.

(a) *Repeated non-final refusal or requirement.* After response by the applicant, the examining attorney will review all statutory refusals and/or requirement(s) in light of the response.

(1) If, after review of the applicant's response, the examining attorney issues a non-final action that maintains any previously issued substantive refusal(s) to register or repeats any requirement(s), the applicant may submit a timely response to the action under § 2.62(a).

(2) If, after review of the applicant's response, the examining attorney issues a non-final action that contains no substantive refusals to register, but maintains any requirement(s), the applicant may respond to such repeated requirement(s) by filing a timely petition to the Director for relief from the repeated requirement(s) if the subject matter of the repeated requirement(s) is appropriate for petition to the Director (*see* § 2.146(b)).

(b) *Final refusal or requirement.* Upon review of a response, the examining attorney may state that the refusal(s) to register, or the requirement(s), is final.

(1) If the examining attorney issues a final action that maintains any substantive refusal(s) to register, the applicant may respond by timely filing:

(i) A request for reconsideration under paragraph (b)(3) of this section that seeks to overcome any substantive refusal(s) to register, and comply with any outstanding requirement(s), maintained in the final action; or

(ii) An appeal to the Trademark Trial and Appeal Board under §§ 2.141 and 2.142.

(2) If the examining attorney issues a final action that contains no substantive refusals to register, but maintains any requirement(s), the applicant may respond by timely filing:

(i) A request for reconsideration under paragraph (b)(3) of this section that seeks to comply with any outstanding requirement(s) maintained in the final action;

(ii) An appeal of the requirement(s) to the Trademark Trial and Appeal Board under §§ 2.141 and 2.142; or

(iii) A petition to the Director under § 2.146 to review the requirement(s), if the subject matter of the requirement(s) is procedural, and therefore appropriate for petition.

(3) Prior to the expiration of the time for filing an appeal or a petition, the applicant may file a request for reconsideration of the final action that seeks to overcome any substantive refusal(s) and/or comply with any outstanding requirement(s). Filing a request for reconsideration does not stay or extend the time for filing an appeal or petition. The Office will enter amendments accompanying requests for reconsideration after final action if the amendments comply with the rules of practice in trademark cases and the Act.

(4) Filing a request for reconsideration that does not result in the withdrawal of all refusals and requirements, without the filing of a timely appeal or petition, will result in abandonment of the application for incomplete response, pursuant to § 2.65(a).

(c) If a petition to the Director under § 2.146 is denied, the applicant will have six months from the date of issuance of the Office action that repeated the requirement(s), or made it final, or thirty days from the date of the decision on the petition, whichever date is later, to comply with the requirement(s). A requirement that is the subject of a petition decided by the Director subsequently may not be the subject of an appeal to the Trademark Trial and Appeal Board.

(d) If an applicant in an application under section 1(b) of the Act files an amendment to allege use under § 2.76 during the six-month response period after issuance of a final action, the examining attorney will examine the amendment. The filing of such an amendment does not stay or extend the time for filing an appeal or petition.

§ 2.64 [Removed and Reserved]

■ 9. Remove and reserve § 2.64.

■ 10. Revise § 2.65 to read as follows:

§ 2.65 Abandonment.

(a) An application will be abandoned if an applicant fails to respond to an Office action, or to respond completely, within six months from the date of issuance. A timely petition to the Director pursuant to §§ 2.63(a) and (b) and 2.146 or notice of appeal to the Trademark Trial and Appeal Board pursuant to § 2.142, if appropriate, is a response that avoids abandonment (*see* § 2.63(b)(4)).

(1) If all refusals and/or requirements are expressly limited to certain goods and/or services, the application will be abandoned only as to those goods and/or services.

(2) When a timely response by the applicant is a bona fide attempt to advance the examination of the application and is a substantially complete response to the examining attorney's action, but consideration of some matter or compliance with a requirement has been omitted, the examining attorney may grant the applicant thirty days, or to the end of the response period set forth in the action to which the substantially complete response was submitted, whichever is longer, to explain and supply the omission before the examining attorney considers the question of abandonment.

(b) An application will be abandoned if an applicant expressly abandons the application pursuant to § 2.68.

(c) An application will be abandoned if an applicant in an application under section 1(b) of the Act fails to timely file either a statement of use under § 2.88 or a request for an extension of time for filing a statement of use under § 2.89.

■ 11. Revise § 2.68 to read as follows:

§ 2.68 Express abandonment (withdrawal) of application.

(a) *Written document required.* An applicant may expressly abandon an application by filing a written request for abandonment or withdrawal of the application, signed by the applicant, someone with legal authority to bind the applicant (*e.g.,* a corporate officer or general partner of a partnership), or a practitioner qualified to practice under § 11.14 of this chapter, in accordance with the requirements of § 2.193(e)(2). A request for abandonment or withdrawal may not subsequently be withdrawn.

(b) *Rights in the mark not affected.* Except as provided in § 2.135, the fact that an application has been expressly abandoned shall not affect any rights that the applicant may have in the mark set forth in the abandoned application in any proceeding before the Office.

■ 12. Amend § 2.77 by revising paragraph (b) to read as follows:

§ 2.77 Amendments between notice of allowance and statement of use.

* * * * *

(b) Other amendments may be entered during this period only with the express permission of the Director, after consideration on petition under § 2.146. If the Director determines that the amendment requires review by the examining attorney, the petition will be denied and the amendment may be resubmitted with the statement of use in order for the applicant to preserve its right to review.

■ 13. Amend § 2.81 by revising paragraph (b) to read as follows:

§ 2.81 Post publication.

* * * * *

(b) In an application under section 1(b) of the Act for which no amendment to allege use under § 2.76 has been submitted and accepted, if no opposition is filed within the time permitted or all oppositions filed are dismissed, and if no interference is declared, a notice of allowance will issue. Thereafter, the applicant must submit a statement of use as provided in § 2.88.

■ 14. Amend § 2.84 by revising paragraph (b) to read as follows:

§ 2.84 Jurisdiction over published applications.

* * * * *

(b) After publication, but before the certificate of registration is issued in an application under section 1(a), 44, or 66(a) of the Act, or before the notice of allowance is issued in an application under section 1(b) of the Act, an application that is not the subject of an *inter partes* proceeding before the Trademark Trial and Appeal Board may be amended if the amendment meets the requirements of §§ 2.71, 2.72, and 2.74. Otherwise, an amendment to such an application may be submitted only upon petition to the Director to restore jurisdiction over the application to the examining attorney for consideration of the amendment and further examination. The amendment of an application that is the subject of an *inter partes* proceeding before the Trademark Trial and Appeal Board is governed by § 2.133.

■ 15. Amend § 2.142 by revising paragraphs (f)(3) and (6) to read as follows:

§ 2.142 Time and manner of ex parte appeals.

* * * * *

(f) * * *

(3) If the further examination does result in an additional ground for refusal of registration, the examiner and appellant shall proceed as provided by §§ 2.61, 2.62, and 2.63. If the ground for refusal is made final, the examiner shall return the application to the Board, which shall thereupon issue an order allowing the appellant sixty days from the date of the order to file a supplemental brief limited to the additional ground for the refusal of registration. If the supplemental brief is not filed by the appellant within the time allowed, the appeal may be dismissed.

* * * * *

(6) If, during an appeal from a refusal of registration, it appears to the examiner that an issue not involved in the appeal may render the mark of the appellant unregistrable, the examiner may, by written request, ask the Board to suspend the appeal and to remand the application to the examiner for further examination. If the request is granted, the examiner and appellant shall proceed as provided by §§ 2.61, 2.62, and 2.63. After the additional ground for refusal of registration has been withdrawn or made final, the examiner shall return the application to the Board, which shall resume proceedings in the appeal and take further appropriate action with respect thereto.

* * * * *

■ 16. Amend § 2.145 by revising paragraph (a) introductory text to read as follows:

§ 2.145 Appeal to court and civil action.

(a) *Appeal to U.S. Court of Appeals for the Federal Circuit.* An applicant for registration, or any party to an interference, opposition, or cancellation proceeding, or any party to an application to register as a concurrent user, hereinafter referred to as *inter partes* proceedings, who is dissatisfied with the decision of the Trademark Trial and Appeal Board, and any registrant who has filed an affidavit or declaration under section 8 or section 71 of the Act or who has filed an application for renewal and is dissatisfied with the decision of the Director (§§ 2.165 and 2.184), may appeal to the U.S. Court of Appeals for the Federal Circuit. The appellant must take the following steps in such an appeal:

* * * * *

■ 17. Amend § 2.146 by revising paragraphs (a)(1) and (g) to read as follows:

§ 2.146 Petitions to the Director.

(a) * * *

(1) From any repeated or final formal requirement of the examiner in the ex parte prosecution of an application if permitted by § 2.63(a) and (b);

* * * * *

(g) The mere filing of a petition to the Director will not act as a stay in any appeal or *inter partes* proceeding that is pending before the Trademark Trial and Appeal Board nor stay the period for replying to an Office action in an application except when a stay is specifically requested and is granted or when §§ 2.63(a) and (b) and 2.65(a) are applicable to an *ex parte* application.

* * * * *

■ 18. Amend § 2.171 by revising paragraph (b)(2)(i) to read as follows:

§ 2.171 New certificate on change of ownership.

* * * * *

(b) * * *

(2)(i) When the International Bureau of the World Intellectual Property Organization notifies the Office that an international registration has been divided as the result of a change of ownership with respect to some but not all of the goods and/or services, the Office will construe the International Bureau's notice as a request to divide. The Office will update Office records to reflect the change in ownership, divide out the assigned goods and/or services from the registered extension of protection (parent registration), and publish notice of the parent registration in the *Official Gazette.*

* * * * *

■ 19. Revise § 2.172 to read as follows:

§ 2.172 Surrender for cancellation.

Upon application by the owner, the Director may permit any registration to be surrendered for cancellation. The application for surrender must be signed by the owner of the registration, someone with legal authority to bind the owner (*e.g.,* a corporate officer or general partner of a partnership), or a practitioner qualified to practice under § 11.14 of this chapter. When a registration has more than one class, one or more entire class(es) but fewer than the total number of classes may be surrendered. Deletion of fewer than all the goods or services in a single class constitutes amendment of the registration as to that class (*see* § 2.173), rather than surrender. A surrender for cancellation may not subsequently be withdrawn.

■ 20. Amend § 2.185 by revising paragraph (a) introductory text to read as follows:

§ 2.185 Correcting deficiencies in renewal application.

(a) If the renewal application is filed within the time periods set forth in section 9(a) of the Act, deficiencies may be corrected after notification from the Office, as follows:

* * * * *

■ 21. Amend § 2.198 by revising paragraphs (a)(1)(vi) and (vii) and adding paragraph (a)(1)(viii) to read as follows:

§ 2.198 Filing of correspondence by Priority Mail Express®.

(a)(1) * * *

(vi) Renewal requests under section 9 of the Act;

(vii) Requests to change or correct addresses; and

(viii) Affidavits of use under section 71 of the Act.

* * * * *

PART 6—CLASSIFICATION OF GOODS AND SERVICES UNDER THE TRADEMARK ACT

■ 22. The authority citation for 37 CFR part 6 is revised to read as follows:

Authority: Secs. 30, 41, 60 Stat. 436, 440; 15 U.S.C. 1112, 1123; 35 U.S.C. 2, unless otherwise noted.

■ 23. Amend § 6.1 by revising paragraph 5 to read as follows:

§ 6.1 International schedule of classes of goods and services.

* * * * *

5. Pharmaceutical and veterinary preparations; sanitary preparations for medical purposes; dietetic food and substances adapted for medical or veterinary use, food for babies; dietary supplements for humans and animals; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides.

* * * * *

PART 7—RULES OF PRACTICE IN FILINGS PURSUANT TO THE PROTOCOL RELATING TO THE MADRID AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS

■ 24. The authority citation for 37 CFR part 7 continues to read as follows:

Authority: 15 U.S.C. 1123, 35 U.S.C. 2, unless otherwise noted.

■ 25. Amend § 7.23 by revising paragraph (a)(5) and (6) to read as follows:

§ 7.23 Requests for recording assignments at the International Bureau.

* * * * *

(a) * * *

(5) A statement, signed and verified (sworn to) or supported by a declaration under § 2.20 of this chapter, that, for the request to record the assignment, either the assignee could not obtain the assignor's signature because the holder no longer exists, or, after a good-faith effort, the assignee could not obtain the assignor's signature;

(6) An indication that the assignment applies to the designation to the United States or an international registration that is based on a U.S. application or registration;

* * * * *

■ 26. Amend § 7.24 by revising paragraphs (b)(5)(ii) and (b)(7) to read as follows:

§ 7.24 Requests to record security interest or other restriction of holder's rights of disposal or release of such restriction submitted through the Office.

* * * * *

(b) * * *

(5) * * *

(ii) Where the restriction is the result of an agreement between the holder of the international registration and the party restricting the holder's right of disposal, a statement, signed and verified (sworn to) or supported by a declaration under § 2.20 of this chapter, that, for the request to record the restriction, or release of the restriction, either the holder of the international registration could not obtain the signature of the party restricting the holder's right of disposal because the party restricting the holder's right of disposal no longer exists, or, after a good-faith effort, the holder of the international registration could not obtain the signature of the party restricting the holder's right of disposal;

* * * * *

(7) An indication that the restriction, or the release of the restriction, of the holder's right of disposal of the international registration applies to the designation to the United States or an international registration that is based on a U.S. application or registration; and

* * * * *

■ 27. Amend § 7.25 by revising paragraph (a) to read as follows:

§ 7.25 Sections of part 2 applicable to extension of protection.

(a) Except for §§ 2.21 through 2.23, 2.76, 2.88, 2.89, 2.130, 2.131, 2.160 through 2.166, 2.168, 2.173, 2.175, 2.181 through 2.186, and 2.197, all sections in parts 2 and 11 of this chapter shall apply to an extension of protection of an international registration to the United States, including sections related to proceedings before the Trademark Trial and Appeal Board, unless otherwise stated.

* * * * *

■ 28. Amend § 7.31 by revising the introductory text and paragraphs (a)(3) and (4) and adding paragraph (a)(5) to read as follows:

§ 7.31 Requirements for transformation of an extension of protection to the United States into a U.S. application.

If the International Bureau cancels an international registration in whole or in part, under Article 6(4) of the Madrid Protocol, the holder of that international registration may file a request to transform the goods and/or services to which the cancellation applies in the corresponding pending or registered extension of protection to the United States into an application under section 1 or 44 of the Act.

(a) * * *

(3) Identify the goods and/or services to be transformed, if other than all the goods and/or services that have been cancelled;

(4) The application filing fee for at least one class of goods or services required by § 2.6(a)(1) of this chapter; and

(5) An email address for receipt of correspondence from the Office.

* * * * *

Dated: January 6, 2015.

Michelle K. Lee,

Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director, United States Patent and Trademark Office.

[FR Doc. 2015–00267 Filed 1–15–15; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2011–0446, FRL–9921–69–Region 10]

Approval and Promulgation of Implementation Plans; Oregon: Interstate Transport of Fine Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving a portion of the State Implementation Plan submission from the State of Oregon to address Clean Air Act interstate transport requirements for the 2006 24-hour fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standards. The Clean Air Act requires that each State Implementation Plan contain adequate provisions prohibiting air emissions that will have certain adverse air quality effects in other states. The EPA is determining that Oregon's existing State Implementation Plan contains adequate provisions to ensure that air emissions in Oregon will not significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour $PM_{2.5}$ National Ambient Air Quality Standards in any other state.

DATES: This final rule is effective on February 17, 2015.

ADDRESSES: The EPA has established a docket for this action under Docket Identification No. EPA–R10–OAR–2011–0446. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at EPA Region 10, Office of Air, Waste, and Toxics, AWT–150, 1200 Sixth Avenue, Seattle, Washington 98101. The EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Karl Pepple at: (206) 553–1778,

pepple.karl@epa.gov, or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION:

Throughout this document wherever ''we,'' ''us'' or ''our'' is used, it is intended to refer to the EPA. Information is organized as follows:

Table of Contents

I. Background
II. Response To Comment
III. Final Action
IV. Statutory and Executive Order Reviews

I. Background

On September 21, 2006, the EPA promulgated a final rule revising the 1997 24-hour primary and secondary National Ambient Air Quality Standards (NAAQS) for $PM_{2.5}$ from 65 micrograms per cubic meter ($\mu g/m^3$) to 35 $\mu g/m^3$ (October 17, 2006, 71 FR 61144).

The interstate transport provisions in Clean Air Act (CAA) section 110(a)(2)(D)(i) (also called ''good neighbor'' provisions) require each state to submit a State Implementation Plan (SIP) that prohibits emissions that will have certain adverse air quality effects in other states. CAA section 110(a)(2)(D)(i) identifies four distinct elements related to the impacts of air pollutants transported across state lines. In this action, the EPA is addressing the first two elements of this section, specified at CAA section 110(a)(2)(D)(i)(I),[1] for the 2006 24-hour $PM_{2.5}$ NAAQS.

The first element of CAA section 110(a)(2)(D)(i)(I) requires that each SIP for a new or revised NAAQS contain adequate measures to prohibit any source or other type of emissions activity within the state from emitting air pollutants that will ''contribute significantly to nonattainment'' of the applicable NAAQS in another state. The second element of CAA section 110(a)(2)(D)(i)(I) requires that each SIP prohibit any source or other type of emissions activity in the state from emitting pollutants that will ''interfere with maintenance'' of the applicable NAAQS in any other state.

On May 14, 2014, we proposed approval of the portion of Oregon's June 28, 2010, submission that addresses the CAA section 110(a)(2)(D)(i)(I) requirements for the 2006 24-hour $PM_{2.5}$ NAAQS (79 FR 27528). An explanation of the CAA requirements and implementing regulations that are met by this SIP submission, a detailed explanation of the submission, and the EPA's reasons for the proposed action were provided in the notice of proposed rulemaking on May 14, 2014, and will not be restated here (79 FR 27528). The public comment period for our proposed action ended on June 13, 2014.

[1] This action does not address the two elements of the interstate transport SIP provision in CAA section 110(a)(2)(D)(i)(II) regarding interference with measures required to prevent significant deterioration of air quality or to protect visibility in another state. We approved the Oregon SIP for purposes of CAA section 110(a)(2)(D)(i)(II) for the 2006 24-hour $PM_{2.5}$ NAAQS on August 1, 2013 (78 FR 46514).

II. Response To Comment

The EPA received one anonymous adverse comment on the May 14, 2014, proposed approval (79 FR 27528). The EPA has evaluated the comment, as discussed below, and has determined that Oregon's 2010 Interstate Transport SIP submission addressing the 2006 24-hour $PM_{2.5}$ NAAQS is consistent with the CAA. Therefore the EPA is approving the Oregon 2010 Interstate Transport SIP as meeting the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS. Following is the comment and the EPA's response.

Comment: ''EPA's analysis of significant contribution to nonattainment and maintenance areas in down-wind states must be done for ALL NAAQS pollutants, not just the 2006 $PM_{2.5}$ NAAQS. This would ensure that Oregon's $PM_{2.5}$ emissions are not affecting the nonattainment or maintenance of ALL NAAQS in other States. The CAA specifically states that, 'Each such plan shall . . . contain adequate provisions (i) prohibiting . . . any source or other type of emissions activity within the State from emitting ANY air pollutant in amounts which will (I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to ANY such national primary or secondary ambient air quality standard,' (Emphasis on 'any'). This was recently affirmed by the Supreme Court in *EME Homer City* v. *EPA,* 'To tackle the problem, Congress included a Good Neighbor Provision in the Clean Air Act (Act or CAA). That provision, in its current phrasing, instructs States to prohibit in-state sources ''from emitting any air pollutant in amounts which will . . . contribute significantly' to downwind States' ''nonattainment . . ., or interfere with maintenance,'' of ANY EPA promulgated national air quality standard.'' (Again, emphasis on 'any'). For this reason the EPA can't approve Oregon's Interstate Transport SIP because it, and EPA's analysis, doesn't include an analysis which determines that Oregon doesn't contribute to another State's nonattainment or maintenance for ALL NAAQS pollutants.''

Response: This comment addresses the requirements of CAA section 110(a)(2)(D)(i)(I). This provision, the ''good neighbor'' provision, requires each State Implementation Plan to prohibit ''any source or other type of emissions activity within the State from emitting any air pollutants in amounts which will . . . contribute significantly to nonattainment in or interfere with maintenance by, any other state with respect to any . . . primary or secondary [NAAQS].'' 42 U.S.C. 7410(a)(2)(D)(i). The recent Supreme Court decision in *Environmental Protection Agency* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584 (2014), addressed the requirements of this provision and reversed the prior DC Circuit Court of Appeals decision vacating the EPA's Cross-State Air Pollution Rule. The commenter quotes from the section of the Supreme Court decision that discusses the historical development (from 1963 onward) of the EPA's interstate transport policy (the 'good neighbor' provision). The quoted language essentially tracks the statutory text of CAA section 110(a)(2)(D)(i)(I), which describes specific elements that must be included in State Implementation Plans to address pollution that is transported across state lines. As the Supreme Court decision in *EME Homer City* confirmed, pursuant to CAA section 110(a)(1), state plans to address these requirements must be submitted to the Administrator within three years of the promulgation or revision of a NAAQS. *EME Homer City,* 134 S. Ct. at 1600.

The EPA interprets the comment as stating that the CAA section 110(a)(2)(D)(i)(I) provisions of Oregon's 2010 Interstate Transport SIP submission for the 2006 24-hour $PM_{2.5}$ NAAQS should address, in addition to emissions that significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS, any emissions that significantly contribute to nonattainment or interfere with maintenance of all other NAAQS. The EPA disagrees. Because it is the promulgation or revision of a NAAQS that triggers the requirement to submit a SIP addressing the requirements of CAA section 110(a)(2)(D)(i)(I), the EPA interprets the CAA as requiring each such SIP to address the CAA section 110(a)(2)(D)(i)(I) requirements only with respect to the specific NAAQS at issue. In other words, each CAA section 110(a)(2)(D)(i)(I) SIP submission need only address the specific NAAQS which had been promulgated or revised by the EPA thereby triggering the SIP

submission requirement. Because Oregon submitted this SIP to address the applicable requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2006 24-hour $PM_{2.5}$ NAAQS, it need only demonstrate that the SIP is adequate to prohibit emissions that significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in other states. Any emissions that have such impacts with respect to other NAAQS must be addressed as appropriate in the CAA section 110(a)(2)(D)(i)(I) SIP submissions for those other NAAQS. In its May 14, 2014, action, the EPA proposed to conclude that Oregon's 2010 Interstate Transport SIP submission addressed the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2006 24-hour $PM_{2.5}$ NAAQS (79 FR 27528). The commenter has offered no data or evidence to suggest that the submission does not do so.

III. Final Action

The EPA is approving the portion of the June 28, 2010, SIP submission from Oregon that addresses the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS. The EPA is determining that Oregon's existing SIP contains adequate provisions to ensure that air emissions from Oregon will not significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in any other state. This action is being taken under section 110 of the CAA.

IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this action does not involve technical standards; and does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this 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 March 17, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, and Volatile organic compounds.

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

Dated: December 31, 2014.

Michelle Pirzadeh,

Acting Regional Administrator, Region 10.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart MM—Oregon

■ 2. In § 52.1990 is amended by adding paragraph (b) to read as follows:

§ 52.1990 Interstate Transport for the 2006 24-hour $PM_{2.5}$ NAAQS.

* * * * *

(b) The EPA approves the portion of Oregon's SIP submitted on June 28, 2010 (cover letter dated June 23, 2010) addressing the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS.

[FR Doc. 2015–00645 Filed 1–15–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2014–0540; FRL–9920–54]

Fosetyl-Al; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of Aluminum tris (*O*-ethylphosphonate) (fosetyl-Al) in or

on pepper/eggplant, subgroup 8–10B. Bayer CropScience requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective January 16, 2015. Objections and requests for hearings must be received on or before March 17, 2015, 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–2014–0540, 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), West William Jefferson Clinton 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: Susan Lewis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main 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–2014–0540 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 March 17, 2015. 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–2014–0540, 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 November 7, 2014 (79 FR 66347) (FRL–9918–69), 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 3E8182) by Bayer CropScience, 2 T.W. Alexander Dr., P.O. Box 12014, Research Triangle Park, NC 27709. The petition requested that 40 CFR 180.415 be amended by establishing tolerances for residues of the fungicide fosetyl-Al, aluminum tris (*O*-ethylphosphonate), in or on pepper/eggplant, subgroup 8–10B at 0.01 parts per million (ppm) and non-bell (chili) pepper, dried fruit at 0.01 ppm. That document referenced a summary of the petition prepared by Bayer CropScience, the registrant, which is available in the docket, *http://www.regulations.gov.* Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA is not establishing a separate tolerance for residues of fosetyl-Al on pepper, non-bell (chili), dry fruit. The reason for this is explained in Unit IV.D.

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 fosetyl-Al

including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with fosetyl-Al 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 major target organs following repeated oral exposure to fosetyl-Al are the reproductive system in the dog (testicular degeneration: Spermatocytic and/or spermatidic giant cells in the lumen of the seminiferous tubules) and the urinary system in the rat (histopathological changes in the kidney, impairment of calcium/phosphorus metabolism, calculi and hyperplasia in the urinary tract, bladder tumors). There is no concern for increased quantitative or qualitative susceptibility of the young following *in utero* (rats and rabbits) and pre-and postnatal exposure (rats) to fosetyl-Al. Also, there is no evidence of developmental toxicity, reproductive toxicity in the rat, neurotoxicity, or immunotoxicity at dose levels that do not exceed the limit dose. The microscopic finding in the dog testes may be considered an isolated finding in light of the lack of any functional deficits in the rat 2-generation reproductive toxicity study and the lack of effects on the rat reproductive organs following chronic exposure. Additionally, a clear no-observed-adverse-effect level (NOAEL) was established for the effect observed in the dog and was selected as a suitable point of departure (POD) for the chronic dietary (all populations) exposure scenario. Fosetyl-Al is negative for carcinogenicity except at extremely high doses (>limit dose) in rats and mice, and it did not show any genotoxic potential (classified as not likely to be carcinogenic to humans). Fosetyl-Al is not acutely toxic via the oral, dermal, and inhalation routes. It produces severe eye irritation, is not a dermal irritant, and is negative for dermal sensitization.

Specific information on the studies received and the nature of the adverse effects caused by fosetyl-Al as well as the NOAEL and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document ''Fosetyl-Aluminum [Fosetyl-Al]: Human Health Risk Assessment for the Establishment of Tolerances with No U.S. Registration in/on Pepper/eggplant, Subgroup 8–10B and Pepper, Non-bell (Chili), Dry Fruit'' in docket ID number EPA–HQ–OPP–2014–0540.

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 fosetyl-Al used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR FOSETYL-AL FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (General population including infants and children).	No hazard or appropriate acute endpoint was identified in the database.		
Chronic dietary (All populations)	NOAEL = 250 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 2.5 mg/kg/day. cPAD = 2.5 mg/kg/day	Chronic oral toxicity (dog). LOAEL = 500 mg/kg/day based on increased incidence of testicular degeneration (spermatocytic and/or spermatidic giant cells in the lumen of the seminiferous tubules).
Incidental oral short-term (1 to 30 days) and intermediate-term (1 to 6 months).	NOAEL = 300 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	Residential LOC for MOE <100.	3-generation reproduction (rat). LOAEL = 600 mg/kg/day based on decreased body weight gains in the F2b generation and urinary tract changes in adults.
Inhalation short-term (1 to 30 days) and intermediate-term (1 to 6 months).	Inhalation (or oral) study NOAEL = 300 mg/kg/day (inhalation absorption rate = 100%). UF_A = 10x UF_H = 10x FQPA SF = 1x	Residential LOC for MOE <100.	3-generation reproduction (rat). LOAEL = 600 mg/kg/day based on decreased body weight gains in the F2b generation and urinary tract changes in adults.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR FOSETYL-AL FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

Exposure/scenario	Point of departure and uncertainty/ safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Cancer (Oral, dermal, inhalation).	Classification: Not likely to be carcinogenic to humans.		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to fosetyl-Al, EPA considered exposure under the petitioned-for tolerances as well as all existing fosetyl-Al tolerances in 40 CFR 180.415. EPA assessed dietary exposures from fosetyl-Al 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 fosetyl-Al; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the U.S. Department of Agriculture's (USDA's) 2003–2008 National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). As to residue levels in food, EPA's unrefined chronic analysis is based on tolerance-level residues and 100% crop treated (PCT) assumptions. Default processing factors were used for all crops except for citrus where processing studies showed no residue concentration; thus, the processing factor was set to one for processed citrus commodities.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that fosetyl-Al is not carcinogenic 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 fosetyl-Al. 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 fosetyl-Al in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of fosetyl-Al. 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.*

Environmental fate properties suggest that fosetyl-Al is not likely to reach ground or surface water under most conditions, and if it does reach surface water, it is expected to degrade rapidly. Using the Screening Concentration in Ground Water (SCI–GROW) model, the estimated drinking water concentration (EDWC) of fosetyl-Al for chronic exposures for non-cancer assessments is estimated to be 0.006 parts per billion (ppb) for ground water. Thus, the ground water EDWC of 0.006 ppb was directly incorporating into the chronic dietary risk assessment.

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). Fosetyl-Al is currently registered for the following use that could result in residential exposure: Turf. EPA assessed residential exposure using the following assumptions: Residential handler and residential post-application exposures. The residential handler assessment quantitatively evaluated inhalation exposure from hose end sprayer for turf applications but not dermal exposure as no dermal point of departure was identified. There is the potential for short-term post-application exposure for individuals exposed as a result of being in an environment that has been previously treated with fosetyl-Al (based on contact with treated turf at the maximum turf application rate of 17.6 pounds (lbs) active ingredient/Acre (ai/A)). Incidental oral post-application exposure is quantitatively assessed for children 1 to <2 years old for exposure to treated turf. Dermal post-application exposure was not assessed because no dermal hazard was identified. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/science/residential-exposure-sop.html.*

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.''

Although fosetyl-Al shares a similar chemical structure with many organophosphates (OPs), there is no evidence of neurotoxicity or evidence of cholinesterase inhibition following exposure to fosetyl-Al at dose levels at and greater than the limit dose. EPA has concluded that fosetyl-Al is a not member of the OP cumulative group. EPA has not found fosetyl-Al to share a common mechanism of toxicity with any other substances either, and fosetyl-Al does not appear to produce a toxic metabolite produced by any other substances. For the purposes of this tolerance action, therefore, EPA has assumed that fosetyl-Al 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.* There is no evidence of increased susceptibility following *in utero* exposure to fosetyl-Al in either the rat (at dose levels that do not exceed the limit dose) or rabbit developmental toxicity study, and there is no evidence of increased susceptibility following *in utero* and/or pre-/postnatal exposure in the 3-generation reproduction study in rats.

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 fosetyl-Al is complete.

ii. There is no indication that fosetyl-Al 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 fosetyl-Al results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 3-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the water modeling used to assess exposure to fosetyl-Al in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by fosetyl-Al.

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, fosetyl-Al 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 fosetyl-Al from food and water will utilize 12% 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 fosetyl-Al is not expected.

3. *Short-term risk.* Fosetyl-Al 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 fosetyl-Al.

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 aggregate MOEs of 3,200 for adult residential handlers applying liquid concentrates to turf via hose-end sprayer and for children, 540 for children's incidental oral post-application exposure from contacting treated lawns. Because EPA's level of concern for fosetyl-Al is an MOE of 100 or below, these MOEs are 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).

Because no intermediate-term non-occupational exposures are expected, fosetyl-Al is not expected to pose an intermediate-term risk.

5. *Aggregate cancer risk for U.S. population.* Based on the discussion in Unit III.A, fosetyl-Al 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 fosetyl-Al residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Rhone-Poulenc Method No. AR 154–97 underwent successfully independent laboratory validation for use as an enforcement analytical method. Although the tolerance expression includes only parent fosetyl-Al, Method AR 154–97 was validated for both fosetyl-Al and its metabolite, phosphorous acid.

In support of the pepper trials, the registrant made use of a data collection method, Method No. 00861/M001, which achieved a lower Limit of Quantitation (LOQ) than Method AR 154–97. Method No. 00861/M001 is an HPLC–MS/MS (high performance liquid chromatography–tandem mass spectrometry) method that uses the same extraction solvent as Method AR 154–97. Sufficient method validation data were submitted with the field trial data to support a LOQ of 0.01 ppm for fosetyl-Al residues in pepper (bell and non-bell). As EPA encourages the development of improved analytical methods and because both methods use the same extraction solvent, EPA considers Method No. 00861/M001 to also be a suitable enforcement method for peppers. Thus, both methods 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 a MRL for fosetyl-Al.

C. Response to Comments

The Agency received a comment expressing concerns about allowing residues of pesticides on eggplant and peppers. The Agency understands the commenter's concerns and recognizes that some individuals believe that no residue of pesticides should be allowed because of potential effects. However, under the existing legal framework provided by FFDCA section 408, EPA is authorized to establish pesticide tolerances where persons seeking such tolerances have demonstrated that the pesticide meets the safety standard imposed by the statute. Based on its assessment of the available data, the Agency has concluded there is a reasonable certainty that no harm will result from aggregate exposure to residues of fosetyl-Al.

D. Revisions to Petitioned-For Tolerances

EPA is not establishing a separate tolerance for residues of fosetyl-Al in or on pepper, non-bell (chili), dry fruit. The residues found on the dried commodity will be covered by the tolerance for residues of fosetyl-Al in or on pepper/eggplant, subgroup 8–10B; therefore, no separate tolerance is needed.

V. Conclusion

Therefore, tolerances are established for residues of fosetyl-Al, aluminum tris (*O*-ethylphosphonate), in or on pepper/eggplant, subgroup 8–10B at 0.01 ppm.

VI. Statutory and Executive Order Reviews

This action 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 action has been exempted from review under Executive Order 12866, this action 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 action 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 action 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: December 23, 2014.

Susan Lewis,

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 § 180.415, add alphabetically ''Pepper/eggplant, subgroup 8–10'' to the table in paragraph (a) to read as follows:

§ 180.415 Aluminum tris (*O*-ethylphosphonate); tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Pepper/eggplant, subgroup 8–10B [1]	0.01
* * * * *	

[1] There are no U.S. registrations as of December 23, 2014.

* * * * *

[FR Doc. 2015–00491 Filed 1–15–15; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2011–0107]

RIN 2127–AL56

Federal Motor Vehicle Safety Standards; Electric-Powered Vehicles; Electrolyte Spillage and Electrical Shock Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule; response to petitions for reconsideration and technical corrections.

SUMMARY: This document denies a petition for reconsideration of Federal Motor Vehicle Safety Standard (FMVSS) No. 305, ''Electric-powered vehicles; electrolyte spillage, and electrical shock protection'' from Nissan Motor Company (Nissan) requesting the use of a megohmmeter as an alternative measurement method for the electrical isolation test procedure. Further, this

document adopts various technical corrections and clarifications to the regulatory text of FMVSS No. 305 that do not change the substance of the rule.

DATES: The effective date of this final rule is January 16, 2015. Petitions for reconsideration of this final rule must be received not later than March 2, 2015.

ADDRESSES: Petitions for reconsideration should refer to the docket number of this document and be submitted to the Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, contact Shashi Kuppa, Office of Crashworthiness Standards (telephone: 202–366–3827) (fax: 202–366–2990), NVS–113. For legal issues, contact Jesse Chang, Office of the Chief Counsel (telephone 202–366–9874) (fax: 202–366–3820), NCC–112. The mailing address for these officials is: National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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I. Background

On June 14, 2010,[1] NHTSA issued a final rule amending the electrical shock protection requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 305, ''Electric-powered vehicles; electrolyte spillage and electrical shock protection.'' [2] In that document, the agency changed the requirements in FMVSS No. 305 to add flexibility for manufacturers of electric vehicles (and other vehicles with high voltage components such as fuel cell vehicles) while still maintaining protection for vehicle occupants and first responders from electrical shock. The main changes to the standard included creating two alternative compliance options (*i.e.,* the electrical isolation [3] and low-voltage [4] options) and altering the requirements to recognize the difference between alternating current (AC) and direct current (DC) high voltage sources. In addition, the 2010 final rule included new definitions and made various updates to existing definitions to align the standard more closely with voluntary industry practice.

Subsequent to the 2010 final rule, the agency received various petitions for reconsideration from vehicle manufacturers and their trade associations. Many of the petitioners sought increased clarity of the definitions, test specifications, and performance requirements of the rule. The agency published a final rule responding to those petitions on July 29, 2011.[5] The main changes to the 2010 final rule were clarifications to the following:

(1) The scope, applicability, and the definitions in the standard,

(2) the retention requirements for electric energy storage/conversion systems,

(3) the electrical isolation requirements,

(4) test specifications and requirements for electrical isolation monitoring, and

(5) the state-of-charge of electric energy storage devices prior to crash tests.

In addition to the above clarifications to the requirements and test procedures of the standard, that response to petitions for reconsideration also denied requests that the agency reconsider certain requests from the petitioners. Those requests included implementing a protective barrier compliance option for electrical safety, adjusting the test procedure to allow for alternative gas for crash testing hydrogen fuel cell vehicles, and adopting a low-energy compliance option for electrical safety. In response to those requests, the agency reiterated its positions on those matters from the 2010 final rule. We cited the lack of data to support the petitioners' requests to implement these changes to the standard. We also noted that no significant new research had produced any data that would have enabled the agency to arrive at a different conclusion from the 2010 final rule. In addition, we again expressed concerns in the 2010 final rule that some of these recommendations (such as using inert gas and megohmmeters for testing) might be outside the scope of the rulemaking.

II. Nissan's Petition for Reconsideration to the July 29, 2011 Final Rule

Subsequent to the 2011 final rule responding to petitions for reconsideration, the agency received a further petition for reconsideration. The petition (from Nissan) requested that we amend section S7.6 of FMVSS No. 305 to allow the use of a megohmmeter as an alternative measurement method for the electrical isolation test procedure.[6] Nissan suggested using a megohmmeter to measure the isolation resistance directly, rather than measuring voltage and calculating resistance (as presently specified in FMVSS No. 305). They contend that this results in a more stable and accurate post-crash test measurement procedure. Nissan noted that the test procedures for United Nations Economic Commission for Europe (ECE) Regulation No. 94 allow such a measurement method.[7] In addition to enhanced measurement stability and accuracy, Nissan stated that a direct resistance measurement supports the use of an inert gas and inactive fuel cells in crash tests of fuel cell vehicles. Nissan expressed concern that the electrical isolation test procedure specified in FMVSS No. 305 S7.6 does not permit the use of inert gas and inactive fuel cells in crash tests because the procedure only specifies a voltage measurement method. Nissan asked the agency to expedite ongoing research to develop a test procedure for evaluating electrical safety of fuel cell vehicles with inert gas and inactive fuel cells.

III. Agency Response to Nissan's Petition for Reconsideration

As stated above, the agency has addressed the issue of including test

[1] 75 FR 33515.

[2] 49 CFR 571.305.

[3] In essence, the electrical safety requirements for this compliance option were that (after testing in accordance with the standard's test procedures), electrical isolation for high voltage sources must be at 500 ohms/volt or greater unless the high voltage source is a DC source with electrical isolation monitoring. A DC source with electrical isolation monitoring must have electrical isolation that is greater than 100 ohms/volt. *See id.* at 33527.

[4] In the alternative, high voltage sources could meet the electrical safety requirements if their voltage was 30 volts for an AC source or lower (60 volts for a DC source).

[5] 76 FR 45436.

[6] A megohmmeter is a specialized ohmmeter that is primarily used to determine electrical isolation resistance. This device operates by applying a voltage or current to the item being tested. Because externally applied voltages or currents can disrupt its measurement (and/or cause damage to the instrument) the megohmmer is used to test items that are under an inactive and fully de-energized state.

[7] ECE R.94, ''Uniform Provisions Concerning the Approval of: Vehicles with Regard to the Protection of the Occupants in the Event of a Frontal Collision,'' Annex 11, ''Test Procedures for the Protection of the Occupants of Vehicles Operating on Electrical Power from High Voltage and Electrolyte Spillage,''

procedures in FMVSS No. 305 for evaluating electrical isolation resistance that use a megohmmeter and an inert gas (first in the June 14, 2010 final rule and second in the July 29, 2011 final rule responding to petitions for reconsideration). In this final rule, our position on the matter has not substantively changed. We continue to be concerned that incorporating an alternative test procedure that incorporates a megohmmeter and inert gas would exceed the scope of this rulemaking.

The 2010 final rule did not provide alternative test procedures with these characteristics because the agency's research was ongoing, there was insufficient information to make any regulatory decisions on establishing these alternative test procedures, and the agency was concerned that this issue would be outside the scope of the rulemaking. In dealing with the same issue in the 2011 final rule, the agency stated that its position on the issue had not substantively changed since the 2010 final rule and that no new information was available to lead it to conclude otherwise. As with the 2010 final rule, we noted in the 2011 final rule that the agency was continuing its research to determine the feasibility for establishing alternative test procedures that would incorporate the use of a megohmmeter and inert gas.

Since publication of the 2011 final rule (and the petition for reconsideration of the 2011 final rule from Nissan), the agency has completed additional research on the feasibility of using a megohmmeter for measuring electrical isolation.[8] The research presents certain technical questions that need to be resolved (*i.e.,* the research showed that megohmmeters could accurately measure electrical isolation resistance of DC high voltage sources in an inactive state but did not consistently do so for AC high voltage sources). We believe that the most appropriate forum to pursue these issues would be a subsequent rulemaking action that includes a new proposal. To incorporate a new set of procedures to test electrical isolation using the method suggested by Nissan in this document would likely raise concerns about the scope of the rulemaking and the effectiveness of the public's opportunity to comment on the merits of incorporating such procedures.

As discussed in the July 29, 2011 final rule, some international regulations and international standards permit the use of megohmmeters in crash tests of hydrogen powered vehicles. We believe that closer harmonization with international regulations (to the extent that they meet the need for safety and the other requirements of the Motor Vehicle Safety Act[9]) is an important consideration. However, as already noted in this document, this issue would be more appropriate for consideration in a subsequent rulemaking action. In that context, the agency would seek to propose a resolution for these technical issues that we have discovered through our research and obtain further input from the public on that approach. This process would help ensure that any such test procedure would be able to evaluate the vehicle's electrical safety using an inert gas and a megohmmeter in a clear, objective, and repeatable fashion.

Thus, the agency cannot grant (within this rulemaking) the petitioner's request to reconsider our decision not to incorporate a test procedure in FMVSS No. 305 for evaluating electrical isolation resistance using a megohmmeter and inert gas. However, as we noted in the July 29, 2011 final rule, manufacturers are not prohibited from using alternative test procedures and devices other than those in the FMVSSs as a basis for their compliance certification.

IV. Technical Corrections to the July 29, 2011 Final Rule

In addition to addressing the petition for reconsideration from Nissan, this document makes a few technical amendments to the regulatory text of FMVSS No. 305 to correct omissions, add clarity, and correct typographical errors. Due to the clerical nature of these corrections to the 2011 final rule, we find that there is good cause to determine that notice and comment on these corrections is unnecessary under the Administrative Procedure Act.[10]

a. Omitted Voltage Definitions

The three definitions for voltage of alternating current (VAC), voltage of direct current (VDC), and working voltage were included in paragraph S4 of the June 14, 2010 final rule but were inadvertently omitted in the July 29, 2011 final rule. This final rule restores these definitions in paragraph S4 of FMVSS No. 305 without any changes to the language from the 2010 final rule (except for a clarification to the definition of VAC, as will be discussed in the section that follows). We find that notice and comment is unnecessary for restoring these three definitions in paragraph S4 of FMVSS No. 305. It was clear that the omission of these definitions was a clerical mistake as the amended regulatory text from the 2011 final rule continued to use the terms VAC, VDC, and working voltage in the requirements and test procedures in the standard. Further, we did not mention removing the definitions from paragraph S4 in the preamble to the 2011 final rule and we believe that restoring these three definitions does not change the substantive requirements of FMVSS No. 305.

b. Clarification to Volts of Alternating Current (VAC) Definition

In addition to restoring the VAC definition into paragraph S4, we believe it is appropriate to further clarify the definition of VAC to be aligned with industry practices and other standardized definitions. Subsequent to the 2011 final rule, the agency received questions from the Alliance of Automobile Manufacturers (''the Alliance'')[11] seeking confirmation that NHTSA intended to use the standard industry practice of using the root mean square value of voltage for VAC.

While we have expressed (throughout the rulemaking process) voltage of alternating current using the root meet square value, we agree with the Alliance that this definition could be clarified. In the 2010 final rule, the definition of VAC stated that ''*VAC* means volts of alternating current (AC).'' Due to the nature of alternating current, VAC varies in time and it could potentially be measured using a different method. However, our rulemaking process has always used the root mean square value for expressing VAC because the safety thresholds established by the 2010 final rule were based on limits of electrical current (that the body can withstand) from IEC Technical Specification 60479–1. This technical specification expresses electrical current for AC

[8] Hydrogen Fuel Cell Vehicle Fuel System Integrity Research—Electrical Isolation Test Procedure Development and Verification, DOT HS 811 553, March 2012, *http://www.nhtsa.gov/Research/Crashworthiness/Alternative%20Energy%20Vehicle%20Systems%20Safety%20Research.*

[9] The National Traffic and Motor Vehicle Safety Act (''Motor Vehicle Safety Act'') directs this agency to establish Federal Motor Vehicle Safety Standards. It further states that these standards ''shall be practicable, meet the need for motor vehicle safety, and be stated in objective terms.'' *See* 49 U.S.C. 30111(a).

[10] The Administrative Procedure Act states that general notice of proposed rulemaking is not required when an agency ''for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' *See* 5 U.S.C. 553(b)(3)(B).

[11] The Alliance of Automobile Manufacturers is an association of 12 vehicle manufacturers including BMW group, Chrysler Group LLC, Ford Motor Company, General Motors Company, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche, Toyota, Volkswagen Group of America and Volvo Cars North America.

sources as the root mean square value of current.[12] As our safety thresholds for AC sources are based on electrical current limits expressed as the root mean square value of current, the voltage for AC sources must also be expressed using the root mean square value.[13]

We further expressed VAC as the root mean square value of voltage of AC sources because this is the standard definition used in common industry standards. The root mean square value is the square root of the time average value of the square of the voltage within a period of oscillation. Using this method of expressing AC voltage is common practice for a wide variety of industries. The Society of Automotive Engineers (SAE) Recommended Practice J1772,[14] refers to the voltage of AC mains as the root mean square value. The voltage of power typically supplied to homes (commonly referred to as ''120 Volts'') is the root mean square value of the AC supply. Voltage of electric power transmission lines are also reported as the root mean square value of voltage. Instrumentation devices, such as multimeters and voltmeters, also measure the root mean square value of voltage of alternating current sources.

Therefore, we find that notice and comment is unnecessary for this clarification to the definition of VAC. The agency is simply stating that VAC is expressed as the root mean square value of voltage in the VAC definition in FMVSS No. 305 to make clear a term that has always been expressed in this manner throughout the rulemaking process. We believe that this clarification does not substantively change the requirements of FMVSS No. 305. Further, the clarification does not change the industry understanding of VAC as used in the standard (as evidenced by the questions we received from industry on this matter).

c. Other Typographical Corrections to the Regulatory Text

In addition, the agency discovered various typographical errors resulting from the 2011 final rule that we are now correcting in this final rule. We find that notice and comment is unnecessary for these changes to FMVSS No. 305. These changes do not alter the substance of the rule. Instead, they correct various inconsistencies including incorrect paragraph references, incomplete sentences, and updating a reference to a current definition (as opposed to an old definition that has been removed from FMVSS No. 305).

In paragraph S5.4, this final rule corrects a reference dealing with electrical isolation monitoring requirements. Paragraph S5.4 establishes the requirements that an electrical isolation monitoring system must meet. Electrical isolation monitoring is required under paragraph S5.3(a)(3) when the electrical isolation of a DC high voltage source is greater or equal to 100 ohms/volt (as opposed to 500 ohms/volt without an electrical isolation monitoring system). S5.4 references S5.3 to indicate the situations under which electrical isolation monitoring is required. However, the current S5.4 incorrectly refers to S5.3(a)(2), a section applicable to DC high voltage sources *without* electrical isolation monitoring. Thus, the agency is correcting this reference to S5.3(a)(3) which is applicable to DC high voltage sources *with* electrical isolation monitoring. We believe that this change corrects a clear typographical error.

In addition, this final rule rewords S7.6.4 and S7.6.5 to clarify the language in these paragraphs. The 2011 final rule mistakenly edited paragraphs S7.6.4 and S7.6.5 to include incomplete sentences and the term ''voltage(s)'' when each paragraph only referenced one voltage measurement. In FMVSS No. 305, S7.6.4 states that the voltage(s) is/are measured as shown in Figure 2. It also has an incomplete sentence about the voltages(s) (V1) between the negative side of the high voltage source and the electrical chassis. Paragraph S7.6.5 states that the voltage(s) is/are measured as shown in Figure 3. It also has an incomplete sentence about the voltage(s) (V2) between the positive side of the high voltage source and the electrical chassis.

Since only a single voltage measurement is made in each of these sections, the references to ''voltage(s)'' are incorrect and confusing. Further, we have edited the paragraphs to remove the sentence fragments from each paragraph. Therefore, the agency is rewording S7.6.4 and S7.6.5 in this final rule. Paragraph S7.6.4 will state that the voltage V1 between the negative side of the high voltage source and the electrical chassis is measured as shown in Figure 2. Further, paragraph S7.6.5 will state that the voltage V2 between the positive side of the high voltage source and the electrical chassis is measured as shown in Figure 3.

As stated above, these changes correct grammatical errors for these two paragraphs without changing the substance of the requirements or the measurement procedures. These sentences merely restate the measurement procedure shown in Figure 2 and Figure 3 more clearly than the language adopted by the 2011 final rule.

Further, this final rule changes the phrase, ''electrical isolation measurement,'' to ''voltage measurement,'' in two instances of section S7.7 Voltage measurement. As evident from the other portions of the regulatory text, the measurements obtained in S7.7 are not ''electrical isolation measurements'' but are ''voltage measurements.'' The title of S7.7 is ''voltage measurement,'' suggesting that the measured value in S7.7 is the voltage. Paragraph S7.6 uses the voltage measurements to then calculate the electrical isolation resistance of a high voltage source. Further, ''electrical isolation'' is defined in the current standard as the resistance between any high voltage source and any of the vehicle's electrical chassis divided by the working voltage of the high voltage source. This measurement cannot be obtained through the procedure described in S7.7. Therefore, it is clear that the reference to ''electrical isolation measurements'' is a typographical error. Thus, this final rule changes the references to ''electrical isolation measurements'' to ''voltage measurements'' in order to clarify that the voltages are measured and the electrical isolation is computed from the voltage measurements. This is not a substantive change to the standard.

Finally, this final rule makes two minor clarifications to paragraph S8. First we are italicizing the title ''Test procedure for on-board electrical isolation monitoring system'' to clarify that it is a title. Second, we are revising the term ''high voltage system to the propulsion motor(s)'' in S8 subparagraph (2) to ''electric energy storage/conversion system to the propulsion system.'' This is also a typographical error because the terms ''high voltage system'' and ''propulsion motor'' are definitions that were replaced by ''electric energy storage/conversion system'' and ''propulsion system'' in the 2011 final rule. Thus, the terms ''high voltage system'' and ''propulsion motor'' are not defined in FMVSS No. 305 and it should be clear

[12] *See* IEC TS 60479–1, Fourth Edition, 2005–2007. Figure 20 shows the amount of current in AC (root mean square) over time and the associated probabilities of fibrillation. Section 5 explains these values and notes that alternating current values are expressed as root mean square values.

[13] Voltage is current multiplied by resistance ($V = I \times R$). In order to establish the required electrical isolation in ohms per volt (*e.g.,* 500 ohms/volt for AC sources in paragraph S5.3(a)) using the $V = I \times R$ equation, the voltage (for an AC source) must be expressed as the root mean square value of voltage given that the value of current that we are using is expressed as the root mean square value.

[14] SAE J1772—Recommended practice for electric vehicle and plug-in hybrid electric vehicle conductive charge coupler.

that the agency intended to use the updated definitions for paragraph S8 in the 2011 final rule. Thus, we are updating these terms in paragraph S8 and we do not believe that this is a substantive change to the standard.

V. Rulemaking Analyses and Notices

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

NHTSA has considered the impact of this rulemaking action under Executive Order 12866, Executive Order 13563, and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.'' It is not considered to be significant under E.O. 12866 or the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). NHTSA has determined that the effects of this final rule are minor and that a regulatory evaluation is not needed to support the subject rulemaking. This final rule only makes slight changes to the regulatory text of the July 29, 2011 final rule to add clarification and does not impose significant costs beyond those already required by the July 29, 2011 final rule.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of proposed rulemaking or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this final rule under the Regulatory Flexibility Act. I certify that this final rule does not have a significant economic impact on a substantial number of small entities. Any small manufacturers that might be affected by this final rule are already subject to the requirements of FMVSS No. 305.

Executive Order 13132 (Federalism)

NHTSA has examined this final rule pursuant to Executive Order 13132 (64 FR 43255; Aug. 10, 1999) and concluded that no additional consultation with States, local governments, or their representatives is mandated beyond the rulemaking process. The agency has concluded that the final rule does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule does not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule does not impose substantial additional requirements. Instead, it clarifies the existing requirements from the July 29, 2011 final rule.

NHTSA rules can have preemptive effect in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an expressed preemption provision that states when a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter. 49 U.S.C. 30103(b)(1). It is this statutory command that preempts any non-identical State legislative and administrative law [15] addressing the same aspect of performance, not this rulemaking.

The express preemption provision described above is subject to a savings clause under which ''[c]ompliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law.'' 49 U.S.C. 30103(e). Pursuant to this provision, State common law tort causes of action against motor vehicle manufacturers that might otherwise be preempted by the express preemption provision are generally preserved. However, the Supreme Court has recognized the possibility, in some instances, of implied preemption of State common law tort causes of action by virtue of NHTSA's rules—even if not expressly preempted.

This second way that NHTSA rules can preempt is dependent upon the existence of an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone obtained a State common law tort judgment against the manufacturer—notwithstanding the manufacturer's compliance with the NHTSA standard. Because most NHTSA standards established by an FMVSS are minimum standards, a State common law tort cause of action that seeks to impose a higher standard on motor vehicle manufacturers will generally not be preempted. However, if and when such a conflict does exist—for example, when the standard at issue is both a minimum and a maximum standard—the State common law tort cause of action is impliedly preempted. See *Geier* v. *American Honda Motor Co.,* 529 U.S. 861 (2000).

Pursuant to Executive Order 13132, NHTSA has considered whether this rule could or should preempt State common law causes of action. The agency's ability to announce its conclusion regarding the preemptive effect of one of its rules reduces the likelihood that preemption will be an issue in any subsequent tort litigation.

To this end, the agency has examined the nature (*e.g.,* the language and structure of the regulatory text) and objectives of this rule and finds that this rule merely clarifies the requirements and definitions contained in the July 29, 2011 final rule. Thus, NHTSA does not intend that this rule preempt state tort law that would effectively impose a higher standard on motor vehicle manufacturers than that established by this rule. Additionally, in the July 29, 2011 final rule, the agency did not assert preemption. Establishment of a higher standard by means of State tort law would not conflict with the final rule announced here. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

Executive Order 12988 (Civil Justice Reform)

When promulgating a regulation, agencies are required under Executive Order 12988 to make every reasonable effort to ensure that the regulation, as appropriate: (1) Specifies in clear language the preemptive effect; (2) specifies in clear language the effect on

[15] The issue of potential preemption of state tort law is addressed in the immediately following paragraph discussing implied preemption.

existing Federal law or regulation, including all provisions repealed, circumscribed, displaced, impaired, or modified; (3) provides a clear legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction; (4) specifies in clear language the retroactive effect; (5) specifies whether administrative proceedings are to be required before parties may file suit in court; (6) explicitly or implicitly defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship of regulations.

Pursuant to this Order, NHTSA notes as follows. The preemptive effect of this final rule is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

Privacy Act

Please note that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or online at *http://www.dot.gov/privacy.html.*

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. There are no information collection requirements associated with this final rule.

National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), ''all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.'' Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards. FMVSS No. 305 has historically drawn largely from SAE J1766. Prior to this update, FMVSS No. 305 was based on the April 2005 version of SAE J1766. However, this final rule has made certain amendments to the standard to reflect the development of new voluntary consensus standards that have superseded SAE J1766. Thus, this final rule makes revisions to the June 14, 2010 final rule that updated FMVSS No. 305.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or Tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). This final rule, which clarifies the July 29, 2011 final rule, will not result in expenditures by State, local or Tribal governments, in the aggregate, or by the private sector in excess of $100 million annually.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicles, Motor vehicle safety.

In consideration of the foregoing, NHTSA amends 49 CFR part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.95.

■ 2. Amend § 571.305 by:

■ a. Adding, in alphabetical order, the definitions of ''VAC,'' ''VDC,'' and ''Working Voltage'' to S4;

■ b. Revising S5.4, S7.6.4, S7.6.5, S7.7, the heading of S8, and S8(2).

The additions and revisions read as follows:

§ 571.305 Standard No. 305; Electric-powered vehicles: electrolyte spillage and electrical shock protection.

* * * * *

S4. *Definitions.*

* * * * *

VAC means volts of alternating current (AC) expressed using the root mean square value.

VDC means volts of direct current (DC).

Working Voltage means the highest root mean square voltage of the voltage source, which may occur across its terminals or between its terminals and any conductive parts in open circuit conditions or under normal operating conditions.

* * * * *

S5.4 *Electrical isolation monitoring.* Each DC high voltage source with electrical isolation monitoring during vehicle operation pursuant to S5.3(a)(3) shall be monitored by an electrical isolation monitoring system that displays a warning for loss of isolation when tested according to S8. The system must monitor its own readiness and the warning display must be visible to the driver seated in the driver's designated seating position.

* * * * *

S7.6.4 The voltage V1 between the negative side of the high voltage source and the electrical chassis is measured as shown in Figure 2.

S7.6.5 The voltage V2 between the positive side of the high voltage source and the electrical chassis is measured as shown in Figure 3.

* * * * *

S7.7 *Voltage measurement.* For the purpose of determining the voltage level of the high voltage source specified in S5.3(b), voltage is measured as shown in Figure 1. Voltage Vb is measured across the two terminals of the voltage source. Voltages V1 and V2 are measured between the source and the electrical chassis. For a high voltage source that has an automatic disconnect that is physically contained within itself, the voltage measurement after the test is made from the side of the automatic disconnect connected to the electric power train or to the rest of the electric power train if the high voltage source is a component contained in the power train. For a high voltage source that has an automatic disconnect that is not physically contained within itself, the voltage measurement after the test is made from both the high voltage source side of the automatic disconnect and from the side of the automatic

disconnect connected to the electric power train or to the rest of the electric power train if the high voltage source is a component contained in the power train.

S8. *Test procedure for on-board electrical isolation monitoring system.*

* * *

(2) The switch or device that provides power from the electric energy storage/conversion system to the propulsion system is in the activated position or the ready-to-drive position.

* * * * *

Issued in Washington, DC on January 2, 2015, under authority delegated in 49 CFR part 1.95.

David J. Friedman,

Deputy Administrator.

[FR Doc. 2015–00423 Filed 1–15–15; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 130925836–4174–02]

RIN 0648–XD713

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

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher/processors using trawl gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2015 Pacific cod total allowable catch apportioned to catcher/processors using trawl gear in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), January 20, 2015, through 1200 hours, A.l.t., June 10, 2015.

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

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

The A season allowance of the 2015 Pacific cod total allowable catch (TAC) apportioned to catcher/processors using trawl gear in the Central Regulatory Area of the GOA is 903 metric tons (mt), as established by the final 2014 and 2015 harvest specifications for groundfish of the GOA (79 FR 12890, March 6, 2014) and inseason adjustment to the final 2015 harvest specifications for Pacific cod (80 FR 192, January 5, 2015).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator) has determined that the A season allowance of the 2015 Pacific cod TAC apportioned to catcher/processors using trawl gear in the Central Regulatory Area of the GOA will soon be reached. Therefore, pursuant to § 679.20(d)(1)(ii)(B), the Regional Administrator is establishing a directed fishing allowance of 0 mt and is setting aside the remaining 903 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher/processors using trawl gear in the Central Regulatory Area of the GOA. After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of Pacific cod by catcher/processors using trawl gear in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of January 12, 2015.

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

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

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

Dated: January 13, 2015.

Emily H. Menashes,

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

[FR Doc. 2015–00630 Filed 1–15–15; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 80, No. 11
Friday, January 16, 2015

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

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Chapter II

[CPSC Docket No. CPSC–2013–0028]

Corded Window Coverings; Request for Comments and Information

AGENCY: Consumer Product Safety Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Consumer Product Safety Commission (the Commission or CPSC) has reason to believe that certain cords on window coverings may present an unreasonable risk of injury to young children. This advance notice of proposed rulemaking (ANPR) initiates a rulemaking proceeding under the Consumer Product Safety Act (CPSA). We invite comments concerning the risk of injury associated with corded window coverings, the regulatory alternatives discussed in this notice, the costs to achieve each regulatory alternative, the effect of each alternative on the safety, cost, utility, and availability of window coverings, and other possible ways to address the risk of strangulation posed to young children by window covering cords. We also invite interested persons to submit an existing standard or a statement of intent to modify or develop a voluntary standard to address the risk of injury described in this notice.

DATES: Written comments in response to this notice must be received by March 17, 2015.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2013–0028, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

The Commission does not accept comments submitted by electronic mail (email), except through *www.regulations.gov.* The Commission encourages you to submit electronic comments by using the Federal eRulemaking Portal as described above.

Written Submissions

Submit written submissions in the following way:

Mail/Hand delivery/Courier to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Rana Balci-Sinha, Project Manager, Directorate for Engineering Sciences, Consumer Product Safety Commission, National Product Testing and Evaluation Center, 5 Research Place, Rockville, MD 20850; 301–987–2584; *rbalcisinha@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of this ANPR is to collect information related to a potential mandatory rule to address the risk of strangulation to young children on window covering cords. On October 8, 2014, the Commission granted a petition to initiate a rulemaking to develop a mandatory safety standard for window coverings. The petition sought to prohibit window covering cords when a feasible cordless alternative exists. When a feasible cordless alternative does not exist, the petition requested that all window covering cords be made inaccessible by using passive guarding devices. The Commission granted the petition and directed staff to prepare this ANPR seeking information and comment on regulatory options for a mandatory rule to address the risk of strangulation to young children on window covering cords.

This ANPR is based on information from staff's December 31, 2014 Briefing Memorandum on Recommended Advance Notice of Proposed Rulemaking for Corded Window Coverings (ANPR Briefing Memorandum), available at *http://www.cpsc.gov/Global/Newsroom/FOIA/CommissionBriefingPackages/2015/Corded-Window-Coverings-Advance-Notice-of-Proposed-Rulemaking.pdf,* as well as CPSC staff's October 1, 2014 Staff Briefing Package in Response to the Petition CP 13–2, Requesting Mandatory Safety Standards for Window Coverings (Petition Briefing Package), available at: *http://www.cpsc.gov/Global/Newsroom/FOIA/CommissionBriefingPackages/2015/PetitionRequestingMandatoryStandardforCordedWindowCoverings.pdf.*

Based on CPSC's incident data, the Commission believes that certain window covering cords may present an unreasonable risk of injury, specifically strangulation, to young children. The Commission is aware of 184 reported fatal strangulations and 101 reported nonfatal strangulations from 1996 through 2012 involving window covering cords among children 8 years and younger. Petition Briefing Package, Tab B. Using separate data from the National Center for Health Statistics (NCHS) and a CPSC study, CPSC estimates that on average, at least 11 fatal strangulations related to window covering cords occurred per year in the United States from 1999 through 2010, among children under 5 years old. CPSC finds no observable trend in the data. *Id.*

CPSC evaluated the risk of a fatal or nonfatal strangulation to children involving window covering cords. Based on various CPSC data sources (*e.g.,* newspaper clippings, consumer complaints, death certificates purchased from states, medical examiners' reports, and in-depth investigation (IDI) reports by CPSC staff), from 1996 through 2012, CPSC found, on average, about 11 reported fatal strangulations, and on average, about six reported nonfatal strangulation incidents per year for children 8 years and younger. *Id.*

Tab E of staff's Petition Briefing Package analyzed the current voluntary standard for window coverings, ANSI/WCMA A100.1–2014, *American National Standard for Safety of Corded*

Window Covering Products (ANSI/WCMA standard or voluntary standard). CPSC engineering staff found that the current version of the ANSI/WCMA standard would not effectively address 57 percent of the 249 window covering cord incidents investigated by CPSC staff. Two types of cords on window coverings continue to present a hazard to children: Pull cords and continuous loops.

The Commission invites the public to review the information and ideas presented in this ANPR and to submit information and comments that would assist the Commission as it considers regulatory alternatives to reduce the strangulation risk to young children associated with corded window covering products.

II. Window Covering Products

Window coverings comprise a wide range of products, including shades, blinds, curtains, and draperies. In general terms, ''hard'' window coverings, composed of slats or vanes, are considered blinds; and ''soft'' window coverings that contain a continuous roll of material are considered shades. Both blinds and shades may have inner cords that cause a motion, such as raising, lowering, traversing, or rotating the window covering to achieve the desired level of light control. Curtains and draperies do not contain inner cords but may be operated by a continuous loop cord or beaded chain. The cord or loop that is manipulated by the consumer to operate the window covering is called an ''operating cord'' and may be a pull cord (single cord or multiple cords) or continuous loops. Cordless window coverings are products designed to function without an operating cord but may contain inner cords. Petition Briefing Package, Briefing Memorandum at 9.

A. Common Window Covering Products

Following is a description of the most common window covering products and the types of cords associated with incidents for each window covering product. Cord types are based on CPSC's review of the 249 IDIs completed by staff on window covering incidents. Petition Briefing Package, Briefing Memorandum Appendix, and Tab B at 83–84.

1. *Horizontal blind* (Figure 1): Horizontal blinds are made using horizontal slats. Slats vary in their length and width and are manufactured using metal, vinyl, wood, fabric, and other materials. Horizontal blinds are typically raised and lowered using pull cords. Pull cords are part of the inner cords that users interact with to raise or lower the blind. Inner cords are attached to the bottom rail and threaded through the horizontal slats to raise and lower them, as well as to adjust the slats for lighting. Slats can be tilted with various mechanisms, including tilt cords, a tilt wand, or in the case of a blind with no operating cords, by using the bottom rail. Cords associated with horizontal blind incidents include: continuous loop cord/beaded-chain (free-standing, *i.e.,* not mounted on a tension device), inner cord, pull cord (with loops or long cords), and tilt cord.

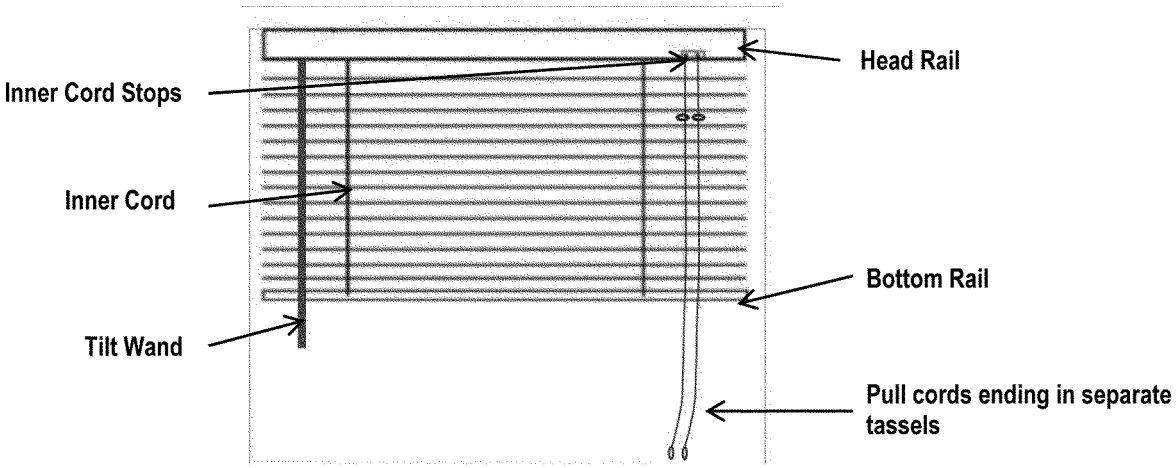


Figure 1. Horizontal Blind

2. *Cellular shade* (Figure 2): Cellular shades are made of multiple layers of material that are formed into tubes or cells in a horizontal orientation. Cellular shades, often referred to as honeycomb shades, are constructed so that an air pocket, which mimics the shape of a bee's honeycomb, is formed in the center of the shade. Cellular shades are typically raised and lowered using an operating cord. Inner cords that assist in raising and lowering the blind are between the layers of material and are visible from the side openings only. Cords associated with cellular shade incidents include: continuous loop cord/beaded-chain (free-standing) and pull cord (with loops, cord connectors, or long cords).

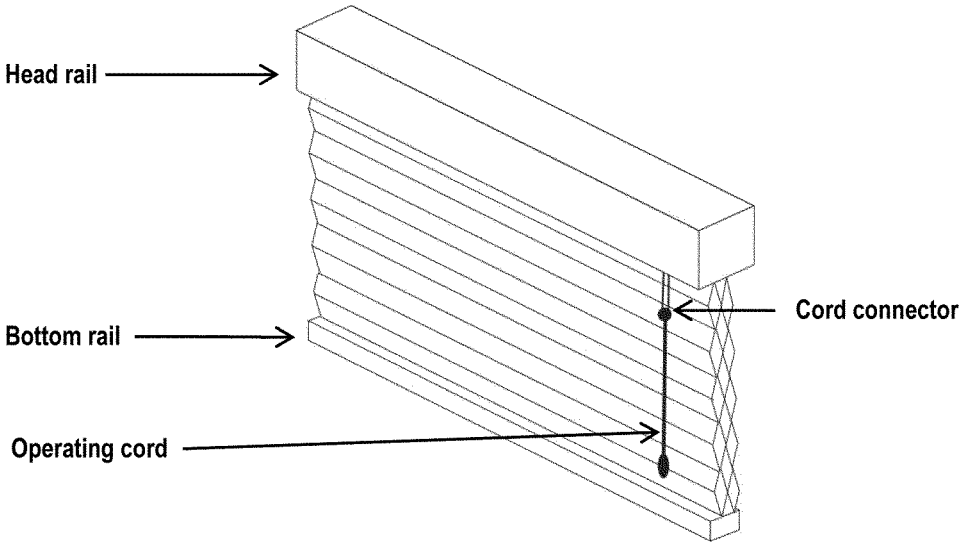


Figure 2. Cellular shade

3. *Pleated shade* (Figure 3): Pleated shades are made of pleated or folded material in a horizontal orientation. The pleated material can be raised and lowered similar to cellular shades. Unlike cellular shades, pleated shades do not have an air pocket. Cords associated with pleated shade incidents include: Continuous loop cord/beaded-chain (free-standing) and pull cord (with loops or long cords).

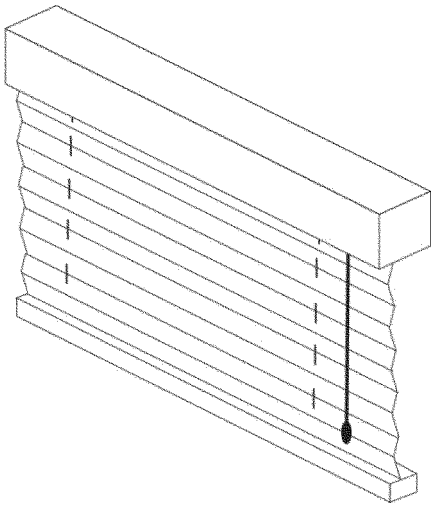


Figure 3. Pleated shade

4. *Roller shade* (Figure 4): Roller shades are comprised of a roller, a means of supporting the roller, and flexible sheets of material attached to the roller. When a roller shade is raised, the material is gathered on the roller located at the top of the shade. Cords associated with roller shade incidents include: Continuous loop cord/beaded-chain (free-standing).

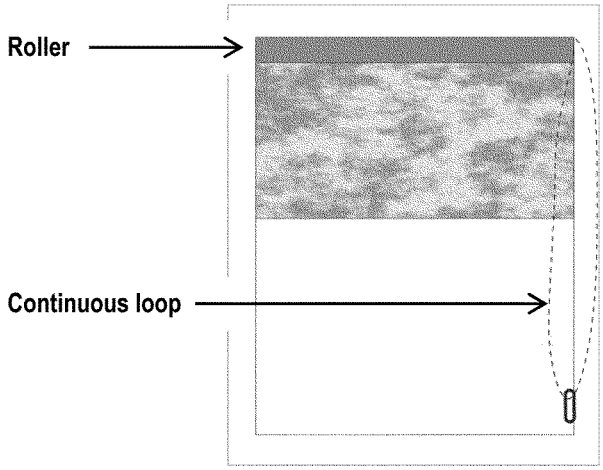


Figure 4. Roller shade

5. *Roll-up blind* (Figure 5): Roll-up blinds are made of flexible material, which rolls up from the bottom of the blind when the blind is raised. Roll-up blinds are typically raised and lowered using pull cords. Cords associated with roll-up blind incidents include: Pull cord (with loops or long cords) and lifting loop (wraps around the bottom of the product and enables the shade to roll up from bottom to top.).

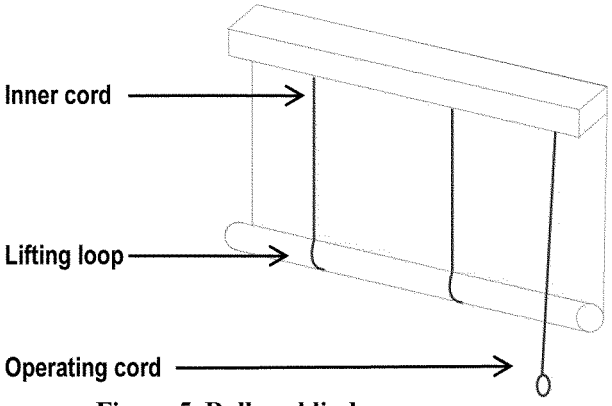


Figure 5. Roll-up blind

6. *Roman shade* (Figure 6): Roman shades are made of fabric or other material that is suspended from a head rail. As the shade is raised, the material gathers from the bottom upward, toward the head rail. Cords associated with Roman shade incidents include: continuous loop cord/beaded-chain (free-standing), inner cords, and pull cord (with loops or long cords).

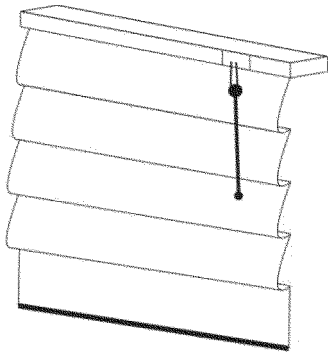


Figure 6. Roman shade

7. *Vertical blind* (Figure 7): Vertical blinds are made using slats in a vertical orientation that can be stacked to one or both sides of the head rail. The head rail houses mechanisms that allow slats to traverse or rotate or both. Cords associated with vertical blind incidents include: Continuous loop cord/beaded-chain (free-standing).

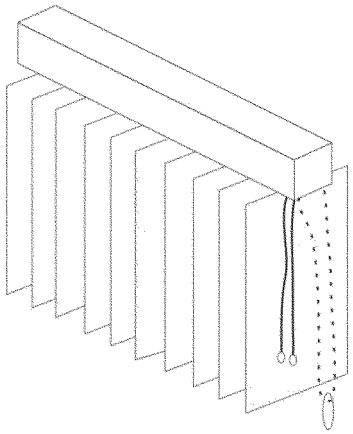


Figure 7. Vertical blind

8. *Drapery/Curtain* (Figure 8): Draperies and curtains are usually made of a fabric material that hangs in a window or other opening (*e.g.,* sliding door). Cords can sometimes be used to open and close draperies and curtains. Cords associated with drapery and curtain incidents include: Continuous loop cord/beaded-chain (free-standing).

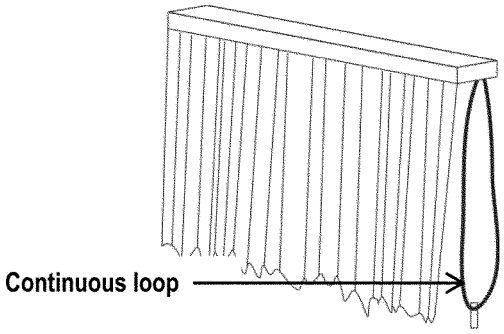


Figure 8. Drapery/Curtain

B. Window Covering Market

Based on 2011 data, more than 350 manufacturers and more than 1,800 retailers of window coverings operate in the United States. Petition Briefing Package, Tab G. Three manufacturers reportedly accounted for almost 70 percent of dollar sales in the U.S. window coverings market in 2008. Retail prices for corded window coverings have a wide range. The type of material, brands, and operating mechanisms affect the price. Average prices for window coverings range from about $50 to $440 for shades and from about $10 to $360 for blinds. Retail prices for extremely large and custom-made window coverings can be as high as $3,000.

The Commission obtained window covering market information from a study conducted by the consulting firm D&R International (D&R, 2013).[1] The Window Covering Manufacturers Association (WCMA), the organization that developed the existing voluntary standard, engaged D&R to conduct the study. D&R received funding for the study from WCMA and the U.S. Department of Energy (DOE), through Lawrence Berkeley National Laboratory (LBNL). Based on information from the D&R study, shipments of residential window coverings from manufacturers may have amounted to about 100 million to 150 million units in the United States in 2012. D&R based these estimates on information (including shipment, pricing, retail and manufacturing data) provided by WCMA members, U.S. Census Bureau reports of vinyl blind imports, and data collected from a WCMA-funded Internet survey of U.S. households, which D&R also conducted as part of the study. WCMA participated in designing and implementing the Internet survey. D&R developed a research plan in consultation with WCMA, with input from LBNL. DOE, through LBNL, provided funding to analyze the Internet survey and prepare the report.[2] Augmenting the D&R estimates with U.S. housing statistics, more than 1 billion window coverings may be in use

[1] D&R International, Ltd. (September 2013). *Residential windows and window coverings: A detailed view of the installed base and user behavior (DOE/EE–0965).* U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Washington DC. September, 2013. Available at: *http://energy.gov/eere/buildings/downloads/residential-windows-and-window-coverings-detailed-view-installed-base-and.*

[2] *Ibid.*

in U.S. homes. Petition Briefing Package, Tab G at 148–152.

The Commission does not have precise information on sales of cordless window coverings (or window coverings with inaccessible cords), but based on CPSC discussions with industry participants and review of a major retailer's Web site, sales of cordless window coverings may amount to as much as 25 percent of the market.

CPSC compared the retail sales prices of cordless and corded products and found that manually operated cordless window coverings may cost about $15 to $130 more than similar corded window coverings. The observed prices of motor-operated window coverings are more than $100 higher than the prices of corded window coverings, and the price differences can exceed $300. Some wand-operated vertical blinds cost about the same as corded versions; others appear to cost about $10 more than corded vertical blinds. The Commission has insufficient information to determine how the costs or retail prices of safer window coverings will change over time. *Id.*

III. The Risk of Injury

A. Incident Data Overview

CPSC estimates that a minimum of 11 fatal strangulations related to window covering cords, on average, occurred per year in the United States from 1999 through 2010, among children under 5 years old, based on National Center for Health Statistics (NCHS) data and a CPSC study.[3] Petition Briefing Package, Tab B. Additionally, CPSC's emergency department-treated injury data (National Electronic Injury Surveillance System or NEISS) demonstrate that from 1996 through 2012, an estimated 1,590 children received treatment for injuries resulting from entanglements on window covering cords based on NEISS data. *Id.* at 80–82.

CPSC also receives incident data through newspaper clippings, consumer complaints, death certificates purchased from states, medical examiners' reports, and IDI reports. Using data from these sources, CPSC found a total of 285 reported fatal and nonfatal strangulation incidents from January 1996 through December 2012 involving window coverings among children 8 years of age or younger. These 285 incidents do not constitute a statistical sample of known probability and do not necessarily include all window covering, cord-related strangulation incidents that occurred during that period. Given that these reports are anecdotal and reporting is incomplete, CPSC strongly discourages drawing any inferences based on the year-to-year increase or decrease shown in the reported data. *Id.*

Of the 285 incidents, 184 resulted in a fatality. Among the nonfatal incidents, 19 involved hospitalizations (7 percent). The long-term outcomes of these 19 injuries varied from a scar around the neck, to quadriplegia, to permanent brain damage. In addition, 67 incidents (24 percent) involved less-severe injuries, some of which required medical treatment but not hospitalization. In the remaining 15 incidents (5 percent), a child became entangled in a window covering cord but was able to disentangle him or herself from the cord and escape injury.

Of the 285 total reported incidents involving window covering cords, CPSC staff reviewed the completed IDIs for 249 incidents. Table 1 presents a breakdown of all 249 investigated incidents, by type of window coverings and type of cord.

TABLE 1—DISTRIBUTION OF INVESTIGATED INCIDENTS BY TYPE OF WINDOW COVERING AND ASSOCIATED CORD 1996–2012

	Pull cord	Continuous loop cord/ beaded-chain	Inner cord	Lifting loop	Tilt cord	Unknown	Total (percentage)
Horizontal	90	3	23		2	13	131 (53%)
Vertical		41				2	43 (17)
Roman	2	1	24				27 (11)
Curtain/drapery		13				1	14 (6)
Cellular	5	5					10 (4)
Roller		6					6 (2)
Roll-up	2			3			5 (2)
Unknown	2	1				10	13 (5)
Total	101	70	47	3	2	26	249 (100)

Source: CPSC In-Depth Investigation File (INDP).

Of the 249 incidents investigated by CPSC staff, 170 involved a fatality. Ninety-two (54 percent) of these fatal incidents involved a horizontal blind, 36 (21 percent) involved a vertical blind, 14 (8 percent) involved a curtain/drapery, eight (5 percent) a Roman shade, five (3 percent) a cellular shade, four (2 percent) a roll-up shade, and two (1 percent) a roller shade. Staff was unable to identify the window covering type in 9 (5 percent) of the 170 fatalities. *Id.* at 84–85.

B. Physiology of Strangulation and Associated Injuries

Young children are at risk of strangulation on corded window coverings. Strangulation due to mechanical compression of the neck involves obstruction of the airway passage and occlusion of blood vessels in the neck. Petition Briefing Package, Tab C. Strangulation can occur when a child's head or neck becomes entangled in any position, even in situations where the body is fully or partially supported, in the event that a lateral pressure is sustained at a level resulting in vascular occlusion. *Id.* at 94.

Strangulation can rapidly progress to anoxia, associated cardiac arrest, and death. Permanent, irreversible damage can occur if the delivery of oxygen to tissues is reduced. The severity of oxygen deprivation ultimately governs the victim's chance for survival or the degree of neurological damage. Neurological damage may range from amnesia, loss of cognitive abilities due to hypoxic-ischemic injury to the hippocampus, mobility limitations, and

[3] N. Marcy, G. Rutherford. ''Strangulations Involving Children Under 5 Years Old.'' U.S. Consumer Product Safety Commission, December 2002.

loss of function, to long-term vegetative state. Experimental studies show that 2 kg (4.4 lbs.) of pressure on the neck may occlude the jugular vein [4] and 3–5 kg (7–11 lbs.) may occlude the carotid artery.[5] Minimal compression of any of these vessels can lead to unconsciousness within 15 seconds and death in 2 to 3 minutes (Digeronimo and Mayes, 1994; Hoff, 1978; lserson, 1984; Polson, 1973).[6] The vagus nerve, responsible for maintaining a constant heart rate, is also located in the neck, in close proximity to the jugular vein and carotid artery. If the vagus nerve is compressed, cardiac arrest can result, due to mechanical stimulation of the carotid sinus-vagal reflex. Petition Briefing Package, Tab C at 94–95.

The majority of incidents involving window covering cords resulted in death (184 of 285 incidents reviewed). Of the 19 incidents that required hospitalization, nine patients suffered severe neurological outcomes, such as cerebral edema, coma, loss of cognitive abilities, a loss of function or mobility, and quadriplegia. Some patients required intensive care, monitoring, lifelong care, and therapy. Four of the entanglement incidents occurred on the child's arm or wrist and did not involve the neck. In 78 incidents involving the neck that were reported as minor or no injury, the child was found entangled in a cord or with the cord wrapped around the neck. In some incidents, the cord was wrapped so tightly that the child turned blue and had red marks or rope burns visible on the neck. Three children suffered temporary airway obstruction and were subsequently taken to the hospital. If the child had not been released from the cord, all of these nonfatal incidents could have had a more serious and even fatal outcome. *Id.* at 95.

C. Population at Risk of Strangulation

Corded window covering incidents involve children from about 7 months to 8 years old. Petition Briefing Package, Tab C at 95. Incident data demonstrate that hazard scenarios involving window covering cords are consistent with child development milestones. Children go from total dependence on others to independence in their first 5 years of life. Petition Briefing Package, Tab D. Starting from around 3 months of age, children begin to grasp objects placed in their hands. By 6 months of age, most children master reaching and grasping objects within their reach. Children learn to stand by holding onto an object starting at around 8 months of age, and a month later, they can stand. At around 10 months of age, children learn to stand without holding on to an object. Between 12 to 18 months of age, children progress from walking, to running, to walking up stairs, to climbing. As children gain new skills (*e.g.,* sitting, standing, walking, running, climbing), they want to use and perfect those skills.[7] The window covering cord incident data show that children climbed on beds, chairs, tables, and other furniture to interact with the window coverings. In some incidents, children were reportedly imitating superheroes or using the beaded chains as necklaces. Petition Briefing Package, Tab D at 101–102.

Parents are advised to encourage children to start taking care of themselves beginning at around age 2 years so that the children can learn independence and self-discovery. During these times of independence and exploration, children have less supervision. The degree of appropriate supervision is strongly linked to developmental level. Research shows that for preschool (birth to 4 years), constant supervision is required, except when children are in rooms in the home that are perceived as safe (living room/bedroom) or in rooms that are deemed fairly safe (bathroom/garage/kitchen).[8] Children's bedrooms and living or play rooms are considered by caregivers to be the safest rooms in the home. A review of the incidents reported to CPSC shows that bedrooms, living rooms, family rooms, or TV rooms were the locations where most incidents occurred. These are rooms that caregivers perceive to be the safest rooms in the home, and thus, caregivers may be inclined to leave children alone in these rooms. Petition Briefing Package, Tab D at 102–103.

Research demonstrates that the more familiar caregivers are with a product, the lower their recognition is of the product's hazards.[9] Increased familiarity, ease and frequency of use, and low price of a product reduce the likelihood that people will read warning labels. Consumers are highly familiar with window coverings and interact with window coverings daily. Even though no specific studies or surveys related to the use of safety devices for window coverings exist, research shows that the rate of compliance with instructions is lower when more effort and time (cost of compliance) are required to comply with the instructions.[10]

In some incidents, parents had seen the warning labels and were aware of the hazards of hanging cords and continuous loops. Parents used cord cleats, tied the cords together, or used other means to keep the cords out of reach of the child; however, the child was still able to access the cords and strangle. In other cases, parents did not use any safety devices. One reason for not using the safety devices is that the parents may have assumed the cords were not a problem because their child had not shown any interest in the window blind cords. In some incidents, safety devices, such as tie-down devices or cord cleats, were not used when the parents did not perceive a threat to the child. In a few cases, parents reported that that they had observed their child's interaction with cords but did not think the cords were a danger. Petition Briefing Package, Tab D at 103–105.

The Commission concludes that if cords are accessible and hazardous, window coverings will present a risk of strangulation to young children. Children cannot be supervised 100 percent of the time, and they can strangle in a few minutes. Children will continue to explore their environment and interact with accessible window covering cords even when parents try to be conscientious and use safety devices on window coverings. *Id.* at 106.

D. Hazard Scenarios Associated With Corded Window Covering Products

Table 2 depicts the nine hazard scenarios CPSC staff found when reviewing 249 IDIs related to corded window covering incidents.

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[4] Brouardel P. *La pendaison, La strangulation, La suffocation, La submersion.* JB Bailliere et fil, Paris, France, 1897; pp. 38–40.

[5] *Ibid.* and Polson CJ. Hanging In: Polson CJ and Gee DJ (eds.) Essentials of forensic medicine, Oxford England, 1973 371–404.

[6] Digeronimo RJ1, Mayes TC. Near-hanging injury in childhood: a literature review and report of three cases. *Pediatr Emerg Care.* 1994 Jun; 10(3):150–6; Hoff BH. Multiple organ failure after near-hanging. *Crit Care Med* 1978; 6:366–9. Howell MA; Iserson, K.V. Strangulation: A review of ligature, manual and postural neck compression injuries. *Ann. Emerg. Med.* 13:179–185, 1984; Polson CJ. Hanging In: Polson CJ and Gee DJ (eds.) Essentials of forensic medicine, Oxford England, 1973 371–404.

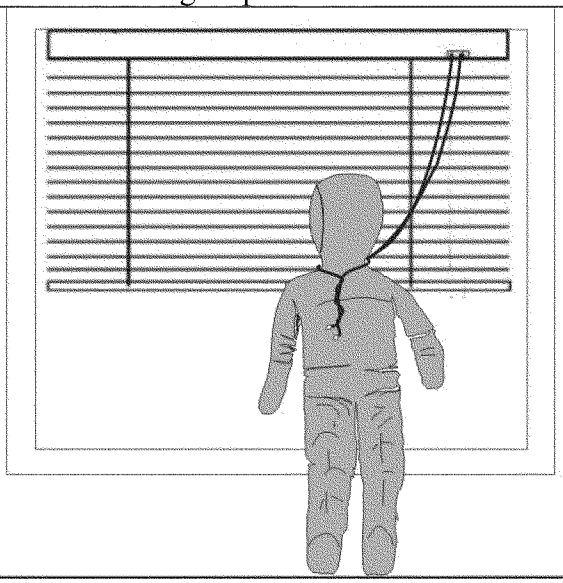
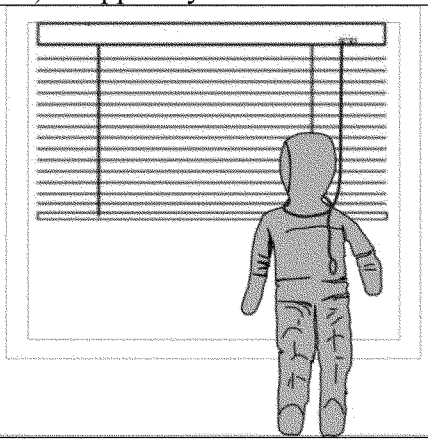
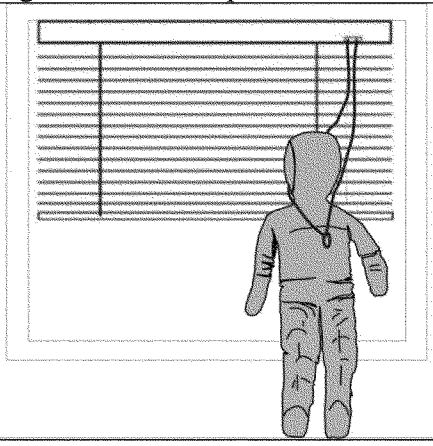
[7] Frankenburg, W.K., Dodds, J., Archer, P. et al.: The DENVER II Technical Manual 1990, Denver Developmental Materials, Denver, Co.

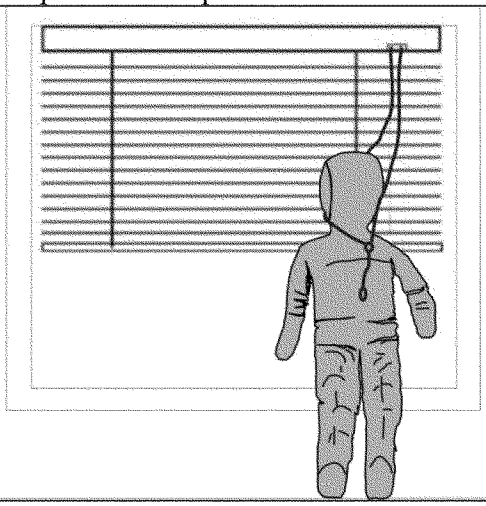
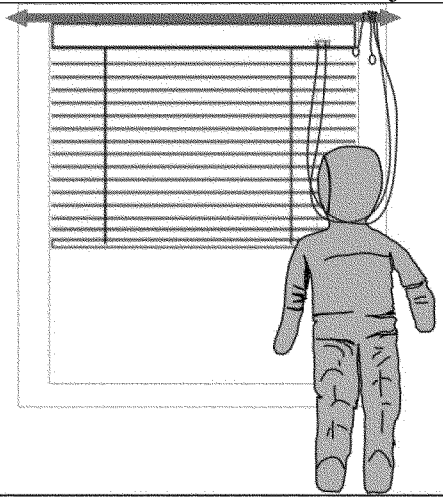
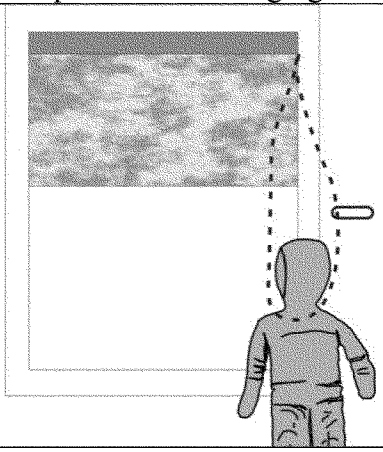
[8] Peterson, L., Ewigman, B., and Kivlahan, C., (1993) ''Judgments Regarding Appropriate Child Supervision to Prevent Injury: The Role of Environmental Risk and Child Age.'' *Child Development, 64,* 934–950.

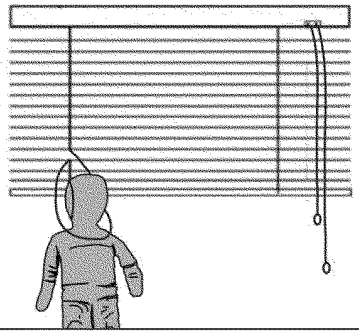
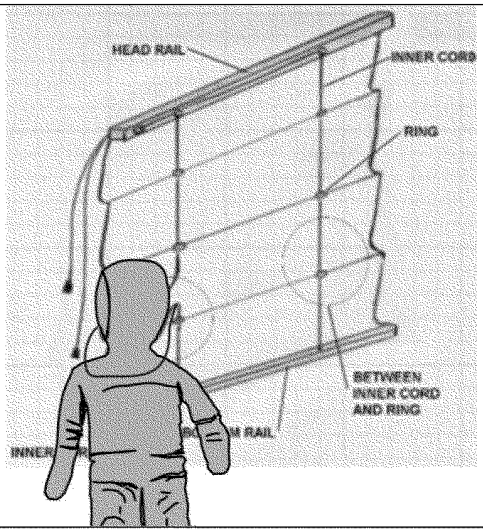
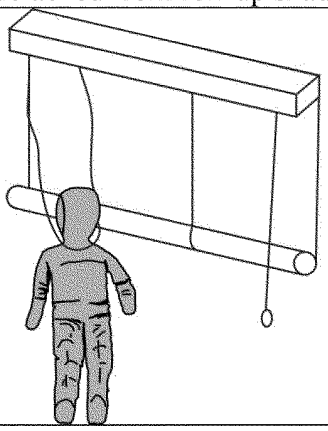
[9] Vredenburgh, A.G., & Zackowitz, I.B., (2006). Expectations. In M. S. Wogalter (Ed.), *Handbook of warnings* (pp. 345–354). Mahwah, NJ: Lawrence Erlbaum Associates.

[10] DeJoy, D.M., (1999). Attitudes and Beliefs. In M. S. Wogalter, D. M. DeJoy, & K. R. Laughery (Eds.), *Warnings and risk communication* (pp. 189–219). Philadelphia: Taylor & Francis.

Table 2: Hazard Scenarios Associated with Corded Window Covering Products

Scenario	Demonstration
1. Loops created by knotted or tangled pull cords.	
Loose pull cords can get knotted or tangled and create a loop in which children can strangle. Blinds or shades with multiple cords can create this hazard.	
2. One or more pull cords (or tilt cords) wrapped by the child around his/her neck.	
Children can wrap one or more long pull cords around their necks and strangle. Blinds and shades with single or multiple cords can create this hazard.	
3. Loop above a single tassel of the pull cords.	
When pull cords end in a single tassel, children can strangle in the loop above the tassel. Blinds or shades with pull cords ending in one tassel can create this hazard.	

4. Loop above a stop ball of the pull cords.	
Children can insert their heads into the loop above the stop ball (or cord connector). Blinds or shades with stop ball (or cord connector) can create this hazard.	
5. Loop created when pull cord was tied to another object.	
Children can insert their heads and strangle in the loop created by tying the pull cord to another object, such as a curtain rod creating a U-shaped opening. Blinds and shades with single or multiple cords can create this hazard.	
6. Continuous loop that is free hanging.	
Children can insert their heads into the cord loop or beaded chain loop, which is not kept taut with a tension device. Vertical blinds and shades that operate with continuous loop system can create this hazard.	

7. Loop created by pulling an inner cord of a horizontal blind.	
Children can pull the inner cord of a horizontal blind and create a large enough loop in which they can insert their heads and strangle.	
8. Opening between the Roman shade inner cord and the shade material.	
Children can insert their heads between the inner cord of a Roman shade and the shade material and strangle.	
9. Lifting loop detached from roll-up shade	
Children can insert their heads into the lifting loop that slides off the roll-up shade and strangle.	

Petition Briefing Package, Briefing Memorandum Appendix and Tab E.

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IV. Efforts To Address the Hazard Associated With Corded Window Coverings

A. Development of a Voluntary Standard

1. Performance Requirements

CPSC has been working with the window covering industry to address the hazards associated with corded window covering products for many years. Petition Briefing Package, Briefing Memorandum at 14–15, Table E, and Tab F. In 1995, CPSC staff began working with the WCMA on an ANSI/WCMA standard to address accessible cords on window coverings. WCMA published the first version of the ANSI/WCMA standard in 1996. The 1996 standard sought to prevent strangulation

incidents created by looped cords by requiring either: (a) Separate operating cords, or (b) a cord release device on multiple cords ending in one tassel. The standard also required a tension device that would hold the cord or bead loop taut when installed according to manufacturer's instructions.

In 2001, CPSC staff sent a letter to the WCMA asking for revisions to the 1996 standard, including the addition of inner cord stops and the elimination of free-hanging cords or bead chains longer than the neck circumference of a fifth percentile 7- to 9-month-old child. In January 2002, CPSC staff sent a similar request by letter to WCMA. In August 2002, the published ANSI/WCMA standard required inner cord stops. In 2007, the published ANSI/WCMA standard required that tension devices partially limit the consumer's ability to control the blind if the tension device is not properly installed.

In 2009, WCMA published a provisional voluntary standard specifying descriptive requirements for Roman shades. CPSC staff sent a letter to the WCMA underscoring that the descriptive requirements still allowed inner cords to be accessible. In September 2010, WCMA published a stronger performance-based standard addressing Roman shade inner cords as another provisional standard. In November 2010, CPSC held a public meeting and WCMA announced that WCMA would establish a steering committee to oversee the activities of six task groups, including one intended for pull cords and another for continuous loops. At the CPSC public meeting, WCMA reiterated its intent to minimize the risks associated with pull cords and continuous loops and to draft revisions to the voluntary standard for balloting by the end of October 2011.

On December 20, 2011, the WCMA balloted proposed revisions to the voluntary standard. On February 6, 2012, staff sent WCMA a letter providing comments on the proposed revision. In these comments, CPSC staff reiterated that the hazardous loop determination should be made for all cords and that the length of an accessible operating cord should not be longer than the neck circumference of the youngest child at risk. In addition, staff raised concerns about the inability of tension devices to eliminate effectively or reduce significantly the risk of strangulation under certain foreseeable-use conditions.

In November 2012, the WCMA announced the approval of the 2012 version of the ANSI/WCMA standard, which includes: (1) Requirements for durability and performance testing of the tension/hold down devices, including new requirements for anchoring; (2) specific installation instructions and warnings; (3) new requirements for products that rely on ''wide lift bands'' to raise and lower window coverings; (4) requirements for a warning label and pictograms on the outside of stock packaging and merchandising materials for corded products; and (5) expanded testing requirements for cord accessibility, hazardous loop testing, roll-up style shade performance, and durability testing of all safety devices.

WCMA approved a revised ANSI/WCMA standard on July 21, 2014.[11] Section 4.3 of the 2014 ANSI/WCMA standard specifies that window coverings with an exposed operating cord or continuous loop operating system shall meet *one* of the following requirements:

4.3.1: Product shall have no accessible operating cords
4.3.2: Product shall have one or more separate operating cords
4.3.3: Product shall contain a cord release device in the loop or head rail
4.3.4: Product shall contain a permanently attached cord retraction device
4.3.5: Product shall contain a cord shear device
4.3.6: Product shall contain a cord shroud device
4.3.7: Product shall contain a cord tension device
4.3.8: Product shall contain a loop cord or bead chain-restraining device
4.3.9: If the product requires a cord connector, *i.e.* stop ball, the exposed loop above the cord connector shall be limited to less than 3 inches below the bottom of the cord lock when the bottom rail is fully lowered.

Thus, the ANSI/WCMA standard allows for separate operating cords, cord release devices, cord retractors, cord shrouds, cord tensioners, and loop/bead chain restraining devices.

2. Warning Labels

In addition to performance requirements, the ANSI/WCMA standard requires a number of warning labels and hangtags on window coverings, all of which are accompanied with a pictogram. ANPR Briefing Memorandum at 5.

B. Substantial Compliance With the Voluntary Standard

According to the WCMA, manufacturers of window coverings are in substantial compliance with the voluntary standard. Beyond WCMA's comments, CPSC has no data on the extent of compliance and cannot estimate the proportion of annual sales of window covering products that comply. CPSC has some anecdotal information on product compliance and incident hazard patterns that lends support to WCMA's contention that products substantially comply with the voluntary standard. For example, the 1996 version of the standard required that pull cords have separate tassels or a breakaway tassel to reduce the hazard with the loop above a single tassel. Among the incidents associated with the loop above a single tassel, staff's review of incidents showed that only one product out of 14 products involved in incidents was manufactured after the 1996 standard went into effect and did not comply with the requirement. Petition Briefing Package, Briefing Memorandum at 18.

C. Engineering Staff's Assessment of ANSI/WCMA Standard

1. Performance Requirements

For the Petition Briefing Package, the Division of Mechanical Engineering (ESME) reviewed the incident data to determine whether the 2014 version of the ANSI/WCMA standard would address the hazards presented in the 249 IDIs reviewed by staff. Petition Briefing Package, Tab E. According to ESME staff's assessment, the 2014 version of the ANSI/WCMA standard addresses the hazards in 25.7 percent (64/249) of the investigated incidents, while hazards reported in 57 percent (141/249) are not addressed by the ANSI/WCMA standard. Insufficient information was available to draw any conclusions for the remaining 17.7 percent (44/249) of investigated incidents. *Id.* at 123–124.

Table 3 summarizes the hazard types identified in the 249 IDIs reviewed by CPSC staff, and ESME's assessment of the hazard addressability with the current 2014 version of the voluntary standard. An Appendix to Tab E of the Petition Briefing Package includes more detailed descriptions of each of these hazard scenarios.

[11] Changes to the descriptive text found in the ANSI/WCMA Standard, Appendix E, Figure E1, Row 3.

TABLE 3—ADDRESSABILITY OF THE HAZARDS WITH THE 2014 ANSI/WCMA STANDARD

Entanglement mechanism (hazard scenario in Table 2)	Number of incidents	Investigated IDIs (%)	Section of the standard related to the hazard	Conclusion
1. Entanglement from pull cords	*69*	*27.7*		*Not addressed.*
	14	*5.6*		*Addressed.*
Entanglement in a loop created by knotted or tangled pull cord (hazard scenario 1).	38	15.3	Section 4.3.2 allows multiple cords in unspecified lengths.	Not addressed.
Entanglement in one or more long cords, which the child wrapped around the neck (hazard scenario 2).	25	10.0	Sections 4.3.2 and 4.3.9 allow accessible free hanging operating cords.	Not addressed.
Entanglement in a loop above a single tassel of the cord (hazard scenario 3).	14	5.6	Sections 4.3.2 and 4.3.3 require either separate cords or cords with release devices in the loop.	Addressed.
Entanglement in a loop above the stop ball of the cord (hazard scenario 4).	4	1.6	Section 4.3.9 allows for an accessible loop when the bottom rail is fully raised.	Not addressed.
Entanglement in a loop created when pull-cord was tied to another object, usually on the wall (hazard scenario 5).	2	0.8	Section 4.3.2 allows unspecified length of cords.	Not addressed.
2. Entanglement in a continuous loop cord (hazard scenario 6).	*70*	*28.1*	*Section 4.3.7 requires a cord tension device that will at least partially prevent the operation of the window covering, when not installed but still allows some operability.*	*Not addressed.*
3. Entanglement from inner cords (hazard scenarios 7 and 8).	*47*	*18.9*	*Section 4.4 addresses accessibility and hazardousness of inner cord loops.*	*Addressed.*
4. Entanglement in the lifting loop of a roll-up shade (hazard scenario 9).	*3*	*1.2*	*Section 4.4.5 addresses the accessible lifting loops of a roll-up style shade.*	*Addressed.*
5. Entanglement in the tilt cords (hazard scenario 2).	*2*	*0.8*	*Section 4.3.2 allows multiple cords in unspecified lengths.*	*Not addressed.*
6. Unknown	*44*	*17.7*		*Unknown.*

Although the standard does address a portion of the hazards associated with pull cords, remaining pull cord hazards and continuous loop cords account for more than 50 percent of the hazard scenarios that are not addressed by the standard.

Continuous Loops. Continuous loops need to be kept taut so that the free-standing loop does not cause a hazard to young children. The voluntary standard requires a tension device to be attached on the loop by the manufacturer. After receiving the product, the consumer must install the tension device on an external surface, such as a wall or window sill, per manufacturer's instructions. As explained in the ESHF memorandum, Tab D of the Petition Briefing Package, compliance with instructions declines if the effort and time required for the installation is high. The first publication of the voluntary standard (1996) required that a cord tension device be supplied and removal of it is a sequential process (*i.e.,* requires two or more independent steps to be performed in a specific order). Once the tension device is installed, it becomes a passive device.

In 2007, the voluntary standard introduced the ''partial inoperability clause,'' which meant that if the tension device was not properly installed, the tension device should at least partially prevent the operation of the window covering. The latest version of the standard includes the same partial inoperability requirement, in addition to a new durability test procedure to prevent the tension device, if installed, from coming off the wall or breaking under the tested conditions.

Pull Cords. For the Petition Briefing Package, ESME staff concluded that the voluntary standard does not address the following hazard scenarios: (1) Loops resulting from knotted or entangled pull cords, (2) pull cords that are wrapped around the neck, (3) pull cords that are tied to another object, and (4) pull cords with loops above stop ball/cord connector. The recently published Canadian standard (*CAN/CSA–Z600–14 Safety of Corded Window Covering Products)* adopts the requirements of the ANSI/WCMA standard with one change: adding cord cleats as a required component to mitigate the pull cord hazard. CPSC understands that for the spirit of harmonization, WCMA will propose to include a similar requirement to the ANSI/WCMA standard.

CPSC staff has raised concerns regarding the pull cord and continuous loop hazards to WCMA, repeatedly emphasizing that either eliminating access to the pull cords or making accessible cords nonhazardous in both raised or lowered heights of the window covering would greatly reduce the incidents. Most recently, on July 22, 2014, CPSC staff sent a letter to WCMA suggesting revisions to the voluntary standard that would address the strangulation hazard created by pull cords and continuous loops on window coverings.[12] WCMA responded to staff's letter on August 29, 2014.[13] ANPR Briefing Memorandum at 4.

WCMA believes that cord cleats, a device around which a cord can be wound and can be attached to a wall or other structure, or that is integral with the product, can help reduce incidents associated with pull cords. WCMA intends to utilize an expedited approval process to add cord cleats as a requirement to the ANSI/WCMA standard with the objective of harmonizing the standard with the latest version of the Canadian standard (CAN/CSA Z600 window covering standard).

Staff has several concerns with cord cleats. Cord cleats require that the user remove and then secure the cord to the cleat each time the window covering is raised or lowered in order to mitigate the hazard, which consumers may feel to be a nuisance and not do, thus voiding the protections ostensibly provided. In addition, failure to install a cord cleat will not cause the window covering to cease operating as intended, which may also serve to reduce the

[12] *http://www.cpsc.gov//PageFiles/170256/WCMA_Ltr_22_July_2014.pdf.*

[13] *http://www.cpsc.gov//PageFiles/170642/WCMALettertoGBorlase8_29.pdf.*

protection provided. Indeed, many stock products already come with cord cleats in the box, so the degree to which they are installed and used is in question. For example, in a 2010 incident, a four-year-old child who was standing on the back of a couch, reached the pull cords which were usually wrapped around the cord cleat, but not on the day of the incident.[14] When cord cleats are installed, consumers still need to be aware that children can climb up to get to the cords, as observed in a 2005 incident where a four-year-old child moved a small plastic table near to a window, climbed upon the table, reached up and removed the pull cord.[15] Furthermore, even if cleats are used to wrap excess pull cords, the cords above the cleat present a strangulation hazard.[16] A cord cleat retrofit program may be beneficial for those consumers who become aware of the hazard and want to take action to mitigate the pull cord hazard. However, staff believes that consumers who respond to a recall likely install and use cord cleats more consistently than consumers who are unaware of the hazard. The latter group of consumers may overlook the cord cleat as they are not aware of the hazard, and the operation of the product does not necessitate the installation and use of cord cleats.

Regarding continuous loops and tension devices, CPSC staff's IDI review of 70 incidents associated with entanglement in a continuous loop cord showed that the majority of the incident units did not have a tension device installed on the continuous loop. Staff recognizes that tension devices, when properly installed and intact, keep the looped cords taut and do not allow a child's head to enter into the loop. If tension devices are not installed, are installed improperly, or are removed from the cord, a hazardous loop is present. ANPR Briefing Memorandum at 4.

2. Warning Labels

Warning labels are intended to alert the user of the strangulation hazard, and to keep cords away from children and move furniture away from cords as children can climb on furniture to reach cords. Warning labels and hang tags have been part of the ANSI/WCMA standard since its first publication in 1996. In 2009, the voluntary standard required a hang tag that must be attached to the lower most section of the inner cord on the back side of a Roman shade. The voluntary standard was amended in 2012 to require that a warning label be placed on the product package (or on merchandising material for custom products) and displayed conspicuously. The requirement to include warnings on retail packaging and merchandising materials was intended to warn consumers about the strangulation hazard associated with accessible cords so that consumers can make an informed purchasing decision.

Staff believes that the requirement to place a warning on product packaging is potentially beneficial for consumers who either learn of the hazard by reviewing the warning material on packaging or are aware of the hazard and looking for a safer product to purchase. However, consumers who are not the original purchasers of the product will not benefit from information included on packaging materials as the packaging is discarded after the product is installed.

The ANSI/WCMA standard requires permanent warning labels [17]and operational hangtags [18] on the product that follow ANSI Z535.4, American National Standard for Product Safety Signs and Labels. Research demonstrates that warning labels should first be visible and noticeable. Warning labels should also have design characteristics that encourage the user to stop and read the warning. Effective labels state the hazard, explain the consequences of the hazard, and provide instructions on how to avoid the hazard using explicit text to improve comprehension. Staff believes that warning labels on window coverings that comply with the ANSI/WCMA standard have design characteristics to make them visible and noticeable. For example, warnings that are placed directly on the product have higher noticeability compared to the warnings listed in a ''distant'' instruction manual (Wogalter *et al.,* 1987). Additionally, the voluntary standard requires the word ''Warning'' in all capital letters and printed in an orange color. The required warning messages that are on the warning labels and hang tags explain the nature of the hazard, the consequences of the hazard, and provide instructions on how to avoid the hazard, as recommended in the warning literature (Wogalter and Laughery, 2006). Finally, the required labels have a pictogram which should increase their noticeability because pictograms help capture user's attention (Wogalter and Leonard 1999).

Even though the warning labels required by the ANSI/WCMA standard meet the usual criteria for what is considered a well-designed warning label, CPSC staff believes that the labels have limited effectiveness in changing the user's behavior in the purchase and use of window coverings. The inherent problem with the strangulation hazard associated with window covering cords and warning labels is that people are less likely to read instructions or recognize potential hazards associated with the products that they use more frequently (Godfrey *et al.,* 1994). Research demonstrates that high familiarity with a product can lower a user's inclination to read warnings or reduce the likelihood that the user will believe such information, lowering the rate of compliance with the warning (Riley, 2004). Window coverings are decorative products providing utility and found in every household in one form or another. Consumers interact with window coverings daily and experienced users are likely to repeat behaviors with little conscious thought, especially on a product that they have had numerous prior experiences (Riley, 2004).

Even after users notice and read the warning label, comprehend the message and make the decision to follow the instructions, they must comply with the warning as instructed to mitigate the hazard. User's actual ability to comply with a warning is affected by cost of compliance, which includes effort, time, and perceived compromise in product performance as well as expense. In the case of window coverings, safety recommendations other than purchasing inherently safe products (*e.g.,* cordless products or products with inaccessible cords), such as keeping cords out of reach of children, moving the furniture away from cords, installing a tension device to the wall or floor, and installing cord cleats, entail significant limitations or high cost of compliance. For example, depending on the room design limitations, consumers may not have the ability to keep cords away from furniture. Additionally, requiring consumers to wrap the pull cords around the cord cleat each and every time the window covering is raised or lowered leads to potential errors, such as forgetting the intended action during the routine use of the product. ANPR Briefing Memorandum at 5–6.

[14] IDI 110103CCC3322.

[15] IDI 050407CCC3309.

[16] *http://www.cpsc.gov/PageFiles/121510/5009a.pdf.*

[17] A permanent marking or label cannot be removed or, during an attempt to manually remove it without the aid of tools or solvents, the marking or label tears apart or damages the surface to which it is attached.

[18] Operational hangtags contain information based on the characteristics of the product or the safety devices included on the product.

D. Available Technology To Address the Hazard

Although not currently mandatory, a variety of technologies currently used by window covering manufacturers on window covering products eliminate the risk of strangulation to young children. CPSC's engineering staff reviewed window covering products currently on the market that incorporate technologies to address the hazard associated with corded products. Petition Briefing Package, Tab E at 130–136. Available products that address the hazard include, but are not limited to: Manual and motorized cordless window coverings, cord shrouds, and cord retractors.

Cords can be made inaccessible with passive guarding devices. Passive guarding devices allow the user to operate the window covering without direct interaction of a hazardous cord. These types of devices would include cord shrouds, integrated cord/chain tensioners, or cord retractors.

Cordless blinds and shades are raised and lowered by pushing the bottom rail up or pulling the rail down. This same motion may also be used to adjust the position of the horizontal slats for light control. Through market research, staff found several examples of cordless blinds that can be made with a maximum height 84'' and a maximum width of 144''.

Rigid cord shrouds (Figure 9) can be retrofitted over various types of window coverings to enclose pull cords and continuous cord loops. An encased clutch system allows the user to utilize the pull cords in the cord shroud while eliminating access to the hazardous cords.

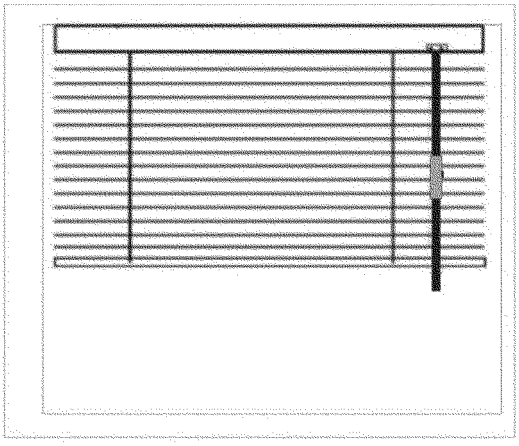


Figure 9: Rigid Cord Shroud System

Loop cord/bead chain restraining devices (Figure 10) keep the looped bead chain taut, preventing access to a hazardous loop, and do not require external components to be installed.

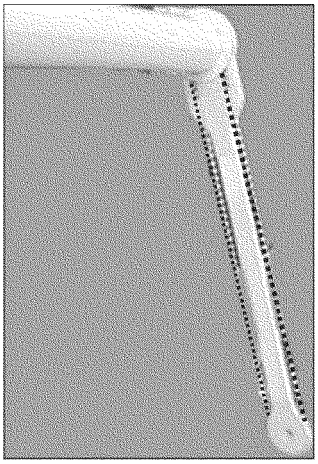


Figure 10: Integrated Cord/Chain Tensioning Device

Crank mechanisms (Figure 11) replace the continuous loop mechanism with a crank/wand mechanism. Because the operating cord is replaced with a wand, the strangulation hazards are completely removed.

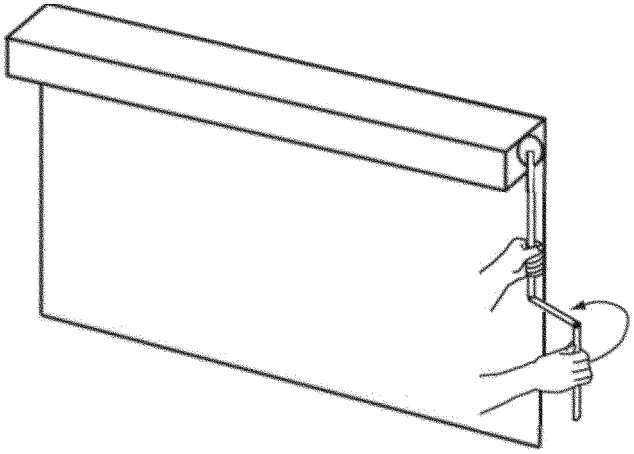


Figure 11: Crank Mechanism

Cord retractors (Figure 12) passively retract the operating cord within 6 inches of the head rail. These devices are intended to keep the operating cords out of the child's reach. Through market research, staff found several examples of cord retractors that can be used on window coverings with a maximum height of 120'' and a maximum width of 174''.

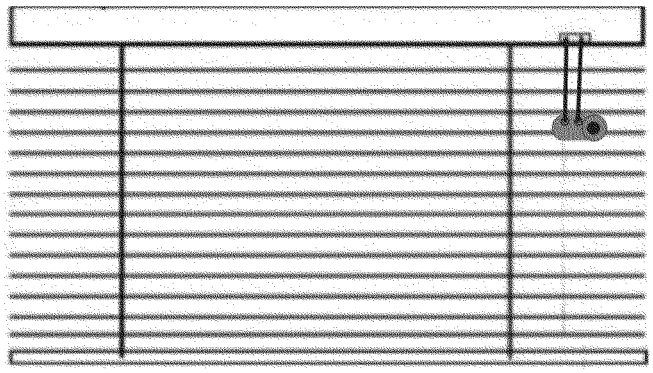


Figure 12: Cord Retractor Mechanism

Cordless motorized blinds are raised and lowered using an electric motor with a supplied controller. These products function in a manner similar to the motorized projector screens. Because these products use a motor instead of a pull cord, there are no exposed hazardous cords.

Table 4 groups the hazard patterns with the appropriate available technologies.

TABLE 4—HAZARD PATTERNS WITH AVAILABLE TECHNOLOGIES

Hazard	Products	ANSI/WCMA requirements	Does the ANSI/WCMA Standard effectively address the hazard per engineering staff's assessment	Available technology (commercially available or in prototype stage) to address hazard
Hazard 1. *Loops created by knotted or tangled cord.*	Horizontal blinds, Cellular shades, Roll up blinds, Roman shades, Pleated shades.	4.3.2 The product shall have one or more separate operating cords.	No—free hanging, exposed operating cords are permissible.	Cordless window coverings, rigid cord shrouds, crank mechanisms, cord retractors, cordless motorized window coverings.

TABLE 4—HAZARD PATTERNS WITH AVAILABLE TECHNOLOGIES—Continued

Hazard	Products	ANSI/WCMA requirements	Does the ANSI/WCMA Standard effectively address the hazard per engineering staff's assessment	Available technology (commercially available or in prototype stage) to address hazard
Hazard 2. *One or more long cords which the child wrapped around the neck involving pull cords and tilt cords.*	Horizontal blinds, Cellular shades, Roll up blinds, Roman shades, Pleated shades.	4.3.2 The product shall have one or more separate operating cords. 4.3.9 The product shall, if it requires a cord connector, limit the exposed loop above the cord connector to less than 3 inches below the bottom of the cord lock when bottom rail is in the fully lowered position.	No—accessible, free hanging cords can be wrapped around the neck of a child as incident data demonstrates.	Cordless window coverings, rigid cord shrouds, crank mechanisms, cord retractors, and, cordless motorized window coverings.
Hazard 3. Loop above a single tassel of the cord.	Horizontal blinds, Cellular shades, Roll Up blinds, Roman shades, Pleated shades.	4.3.2 The product shall have one or more separate operating cords. 4.3.3 The Product shall contain a cord release device in the loop or the head rail.	Yes—by requiring either separate tassels on each cord or breakaway tassel, however this separate tassel configuration presents a wrap-around (hazard #1) or knotted loop (hazard#2) strangulation hazards as described above.	
Hazard 4. *Loop above the stop ball of the cord.*	Horizontal blinds, Cellular shades, Roll up blinds, Roman shades, Pleated shades.	4.3.9 *The cord connector shall limit the exposed loop above the cord connector to less than 3 inches below the bottom of the cord lock when the bottom rail is fully lowered.*	No—a product that meets the standard could still contain an accessible hazardous loop when the bottom rail is raised.	Cordless window coverings, rigid cord shrouds, crank mechanisms, cord retractors, and, cordless motorized window coverings.
Hazard 5. Loop created when pull-cord was tied to another object, usually on the wall.	Horizontal blinds, Cellular shades, Roll up blinds, Roman shades, Pleated shades.	4.3.2 The product shall have one or more separate operating cords.	No—consumers may attempt to keep the long cords away from children by tying the cords on a curtain rod or other means.	Cordless window coverings, rigid cord shrouds, crank mechanisms, cord retractors, and, cordless motorized window coverings.
Hazard Unknown manner (involving a pull cord).	Horizontal blinds, Cellular Shades, Roll Up blinds, Roman Shades, Pleated shades.	N/A	Unknown	Unknown.
Hazard 6. Entanglement in a continuous loop cord.	Vertical blinds, Roller shades, Curtains and draperies.	4.3.7 *The product shall contain a cord tension device that will at least partially prevent the window covering from functioning for light control or privacy when not installed.*	No—hazardous loops are not effectively addressed by the standard when the blind continues to be operational, despite the fact that the tension device is not properly installed.	Loop cord/bead restraining device, crank mechanisms, motorized option.
Hazard 7a. Entanglement from exposed inner cords with no cord stops.	Horizontal blinds	4.4.1 the product shall have no inner cords. 4.4.2 no accessible inner cords. 4.4.3 accessible inner cords shall pass the hazardous loop test. 4.4.3.1 inner cord stop devices or cord connectors shall be positioned 3 inches or less below the head rail. 4.4.4 shrouded inner cords.	Yes—window coverings associated with the inner cord hazard scenario appeared to be older products that were manufactured before the 2002 standard was published. Engineering staff believes that had the cord stops involved in the incident scenarios met the voluntary standard, they would not likely have occurred.	

TABLE 4—HAZARD PATTERNS WITH AVAILABLE TECHNOLOGIES—Continued

Hazard	Products	ANSI/WCMA requirements	Does the ANSI/WCMA Standard effectively address the hazard per engineering staff's assessment	Available technology (commercially available or in prototype stage) to address hazard
Hazard 7b. Entanglement from exposed inner cords when the cord stops are positioned too low.	Horizontal blinds	4.4.1 the product shall have no inner cords. 4.4.2 no accessible inner cords. 4.4.3 accessible inner cords shall pass the hazardous loop test. 4.4.3.1 inner cord stop devices or cord connectors shall be positioned 3 inches or less below the head rail. 4.4.4 shrouded inner cords.	Yes—window coverings associated with the inner cord hazard scenario appeared to be older products that were manufactured before the 2002 standard was published. Engineering staff believes that had the cord stops involved in the incident scenarios met the voluntary standard, they would not likely have occurred.	
Hazard 8. Entanglement in the Roman shade inner cord.	Roman shades	4.4.1 the product shall have no inner cords. 4.4.2 no accessible inner cords. 4.4.3 accessible inner cords shall pass the hazardous loop test. 4.4.3.1 inner cord stop devices or cord connectors shall be positioned 3 inches or less below the head rail. 4.4.4 shrouded inner cords.	Yes—the requirements prevent hazardous inner cords that may allow child's head to be inserted to the loop.	
Hazard 9. Entanglement in the lifting loop.	Roll up blind	4.4.5 accessible inner cords shall feature an inner cord release device.	Yes—the lifting loop shall be pulled 48 times in various directions. The lifting loop shall breakaway with an average force not to exceed 3 pounds. This test mimics the force that may be exerted due to the child's head being in the loop.	

E. Compliance Actions

Compliance staff began working with WCMA in 1994, when CPSC announced a joint recall with the WCMA on how to eliminate the loops on pull cords ending in one tassel. Petition Briefing Package, Tab F. The WCMA created the larger Window Covering Safety Council (WCSC) to include window covering manufacturers and retailers to support the recall and to provide free repair kits to consumers. In 1999, after an extensive review of the incidents reported to CPSC, Compliance staff began a new investigation of window covering deaths resulting from inner cords of horizontal blinds. In 2000, CPSC and WCMA again announced a joint recall involving inner cord stops to reduce the risk of a child pulling on the inner cords and creating a hazardous loop. *Id.* at 142–143.

In 2005, Compliance staff learned of a nonfatal incident involving the inner cord of a Roman shade. Subsequently, CPSC investigated a worldwide retailer following a child's death from the inner cord of a Roman shade. In 2008, CPSC and the retailer announced a joint recall for Roman shades, offering a full refund to consumers. In 2009, CPSC and 15 manufacturers and retailers in conjunction with the WCSC, announced individual recalls of Roman shades and roll-up blinds. In 2012, two more recalls occurred: One involving horizontal blinds manufactured without inner cord stops and vertical blinds manufactured without tension devices, and the second recall to repair and correct an assembly error in a breakaway cord connector. *Id.* at 143–145.

F. Public Education

Since the window covering-related first safety alert was issued in 1985, CPSC has been warning parents of the danger of child strangulation due to corded window coverings. Petition Briefing Package, Briefing Memorandum at 19. CPSC identified window coverings as one of the top five hidden home hazards.[19] Every October, CPSC participates jointly with WCSC in National Window Covering Safety Month to urge parents and caregivers to check their window coverings for exposed and dangling cords and to take precautions. Both CPSC and WCSC recommend cordless window coverings or window coverings with inaccessible cords in homes where young children live or visit. In addition to traditional communication methods, CPSC reaches out to consumers using social media, such as safety blogs and online chats, the Neighborhood Safety Network, and

[19] *http://www.cpsc.gov/PageFiles/165163/hidden.pdf.*

through partnerships (such as with the Department of Defense) to create awareness of the hazards associated with corded window coverings. CPSC does not have information to assess the effectiveness of public education campaigns.

V. Existing Standards for Window Covering Products

A. ANSI/WCMA Standard

Although no mandatory window covering standard exists in the United States, the 2014 version of the ANSI/WCMA voluntary standard establishes safety performance requirements.. The standard applies to all interior corded window covering products sold in the United States and includes, but is not limited to, cellular shades, horizontal blinds, pleated shades, roll-up style blinds, roller shades, Roman style shades, traverse rods, and vertical blinds. The standard was first published in 1996, and subsequently was revised six times. The latest version was published in 2014. Section IV.A–C of this ANPR review provisions in the ANSI/WCMA standard intended to address the hazard creating by corded window coverings.

B. International Standards

Three international standards specify requirements for the safety of window coverings:

(1) *Competition and Consumer (Corded Internal Window Coverings) Safety Standard 2014* published in Australia (Australian standard),

(2) *Corded Window Covering Products Regulations (SOR/2009–11)* and *CAN/CSA–Z600–14 Safety of Corded Window Covering Products* published in Canada, which is based on the 2012 ANSI/WCMA standard with some modifications (Canadian standard), and

(3*) EN 13120:2009+A1:2014 Internal blinds—Performance requirements including safety, EN 16433:2014 Internal blinds—Protection from strangulation hazards—Test methods,* and *EN 16434:2014 Internal blinds—Protection from strangulation hazards. Requirements and test methods for safety devices* published by European Committee for Standardization (European standard).

CPSC engineering staff compared the ANSI/WCMA standard with the international standards and concluded that the ANSI standard developed by WCMA is one of strongest standards in the world. Petition Briefing Package, Tab E at 124–130.

1. Australian Standard

Australia has a mandatory product safety standard requiring the provision of information, warnings, instructions, and safety devices with corded internal window coverings (CIWC). A new regulation has been enacted requiring those installing CIWC in trade or commerce to follow the safety instructions when installing the product and avoid the production of dangerous lengths or loops of cord.

A corded internal window covering must be installed to meet the following four requirements:

a. A loose cord cannot form a 220 mm loop or longer at less than 1600 mm (62.99 in.).

b. The product must be installed using the installation instruction on the retail packaging and any other provided information about how to ensure a loose cord cannot form a loop described in requirement 1.

c. No part of the cord guide (a device designed to retract, tension, or secure a cord) may be installed lower than 1600 mm above floor level unless:

i. The cord guide will stay attached to the wall when subjected to 70 N applied in any direction for 10 seconds.

ii. The cord is sufficiently secured or tensioned to prevent the formation of a loop 220 mm or longer.

d. If a cleat is used to secure a cord, it must be installed at least 1600 mm above the floor level.

CPSC does not believe the use of a cord cleat is effective to address the strangulation risk.[20] First, a cord cleat needs to be actively installed and used every time. Second, the cord cleat needs to be installed at a height not accessible to a child. If the child had access to the cord cleat, the resulting hazard would be similar to hazard 5: Loop created when pull-cord was tied to another object, usually on the wall. Finally the cord cleat needs to take up all the excess slack in the cord; excess cord slack could pose a hazard similar to the hazard created by loops created by knotted or tangled cord or one or more long cords which the child wrapped around the neck (see Table 3).

2. Canadian Standard

Canada's most recent standard, *CAN/CSA–Z600–14,* is the 2012 ANSI/WCMA standard with the inclusion of cord cleats. Cord cleats are required for window coverings with accessible cords and shall allow complete cording length to be accumulated on the cleat. Instructions on how to properly use the cord cleats are also required. Consumers will be advised that the cord cleats that are external to the product should be installed at a height of 1.6 m above the floor, while cord cleats integral to the product shall be within 18 inches of the head rail. CPSC maintains the same opinion about cord cleats as explained above in section V.B.2 regarding the Australian standard.

3. European Standard

Many differences exist between the WCMA and European standards, with each standard having areas of strength and weakness. Table 5 compares the operating cord requirements of the ANSI/WCMA standard and the European standard.

[20] *Ibid.*

TABLE 5—COMPARISON OF ANSI/WCMA STANDARD WITH THE EUROPEAN STANDARD

Test	ANSI/WCMA A100.1–2014	EN Standard	Summary
Cord Release Device/Cord Shear Device vs. Breakaway System.	Cord Release Device & Cord Shear Device: *Create a 3.5 foot loop from the cord and hook a force gage onto it *Twist the force gauge 360 degrees and draw the force gauge at a speed between .1 and 1 inch per second. The cord shall release within 10 seconds. *Repeat for 50 products *The average release force shall not exceed 3 pounds for the 50 products and all products shall have a release force below 5 pounds.	Breakaway system: *If installation height is not given, the length of pull cord(s) shall be less than or equal to ⅔ of the height of the curtain. *If the installation height is given, the pull cords shall be at least .6 m above the floor. *The hazardous loop shall be eliminated when a mass of 13.22 pounds is gradually applied to the pull cords within 5 seconds of application.	The ANSI/WCMA standard appears to be more conservative because it requires the cord to break away at an average of 3 pounds, compared to EN's 13.22 pounds.
Cord tension vs. Fixed Tensioning system.	*The tension device shall at least partially prevent the window covering from functioning for light control or privacy when not installed. *The tension device shall have a minimum tested release force of 20 pounds off the wall. *Using a force gage gently pull the loop cord horizontally over a period of 5 seconds to create an opening. Stop pulling the gauge when it reads 5 pounds or the pulled pull distance = 25 inches, whichever comes first. *Determine whether the head probe can be inserted into the created with an insertion force of 10 pounds. If the probe can be inserted, then the loop is hazardous.	*If the blind's height is ≤2.5 m, then pull cords shall be ≤1 m. *If the blind's height is >2.5 m, then the pull cords shall be ≤ the height of the curtain minus 1.5 m. *The distance between the two strands of the loop shall be no more than 50 mm adjacent to the tensioning device. *Allows for a breakaway system for the continuous corded system	The ANSI/WCMA standard is stronger because: *It requires the product to be installed by partially limiting the product's functionality while the EN does not. *Even though the EN allows for a break away, the tested release force is 13.2 pounds, which is more than the ANSI/WCMA version. *The ANSI/WCMA standard only allows products into which a head probe can't be inserted, while the EN does not.

TABLE 5—COMPARISON OF ANSI/WCMA STANDARD WITH THE EUROPEAN STANDARD—Continued

Test	ANSI/WCMA A100.1–2014	EN Standard	Summary
Pull Cords	Section 4.3 of the standard specifies that window coverings with an exposed operating cord or continuous loop operating system shall meet *one* of the following requirements: 4.3.1: Product shall have no accessible operating cords 4.3.2: Product shall have one or more separate operating cords 4.3.3: Product shall contain a cord release device in the loop or head rail 4.3.4: Product shall contain a permanently attached cord retraction device 4.3.5: Product shall contain a cord shear device 4.3.6: Product shall contain a cord shroud device 4.3.7: Product shall contain a cord tension device 4.3.8: Product shall contain a loop cord or bead chain-restraining device 4.3.9: If the product requires a cord connector, i.e. stop ball, the exposed loop above the cord connector shall be limited to less than 3 in below the bottom of the cord lock when the bottom rail is fully lowered.	When the bottom rail is fully lowered: *If the blind height is ≤2.5 m, the pull cords shall be ≤1 m. *If the blind height is >2.5 m, the pull cord length shall be no longer than the curtain height minus 1.5 m. If the product has two pull cords: *Pull cords shall not tangle. *If cords tangle, the loop shall be eliminated within 5 seconds of a 6 kg mass application. *Pull cords shall be connected using a breakaway system. The hazardous loop shall be eliminated within 5 seconds of a 6kg mass application. If the product has more than two pull cords: *Pull cords shall be connected together using a breakaway system. *The hazardous loop shall be eliminated within 5 seconds of a 6kg mass application. If the product has more than four pull cords in the absence of a suitable breakaway connector: *Cords may be connected to a single pull cord positioned <50 mm from the head rail when the bottom rail is fully lowered.	WCMA is standard is stronger as it requires the cord release device to release the cord at an average force of 3 pounds while the WCMA allow for forces up to 13.3 pounds. The EN standard is stronger in terms of the following: *It ensures that tangled cords become eliminated within 5 seconds of a 13.22-pound application, WCMA has no such requirement. *It restricts the length on continuous loop and breakaway pull cords to reduce access to the cord. If the product does not meet the length requirements, then the product must be fitted with an accumulation system to contain all of the excess cord, not allowing more than 100 mm of cord when 60N is applied to it. The WCMA standard does not restrict the pull cord length and the cord retractor is an optional requirement. *In addition to the length requirement, it requires the pull cords to either be connected with a breakaway device, for less than four pull cords, or connected less than 50 mm below the head rail for more than four pull cords. WCMA standard does not have this requirement. *Does not allow for multiple separate cords without any other protection devices. WCMA standard allows for multiple cords.
Inner Cords	Section 4.4 of the standard specifies that window coverings containing inner cords shall meet *one* of the following requirements: 4.4.1: Product shall have no inner cords. 4.4.2: Product shall have no accessible inner cords using a test probe with a diameter of 51 mm for open construction and 102 mm for closed construction. Any cord that the probe can touch is considered accessible. If the inner cords are accessible, then pull on the cord with a force gage until it reads 22.24 N or 635 mm of slack is pulled, whichever comes first. The head probe, dimensions of W 148 mm by H 110 mm by H 150 mm, shall not be able to be inserted in the loop with a force of 44.5 N. 4.4.3: Products that have accessible inner cords shall incorporate an inner cord stop device or cord connector 76.2 mm or less below head rail when bottom rail is fully lowered. 4.4.4: Product shall have an inner cord shroud. 4.4.5: If the product is a roll up style, blind, accessible inner cords shall have a cord release device.	*The maximum distance between two consecutive attachment/retention points of inner cords shall be ≤200 mm. *It shall not be possible to insert the head probe (W 148 mm by L 110 mm by H 150 mm) between the inner cords after 50 N is applied and released from the inner cords. The dimension of the loop shall not be increased when inserting the probe. If either of the above requirements are not met, the hazardous loop shall be eliminated when 58.83 N is applied within 5 seconds of application.	The WCMA standard is stronger because: *The head probe is inserted while the inner cord loop is held open with the force gage. However, the EN standard releases the inner cord after it was pulled and then the head probe is inserted. The weight of the bottom rail could potentially remove the inner cord loop. *The WCMA standard also gives the option for inner cord stops, which the EN standard fails to mention. The EN standard is stronger because it pulls on the inner cord with 50 N vs WCMA's 22.24 N.

TABLE 5—COMPARISON OF ANSI/WCMA STANDARD WITH THE EUROPEAN STANDARD—Continued

Test	ANSI/WCMA A100.1–2014	EN Standard	Summary
Cord Accumulation System.	N/A	Accumulation systems (*e.g.,* cord cleats) are required to be installed per the manufactures instructions which should be at least 1.5 m above the ground. In addition, no more than 100 mm of cord shall be released after a force of 13.48 pounds is applied to any of the cords.	Neither the ANSI/WCMA, nor the EN standard is stronger standard. Having an accumulation system can possibly keep the cord out of a child's reach and at the same time pose a hazard similar to, *Hazard 5. Loop created when pull-cord was tied to another object, usually on the wall.*

C. International Alignment Agreement

In February 2012, participating staff of the Australia Competition and Consumer Commission, Health Canada, European Commission Directorate General for Health & Consumers, and the CPSC reached consensus on a document that describes approaches to addressing the strangulation hazard related to corded window coverings. Petition Briefing Package, Briefing Memorandum at 13–14. The document includes a hierarchy of the various solutions, recognizing that different approaches may be necessary for making different types of products safer:

To achieve the greatest permanent reductions in strangulations from corded window covering products, the product designs should eliminate exposure to the hazard or eliminate the hazard entirely. At the top of the hierarchy of safe solutions for window coverings are the following:

- The product has no accessible cords under any conditions of foreseeable use or misuse.
- The product has accessible cords that cannot form a hazardous loop under any conditions of foreseeable use or misuse, including failure to heed warnings or incorrect installation.

The following approach provides for the next level in the hierarchy of solutions to reduce strangulation hazard:

- The product is provided with safety devices to be installed ensuring that accessible cords cannot form a hazardous loop. Instructions and warnings are provided for correct installation.

Due to variable factors, such as a consumer's diligence and ability to follow all installation instructions and heed all warnings, there is a difference between this approach and the approach providing the highest level of safety. Finally, relying solely on warnings that the product contains hazardous loops that could strangle a child is considered insufficient to prevent fatalities.

Warnings and instructions for safe use however should continue to be present on all corded window coverings, their packaging, and their instructions. Public education efforts should encourage the use of safe window coverings and removal of products with accessible cords that can form hazardous loops.

VI. Relevant Statutory Provisions

The Commission is conducting this proceeding under the Consumer Product Safety Act (''CPSA''). 15 U.S.C. 2051 *et seq.* Window covering products are consumer products. *Id.* 2052(a)(5). Under section 7 of the CPSA, the Commission can issue a consumer product safety standard if the requirements of such a standard are ''reasonably necessary to prevent or reduce an unreasonable risk of injury associated with [a consumer product].'' *Id.* 2056(a). Such a standard must be expressed in terms of performance requirements or requirements for warnings or instructions. *Id.* Under section 8 of the CPSA, the Commission can issue a rule declaring a product to be a banned hazardous product when the Commission finds that a consumer product is being, or will be, distributed in commerce and there is no feasible consumer product safety standard that would adequately protect the public from the unreasonable risk associated with the product. *Id.* 2057.

Section 9 of the CPSA sets out the procedure that the Commission must follow to issue a standard or a banning rule. The rulemaking may begin with an ANPR that identifies the product and the nature of the risk of injury associated with the product, summarizes the regulatory alternatives considered by the Commission, and provides information about any relevant existing standards and a summary of the reasons the Commission believes they would not eliminate or adequately reduce the risk of injury. The ANPR also must invite comments concerning the risk of injury and regulatory alternatives and invite the public to submit an existing standard or a statement of intent to modify or develop a voluntary standard to address the risk of injury. *Id.* 2058(a).

The next step in the rulemaking would be for us to review comments submitted in response to the ANPR and decide whether to issue a proposed rule along with a preliminary regulatory analysis. The preliminary regulatory analysis would describe potential benefits and costs of the proposal, discuss reasonable alternatives, and summarize the potential benefits and costs of the alternatives. *Id.* 2058(c). We would then review comments on the proposed rule and decide whether to issue a final rule along with a final regulatory analysis. *Id.* 2058(d) through (g).

VII. Preliminary Estimate of Societal Costs

Tab G of the Petition Briefing Package estimates societal costs associated with deaths and injuries from corded window covering products. Based on deaths reported from 1999 through 2010, and medically attended injuries from 1996 through 2012, the societal costs associated with deaths and injuries involving window covering cords may have amounted to an average of about $110.7 million annually. EC staff estimated that an average of about 20 percent of the window coverings[21] were cordless (or did not have accessible cords) during the 1996 through 2012 time period, which suggests that these injuries and deaths were associated with the roughly 832 million window coverings in use that had accessible cords.

Based on the estimates provided in the Petition Briefing Package, the societal costs may have amounted to an average of about $0.13 per corded window covering per year (*i.e.,* $110.7 million ÷ 832 million window coverings) from 1996 through 2012. Additionally, because window coverings remain in use for an average of about 7 years, the expected present

[21] Based on EC staff's estimate that about 25 percent of current market sales consist of cordless products, the increasing availability and sales of cordless products in recent years, and the assumption that only about one-third of curtains and draperies have cords.

value of the annual societal costs (discounted at a rate of 3.0 percent) would average about $0.85 per corded covering over its expected product life.

VIII. Regulatory Alternatives

The Commission is considering the following alternatives to address the risk of injury associated with corded window covering products:

A. Mandatory Standard

The Commission could issue a rule specifying performance requirements for corded window coverings to reduce the risk of injury identified with these products. For example, to address the pull cord and continuous loop hazards, one option may be to develop a mandatory rule that is similar to the current ANSI/WCMA standard, which provides manufacturers a list of options to make safe window coverings. Such a rule could require that pull cords and continuous loops be tested for accessibility similar to the inner cords that are currently required by the standard. If accessible cords are found, a hazardous loop test procedure similar to the current procedure, but with some modifications, could be applied to determine if cords can create a hazardous loop.

Another option for a mandatory rule would be to issue a rule consistent with the petitioners' request, which would prohibit window covering cords if a feasible cordless alternative exists; and for instances in which a feasible cordless alternative does not exist, require that all cords be made inaccessible by using a passive guarding device.

A third option for a mandatory rule may be to model such a rule after one of the enumerated international standards in section VII, or relevant portions of such standards.

For any mandatory rule, the Commission could issue a rule that focuses on performance requirements or issue a rule that includes both performance requirements and labeling requirements to address the risk of strangulation. The Commission is interested in comments on the approaches described above, as well as any other suggestions to develop a mandatory standard to address the risk of injury associated with window covering cords. To issue a mandatory standard, the Commission would need to assess the costs and benefits of the requirements. Accordingly, the CPSC is interested in an assessment of the costs and benefits associated with options for a mandatory rule.

B. Labeling Rule

The Commission could issue a mandatory rule that relies on warning labels. CPSC staff is concerned that warning labels have limited effectiveness for a product that is familiar, used frequently, and contains a hidden hazard, as explained in Section IV.C.2 of this notice.

C. Banning Rule

The Commission could issue a rule declaring window covering products with cords to be banned hazardous products, if we found that no feasible consumer product safety standard would adequately protect the public from the unreasonable risk of injury associated with these products.

D. Reliance on Voluntary Standard

If the Commission determines that a voluntary standard is adequate to address the risk of injury associated with corded window covering products, and that substantial compliance with the standard exists in the industry, we must rely on the voluntary standard, in lieu of issuing a mandatory rule. 15 U.S.C. 2058(b)(2).

If the Commission announces in the **Federal Register** its intention to rely on the voluntary standard, this would obligate manufacturers, distributors, and retailers to report any product that does not comply with the standard, even a product with no incidents. 15 U.S.C. 2064(b)(1). Failure to report could result in penalties. 15 U.S.C. 2068(a)(4).

As explained in the Petition Briefing Package, CPSC engineering staff believes the current version of the ANSI/WCMA voluntary standard would fail to eliminate or adequately reduce the strangulation hazard to children because at least 57 percent of the incidents that occurred could still occur with pull cords and continuous loops on window coverings that meet the current version of the ANSI/WCMA standard.

E. No Regulatory Action

The Commission could take no regulatory action but continue to rely on corrective actions under section 15 of the CPSA and/or public education campaigns to address the risk of injury associated with corded window covering products. The Commission could continue to rely on recalls to address hazards associated with window coverings. For example, CPSC and WCMA announced joint recalls to eliminate the loops on pull cords ending in one tassel by offering free tassels; to reduce the incidents associated with horizontal blind inner cords by offering free inner cord stops, and repair kits to remove inner cords from Roman shades. The ANSI/WCMA standard was revised accordingly after these recalls to add performance requirements associated with these hazards.

To date, no recalls have addressed the issue of pull cords ending in separate tassels or continuous loops that did not require an external tension device to be installed. Accordingly, just like a mandatory rule, relying on recalls to address hazards associated with continuous loops and pull cords would also require a solution from manufacturers to implement for the products that have been sold and for future production. We are also concerned that relying on recalls requires staff to establish independently that each window covering in question presents a substantial product hazard. In addition, a recall of an individual manufacturer's window covering has no binding effect on other manufacturers who may have similar products that present the same hazard.

The Commission could also continue to pursue public information and education campaigns. In addition to compliance activities, CPSC has been warning parents of the danger of child strangulation due to corded window coverings since the first safety alert that was issued in 1985. CPSC has identified window coverings as one of the top five hidden home hazards.[22] Every October, CPSC participates in National Window Covering Safety Month to urge parents and caregivers to check their window coverings for exposed and dangling cords and to take precautions. Both CPSC and the Window Covering Safety Council (WCSC) recommend cordless window coverings at homes where young children live or visit. CPSC reaches out to consumers to create awareness of the hazards associated with corded window coverings. Staff does not have information to assess the effectiveness of public education campaigns to date; however, the lack of an observable trend in the data over this time period indicates that such campaigns are not effectively reducing the risk.

IX. Solicitation of Information and Comments

This ANPR is the first step of a proceeding that could result in a mandatory rule for corded window covering products. We invite interested persons to submit comments on any aspect of the alternatives discussed above.

[22] *http://www.cpsc.gov/PageFiles/165163/hidden.pdf.*

A. CPSA Requirements

In accordance with section 9(a) of the CPSA, we also invite comments on:

1. The risk of injury identified by the Commission, the regulatory alternatives being considered, and other possible alternatives for addressing the risk.

2. Any existing standard or portion of a standard that could be issued as a proposed regulation.

3. A statement of intention to modify or develop a voluntary standard to address the risk of injury discussed in this notice, along with a description of a plan (including a schedule) to do so.

B. Information Specific to Corded Window Coverings

In addition, we invite comments and information concerning the following:

1. What corded window covering products should we include or exclude from the rulemaking and why? For example, we can include all corded window covering products, or we could just include products most likely to be found in homes and residences, and exclude larger products intended for commercial use.

2. What possible warnings or instructions for corded window coverings could address the risk of injury? The current ANSI/WCMA standard requires warning labels, yet injuries and deaths continue. Are there additional warnings that could address the risk of injury?

3. What possible performance requirements for window covering cords could address the risk of injury?

4. Are there sections in a foreign or international standard that can be adopted as part of a mandatory rule?

5. What are the current costs to manufacturers to comply with the labeling requirements in the current ANSI/WCMA voluntary standard? What are the potential costs to manufacturers of labeling or performance requirements?

6. What are the potential benefits of a rule that would require warnings or instructions for corded window coverings?

7. What are the potential benefits of a rule that would establish performance requirements for corded window coverings?

8. What are the potential costs, economic and societal, of banning cords on window covering products? What alternative products would remain available?

9. What is the potential impact on small entities of a rule based on the options presented above?

10. Do consumers actually install and consistently use cord cleats and cord tensioning devices correctly? Are there other actions consumers take to reduce access to loops or cords?

11. How can public education campaigns on window covering safety be improved? How can the effectiveness of such campaigns be measured?

Market Information

12. What percent or share of the market or how many products are in use for curtains and drapes are corded, cordless, or have inaccessible cords?

13. How many window coverings are in use in U.S. households, by window covering type, if possible?

14. What proportion of the window coverings in use are cordless, by window covering type, if possible?

Cordless Products and Products With Inaccessible Cords

15. What percent of the market (as measured by sales volume) constitutes cordless products?

16. What percent of the market (as measured by sales volume) constitute products with inaccessible cords?

17. What are annual dollar sales and unit sales volumes of cordless products, in total, and by product type, *e.g.* vertical blinds, horizontal blinds, curtains, and the various types of shades, such as cellular, pleated, roller, roll-up and Roman shades?

18. What are annual dollar sales and unit sales volumes of products with inaccessible cords, in total and by product type, *e.g.* vertical blinds, horizontal blinds, curtains, and the various types of shades, such as cellular, pleated, roller, roll-up and Roman shades?

19. What efforts have been made to market these solutions to consumers both at retail, online, and through direct outreach?

20. What proportion of curtains or drapery coverings are used with looped or other types of cords for opening and closing?

21. Information on size limitation(s) for cordless products. For example, would certain types of blinds or shades be too large or too heavy to be made into a cordless product?

22. Information on size limitation(s) for products with inaccessible cords. For example, would certain types of blinds or shades be too large or too heavy to be made into products with inaccessible cords?

23. Are there any other factors that would limit the production or use of cordless products and products with inaccessible cords?

24. What is the size of the market for custom made cordless products, in annual dollar sales value or unit sales volume?

25. What is the size of the market for custom-made products with inaccessible cords, in annual dollar sales value or unit sales volume?

26. What is the expected product life of the various types of blinds and shades that are currently being sold in the marketplace?

27. How does the product life of cordless products compare to (or differ from) the product life of corded products?

28. How does the product life of products with inaccessible cords compare to (or differ from) the product life of corded products?

29. Are cordless options available that would be inappropriate for populations with limited mobility or the elderly?

30. Are products with inaccessible cords available that would be inappropriate for populations with limited mobility or the elderly?

31. What technologies are available as alternatives to a corded operating system?

32. What are the methods by which corded products can be converted into cordless products in the production process? What would the change in unit cost be for such conversions?

33. What are the methods by which corded products can be converted into products with inaccessible cords in the production process? What would the change in unit cost be for such conversions?

34. What are the potential benefits and limitations of tensioning devices that would render the window coverings completely inoperable if not installed properly?

Information on Compliance With the Voluntary Standard

35. As described in section VIII, one regulatory alternative is reliance on the voluntary standard issued by ANSI/WCMA.

a. Is the ANSI/WCMA standard likely to result in the elimination or adequate reduction of the risk of injury associated with window covering cords?

b. What effect, if any; would the obligation to report non-compliant products under 15 U.S.C. 2064(b)(l) have on compliance with the standard?

36. What percentage of the market (in terms of sales) or producers comply with the voluntary standard? Should the Commission consider this percentage to be ''substantial compliance'' within the meaning of the CPSA?

37. Does the current level of conformance to the voluntary standard differ for the various types of window coverings? If so, to what levels?

Information on Manufacturer Cost

38. What is the typical difference in cost to produce cordless products, products with inaccessible cords, and corded window coverings? If possible, please provide the information by window covering type (*e.g.* vertical blinds, horizontal blinds, and the various types of shades, such as cellular, pleated, roller, roll-up and Roman)?

39. What is the manufacturer's cost to produce various safety technologies, including research and development costs, and components, such as a retractable cord operating system, cord cleat, or cord shroud?

40. How would manufacturing these products in large quantities change the cost? Please provide examples in terms of quantity and price change (%).

Alberta E. Mills,

Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 2015–00566 Filed 1–15–15; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 70

[Docket No. USCG–2011–0357]

RIN 1625–AB91

Cruise Vessel Security and Safety Act of 2010; Implementation

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes amending its passenger vessel regulations to implement the Cruise Vessel Security and Safety Act of 2010 with respect to deck rails, systems for detecting or recording falls overboard and for recording evidence of possible crimes, hailing devices, security guides, sexual assault response, and crime scene preservation training. The proposed regulations promote the Coast Guard's maritime safety and security missions.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before April 16, 2015 or reach the Docket Management Facility by that date. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before April 16, 2015.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0357 using any one of the following methods:

(1) *Online: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

Collection of Information Comments: If you have comments on the collection of information discussed in section VI.D of this NPRM, you must also send comments to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget. To ensure that your comments to OIRA are received on time, the preferred methods are by email to *oira_submission@omb.eop.gov* (include the docket number and ''Attention: Desk Officer for Coast Guard, DHS'' in the subject line of the email) or fax at 202–395–6566. An alternate, though slower, method is by U.S. mail to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email LT Jason Kling, U.S. Coast Guard Office of Design and Engineering Standards, telephone 202–372–1361, email *jason.m.kling@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

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I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0357), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* and follow the instructions on that Web site. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments.

B. Viewing Comments and Documents

Public comments and relevant documents mentioned in this notice will all be available in the public docket. To see the public docket, go to *http://www.regulations.gov,* and follow the instructions on that Web site. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the 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. We have an agreement with the Department of Transportation to use the Docket Management Facility.

C. Privacy Act

Anyone can search the electronic form of 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 a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

D. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the docket using one of the methods specified under **ADDRESSES**. In your request, explain why you believe a public meeting would be beneficial. If we decide to hold a public meeting, we will announce its time and place in a later notice in the **Federal Register**.

II. Abbreviations

CFR Code of Federal Regulations
CLIA Cruise Line International Association
CVSSA Cruise Vessel Security and Safety Act of 2010
FBI Federal Bureau of Investigation
FR Federal Register
IRFA Initial Regulatory Flexibility Analysis
MARAD Maritime Administration
MISLE Marine Information for Safety and Law Enforcement
NAICS North American Industry Classification System
NPRM Notice of proposed rulemaking
OMB Office of Management and Budget
SBA Small Business Administration
§ Section symbol
U.S.C. United States Code

III. Background

The purpose of this proposed rule is to implement the Cruise Vessel Security and Safety Act of 2010 (CVSSA),[1] which added 46 U.S.C. 3507 (Passenger vessel security and safety requirements) and 46 U.S.C. 3508 (Crime scene preservation training for passenger vessel crewmembers). The basis of this proposed rule is 46 U.S.C. 2103 (regulatory authority to implement 46 U.S.C. Subtitle II) and 46 U.S.C. 3507(j) (regulatory authority to issue regulations necessary to implement section 3507). The Secretary of Homeland Security's authority under these statutes is delegated to the Coast Guard by DHS Delegation No. 0170.1, para. II (92.a), (92.b).

The CVSSA prescribes security and safety requirements for any passenger vessel that is authorized to carry and has onboard sleeping facilities for at least 250 passengers, that is not engaged in a coastwise voyage, and that embarks or disembarks passengers in the United States.[2] It provides new requirements for vessel design, public access to information about crime aboard cruise ships, provisions for emergency medical treatment, and crime prevention and criminal evidence gathering.

In passing the CVSSA, Congress found that serious incidents, including sexual assault and the disappearance of passengers at sea, have occurred on cruise vessel voyages, that passengers lack adequate understanding of their vulnerability to crime on board cruise vessels, that inadequate resources are available to assist cruise vessel crime victims, and that detecting and investigating cruise vessel crimes is difficult.[3]

In 2011, the Coast Guard published a **Federal Register** notice and request for comments relating to the CVSSA.[4] The notice did not propose a rulemaking, but asked the public to comment on the types of technology currently available to provide the video surveillance and image-capture or detection of falls overboard that the CVSSA requires. We discuss the comments we received on this notice in Section IV of this preamble.

Later in 2011, we issued guidance [5] for Coast Guard inspectors in verifying cruise vessel compliance with CVSSA requirements, and guidance and a model course curriculum [6] for complying with the CVSSA's requirements for training at least one cruise vessel crew member in crime prevention and criminal evidence gathering. We developed the model course in consultation with the Maritime Administration (MARAD) and the Federal Bureau of Investigation (FBI).[7]

IV. Comments on 2011 Notice

As added by the CVSSA, 46 U.S.C. 3507(a)(1)(D) requires cruise vessels to ''integrate technology that can be used for capturing images of passengers or detecting passengers who have fallen overboard, to the extent that such technology is available.'' In addition, 46 U.S.C. 3507(b) requires cruise vessel owners to ''maintain a video surveillance system to assist in documenting crimes on the vessel and in providing evidence for the prosecution of such crimes. . . .'' Our 2011 notice sought information on the technology currently available for meeting these requirements, and asked two specific sets of questions designed to elicit that information. We received submissions from nine commenters: Five security equipment providers; two crime victim advocacy organizations; one cruise vessel trade association; and one cruise passenger.

The cruise passenger did not respond to our questions, but asked for regulations to control smoking on cruise vessels. That topic is not addressed by the CVSSA and is outside the scope of this proposed rule.

The first substantive question set asked: ''If you work in the maritime community, do you use equipment to detect persons falling overboard? If yes, what is the equipment, and how reliable is the equipment? What alternative source(s) for detecting persons falling overboard would you recommend? How would you rate the alternative source(s) in terms of user cost and reliability and usefulness of the information?''

The second substantive question set asked: ''Do industry best practices for placement and retention of video recording devices exist? If yes, please specify what they are and how effective they have been in helping law enforcement officials prosecute offenders.''

The cruise vessel trade association answered the first question by saying that, while the technology exists to capture images of persons who have gone overboard, fall-overboard detection systems are not yet reliable under marine conditions. As added by the CVSSA, 46 U.S.C. 3507(a)(1)(D) requires a vessel to integrate image capture or fall detection technology ''to the extent such technology is available.'' Given that the industry view is that fall detection technology is not yet reliable under marine conditions, we expect that owners and operators will select the image capture option provided by Congress until such time that fall detection technology is believed to be sufficiently reliable.

The cruise vessel trade association answered the second question by saying that video surveillance has been used successfully for many years, but that ''one size does not fit all'' and that system placement is unique for each

[1] Public Law 111–207, 124 Stat. 2243; July 27, 2010.

[2] 46 U.S.C. 3507(k).

[3] CVSSA sec. 2, codified at 46 U.S.C. 3507 note.

[4] ''Cruise Vessel Security and Safety Act of 2010, Available Technology,'' 76 FR 30374 (May 25, 2011).

[5] CG–543 Policy Letter 11–09, June 28, 2011.

[6] CG–543 Policy Letter 11–10, July 27, 2011.

[7] The model course is available at: *http://www.uscg.mil/hq/cg2/cgis/Docs/CVSSA_MC_110615.pdf.*

vessel. As added by the CVSSA, 46 U.S.C. 3507(b)(1) requires each vessel to maintain a video surveillance system, but it does not specify how the system must be placed. Our proposed rule would require only that video surveillance be provided in areas to which passengers and crew members have common access (other than passenger staterooms or crew cabins). We would expect the vessel owner or operator to make whatever arrangements are necessary to ensure effective system placement.

The five security equipment providers provided information about the capabilities of various fall detection or surveillance systems. The information provided for fall detection systems did not directly address the cruise vessel trade association's assertion that existing systems are unreliable under marine conditions. It was not clear from the equipment providers' comments that industry prefers any one system for specific applications under specific conditions. The approach taken in our proposed rule is to let each vessel owner or operator determine the suitability and reliability of available systems, and choose the system or systems best adapted to its needs and the conditions under which the vessel operates. With respect to falls overboard, our proposed rule incorporates the CVSSA's flexible approach under which vessel owners could choose between detection systems, image capture systems, or some combination of image capture and detection systems.

One of the two crime victim advocacy organizations said video surveillance should ''in essence provide a safety blanket that envelopes the vessel,'' should cover all public areas, and should be monitored as well as recorded. This organization also recommended keeping videos for at least 90 days and longer when a serious incident has occurred or is alleged, and said the Coast Guard should verify information about a vessel's video systems annually. This organization also provided recommendations for the relative responsibilities of law enforcement and vessel personnel for reviewing video evidence. As added by the CVSSA, 46 U.S.C. 3507(b)(1) requires video surveillance systems ''to assist in documenting crimes . . . and in providing evidence.'' The statute does not require real time monitoring, and in the event a crime is alleged to have taken place, video can be retrospectively reviewed for possible evidence of the crime. Thus, we do not propose requiring real time monitoring. We would require video to be kept for at least 14 days after a voyage, and for an additional 120 days when a serious incident is reported. We think this provides adequate time for law enforcement to take action should an incident be serious enough to be reported. We do not think it is necessary to detail how video records must be safeguarded or shared with law enforcement, except to note that our proposed rule would require compliance with the current industry practice, which is to keep records in a secure location to prevent unauthorized access or tampering, and to make them available on request to law enforcement officials investigating an incident.

The other crime victim advocacy organization provided technical recommendations for ensuring that video surveillance can provide an individual's ''accurate likeness.'' This organization said video surveillance should be operational at all times, but that monitoring video is ''beyond the scope of any comparable industry standard.'' It recommended keeping video for at least 30 days past the end of each cruise and as part of the investigative file in the event of an incident, and made additional recommendations for safeguarding and limiting crew access to video images. We agree that video monitoring should not be required. We think video should be kept for an additional 120 days after a voyage if a serious incident is reported to have taken place during the voyage. The Coast Guard does not have regulatory authority over local law enforcement personnel and therefore we cannot require them to retain video as part of any open investigative file. We agree that video surveillance should be operational at all times and should provide identifiable images, and that video should be safeguarded and protected from unauthorized access, but we do not think it necessary to prescribe specifics for how each vessel complies with those requirements.

V. Discussion of CVSSA and Proposed Rule

Our proposed rule would add new subpart 70.40 to subchapter H (passenger vessels) of Title 46 CFR. The new subpart would include all the self-executing CVSSA provisions, as well as regulations needed to implement those CVSSA provisions that require regulatory action in order to be fully effective. Table 1 lists each CVSSA provision and distinguishes the self-executing provisions from those that must be implemented through Coast Guard regulatory action. A detailed discussion follows the table.

TABLE 1—BREAKDOWN OF CVSSA PROVISIONS

Legislative section	Provision	Self-executing?	
		Yes	No
3507(a)(1)(A)	Rail height		X
3507(a)(1)(B)	Peep holes	X	
3507(a)(1)(C)	Security latches and time-sensitive key technology for staterooms and crew cabins.	X	
3507(a)(1)(D)	Systems for detecting falls overboard		X
3507(a)(1)(E)	Hailing or warning devices		X
3507(a)(2)	Security latches and time-sensitive keys technology must consider fire and other safety requirements.	X	
3507(b)	Video recording		X
3507(c)	Security guides		X
3507(d)	Sexual assault response		X
3507(e)	Confidentiality for victim's information	X	
3507(f)	Procedures to identify crew with access to staterooms	X	
3507(g)	Vessel owners required to log reported criminal allegations, report serious incidents to law enforcement, and make statistics available to the public on the owner's website.	X	
3507(h)	Civil penalties for violations and denial of entry into the U.S. when serious crimes are alleged.	X	

TABLE 1—BREAKDOWN OF CVSSA PROVISIONS—Continued

Legislative section	Provision	Self-executing?	
		Yes	No
3508(a)	Crime scene preservation training and victim assistance training		X

Section 3507(a)(1)(A) requires each cruise vessel to ''be equipped with ship rails that are located not less than 42 inches above the cabin deck.'' This requirement is largely self-executing and Coast Guard inspectors already have guidance on its enforcement.[8] However, to fully achieve section 3507(a)(1)(A)'s apparent intention of helping prevent falls overboard, we propose, in new 46 CFR 70.40–5, applying the 42-inch height requirement to any exterior deck to which passengers have general access, including but not limited to, cabin decks. We would allow alternative arrangements where a 42-inch height could interfere with the operation of lifesaving equipment or arrangements. Passenger vessel rails and bulwarks may already be subject to 46 CFR subpart 72.40, which requires a minimum height of 39½ inches, even if they are not subject to the CVSSA.

Section 3507(a)(1)(B) requires each passenger stateroom and crew cabin to be ''equipped with entry doors that include peep holes or other means of visual identification.'' This provision is self-executing and Coast Guard inspectors have the necessary enforcement guidance.[9] We have placed this provision in proposed 46 CFR 70.40–2(a).

Section 3507(a)(1)(C) requires that, for any vessel the keel of which is laid after July 27, 2010, each passenger stateroom and crew cabin must be equipped with security latches and time-sensitive key technology. This provision is self-executing and Coast Guard inspectors have the necessary enforcement guidance.[10] We have placed this provision in proposed 46 CFR 70.40–2(b). We interpret ''keel laid'' to mean the date the vessel's keel was laid or the vessel reached an equivalent stage of construction.

Section 3507(a)(1)(D) requires each vessel to ''integrate technology that can be used for capturing images of passengers or detecting passengers who have fallen overboard, to the extent that such technology is available.'' Therefore, in proposed 46 CFR 70.40–6 we would require a vessel either to maintain a fall-overboard image capture system, or a fall-overboard detection system, or some combination of both. The fall-overboard detection system, by itself, is intended to sound an immediate alarm, and may (but need not) capture an image of the falling person. However, to the extent the vessel relies on an image-capture system, or combination image-capture/detection system, the system should record the incident's date and time to provide proper assistance to search and rescue or law enforcement personnel. System video, data, and images (''records'') need to be made available for search and rescue or law enforcement purposes. To ensure that availability, we propose requiring records to be kept for the duration of the voyage, and for at least 14 days after all passengers are accounted for as having disembarked. The 14-day proviso allows extra time to report the disappearance of a stowaway or other person whose presence on the vessel may not be reflected in the vessel operator's records, thereby making it less likely that the person's disappearance could be discovered or reported quickly. If, during the voyage or the subsequent 14 days, the vessel receives a report of a fall overboard, these records would have to be kept for an additional 120 days after receipt of the report. Our proposed rule provides flexible performance-based standards that may be met using a variety of technological equipment and systems.

Section 3507(a)(1)(E) requires each vessel to be ''equipped with a sufficient number of operable acoustic hailing or other such warning devices to provide communication capability around the entire vessel when operating in high risk areas (as defined by the United States Coast Guard).'' We designate as ''high risk'' areas those waters where hazards like widespread piracy activity are known to be present. The location of high risk areas is sensitive security information that we do not divulge to the general public. We think section 3507(a)(1)(E) requires vessels to carry megaphones or other devices for use in high risk waters anywhere in the world. Such devices could facilitate communications if circumstances made use of the vessel's normal communications system impossible. We do not think section 3507(a)(1)(E) requires vessels to carry high pitched sound-emitting devices to repel unauthorized boarders, and while we take no position on the advisability of equipping vessels with such devices, we note that vessel owners and operators are free to do so if they choose. Because an area in which a cruise vessel is operating may be determined to be ''high risk'' only after the vessel has entered it and no longer has the ability to procure appropriate equipment, we propose requiring vessels to carry this equipment at all times.

Section 3507(a)(2) provides that the security-latch and time-sensitive key technology requirements of section 3507(a)(1)(C) must be administered after taking ''into consideration fire safety and other applicable emergency requirements'' established by the Coast Guard and under international law, ''as appropriate.'' The section 3507(a)(1)(C) requirements are self-executing, and Coast Guard inspectors are required[11] to make sure that the latch devices will not hinder appropriate emergency actions, like breaking down a door, in the event of a fire. We propose placing the section 3507(a)(2) requirement in 46 CFR 70.40–2(b) to make it clear that the required devices may not prevent appropriate access by emergency responders.

Section 3507(a)(3) made most section 3507(a)(1) requirements effective January 27, 2012. Because that date has passed and the applicable requirements are now in effect, we have not reflected it in proposed regulatory text. The section 3507(a)(1)(C) security latch and time-sensitive key technology requirement applies only to newer vessels with keels laid after July 27, 2010. We have included this limitation on applicability in proposed 46 CFR 70.40–2(b).

Section 3507(b) requires vessel owners to maintain a video surveillance system to assist in documenting crimes on the vessel and to provide law enforcement officials investigating those crimes with copies of video records. We propose new 46 CFR 70.40–8 to specify that the surveillance system must cover any areas of the vessel to which passengers or crew members have common access—which excludes passenger staterooms and crew cabins.

[8] CG–543 Policy Letter 11–09, para. 6.a.(1).

[9] CG–543 Policy Letter 11–09, paragraph 6.a.(2).

[10] CG–543 Policy Letter 11–09, paragraph 6.a.(3).

[11] CG–543 Policy Letter 11–09, paragraph 6.a.(3).

The surveillance system must make identifiable time and date-stamped images of persons who may be involved in alleged crimes. The surveillance system must be maintained in a secure location and access must be strictly limited and documented to prevent unauthorized access or tampering. To ensure that copies of system records can be provided to law enforcement officials upon request, we propose requiring those records to be kept for the duration of the voyage, and for 7 days after all passengers are accounted for as having disembarked (7 days during the average length of travel during the voyage and 7 days after disembarking). The 14-day proviso allows extra time to report a crime, such as theft, that may not be discovered until sometime after all passengers have disembarked. If a crime is reported any time during the 14-day period, the records would need to be kept for an additional 120 days. Our proposed rule provides performance-based standards that may be met using a variety of technological equipment and systems.

Section 3507(c)(1) requires a vessel owner to provide each passenger with a security guide. The guide must identify onboard personnel designated to prevent and respond to criminal and medical situations, and must describe applicable criminal law procedures for crimes committed in any waters the vessel might traverse during the voyage. The vessel owner must provide the FBI with a copy of the security guide for comment, and must publicize the security guide on its Web site. Section 3507(c)(2) would require a listing of U.S. embassy and consulate locations in any foreign countries to be visited during the voyage. This list must be provided in each passenger stateroom, and must be posted in a location that is readily accessible to the crew. Although these requirements are largely self-executing, and enforcement guidance has been provided for Coast Guard inspectors,[12] we need regulatory text to make it clear how we will ensure that each passenger is provided with a security guide. Therefore, we propose adding 46 CFR 70.40–9, to require that a copy of the guide must be provided in each passenger stateroom prior to each voyage.

Section 3507(d) specifies what medical personnel, equipment, and ''adequate'' supplies vessel owners must maintain on board for responding and providing victim treatment in the event of a sexual assault. It also specifies the measures the vessel owner must take to give victims access to lawyers, investigators, and victim advocacy programs. Section 3507(d) is largely self-executing, and Coast Guard inspectors have enforcement guidance.[13] We do not think it necessary to issue regulations stating what medical supplies are needed to provide the treatment described in section 3507(d), because that can be left to the discretion of the medical staff, and the identity of those supplies may change over time as medical techniques and supplies improve. However, we do think our regulations need to define, for the benefit of the public and our inspectors, what constitutes an adequate stock of medical supplies. Therefore, in proposed 46 CFR 70.40–10, we propose that the vessel must have enough supplies for at least two patients throughout the expected length of the voyage. If any of an owner's cruise vessels has a history of alleged sexual assaults within the past three years, then the owner must ensure that each of its vessels has enough medical supplies on board to treat the maximum number of assaults alleged to have occurred on one of those previous voyages within the last three years. We also propose requiring any crew member who interviews an alleged sexual assault victim to have been trained to communicate appropriately with a trauma victim.

Section 3507(e) requires confidentiality for information obtained as the result of providing medical or other assistance to sexual assault victims. This requirement is self-executing and Coast Guard inspectors have enforcement guidance.[14] We propose referencing the section 3507(e) requirement in regulatory text at 46 CFR 70.40–2(c).

Section 3507(f) requires vessel owners to establish procedures for identifying crew members who have access to passenger staterooms and for limiting that access. This requirement is self-executing and Coast Guard inspectors have adequate enforcement guidance in CG–543 Policy Letter 11–09, paragraph 6.a.(8). We propose referencing the section 3507(f) requirement in regulatory text at 46 CFR 70.40–2(d).

Section 3507(g) requires vessel owners to log reported criminal incident allegations, to report serious incidents to law enforcement officials, and to make a statistical compilation of data relating to alleged criminal incidents available to the public on the owner's Web site. This requirement is self-executing and Coast Guard personnel have enforcement guidance.[15] We propose referencing the section 3507(g) requirement in regulatory text at 46 CFR 70.40–2(e).

Section 3507(h) provides civil and criminal penalties for persons who violate section 3507 or regulations under that section. It also allows the Coast Guard to deny a vessel entry into the United States if the vessel owner commits an act or omission for which a penalty can be imposed under section 3507(h), or if the vessel owner fails to pay such a penalty. We propose referencing this provision in new 46 CFR 70.40–1(c). CG–543 Policy Letter 11–09, paragraph 6.b, addresses how the Coast Guard handles possible violations.

Section 3507(i) requires the Coast Guard to issue the implementation guidance contained in the two 2011 policy letters. The Coast Guard has complied with this requirement by issuing CG–543 Policy Letters 11–09 and 11–10.

Section 3507(j) authorizes ''such regulations as are necessary to implement'' section 3507. This NPRM proposes the regulations we consider to be necessary for implementation. We do not think it necessary to restate the regulatory authorization itself in regulatory language, and the proposed rule would not do so.

Section 3507(k) describes the vessels to which the CVSSA applies, to include any voyage that ''embarks or disembarks passengers in the United States.'' This phrase could be interpreted as applying to a voyage originating and ending in a foreign country, and on which no U.S. national is a passenger, but which makes a brief port call in a U.S. port. Because we do not think the U.S. interest in the safety and security of a vessel engaged in such a voyage is sufficient to subject it to the proposed regulations, we propose specifying, in 46 CFR 70.40–1(a), that subpart 70.40 applies to a voyage that embarks or disembarks passengers in the U.S., ''except that embarking and disembarking does not include temporary port calls by passengers.'' We also propose clarifying, in 46 CFR 70.40–1(a), that subpart 70.40 applies to foreign as well as to U.S. vessels, notwithstanding 46 CFR 70.05–3(b), which generally exempts foreign vessels from Coast Guard passenger vessel regulations. We propose amending 46 CFR 70.05–3(b) to clarify that this general exemption is subject to specific exceptions, such as the exception we propose to include in 46 CFR 70.40–1(a).

[12] CG–543 Policy Letter 11–09, paragraph 6.a.(4).

[13] CG–543 Policy Letter 11–09, paragraphs 6.a.(5) and (6).

[14] CG–543 Policy Letter 11–09, paragraph 6.a.(7).

[15] CG–543 Policy Letter 11–09, paragraph 6.a.(9).

Section 3507(l) defines Coast Guard ''Commandant'' and a vessel's ''owner.'' Our proposed rule does not use the term ''Commandant,'' but it does refer to a vessel's ''owner,'' so we propose including the statutory definition of that term in new 46 CFR 70.40–1(b).

In section 3508, paragraphs (a) through (d) concern training in appropriate methods for prevention, detection, evidence preservation, and reporting of criminal activities in the international maritime environment. Section 3508(a) requires the Coast Guard to consult with the FBI and MARAD to develop training standards and criteria, and permits (but does not require) MARAD to certify U.S. and foreign training and certification providers. We complied with section 3508(a) by consulting with the FBI and MARAD, and incorporated the results of that consultation in our policy guidance and model course.[16] The model course covers the minimum standards set out in section 3508(b). Our guidance was issued on June 28, 2011. It established the interim training requirement called for by section 3508(d) (effective from July 2011 to July 2013) and the final certification requirement called for by section 3508(c). We made the final certification requirement effective on July 27, 2013. Since that date, persons who voluntarily develop and provide training that meets the model course criteria have been eligible for certification as training providers under section 3508(a), and persons who voluntarily receive that training have been eligible for certification under section 3508(c) as having received the training specified by that paragraph. However, the policy letter is not binding on members of the public and therefore, until new regulations are in place, no one is obligated to receive certification either as a training provider or as having received training.

We propose making certification mandatory by adding new 46 CFR 70.40–11. A person who develops and provides training in all the subjects listed in section 70.40–11(a), and who certifies those who successfully complete training, would be eligible for certification as a training provider. This certification could be made by MARAD, if MARAD chooses to exercise its discretionary section 3508(a) authority to provide certification, and section 70.40–11(b)(2) makes it clear that we would accept the validity of MARAD's certification so long as MARAD's certification criteria requires training in all the subjects listed in section 70.40–11(a). If MARAD chooses not to provide certification, a person could become a certified training provider under section 70.40–11(b)(1) by self-certifying that the training provided meets or exceeds the criteria detailed in our model course.

A person who successfully completes training from a certified training provider in all the subjects listed in section 70.40–11(a) would be certified as having received the training specified by 46 U.S.C. 3508(c). Over time, training may be forgotten, and relevant developments such as changes in evidentiary techniques may require updates to our model course requirements. Therefore, we propose requiring training and certification to be refreshed at least once every 2 years.

Section 3508(e) provides civil penalties for violations of section 3508. Coast Guard personnel have been given enforcement guidance for this provision, which we propose referencing in new 46 CFR 70.40–1(c).[17], provides enforcement guidance to Coast Guard personnel.

Section 3508(f) allows the Coast Guard to deny entry into the U.S. by vessels that violate section 3508 or fail to pay a penalty for violation. We propose referencing this provision in new 46 CFR 70.40–1(c).

VI. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 of these statutes or executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This proposed rule 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 that Order. The Office of Management and Budget (OMB) has not reviewed it under that Order. Nonetheless, we developed an analysis of the costs and benefits of the proposed rule to ascertain its probable impacts on industry. We consider all estimates and analysis in this regulatory analysis to be preliminary and subject to change in consideration of public comments.

TABLE 1—SUMMARY OF THE PROPOSED RULE'S IMPACTS

Category	Summary
Applicability	Cruise vessels that are authorized to carry at least 250 passengers, have onboard sleeping facilities for each passenger, are on voyages that embark or disembark passengers in the United States, and are not engaged in coastwise voyages
Affected Population	147 cruise vessels: 71 U.S. flagged 76 Foreign flagged
Total Cost to Industry and Government[1]	10-year: $79.1 million[2]
(7% discount rate)	Annualized: $8.4 million[2]
Non-quantified Benefits	Clarification of rail height requirements by aligning regulation with statutory language. Enhanced ability to determine if and when a person went overboard. Potential to reduce search and rescue costs by reducing search area. Clarification of hailing or warning devices requirement by aligning regulation with statutory language. Improved criminal investigation and recordkeeping

[16] CG–543 Policy Letter 11–10. See footnote 2 for a link to the model course.

[17] CG–543 Policy Letter 11–10, paragraph 6.

TABLE 1—SUMMARY OF THE PROPOSED RULE'S IMPACTS—Continued

Category	Summary
	Potential deterrent effect. Clarification of sexual assault medical equipment requirements by aligning regulation with statutory language. Enhanced awareness of security contacts, in case of an emergency. Ensures that personnel are trained appropriately in crime scene preservation, thereby improving criminal investigation and recordkeeping. Ensures that vessel crew members are limited in their access to passenger staterooms. Clarifies that crewmembers respect the privacy of passengers and the security of their staterooms. Improved recordkeeping. Enhanced transparency to the public of reported crimes.

[1] Note that US-based cost is $28.4 million and the cost to foreign-based companies is $30.7 million (10-year, 7% discounted)
[2] Costs include burden imposed to comply with statue.

A preliminary Regulatory Assessment follows:

In this NPRM, we propose to implement the CVSSA, codified at 46 U.S.C. 3507 and 3508. The proposed changes include amendments to regulations affected by CVSSA mandates, and new guidelines for surveillance systems, determining the appropriate amount of medical supplies to maintain on board to treat victims of a sexual assault, and reporting serious incidents to Federal authorities. The proposed changes, in conjunction with CVSSA mandates, are intended to improve passenger and crew safety aboard cruise vessels.

As previously discussed, many provisions of the CVSSA were current industry standards prior to the enactment of the CVSSA and implementing the proposed regulatory changes will not result in any change in industry practices. This preliminary regulatory analysis provides an assessment of costs and benefits of the provisions of the proposal.

This proposed rule would affect current Coast Guard regulations in Title 46, subchapter H (Passenger Vessels) of the CFR. The CVSSA affects a unique subset of approximately 147 overnight ocean-going cruise vessels that operate worldwide, of which approximately 48 percent are U.S.-based. The other 52 percent are foreign-based. At that rate, the US-based cost is approximately 38.0 million and the cost to foreign-based companies is approximately $41.1 million (10-year, undiscounted).[18] These cruise vessels are authorized to carry at least 250 passengers, have onboard sleeping facilities for each passenger, are on voyages that embark or disembark passengers in the United States, and are not engaged in coastwise voyages.

We propose to amend 46 CFR part 70 to address changes to current regulations dealing with ship design and operating requirements resulting from the CVSSA that are specifically directed to cruise ships as defined in the CVSSA. Table 2 provides a summary of the cost impacts from the proposed rule by provision.

Many of the provisions of the CVSSA were already current industry practice prior to the enactment to the statute. According to the Government Accountability Office:

> ''Officials from all five of the cruise lines we spoke with, as well as CLIA [the Cruise Line International Association], told us that there were minor issues with implementing these 11 CVSSA requirements and that most of the safety and security measures required by the law were already in place when the CVSSA was enacted, in July 2010. For example, each of the cruise line officials we met with told us that their vessels already were in compliance with most CVSSA provisions including having peepholes in stateroom doors, using certified medical personnel for sexual assault exams, and carrying rape kits onboard.'' [19]

For the provisions that were industry practice prior to the CVSSA enactment, there will be no cost impacts for the proposal.

TABLE 2—SUMMARY OF COST IMPACTS

Provision/Description of Change	Type of Change	Cost Impact
§ 70.05–3 Foreign vessels subject to the requirements of this subchapter.		
Requires the compliance of foreign vessels	Mandatory statutory alignment	No cost because this describes the population.
§ 70.40–1 Applicability; definition; penalties.		
Defines the type of cruise vessel	Mandatory statutory alignment	No cost because this describes the affected population.
Civil penalties for violations and denial of entry into the U.S. when serious crimes are alleged.	Mandatory statutory alignment	No net impact. Civil penalties are transfer payments and avoidable by complying with the law.

[18] Totals may not add due to rounding.

[19] ''Cruise Vessels: Most Required Security and Safety Measures Have Been Implemented, but Concerns Remain About Crime Reporting'', December 2013, United States Government Accountability Office report (GAO–14–43), p. 13 (available at *http://www.gao.gov/products/GAO-14-43*).

TABLE 2—SUMMARY OF COST IMPACTS—Continued

Provision/Description of Change	Type of Change	Cost Impact
§ 70.40–2 Statutory requirements.		
Requires peep holes or other means of visual identification.	Mandatory statutory alignment	No cost. Already industry practice prior to CVSSA.[20]
Security latches and time-sensitive key technology for staterooms and crew cabins for new vessels.	Mandatory statutory alignment	Currently, all vessels are in compliance with this requirement so there is no cost due to the regulatory implementation of the statutory requirement. However, some vessels made modifications in order to comply with the 2010 statute. The total cost incurred by industry at that time to comply with the statute is $23.3 million (10-year, 7% discounted).
Confidentiality of sexual assault examination	Mandatory statutory alignment	No cost. Rule only states that confidentiality must be upheld in sexual assault cases.
Means to access support information (telephone line, computer and internet access).	Mandatory statutory alignment	Telephone line and computer with internet access currently available and provided.
Procedures to identify crew with access to staterooms.	Mandatory statutory alignment	$29,164 total cost (10-year, 7% discounted).
Vessel owners required to log reported criminal allegations, report serious incidents to law enforcement, and make statistics available to the public on the owner's website.	Mandatory statutory alignment	$26,523 total cost (10-year 7% discounted).
§ 70.40–5 Rail or bulwark height.		
Rail heights must be at least 42 inches above deck, except where it would interfere with the operation of lifesaving equipment.	Mandatory statutory alignment	Currently, all vessels are in compliance with this requirement so there is no cost due to the regulatory implementation of the statutory requirement. However, some vessels made modifications in order to comply with the 2010 statute. The total cost incurred by industry at that time to comply with the statute is $125,496 (10-year, 7% discounted).[21]
§ 70.40–6 Fall-overboard incidents.		
Vessels must have a system for detecting or capturing falls overboard.	Mandatory statutory alignment	$29.9 million total cost (10-year, 7% discounted).
Video footage must be kept for 14 days or an additional 120 days after receipt of a report.	USCG has the discretion to establish time required to store such footage.	$13,180 total cost (10-year, 7% discounted) for retention of footage for 120 days.
§ 70.40–7 Hailing or warning devices.		
Vessels must be equipped with a hailing or warning device.	Mandatory statutory alignment	No cost. Already in compliance.[22]
§ 70.40–8 Video recording.		
Requires video footage of common access areas. Excludes state room and crew cabins.	Mandatory statutory alignment	No cost. Cruise vessels, prior to CVSSA, already had an extensive system of surveillance cameras. The performance-based requirements proposed here mirror the desired criteria used by industry in meeting the statutory requirements.[23]
Video footage must be kept for 14 days or an additional 120 days after receipt of a report.	USCG has the discretion to establish the time required to store footage.	See *§ 70.40–6 above for cost.*

TABLE 2—SUMMARY OF COST IMPACTS—Continued

Provision/Description of Change	Type of Change	Cost Impact
§ 70.40–9 Security guides and embassy information.		
Security guides must be provided in each stateroom	USCG has the discretion to establish protocol in which individuals are provided access to security guides.	$3.2 million total cost (10-year, 7% discounted).
§ 70.40–10 Sexual assault response.		
Vessels must have a sufficient number of medication and equipment to deal with sexual assault cases.	USCG has discretion to establish the quantity of medication and equipment.	No cost. Already industry practice prior to CVSSA.[24]
§ 70.40–11 Training.		
Vessels must have at least one person trained in crime scene preservation training. Vessels must have trained staff onboard to deal with trauma victims.	USCG has the discretion to establish minimum training requirements.	$2.5 million total cost (10-year, 7% discounted).

There are nine categories of requirements in this proposal that we discuss and analyze in this section:

1. Rail Heights and Guards
2. Fall-Overboard Incidents
3. Hailing or Warning Devices
4. Video Recording
5. Sexual Assault
6. Security Guides
7. Training
8. Crewmembers with Stateroom Access Addendums
9. Crime Complaints Logs

To better inform our analysis for this proposal, the Coast Guard issued a notice of request for comments (76 FR 31350; May 25, 2011), to solicit public comment on the availability of technology to meet certain provisions of the CVSSA, specifically related to video recording and fall-overboard detection technologies. Our research also gathered information from the CLIA to assess the current practices in the field. The information provided by CLIA confirms that the requirements detailed in this proposed rule are for the most part current industry practice. The responses from CLIA, whose member companies account for 98 percent of the cruise capacity marketed for North America, were used to support this preliminary regulatory analysis regarding CVSSA compliance with requirements related to rail heights and guards, falls-overboard detection, video recording, sexual assault, and timeliness of crimes reporting.

For several provisions, the current industry practice prior to the CVSSA already met the proposed requirements. This section analyzes those requirements that are expected to have a cost impact on the affected population.

1. Rail Heights and Guards

The CVSSA requires that vessels be equipped with ship rails that are located not less than 42 inches above the cabin deck. Based on information provided by industry, 42 inches is, for the most part, the current industry standard for rail heights. For example, classification societies such Lloyd's require a rail-height build standard of 1100 millimeters above deck, which is 32 millimeters above the 42 inches (1067mm) CVSSA requirement. The 2013 GAO report documented industry compliance with one exception where a cruise line has modified isolated locations on a single vessel (such as around entrance gangways and lifeboat stations) and is now in compliance with the 42-inch standard.[25] Based on this information, the Coast Guard estimates that all CLIA members except for one vessel meet this requirement. Since we have no information on the other 3 vessels of the affected population, we assume that they would need to upgrade the rail heights in limited locations as well (for a total of 4 vessels affected by this requirement).

To determine the length of rail to be replaced around lifeboat stations, we first estimate the number of lifeboats per cruise vessel. The Coast Guard Foreign and Offshore Vessel Division within the Office of Commercial Vessel Compliance estimates that, on average, there are 1,600 staterooms per cruise ship. Assuming that there are 2 people per stateroom, we estimate that there are 3,200 people per ship.[26] Assuming a passenger capacity of 150 people, we estimate that the rails would need to be adjusted around 22 lifeboats.[27] Assuming that the average length of a lifeboat is 12 meters, an affected vessel would need to update 264 meters per boat, at an average cost of $100 per meter for rails and a weld rate of $27.16 per hour. [28] [29] [30] The per vessel cost is as follows:

264 meters * $27.16 per hour (1 hour per meter) + $26,400 rails = $33,570 per vessel

We estimate that 4 vessels would be affected by this provision. We estimate that vessels would incur a one-time cost

[20] ''Cruise Vessels: Most Required Security and Safety Measures Have Been Implemented, but Concerns Remain About Crime Reporting'', December 2013, United States Government Accountability Office report (GAO–14–43), p. 13 (available at *http://www.gao.gov/products/GAO–14–43*).

[21] GAO–14–43 documented one case where a vessel needed to change rail heights. Based on the GAO report, we assume that all CLIA members are in compliance with the exception of one vessel. Due to the lack of information, we assume that the remaining three non-CLIA members will also need to update rail heights.

[22] As described below, based on SOLAS requirements for all international ships to have a public address system onboard, and based on ship examinations, we estimate that vessels comply with this requirement.

[23] USCG Docket USCG–2011–0357, CLIA, July 25, 2011.

[24] GAO–14–43, ''Cruise Vessels: Most Required Security and Safety Measures Have Been Implemented, but Concerns Remain About Crime Reporting'' GAO report, p. 13. American College of Emergency Physicians Health Care Guidelines for Cruise Ship Medical Facilities specify carriage of these supplies.

[25] GAO–14–43, p. 13.

[26] *http://answers.yahoo.com/question/index?qid=20090212185609AAFuxLL.*

[27] *http://www.rina.org.uk/lifeboat-embarkation.html.*

[28] Average length of a lifeboat *http://www.fassmer.de/index.php?id=63.*

[29] Average rate of rails is $100/meter. $50/meter *http://www.alibaba.com/product-detail/cheap-dubai-stainless-steel-railings-price_1338866401.html,* $150/meter *http://www.alibaba.com/product-detail/stainless-steel-railings-price_1382208547.html.*

[30] Welder: 1 hour per meter (Coast Guard subject matter expert)*$27.16 per hour (*http://www.bls.gov/oes/2011/may/oes514121.htm*) * load factor of 1.49. Therefore the welder's loaded wage rate is $27.16 = ($18.23 wage rate * 1.49 load rate).

of $134,281 in year one. $33,570 * 4 vessels = $134,281.

2. Overboard Detection or Capture

The CVSSA requires integration of technology that can be used for capturing images of passengers or detecting passengers who have fallen overboard, to the extent that such technology is available, and does not require one approach over the other. This provision is performance based and allows for use of either image-capture or detection systems, or a combination thereof. Based on the comments submitted by CLIA in response to the 2011 notice, we anticipate industry will comply predominantly through capture.

According to CLIA, image capture technology systems (closed circuit TV, thermal, etc.) have been proven to be reliable and have been successfully used in the maritime environment for many years. However, the technology to reliably detect persons or objects as they are in the process of going overboard is not yet readily available for use at sea. Because the statute does not require one method over the other, we anticipate that the cruise industry will focus on using capture systems rather than detection systems.

While some cruise ships already have cameras that can capture images of objects going overboard, the industry does not universally meet the requirements of the CVSSA at this time. Based on industry data provided by cruise lines, we estimate that costs would range from $62,500 to $700,000 per ship in order to comply with the CVSSA requirements. For the purposes of regulatory analysis, we used the weighted average of all the cost points as provided by industry ($108,583 per ship). Coast Guard data indicates that there are 147 cruise ships that will be affected by this regulation.[31] Coast Guard estimates that all 147 cruise ships would incur additional costs to comply with this requirement. Using the $108,583 cost per ship for 147 ships, we estimate that the first year cost would be $15.96 million. Because of the harsh weather conditions at sea and the dynamic nature of a cruise ship, we must account for some maintenance and operational cost to maintain the cameras on an annual basis. For this analysis, we assume the annual cost will be 5 percent of the installation costs due to deterioration from weather, or about $798,088 per year.[32] We also assume a 5-year replacement cost for the system equal to the first year cost.[33] Table 3 shows the 10-year costs for overboard capture systems.

TABLE 3—COST FOR OVERBOARD CAPTURE SYSTEM

Year	Undiscounted	7% Discount rate	3% Discount rate
1	$15,961,750	$14,917,523	$15,496,845
2	798,088	697,081	752,274
3	798,088	651,477	730,363
4	798,088	608,857	709,090
5	798,088	569,025	688,437
6	15,961,750	10,635,988	13,367,714
7	798,088	497,009	648,918
8	798,088	464,494	630,018
9	798,088	434,107	611,668
10	798,088	405,707	593,852
Total	38,308,200	29,881,268	34,229,179
Annualized	.....	4,254,420	4,012,704

We estimate the 10-year costs for overboard capture systems to be approximately $29.9 million discounted at 7 percent and $34.2 million discounted at 3 percent. The annualized costs would be $4.3 million and $4.0 million discounted at 7 percent and 3 percent, respectively.

3. Hailing or Warning Devices

This proposal requires that all vessels transiting waters that are designated as a high risk area be equipped with acoustic hailing or other devices as required by the Coast Guard to provide communication capability around the entire vessel. Based on International Convention for the Safety of Life at Sea (SOLAS) requirements for all international ships to have a public address system onboard, and based on ship examinations, we estimate that all vessels comply with this requirement.[34]

4. Video Recording and Retention

The CVSSA requires affected vessel owners to ''maintain a video surveillance system to assist in documenting crimes on the vessel and in providing evidence for the prosecution of such crimes, as determined by the Secretary.'' 46 U.S.C. 3507(b)(1). The Act further requires vessel owners to ''provide to any law enforcement official performing official duties in the course and scope of an investigation, upon request, a copy of all records of video surveillance that the official believes may provide evidence of a crime reported to law enforcement officials.'' 46 U.S.C. 3507(b)(2).

Industry representatives provided information that cruise vessels maintain video footage for approximately 14 days (7 days during the average cruise and 7 days beyond the end of the cruise).[35] The proposed regulation requires the retention of video for two weeks. Based on this information, we assumed no cost to retain footage for 14 days due to the current industry practice of retaining video for 14 days.

Further, in the event of a reported crime, a cruise vessel would need to maintain footage of the incident for at least an additional 120 days. Industry would incur a collection of information cost to store footage of reported incidents. From 2010–2012, there was an average of 73 incidents reported annually to the Federal Bureau of Investigation. We assume that footage

[31] The CVSSA of 2010 states that there are approximately 200 cruise vessels affected. The Coast Guard Foreign and Offshore Vessel Division provided an updated figure of 147.

[32] Based on input from Coast Guard subject matter experts for similarly exposed equipment.

[33] *Ibid.*

[34] SOLAS Chapter IV, Regulation 6. *https://treaties.un.org/doc/Publication/UNTS/Volume%201184/volume-1184–I–18961-English.pdf.*

[35] GAO–14–43 ''Cruise Vessels: Most Required Security and Safety Measures Have Been Implemented, but Concerns Remain About Crime Reporting'' GAO report, p. 16.

would be stored by a Vessel Security Officer, at the loaded wage rate of $51.41 per hour.[36] Based on other collections of information, we assume that it would take 30 minutes (0.5 hours) to store video footage. At this rate, we estimate the annual hour burden to be 36.5 hours (0.5 hours × 73 incidents), costing cruise vessels $1,876 annually for all 147 vessels or $15 per ship. Table 4 provides the 10-year breakdown in costs for this provision.

TABLE 4—COST TO RETAIN VIDEO FOOTAGE FOR REPORTED CRIMES

Year	Undiscounted	7% Discount rate	3% Discount rate
1	$1,876	$1,754	$1,822
2	1,876	1,639	1,769
3	1,876	1,532	1,717
4	1,876	1,432	1,667
5	1,876	1,338	1,619
6	1,876	1,250	1,572
7	1,876	1,169	1,526
8	1,876	1,092	1,481
9	1,876	1,021	1,438
10	1,876	954	1,396
Total	18,765	13,180	16,007
Annualized	.....	1,876	1,876

* Note numbers may not add due to rounding.

5. Sexual Assault

The CVSSA requires cruise ships to maintain an adequate supply of equipment and materials for performing a medical examination in sexual assault cases. Current industry practice is for vessels to determine the appropriate supply based on the number of passengers, history of sexual assaults where medications are needed and the demographics of the cruising population. Cruise lines follow the American College of Emergency Physicians Health Care Guidelines for Cruise Ship Medical Facilities. As such, we do not expect industry to incur additional burden from this requirement, as it was current industry practice prior to the CVSSA.[37] [38]

6. Security Guides

Based on research into company Web sites, security guides are available via the company Web site. However, the CVSSA requires that vessel owners provide each passenger with access to a security guide. The guide must identify onboard personnel designated to prevent and respond to criminal and medical situations, and it must describe applicable criminal law procedures for offenses committed in any waters the vessel might be in during the voyage. The guide must also provide a list of U.S. embassy and consulate locations in foreign countries to be visited during the voyage. We propose that a copy of the security guide must be placed in each stateroom. Industry will incur a cost for this requirement initially as well as an annual replacement cost. The Coast Guard Foreign and Offshore Vessel Division within the Office of Commercial Vessel Compliance estimates that, on average, there are 1,600 staterooms per cruise ship. We estimate 147 cruise ships would be affected by this proposal, meaning there would be 235,200 security guides required for the affected population. As security guides are currently available on company Web sites, there will be no additional cost to develop the content of the security guide.

Based on one industry Web site, there were 72 pages of security information ($0.10 per page * 72 pages = $7.20 printing cost).[39] We then estimate that an administrative assistant or secretary would print the pages and add the guide to existing vessel and cruise documentation in the staterooms at a rate of 10 minutes per guide ($23.65 loaded wage rate * 0.1667 = $3.94).[40] We based our estimate of 10 minutes on information from internal subject matter experts. With this cost of $7.20 per security guide and $3.94 in labor hours to print and add the guide to existing vessel and cruise documentation currently provided within staterooms, this requirement would have an initial cost of $2.62 million. We also assume a five-percent replacement cost per year of $131,035. Table 5 shows the estimated 10-year costs for this requirement.

TABLE 5—SECURITY GUIDE COSTS

Year	Undiscounted	7% Discount rate	3% Discount rate
1	$2,620,705	$2,449,257	$2,544,374
2	131,035	114,451	123,513
3	131,035	106,964	119,916
4	131,035	99,966	116,423
5	131,035	93,426	113,032
6	131,035	87,314	109,740
7	131,035	81,602	106,544
8	131,035	76,264	103,440
9	131,035	71,275	100,428

[36] Mean reported wage is $34.50 * 1.49 load rate = $51.41. *http://www.bls.gov/oes/2011/may/oes535021.htm.*

[37] *http://www.cruising.org/regulatory/issues-facts/health-and-medical.*

[38] *http://www.acep.org/Content.aspx?id=29980.*

[39] *http://www.ncl.com/sites/default/files/Security_Guide_11252013.pdf.*

[40] $23.65 = ($15.87 per hour * 1.49 loaded wage rate) *http://www.bls.gov/oes/2011/may/oes436014.htm.*

TABLE 5—SECURITY GUIDE COSTS—Continued

Year	Undiscounted	7% Discount rate	3% Discount rate
10	131,035	66,612	97,503
Total	3,800,023	3,247,131	3,534,913
Annualized		462,318	414,400

* Note that numbers may not total due to rounding.

7. Training

The proposed regulation would require refresher training for crime scene preservation. This proposal would require that a refresher course be taken at least every two years. This will present a burden to industry equal to the opportunity cost associated with staff time spent in training. For this rulemaking, we assume that refresher training will be similar in content to the initial training and will take approximately 8 hours, based on MARAD's available training course.[41]

The proposed regulation would also require that a person who interviews an alleged sexual assault victim must be trained to communicate appropriately with a trauma victim. We assume that a VSO would be the first point of contact for an alleged sexual assault; therefore, we assume that they would need additional victim assistance training in the event that a sexual assault occurs.

We assume that the refresher training and victim assistance training may be available via multiple delivery methods, including electronic or on the job training. As such, we do not account for travel costs associated with training in this regulatory analysis. For our analysis, we assume that the vessel security officer would complete the eight hour training for crime preservation and an additional forty hours for victim assistance training at a cost of $2,467.68 per trainee, at a loaded hourly wage of $51.41. As we estimate that there are 147 cruise ships that would train a total of two vessel security officers, we anticipate that this requirement would cost approximately $362,749 per year, based on one-half of the population taking the refresher every year.[42] Table 6 shows these costs over the 10-year period of analysis. (Number of Vessels (147) × Trainees per Vessel (2) × Cost per Trainee ($2,467.68) ÷ 2 years = Training Cost per Year = ($362,749 rounded)).

TABLE 6—TRAINING COSTS

Year	Undiscounted	7% Discount rate	3% Discount rate
1	$362,749	$339,018	$352,183
2	362,749	316,839	341,926
3	362,749	296,111	331,967
4	362,749	276,739	322,298
5	362,749	258,635	312,910
6	362,749	241,715	303,797
7	362,749	225,902	294,948
8	362,749	211,123	286,357
9	362,749	197,311	278,017
10	362,749	184,403	269,919
Total	3,627,490	2,547,797	3,094,323
Annualized		362,749	362,749

8. Crew Access

The proposed regulation requires an addendum or memo listing all crewmembers with stateroom access as well as procedures and restrictions to stateroom access. Based on input from internal subject matter experts we estimate that it would take 20 hours for each company to create the document and then an additional hour per ship to modify it according to their specifications and distribute it. Based on Coast Guard Marine Information for Safety and Law Enforcement (MISLE) data, we estimate that there are approximately 23 companies managing the 147 ships. Based on this information, the number of total hours needed to draft an addendum or memo is 607 = ((23 companies * 20 hours) + (147 ships * 1 hour)). It would be a one-time cost of $31,206 = (607 hours * $51.41 per hour) for VSOs.

9. Alleged Crime Logs

The CVSSA requires that complaints of crimes (thefts of $10,000 or more or other crimes) must be logged and reported to the Coast Guard, Federal Bureau of Investigation (FBI), or other law enforcement personnel. From 2010 to 2012, there has been an average of 73 cases per year reported to the FBI.[43] Based on internal subject matter experts, we estimate that would take a VSO 0.5 hours to log the report as outlined in the U.S.C. 3507(g) and take another 0.5 hours to report it to the appropriate officials at the rate of $51.41 per hour. The CVSSA also requires that reported crimes be posted on their Web site. Based on internal subject matter experts, we estimate that a web developer would upload the information at $58.51 per hour in 0.1 hours.[44] Table 7 provides the breakdown of costs for the VSO to log and report alleged crimes and for a web developer to upload crimes committed to the Web site.

[41] Freely accessed at: *http://www.marad.dot.gov/documents/Model_Course_CVSSA_11-01.pdf*.

[42] Based on Coast Guard subject matter experts, a cruise ship will have one VSO on board during a cruise. In order for cruise ships to operate on existing schedules, a second VSO per ship is required to act as a backup and to alternate cruises as needed. Thus, two VSO's per ship would require training.

[43] GAO–14–43 Cruise Vessels: Most Required Security and Safety Measures Have Been Implemented, but Concerns Remain About Crime Reporting'' GAO report, p. 25.

[44] Web developer: $58.51 = ($39.27 wage rate * 1.49 load rate). (*http://www.bls.gov/oes/2011/may/oes151179.htm*)

TABLE 7—LOGGING, REPORTING, AND UPLOADED LIST OF CRIMES

Activity	Number of incidents	Hours per incident	Hourly wage rate	Annual cost
Log Incidents	73	0.5	51.41	$1,876
Report Serious Crimes	73	0.5	51.41	1,876
Upload onto Website	4	0.1	58.51	23
Annual Cost				3,776

Table 8 provides the 10-year breakdown for these annually recurring costs.

TABLE 8—10-YEAR CRIMES LOGGING AND REPORTING COSTS

	Undiscounted	7% Discount rate	3% Discount rate
1	$3,776	$3,529	$3,666
2	3,776	3,298	3,560
3	3,776	3,083	3,456
4	3,776	2,881	3,355
5	3,776	2,692	3,257
6	3,776	2,516	3,163
7	3,776	2,352	3,071
8	3,776	2,198	2,981
9	3,776	2,054	2,894
10	3,776	1,920	2,810
	37,763	26,523	32,213
Annualized		3,776	3,776

10. Total Cost

Based on our analysis, we anticipate the cost drivers to industry from this proposal would come from the fall-overboard capture systems and security locks, which represent about 48% and 42% of the total cost of the proposed rule, respectively. Based on the cost inputs as described in the sections above, we estimate that it would cost $4.0 million per ship to comply with this proposed rule. Table 9 provides the per-vessel cost by provision.

TABLE 9—PER SHIP COST BY PROVISION

	Rail heights	Locks	Overboard capture	Video storage	Addendums	Logs	Training	Security guides	Total
1	$33,570	$368,000	$108,583	$13	$212	$26	$2,468	$17,828	$530,700
2	0	368,000	5,429	13	0	26	2,468	891	376,827
3	0	368,000	5,429	13	0	26	2,468	891	376,827
4	0	368,000	5,429	13	0	26	2,468	891	376,827
5	0	368,000	5,429	13	0	26	2,468	891	376,827
6	0	368,000	108,583	13	0	26	2,468	891	479,981
7	0	368,000	5,429	13	0	26	2,468	891	376,827
8	0	368,000	5,429	13	0	26	2,468	891	376,827
9	0	368,000	5,429	13	0	26	2,468	891	376,827
10	0	368,000	5,429	13	0	26	2,468	891	376,827
Total	33,570	3,680,000	260,600	128	212	257	24,677	25,850	4,025,294

Table 10 shows the total, undiscounted 10-year cost by provision.

TABLE 10—TOTAL UNDISCOUNTED COST TO INDUSTRY BY PROVISION

	Rail heights	Locks	Overboard capture	Video storage	Addendums	Logs	Training	Security guides	Total
1	$134,281	$3,312,000	$15,961,750	$1,876	$31,206	$3,776	$362,749	$2,620,705	$22,428,344
2	0	3,312,000	798,088	1,876	0	3,776	362,749	131,035	4,609,525
3	0	3,312,000	798,088	1,876	0	3,776	362,749	131,035	4,609,525
4	0	3,312,000	798,088	1,876	0	3,776	362,749	131,035	4,609,525
5	0	3,312,000	798,088	1,876	0	3,776	362,749	131,035	4,609,525
6	0	3,312,000	15,961,750	1,876	0	3,776	362,749	131,035	19,773,187
7	0	3,312,000	798,088	1,876	0	3,776	362,749	131,035	4,609,525

TABLE 10—TOTAL UNDISCOUNTED COST TO INDUSTRY BY PROVISION—Continued

	Rail heights	Locks	Overboard capture	Video storage	Addendums	Logs	Training	Security guides	Total
8	0	3,312,000	798,088	1,876	0	3,776	362,749	131,035	4,609,525
9	0	3,312,000	798,088	1,876	0	3,776	362,749	131,035	4,609,525
10	0	3,312,000	798,088	1,876	0	3,776	362,749	131,035	4,609,525
Total	134,281	33,120,000	38,308,200	18,765	31,206	37,763	3,627,490	3,800,023	79,077,728

Note: The total undiscounted cost without the self-implementing provisions for rail heights and locks is $45.8 million.

Table 11 shows the 10-year costs for this proposal. As shown in Table 11, we estimate the 10-year costs for CVSSA requirements implemented by this proposed rule to be approximately $59.1 million discounted at 7 percent and $69.3 million discounted at 3 percent. The annualized costs would be $8.4 million and $8.1 million discounted at 7 percent and 3 percent, respectively.

TABLE 11—TOTAL COST

Year	Undiscounted	7% Discount rate	3% Discount rate
1	$22,428,344	$20,961,069	$21,775,091
2	4,609,525	4,026,137	4,344,919
3	4,609,525	3,762,745	4,218,368
4	4,609,525	3,516,584	4,095,503
5	4,609,525	3,286,527	3,976,216
6	19,773,187	13,175,709	16,559,733
7	4,609,525	2,870,580	3,747,965
8	4,609,525	2,682,785	3,638,801
9	4,609,525	2,507,276	3,532,817
10	4,609,525	2,343,249	3,429,919
Total	79,077,728	59,132,663	69,319,333
Annualized	.....	8,419,161	8,126,341

Benefits

The purpose of this proposal is to provide requirements for those provisions in the CVSSA that are not self-executing, thereby complying with statutory requirements and enhancing compliance with the CVSSA mandate. Table 12 describes the benefits for the requirements presented in this NPRM.

TABLE 12—BENEFITS

Key provision	Benefit
Rail Heights	• Clarification of rail height requirements by aligning regulation with statutory language.
Overboard Detection or Capture	• Enhanced ability to determine if and when a person went overboard. Potential to reduce search and rescue costs by reducing search area.
Hailing or Warning Devices	• Clarification of hailing or warning devices requirement by aligning regulation with statutory language.
Video Recording	• Improved criminal investigation and recordkeeping. • Potential deterrent affect.
Sexual Assault	• Clarification of sexual assault medical equipment requirements by aligning regulation with statutory language.
Security Guides	• Enhanced awareness of security contacts, in case of an emergency.
Training	• Ensures that personnel are trained appropriately in crime scene preservation, thereby improving criminal investigation and recordkeeping.
Crew Access	• Ensures that vessel crew members are limited in their access to passenger staterooms. • Clarifies that crewmembers respect the privacy of passengers and the security of their staterooms.
Crime Logs	• Improved recordkeeping. • Enhanced transparency to the public of reported crimes.

The proposed rule would align regulatory language with congressional mandates in the CVSSA to reduce regulatory uncertainty. Because most of our proposals align with current industry practice, most benefits derive from harmonizing regulatory language with the statute. For other requirements, it is difficult to quantify the benefits because we cannot accurately estimate what the impact would be of provisions like fall-overboard capture or availability of security contacts. Therefore we discuss the benefits of those requirements qualitatively.

From 2010 to 2012, the average annual number of crimes that occurred on cruise ships reported to the FBI was 73. Crimes may be homicide, suspicious deaths, missing, kidnapping, assault with serious bodily injury, firing or tampering with the vessel, thefts greater than $10,000, or sexual assault.

In 2011, there were five cruise ship-related cases of a person in the water who required a search and rescue (SAR) effort by the Coast Guard. These cases

resulted in one life lost and four lives unaccounted for. These five SAR activities required 14 sorties at a total expense of approximately $1.2 million. We believe that the introduction of more robust fall-overboard detection or capture capabilities could lead to a decrease in the SAR costs associated with fall-overboard incidents on cruise ships. By providing accurate information about where and when a person may have fallen overboard, the industry and the proper authorities would be able to reduce their search area, which would reduce costs and could also lead to an increase in recovery and survivability of a person who has fallen overboard.

Looking at Coast Guard MISLE casualty data from 2007–2011, we found that, on average, there have been 2.2 deaths or missing persons per year due to falls overboard on cruise ships. Using $9.1 million as the value of a statistical life,[45] we can monetize these casualties at $20.0 million per year.

Break-even analysis is useful when it is not possible to quantify the benefits of a regulatory action. OMB Circular A–4 recommends a ''threshold'' or ''break-even'' analysis when non-quantified benefits are important to evaluating the benefits of a regulation. Threshold or break-even analysis answers the question, ''How small could the value of the non-quantified benefits be (or how large would the value of the non-quantified costs need to be) before the rule would yield zero net benefits?'' [46] If we use value of the fatalities from falls overboard from a cruise ($20.0 million) to perform a break-even analysis, we get a required risk reduction of 40.4 percent [47] for the benefits to break even with the costs. To state it another way, this proposal would need to prevent 1 death every 3 years to break even (Table 11).

TABLE 13—BREAK-EVEN ANALYSIS

Cost of the proposed rule (annualized at 7%)	Monetized loss due to casualties (annual)	Required risk reduction	Frequency of casualties avoided
$8,419,161	$20,020,000	42.1%	1 every 3 years.

Other provisions of this rule offer benefits as mentioned in Table 5. Although we cannot quantify benefits for these provisions, we believe that there will be benefits associated with these provisions, such as improved awareness of contact information in the event of a crime, as listed in the security guides.

Discussion of Alternatives

Because the majority of the proposed provisions are current industry practice, we do not present alternatives to the performance-based requirements for rail heights, video recording, or sexual assault preparedness. We are able to present alternatives based on the fall-overboard, training and security guides requirements. Table 14 describes these alternatives.

TABLE 14—REGULATORY ALTERNATIVES

	Description	10-Year cost	Annualized cost (7%)
NPRM Alternative	Includes requirements for rail heights, locks for new vessels, fall-overboard capture, crime scene preservation refresher training every three years, security guidelines to be placed in every stateroom, outline of crew access, and logs of crime reports.	$79,077,728	$8,419,161
Alternative 2	Same rail height and fall-overboard requirements as NPRM Alternative, no requirement for refresher training, and no requirement for security guides to be placed in staterooms.	71,650,215	7,594,093
Alternative 3	Requires redundant camera coverage of entire vessel for fall-overboard system, video retention of 1 month, annual refresher training for crime scene preservation, and the same security guides requirements as the NPRM Alternative.	227,635,928	27,343,787

NPRM Alternative—Fall-overboard detection or capture, crime scene preservation refresher training no less than every three years, and security guides to be placed in all staterooms:

The analysis for this alternative is discussed in detail previously in the regulatory analysis section of this NPRM, as it is the proposed alternative.

Alternative 2—Less Stringent Alternative—Reduce burden associated with training and security guides:

This alternative would include the same fall-overboard requirements as the NPRM Alternative, but would not include requirements for refresher training every 2 years or for security guides to be placed in every stateroom. For this alternative, we remove the requirement for refresher training, which reduces the burden on industry. We also remove the requirement for security guides in every stateroom, rather, allowing online only posting of the security guides. This also reduces the burden. This alternative would have a 10-year cost of $53.3 million, discounted at 7 percent and an annualized cost of $7.6 million, discounted at 7 percent. Table 15 provides the undiscounted, 10-year breakdown of costs, by provision, to comply with this alternative.

[45] United States Department of Transportation, ''Guidance on Treatment of the Economic Value of a Statistical Life in U.S. Department of Transportation Analyses'', 2013, available at *http://www.dot.gov/regulations/economic-values-used-in-analysis.*

[46] U.S. Office of Management and Budget, Circular A–4, September 17, 2003.

[47] To calculate the required risk reduction for costs and benefits to break even, we divide the annualized cost of the RA by the annual monetized loss that we are trying to mitigate: $8.4 million/$20.0 million = 42.1% percent.

TABLE 15—ALTERNATIVE 2 COSTS

Rail heights	Locks	Overboard	Video retention	Training	Addendum	Logs	Security guides	Total
$134,281	$3,312,000	$15,961,750	$1,876	$0	$31,206	$3,776	$0	$19,444,890
0	3,312,000	798,088	1,876	0	0	3,776	0	4,115,740
0	3,312,000	798,088	1,876	0	0	3,776	0	4,115,740
0	3,312,000	798,088	1,876	0	0	3,776	0	4,115,740
0	3,312,000	798,088	1,876	0	0	3,776	0	4,115,740
0	3,312,000	15,961,750	1,876	0	0	3,776	0	19,279,403
0	3,312,000	798,088	1,876	0	0	3,776	0	4,115,740
0	3,312,000	798,088	1,876	0	0	3,776	0	4,115,740
0	3,312,000	798,088	1,876	0	0	3,776	0	4,115,740
0	3,312,000	798,088	1,876	0	0	3,776	0	4,115,740
134,281	33,120,000	38,308,200	18,765	0	31,206	37,763	0	71,650,215

We rejected this alternative because we felt that it does not provide sufficient training for crime-scene preservation due to advancements in the field and also because of the relative infrequency of crime on board cruise vessels. The Coast Guard believes that refresher training is necessary for vessel personnel to maintain the necessary skills. Furthermore, the Coast Guard believes that the only way to ensure that all passengers have the pertinent security information readily available when on board a vessel is to have the information in each stateroom, rather than only available online or in public areas of the vessel.

Alternative 3—More Stringent Alternative—Increases requirements for training and fall-overboard systems:

This alternative would require a fall-overboard system that would include overlapping fields of view for all areas of the vessel, providing greater coverage and redundancy. It would require additional video retention for the existing coverage as well as coverage for additional cameras, as needed. Based on input from industry, the cost to retain an additional 2 week worth of video would range from $400,000 to $600,000 per ship. They would need to install additional storage for the 2 incremental weeks, plus an incremental amount ($250,000) to cover the redundant cameras.[48] It would also require the same annual refresher training for crime-scene preservation. The security guides requirement would remain the same as the NPRM alternative. This alternative would have a 10-year cost of $227.6 million and an annualized cost of $27.3 million, discounted at 7 percent. Table 16 provides the 10-year, undiscounted cost to comply with this alternative.

TABLE 16—ALTERNATIVE 3 COSTS

Rail Heights	Locks	Overboard	Video retention	Training	Addendum	Logs	Security guides	Total
$134,281	$3,312,000	$31,923,500	$110,251,876	$362,749	$31,206	$3,776	$2,620,705	$148,640,094
0	3,312,000	1,596,175	1,876	362,749	0	3,776	131,035	5,407,612
0	3,312,000	1,596,175	1,876	362,749	0	3,776	131,035	5,407,612
0	3,312,000	1,596,175	1,876	362,749	0	3,776	131,035	5,407,612
0	3,312,000	1,596,175	1,876	362,749	0	3,776	131,035	5,407,612
0	3,312,000	31,923,500	1,876	362,749	0	3,776	131,035	35,734,937
0	3,312,000	1,596,175	1,876	362,749	0	3,776	131,035	5,407,612
0	3,312,000	1,596,175	1,876	362,749	0	3,776	131,035	5,407,612
0	3,312,000	1,596,175	1,876	362,749	0	3,776	131,035	5,407,612
0	3,312,000	1,596,175	1,876	362,749	0	3,776	131,035	5,407,612
134,281	33,120,000	76,616,400	110,268,765	3,627,490	31,206	37,763	3,800,023	227,635,928

The Coast Guard rejects this alternative because it would impose an unnecessary burden on industry. The performance-based approach to fall-overboard systems proposed in this NPRM would provide a sufficient level of coverage without the more stringent and costly requirements.

Video Retention Alternatives

We considered various alternatives to complying with the video retention requirements. Currently, industry retains footage for 14 days. Retaining video footage for an additional 2 weeks would require cruise vessels to incur a cost of $73.5 million in the first year and $367.5 million for the industry to retain video footage for 90 days. These durations were selected based on input from victim advocacy groups. Table 17 provides the cost comparison at 2 weeks, 4 weeks, and 90 days.

[48] $500,000 for a 2-week increment + $250,000 for redundancy = $750,000 per ship to install additional video retention.

TABLE 17—COST COMPARISON FOR VIDEO FOOTAGE

Retention rate	Percent capture rate of crimes reported [49]	Incremental difference (from 2 weeks)	Cost (undiscounted)	Annualized (7%)	Incremental cost [50] (undiscounted)
2 weeks (proposed Alternative)	90.1	.....	$0	$0	$0
4 weeks (30 days)	91.5	1.4%	73,518,765	10,467,418	73,518,765
90 days	97.2	7.0	367,518,765	24,859,898	73,503,753

The longer video footage is retained, the more incidents are available in video storage after a crime has been reported. At the current industry practice of 2 weeks of storage, 90 percent of the reported crimes would be available in video storage at no cost to industry. If an additional 2 weeks of video retention is required (to 30 days total), an additional 1.4 percent of reported crimes would be available in storage at an additional 10-year undiscounted cost of $73.5 million. If 90 days of storage is required, an additional 7 percent of reported crimes would be available in storage (although 3 percent would remain uncaptured) at a 10-year undiscounted cost of $367.5 million. We selected the cost minimizing alternative of requiring 2 weeks of video retention, as most incidents (90 percent) are reported within 2 weeks.

OMB A–4 Accounting Statement

This Notice of Proposed Rulemaking is not expected to exceed the threshold for economic significance under section 3(f) of Executive Order 12866, Regulatory Planning and Review. In accordance with OMB Circular A–4 (available at *www.whitehouse.gov/omb/circulars/*), we have prepared a preliminary accounting statement showing the classification of impacts associated with the rulemaking.

Agency/Program Office: U.S. Coast Guard

Rule Title: Cruise Vessel Safety and Security Facilities NPRM

RIN#: 1625–AB91

Date: July 2013

Category	Primary estimate	Minimum estimate	High estimate	Source
Benefits				
Annualized monetized benefits ($ Mil)	None			RA
Annualized quantified, but unmonetized, benefits	None			RA
Unquantifiable Benefits	Clarification of rail height requirements by aligning regulation with statutory language. Enhanced ability to determine if and when a person went overboard. Potential to reduce search and rescue costs by reducing search area. Clarification of hailing or warning devices requirement by aligning regulation with statutory language. Improved criminal investigation and recordkeeping. Potential deterrent affect. Clarification of sexual assault medical equipment requirements by aligning regulation with statutory language. Enhanced awareness of security contacts, in case of an emergency. Ensure that personnel are trained appropriately in crime scene preservation, thereby improving criminal investigation and recordkeeping. Ensure that vessel crew members are limited in their access to passenger staterooms. Clarifies that crewmembers respect the privacy of passengers and the security of their staterooms. Improved recordkeeping. Enhanced transparency to the public of crimes reported.			RA
Costs *				
Annualized monetized costs ($ Mil) *	$8.4 7% ..... 7% ..... 7% $8.1 3% ..... 3% 3%			RA RA
Annualized quantified, but unmonetized, costs	None.			
Qualitative (un-quantified) costs	None.			
Transfers				
Annualized monetized transfers: ''on budget''	None.			
From whom to whom?	None.			
Annualized monetized transfers: ''off-budget''	None.			
From whom to whom?				

[49] Based on information provided by CLIA.

[50] The incremental cost is calculated by taking the undiscounted cost and dividing it by the incremental difference between capture rates. For example, at 4 weeks the incremental cost = $73.5 million (undiscounted cost) ÷ 1 (incremental difference from 2 weeks).

Category							
Miscellaneous Analyses/Category							
Effects on State, local, and/or tribal governments	None.						
Effects on small businesses	We do not expect the rulemaking to have a significant impact on a substantial number of small businesses.						RA
Effects on wages	Not determined.						
Effects on growth	Not determined.						

* **Note:** Annualized cost on US entities: $4.0 million discounted at 7% and $3.8 million at 3%. Annualized cost on foreign entities: $4.4 million discounted at 7% and 4.2 million at 3%.

B. Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of fewer than 50,000.

We used managing owner and operator contact information from the Coast Guard MISLE data in 2011 to research public and proprietary business databases for entity ownership status (subsidiary, parent company, government entity, etc.), employee size, and revenue, among other information. By using the Small Business Administration (SBA)'s size standards and the North American Industry Classification System (NAICS) code classifications, we are able to determine whether a business is small or not. The SBA provides business size standards for all sectors of the NAICS. We found that of the 23 entities that own or operate cruise ships and would be affected by this proposed rulemaking, 11 are foreign entities. Of the remaining 12, all entities exceed the SBA size standards for small businesses. Table 18 provides the breakdown of businesses by size.

TABLE 18—NUMBER OF ENTITIES IMPACTED BY THE PROPOSED RULE

Entities	Number	Percentage
Businesses that Exceed SBA Standards	11	48
Foreign owned entities	12	52
Small Businesses with revenue data		0
Unknown, assumed Small Business [1]		0
Total	23	100

[1] Revenue information on these 26 were not available, which are then considered to be small.

Entities are categorized by the NAICS codes.[51] By using SBA criteria for small businesses, the associated NAICS codes, and the 2007 United States Economic Census data,[52] Table 14 provides the top 5 NAICS Codes of the identified small businesses.

We expect entities affected by the rule would be classified under the NAICS code subsector 483-Water Transportation, which includes the following six-digit NAICS codes for cruise lines: 483112-Deep Sea Passenger Transportation and 483114-Coastal and Great Lakes Passenger Transportation.

According to the SBA's Table of Small Business Size Standards,[53] a U.S. company with these NAICS codes and employing equal to or fewer than 500 employees is a small business. Additionally, cruise lines may fall under the NAICS code 561510-Travel Agencies, which have a small business size standard of equal to or less than $3,500,000 in annual revenue.

We did not find any small not-for-profit organizations that are independently owned and operated and are not dominant in their fields. We did not find any small governmental jurisdictions with populations of fewer than 50,000 people. Based on this analysis, we found that this rulemaking, if promulgated, will not affect a substantial number of small entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of U.S. small entities. If you think that a business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule will have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies as a small entity and how and to what degree this proposed rule will economically affect it.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the person named under **FOR FURTHER INFORMATION CONTACT**. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

D. Collection of Information

This proposed rule would call for new collections of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden

[51] Small business information can be accessed online at *http://www.sba.gov/size/indextableofsize.html.*

[52] U.S. Census Bureau information can be accessed online at *http://factfinder.census.gov/servlet/DatasetMainPageServlet?_program=ECN&_tabId=ECN1&_submenuId=datasets_4&_lang=en&_ts=246366688395.*

[53] Source: *http://www.sba.gov/size.* SBA has established a Table of Small Business Size Standards, which is matched to the North American Industry Classification System (NAICS) industries. A size standard, which is usually stated in number of employees or average annual receipts (''revenues''), represents the largest size that a business (including its subsidiaries and affiliates) may be to remain classified as a small business for SBA and Federal contracting programs.

follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Cruise Vessel Security and Safety.

OMB Control Number: XXXX–XXXX.

Summary of the Collection of Information: Cruise vessels subject to the Cruise Vessel Security and Safety Act of 2010 would be required to record and maintain video surveillance data of public areas of the vessel and any fall overboard image capture or alleged crime records for at least 120 days after the completion of a voyage in the event of an incident, as well as maintain a log of such crimes. Furthermore, there is a one-time cost for cruise vessels to draft procedure and restrictions on crewmember access to staterooms.

Need for Information: The video surveillance information and logging of incidents are necessary to assist in criminal investigations for alleged crimes on board cruise vessels. Fall overboard detection or image capture is necessary to assist in investigation of such incidents. The requirement that procedures and restrictions for crew access to passenger staterooms be established, implemented, documented, and periodically reviewed, is a non-substantive paraphrase of the statutory requirement, 46 U.S.C. 3507(f). The Coast Guard has not modified that requirement in any way. Stateroom-access procedures and restrictions protect the privacy of cruise vessel passengers and the security of their staterooms.

Proposed Use of Information: Appropriate law enforcement agencies would use this information to assist in criminal investigations when necessary. Cruise vessel operators would use stateroom-access procedures and restrictions to ensure that vessel crew members are limited in their access to passenger staterooms, and respect the privacy of passengers and the security of their staterooms. The Coast Guard would enforce the statutory requirement by verifying, during vessel inspections or examinations that those procedures are in place to comply with the statute.

Description of the Respondents: The respondents are any passenger vessel that is authorized to carry and has onboard sleeping facilities for at least 250 passengers, that is not engaged in a coastwise voyage, and that embarks or disembarks passengers in the United States.

Number of Respondents: The number of respondents is 147 affected cruise vessels.

Frequency of Response: Cruise lines would need to retain video footage and a log of such events in the event of a reported incident. This would occur as part of their standard operation procedure. Cruise lines would also need to provide a one-time response regarding crewmember access to staterooms.

Burden of Response: The estimated burden for each response would be 0.5 hours to retain video surveillance, 1 hour to write a log and report the incident, 20 hours per company to draft an addendum or memo, and 1 hour for each vessel to modify the addendum or memo to tailor it to the ships' specificity.

Estimate of Total Annual Burden: We estimate an annual industry total of 73 incidents for video surveillance, logs of such incidents, and fall-overboard systems. We estimate that it takes 0.5 hours for a VSO to file or store video footage of a reported incident and it takes 1 hour to write and report an incident. Based on the wage rate for a VSO ($51.41), we estimate the annual burden cost to be $5,629 to collect video footage and log the reported incident. The estimated one-time burden of response for cruise lines to draft an addendum or memo regarding crewmember access to staterooms is 607 hours. Based on the wage rate for a VSO, we estimate that one-time cost to be $31,206. This makes the total hourly burden 717, for a total cost of $36,835.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for this collection of information become effective, we will publish a notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the proposed collection.

E. 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 proposed rule under that Order and have determined that it does not have implications for federalism. A summary of our analysis is provided below.

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels) are within the fields foreclosed from regulation by the States. (See the decision of the Supreme Court in the consolidated cases of *United States* v. *Locke* and *Intertanko* v. *Locke,* 529 U.S. 89, 120 S.Ct. 1135 (March 6, 2000).). These regulations implement safety and security features on board certain inspected passenger vessels, specifically with regard to vessel design, construction, operation, and equipment requirements. Because States may not promulgate rules within these categories, there are no implications for federalism under Executive Order 13132.

F. Unfunded Mandates Reform Act

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

G. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

H. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

K. Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards

The National Technology Transfer and Advancement Act, 15 U.S.C. 272 note, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969, 42 U.S.C. 4321–4370f, and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under the ''Public Participation and Request for Comments'' section of this preamble. This rule involves regulations concerning the training of maritime personnel, the equipping of vessels, and vessel operation safety equipment. Thus, this rule is likely to be categorically excluded under section 2.B.2, figure 2–1, paragraph (34)(c) and (d) of the Instruction, as well as under categorical exclusion 6(a) as listed in the Coast Guard's notice of July 23, 2002 (67 FR 48243 at 48245). We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 46 CFR Part 70

Marine safety; Passenger vessels; Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR part 70 as follows:

TITLE 46—SHIPPING

■ 1. The authority citation for part 70 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3507, 3703; Pub. L. 103–206, 107 Stat. 2439; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1, para. II (92.a), (92.b); Section 70.01–15 also issued under the authority of 44 U.S.C. 3507.

■ 2. In § 70.05–3, add paragraph (g) to read as follows:

§ 70.05–3 Foreign vessels subject to the requirements of this subchapter.

* * * * *

(g) Notwithstanding the exceptions noted in paragraph (b) of this section, each foreign vessel to which 46 U.S.C. 3507 applies must comply with subpart 70.40 of this part.

■ 3. Add subpart 70.40 to read as follows:

Subpart 70.40—Cruise Vessel Security and Safety

Sec.

70.40–1 Applicability; definition; penalties.
70.40–2 Statutory requirements.
70.40–3 and 70.40–4 [Reserved]
70.40–5 Rail or bulwark height.
70.40–6 Fall-overboard incidents.
70.40–7 Hailing or warning devices.
70.40–8 Video recording.
70.40–9 Security guides and embassy information.
70.40–10 Sexual assault response.
70.40–11 Training.

Subpart 70.40—Cruise Vessel Security and Safety

Authority: 46 U.S.C. 2103, 3507(j); Department of Homeland Security Delegation No. 0170.1(92.a), (92)(b).

§ 70.40–1 Applicability; definition; penalties.

(a) Notwithstanding the provisions of 46 CFR 70.05–3(b), this subpart applies to the owner, charterer, managing operator, master, or other individual in charge of each passenger vessel, whether U.S.- or foreign-flagged, as defined in 46 U.S.C. 2101(22), that—

(1) Is authorized to carry at least 250 passengers;

(2) Has onboard sleeping facilities for each passenger;

(3) Is on a voyage that embarks or disembarks passengers in the United States, except that embarking and disembarking does not include temporary port calls by passengers;

(4) Is not engaged on a coastwise voyage; and

(5) Is neither a vessel of the United States operated by the Federal government nor a vessel owned and operated by a State.

(b) As used in this subpart, ''owner'' means the owner, charterer, managing operator, master, or other individual in charge of a vessel.

(c) Failure to comply with this subpart is subject to the civil and criminal penalties provided by 46 U.S.C. 3507 and 3508, and may result in a vessel's being denied entry into the United States.

§ 70.40–2 Statutory requirements.

In addition to the regulatory requirements of this subpart, the owner, charterer, managing operator, master, or other individual in charge of each passenger vessel to which this subpart applies is also subject to the following requirements of 46 U.S.C. 3507:

(a) Each passenger stateroom and crew cabin must be equipped with entry doors that include peep holes or other means of visual identification, in accordance with 46 U.S.C. 3507(a)(1)(B);

(b) For any vessel the keel of which is laid after July 27, 2010, each passenger stateroom and crew cabin must be equipped with security latches and time-sensitive key technology, but neither the latches nor the time-sensitive key technology may prevent emergency responders from taking appropriate emergency action to enter a stateroom or cabin in the event of fire

or other emergency, in accordance with 46 U.S.C. 3507(a)(1)(C) and (a)(2);

(c) The confidentiality of sexual assault examination and support information must be protected in accordance with the detailed provisions of 46 U.S.C. 3507(e);

(d) Procedures and restrictions for crew access to passenger staterooms must be established, implemented, documented, and periodically reviewed in accordance with the detailed provisions of 46 U.S.C. 3507(f); and

(e) Complaints of crimes must be logged and made available to Coast Guard, Federal Bureau of Investigation, or other law enforcement personnel, and crimes and other information must be reported, in accordance with the detailed provisions of 46 U.S.C. 3507(g).

§§ 70.40–3 and 70.40–4 [Reserved]

§ 70.40–5 Rail or bulwark height.

(a) The height of each guard rail or bulwark on any exterior deck to which passengers have general access must be at least 42 inches above the deck.

(b) The Coast Guard may accept alternative arrangements where the 42-inch height requirement would interfere with the operation of lifesaving equipment or arrangements.

§ 70.40–6 Fall-overboard incidents.

(a) Each vessel must maintain either—

(1) A recording system for capturing an image of any person falling overboard from the vessel into the sea (a ''fall-overboard''); or

(2) A detection system for immediately detecting any fall-overboard and sounding an alarm in a manned location; or

(3) A combination of recording and detecting systems.

(b) Video, data, and images (''records'') created by a recording system must be—

(1) Time and date-stamped;

(2) Kept for the entire voyage and at least 7 days after all passengers disembark; provided that if, during that time, the vessel receives a report of a fall overboard during the voyage, the records must be kept for an additional 120 days after receipt of the report; and

(3) Made available on request to any search and rescue or law enforcement official investigating a fall overboard.

§ 70.40–7 Hailing or warning devices.

Each vessel must be equipped with acoustic hailing or other devices to provide communication capability around the entire vessel.

§ 70.40–8 Video recording.

(a) This section applies to any alleged incident involving a U.S. national as either an alleged victim or alleged perpetrator, regardless of whether committed in or outside U.S. waters, which if committed in U.S. waters would be a crime.

(b) Each vessel must maintain a system, in areas of the vessel to which passengers and crew members have common access and excluding passenger staterooms and crew cabins, to record an identifiable time and date-stamped image of any person involved in an incident to which this section applies. The system must be maintained in a secure location to prevent unauthorized access or tampering.

(c) Recorded images must be kept for the entire voyage and at least 7 days after all passengers disembark; provided that if, during that time, the vessel receives a report of an incident to which this section applies, the recorded images from that voyage must be kept for an additional 120 days after receipt of the report.

(d) Recorded images must also be maintained in a secure location to prevent unauthorized access or tampering.

(e) Recorded images must be made available on request to any law enforcement official investigating an incident to which this section applies.

§ 70.40–9 Security guides and embassy information.

Prior to each voyage, the vessel owner or operator must ensure that—

(a) A copy of a security guide containing the medical and security personnel information required by 46 U.S.C. 3507(c)(1)(A)(i) and the jurisdictional and procedural information required by 46 U.S.C. 3507(c)(1)(A)(ii) has been provided to the Federal Bureau of Investigation for comment and is placed in each passenger stateroom; and

(b) The embassy and consulate information required by 46 U.S.C. 3507(c)(2) has been provided in each passenger stateroom and in a location readily accessible to all crew members.

§ 70.40–10 Sexual assault response.

(a) A vessel complies with the requirements of 46 U.S.C. 3507(d)(1) and (2) if it has on board a supply of the medications required by that statute that is enough for the expected length of the voyage and for the number of patients required by paragraph (b) of this section.

(b) The number of patients described in paragraph (a) of this section must be the greater of—

(1) Two patients; or

(2) The highest number of sexual assaults alleged on any single voyage of any cruise vessel owned by the owner in the past 3 years.

(c) Any crew member who interviews an alleged sexual assault victim must have been trained to communicate appropriately with a trauma victim.

§ 70.40–11 Training.

(a) A vessel complies with the requirements of 46 U.S.C. 3508(c) if at least one crewmember on the vessel is certified by a certified training provider as having successfully completed, within the past 2 years, training that includes topics covering the following competences:

(1) Security and safety requirements aboard cruise vessels;

(2) Current safety and security threats and patterns;

(3) Cruise vessel characteristics and conditions where criminal activities are likely to occur;

(4) Cruise vessel security equipment and systems;

(5) Criminal incident procedures and plans;

(6) Crime scene preservation, gathering evidence and chain of custody;

(7) Requirements for reporting and documenting serious crimes;

(8) Protection and proper handling of confidential, personally identifiable, sensitive security, or other information and communications;

(9) Law enforcement response to criminal activity; and

(10) Required support to be provided to law enforcement and prosecutors.

(b) For the purpose of complying with paragraph (a) if this section, a certified training provider is one who certifies those who successfully complete training in accordance with paragraph (a) of this section and who—

(1) Certifies that the training provided by the provider meets or exceeds the criteria contained in the Coast Guard model course available from the Coast Guard at [URL]; or

(2) Is certified as a training provider by the Administrator of the Maritime Administration in accordance with 46 U.S.C. 3508(a) and paragraph (a) of this section.

Dated: January 6, 2015.

Paul F. Zukunft,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 2015–00464 Filed 1–15–15; 8:45 am]

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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; Listing the Northern Long-Eared Bat With a Rule Under Section 4(d) of the Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule and reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to create a species-specific rule under authority of section 4(d) of the Endangered Species Act of 1973, as amended (Act), that provides measures that are necessary and advisable to provide for the conservation of the northern long-eared bat (*Myotis septentrionalis*), should we determine this species warrants listing as a threatened species under the Act. In addition, we announce the reopening of the public comment period on the October 2, 2013, proposed rule to list the northern long-eared bat as an endangered species under the Act.

DATES: We will accept comments received or postmarked on or before March 17, 2015. 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. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by March 2, 2015.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R5–ES–2011–0024, which is the docket number for this rulemaking. You may submit a comment by clicking on ''Comment Now!''

(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 one of the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Tony Sullins, Endangered Species Chief, Midwest Regional Office, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437, by telephone 612–725–3548 or by facsimile 612–725–3548. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

On October 2, 2013, the Service proposed to list the northern long-eared bat as an endangered species (78 FR 61046). To date, we solicited public comment on this proposal on three separate occasions, totaling 180 days. Through these public comment periods, we received numerous comments and additional information suggesting we evaluate listing the northern long-eared bat as a threatened species with a species-specific rule under section 4(d) of the Act excepting specific forms of take. The Service has not yet made a final listing decision regarding the status of the northern long-eared bat (*e.g.,* not warranted, threatened, or endangered); however, in our review of public comments we did determine that if threatened status is warranted, a species-specific rule under section 4(d) of the Act rule may be advisable. Therefore, this document consists of: (1) A proposed rule under section 4(d) of the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*), that outlines the prohibitions, and exceptions to those prohibitions, necessary and advisable to provide for the conservation of the northern long-eared bat; and (2) a reopening of the comment period for the proposed rule to list the northern long-eared bat as an endangered species under the Act.

The Need for the Regulatory Action and How the Action Will Meet That Need

Based on information received during three open comment periods and a time extension, the Service is considering multiple public comments and additional information to determine if listing as a threatened species may be appropriate. If threatened status is appropriate, Section 4(d) of the Act specifies that, for threatened species, the Secretary shall issue such regulations as she deems necessary and advisable to provide for the conservation of the species. Further, a 4(d) rule may identify activities that would not be prohibited under section 9 of the Act.

Although the Service has not yet made a final listing determination for the northern long-eared bat, we are proposing this 4(d) rule in the event that our final listing determination is to list the species as a threatened species. If we list the species as an endangered species or find that it does not warrant listing, we will withdraw this proposed rule. If we list the species as a threatened species, we intend to publish a final 4(d) rule concurrent with, and as a component of, the final listing rule. Consistent with section 4(d) of the Act, this proposed 4(d) rule provides measures that are tailored to our current understanding of the conservation needs of the northern long-eared bat.

Statement of Legal Authority for the Regulatory Action

Under section 4(d) of the Act, the Secretary of the Interior has discretion to issue such regulations as she deems necessary and advisable to provide for the conservation of 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.

Summary of the Major Provisions of the Regulatory Action in Question

The proposed species-specific 4(d) rule prohibits purposeful take of northern long-eared bats throughout its range except in instances of removal of northern long-eared bats from human dwellings and authorized capture and handling of northern long-eared bat by individuals permitted to conduct these same activities for other listed bats.

In areas not affected by white nose syndrome (WNS), a disease currently affecting many U.S. bat populations, all incidental take resulting from any otherwise lawful activity will be excepted from prohibition.

In areas affected by WNS, all incidental take prohibitions apply except that take attributable to forest management practices, maintenance and limited expansion of transportation and utility rights-of-way, removal of trees and brush to maintain prairie habitat, and limited tree removal projects shall be excepted from the take prohibition, provided these activities protect known maternity roosts and hibernacula. Further, removal of hazardous trees for the protection of human life or property shall be excepted from the take prohibition.

Public Comments

To allow the public to comment simultaneously on this proposed species-specific 4(d) rule and the proposed listing rule, we also announce

the reopening of the comment period on the Service's October 2, 2013, proposed rule to list the northern long-eared bat as an endangered species under the Act. If the result of our final listing determination concludes that threatened species status is appropriate for the northern long-eared bat, we intend to finalize the species-specific 4(d) rule with the final listing rule. Therefore, we request comments or information from other concerned Federal and State agencies, the scientific community, or any other interested party concerning the proposed listing and the proposed 4(d) rule. We also are seeking peer review 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. We will consider all comments and information received during our preparation of a final determination on the status of the species and the rule under section 4(d) of the Act, if threatened status is determined. Accordingly, if our final decision is to list the species as a threatened species, and we determine that it is necessary and advisable to promulgate a species specific 4(d) rule under the Act, any 4(d) rule we finalize may differ from this proposal based on specific public comments and any new information that may become available.

With regard to the proposed 4(d) rule, we particularly seek comments regarding:

(1) Whether measures outlined in this proposed rule under section 4(d) of the Act are necessary and advisable for the conservation and management of the northern long-eared bat.

(2) Whether it may be appropriate to except incidental take as a result of other categories of activities beyond those covered in this proposed rule and, if so, under what conditions and with what conservation measures.

(3) Whether the Service should modify the portion of this rule under section 4(d) of the Act that defines how the portion of the northern long-eared bat range will be identified as the ''WNS buffer zone.'' We are seeking comments regarding the factors and process we used to delineate where on the ground we believe WNS is likely affecting the northern long-eared bat and whether that delineation should incorporate political boundaries (*e.g.,* county lines) for ease in describing the delineated area to the public.

(4) Additional provisions the Service may wish to consider for a rule under section 4(d) of the Act in order to conserve, recover, and manage the northern long-eared bat.

Please note that comments merely stating support for or opposition to the actions 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 a threatened or endangered 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 **ADDRESSES**.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this 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, Midwest Regional Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

For a complete list of previous Federal actions, see the proposed rule to list the northern long-eared bat (78 FR 61046). On October 2, 2013, we published in the **Federal Register** a proposed rule to list the northern long-eared bat as an endangered species under the Act. The proposed rule had a 60-day comment period, ending on December 2, 2013. On December 2, 2013, we extended this comment period through January 2, 2014 (78 FR 72058). On June 30, 2014, we announced a 6-month extension of the final determination on the proposed listing rule for northern long-eared bat, and we reopened the public comment period on the proposed rule for 60 days, until August 29, 2014 (79 FR 36698). On November 18, 2014, we again opened the comment period for an additional 30 days, which closed on December 18, 2014 (79 FR 68657). During the comment period we received one request for a public hearing, which was held in Sundance, Wyoming, on December 2, 2014.

Background

On October 2, 2013, the Service proposed to list the northern long-eared bat as an endangered species. To date, we solicited public comment on this proposal on three separate occasions, totaling 180 days. Through these public comment periods, we received numerous comments and additional information suggesting we evaluate listing the northern long-eared bat as a threatened species with a species-specific rule under section 4(d) of the Act excepting specific forms of take. The Service has not yet made a final listing decision regarding the status of the northern long-eared bat (*e.g.,* not warranted, threatened, or endangered); however, in our review of public comments we did determine that if threatened status is warranted, a species- specific rule under section 4(d) of the Act rule may be advisable. Therefore, this document consists of: (1) A proposed rule under section 4(d) of the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*), that outlines the prohibitions, and exceptions to those prohibitions, necessary and advisable to provide for the conservation of the northern long-eared bat; and (2) a reopening of the comment period for the proposed rule to list the northern long-eared bat as an endangered species under the Act.

Unlike the Act's provisions regarding endangered species, the Act does not specify particular prohibitions, or exceptions to those prohibitions, for threatened species. Instead, under section 4(d) of the Act, the Secretary of the Interior has the discretion to issue such regulations as she deems necessary and advisable to provide for the conservation of such species, including discretion to prohibit by regulation, with respect to any threatened species, any act prohibited under section 9(a)(1) of the Act. By delegation from the Secretary, the Service has exercised this discretion to promulgate regulations that apply general take and other prohibitions (50 CFR 17.31) to threatened species, while allowing exceptions to those prohibitions as authorized by permit (50 CFR 17.32). Alternately, the Service may issue a rule under section 4(d) of the Act that establishes specific prohibitions and exceptions that are tailored to the specific conservation needs of a particular species (see 50 CFR 17.31(c)).

In such cases, some of the prohibitions and authorizations under 50 CFR 17.31 and 17.32 may be appropriate for the species and incorporated into the rule, but the 4(d) rule will also include provisions that are tailored to the specific conservation needs of the threatened species and may be more or less restrictive than the general provisions at 50 CFR 17.31. The final species-specific 4(d) rule will contain all the applicable prohibitions and exceptions.

This document discusses only those topics directly relevant to the proposed 4(d) rule for the northern long-eared bat. For more information on the northern long-eared bat and its habitat, please refer to the October 2, 2013, proposed listing rule, (78 FR 61046), which is available online at *http://www.regulations.gov* (at Docket Number FWS–R5–ES–2011–0024) or from the Midwest Regional Office (see **FOR FURTHER INFORMATION CONTACT**).

Provisions of the Proposed 4(d) Rule for the Northern Long-Eared Bat

Under section 4(d) of the Act, the Secretary may publish a species-specific rule that modifies the standard protections for threatened species with prohibitions and exceptions tailored to the conservation of the species that are determined to be necessary and advisable. Under this proposed 4(d) special rule, the Service proposes that all of the prohibitions under 50 CFR 17.31 and 17.32 will apply to the northern long-eared bat and are necessary and advisable to provide for the conservation of the species, except as noted below. The proposed rule under section 4(d) of the Act will not remove, or alter in any way, the consultation requirements under section 7 of the Act.

As discussed in the October 2, 2013, proposed rule (78 FR 61046), the primary factor supporting the proposed determination of endangered species status for the northern long-eared bat is the disease, white-nose syndrome (WNS). We further determined that other threat factors, including forest management activities, wind-energy development, habitat modification, destruction and disturbance, and other threats may have cumulative effects to the species in addition to WNS; however, they have not independently caused significant, population-level effects on the northern long-eared bat. Based upon information received during public comment periods, we are reanalyzing the species status to determine if listing as threatened is appropriate. Therefore, we are proposing this rule under section 4(d) of the Act and seeking public review and comment on it so in the event we determine that the northern long-eared bat meets the definition of a threatened species instead of an endangered species we can finalize this 4(d) rule, which provides exceptions to the prohibitions for some of these activities that cause cumulative effects, as we deem necessary and advisable for the conservation of the species concurrently with our final listing determination.

We conclude that certain activities described in this section of the preamble, when conducted in accordance with the conservation measures identified herein, will provide protection for the northern long-eared bat during its most sensitive life stages. These activities are: Forest management activities, subject to certain time restrictions, maintenance and minimal expansion of existing rights-of-way and transmission corridors (also subject to certain restrictions), native prairie management, other projects resulting in minimal tree removal, hazard tree removal, removal of bats from and disturbance within human structures, and capture, handling, attachment of radio transmitters, and tracking northern long-eared bats for a 1-year period following the effective date of the final rule. The Service proposes that incidental take that is caused by these activities implemented on private, State, tribal, and Federal lands will not be prohibited provided those activities abide by the conservation measures in the rule and are otherwise legal and conducted in accordance with applicable State, Federal, tribal, and local laws and regulations.

Buffer Zone Around WNS and Pseudogymnoascus destructans (the Fungus That Causes WNS) Positive Counties (WNS Buffer Zone)

Currently, not all of the range of northern long-eared bat is affected by WNS. In the proposed listing (78 FR 61046), the Service concluded that the proposed status determination of endangered species was primarily based on the impacts from WNS, and that the other threats, when acting on the species alone, were not causing the species to be in danger of extinction. Given this information, the Service proposes that while all purposeful take will be prohibited with the exception of removal of bats from human dwellings and survey and research efforts conducted within a 1-year period following the effective date of the final rule. All other take incidental to other lawful activities will be allowed in those areas of the northern long-eared bat range not in proximity to documented occurrence of WNS or *Pseudogymnoascus destructans,* as identified by the Service.

Currently, WNS is mainly detected by surveillance at bat hibernacula. Thus, our direct detection of the disease is limited largely to wintering bat populations in the locations where they hibernate. However, bats are known to leave hibernacula and travel great distances, sometimes hundreds of miles, to summer roosts. Therefore, the impacts of the disease are not limited to the immediate vicinity around bat hibernacula, but have an impact on a landscape scale. For northern long-eared bats, as with all species, this means that the area of influence of WNS is much greater than the counties known to harbor affected hibernacula, resulting in impacts to a much larger section of the species' range. To fully represent the extent of WNS, we must also include these summer areas.

Overall, northern long-eared bats are not considered to be long-distance migrants, typically dispersing 40–50 miles (64–80 kilometers) from their hibernacula. However, other bat species that disperse much further distances are also vectors for WNS spread and may transmit the disease to northern long-eared bat populations. It has been suggested that the little brown bat (*Myotis lucifugus*), in particular, be considered a likely source of WNS spread across eastern North America. Little brown bats tend to migrate greater distances, particularly in the western portions of their range, with distances up to 350 miles (563 km) or more recorded (See Ellison 2008, p. 21; Norquay et al. 2013, p. 510). In a recent study, reporting on bat band recoveries of little brown bats over a 21-year period, Norquay et al. (2013, pp. 509–510) describe recaptures between hibernacula and summer roosts with a maximum distance of 344 miles (554 km) and a median distance of 288 miles (463 km).

For the purpose of this rule, the portion of the northern long-eared bat range that is considered to be affected by WNS is that area within 150 miles (241 km) of the boundary of U.S. counties or Canadian districts where the fungus *Pseudogymnoascus destructans* or WNS has been detected. We acknowledge that 150 miles (241 km) does not capture the full range of potential WNS infection, but represents a compromise distance between the known migration distances of northern long-eared bats and little brown bats that is suitable for our purpose of estimating the extent of WNS infection on the northern long-eared bat. Anywhere outside of the geographic

area defined by these parameters, northern long-eared bat populations will not be considered to be experiencing the impacts of WNS.

The Service proposes to define the term ''WNS buffer zone'' as the portion of the range of the northern long-eared bat within 150 miles of the boundaries of U.S. counties or Canadian districts where the fungus *Pseudogymnoascus destructans* or WNS has been detected.

For purposes of this proposed 4(d) rule, coordination with the local Service Ecological Services field office is recommended to determine whether specific locations fall within the WNS buffer zone. For more information about the current known extent of WNS and 150-mile (241-km) buffer, please see *http://www.fws.gov/midwest/endangered/mammals/nlba/.*

Conservation Measures

The Service proposes that take incidental to certain activities conducted in accordance with the following habitat conservation measures, as applicable, will not be prohibited (*i.e.,* excepted from the prohibitions):

(*i*) Occur more than 0.25 mile (0.4 km) from a known, occupied hibernacula;

(*ii*) Avoid cutting or destroying known, occupied maternity roost trees during the pup season (June 1–July 31); and

(*iii*) Avoid clearcuts within 0.25 (0.4 km) mile of known, occupied maternity roost trees during the pup season (June 1–July 31).

Note that activities that may cause take of northern long-eared bat that do not use these conservation measures may still be done, but only after consultation with the Service. This means that, while the resulting take from such activities is not excepted by this rule, the take may be authorized through other means provided in the Act (*i.e.,* section 7 consultation or an incidental take permit).

For purposes of this proposed rule and the conservation measures listed above, coordination with the local Service Ecological Services field office is recommended to determine the specific locations of the ''known hibernacula'' and ''known maternity roosts.'' These locations will be informed by records in each State's Natural Heritage database, Service records, other databases, or other survey efforts. Hibernacula are generally defined as locations where one or more northern long-eared bats have been detected during hibernation or outside during staging or swarming. Similarly, maternity roosts are generally defined through roost records in each State's Natural Heritage database, Service records, other databases, or other survey efforts for northern long-eared bat or other bat species.

These conservation measures aim to protect the northern long-eared bat during its most sensitive life stages. Hibernacula are an essential habitat and should not be destroyed or modified (any time of year). In addition, there are periods of the year when northern long-eared bats are concentrated at and around their hibernacula (fall, winter, and spring). Northern long-eared bats are susceptible to disruptions near hibernacula in the fall, when they congregate to breed and increase fat stores, which are depleted from migration, before entering hibernation. During hibernation, northern long-eared bat winter colonies are susceptible to direct disturbance. Briefly in spring, northern long-eared bats yet again use the habitat surrounding hibernacula to increase fat stores for migration to their summering grounds. This feeding behavior is particularly important for the females, who must obtain enough fat stores to carry not only themselves, but also their unborn pups, to their summer home range. In the summer maternity season, northern long-eared bat maternity colonies are especially vulnerable during the time after the pups are born, but before pups are able to fly (the non-volant period or pup season). During this time, pups are unable to flee danger without the assistance of their mothers, thus increasing the potential for activities affecting maternity roosts to kill and injure individual bats. Once the pups can fly, this risk is reduced because the pups will have the ability to flee their roost if it is being cut or otherwise damaged, potentially avoiding harm, injury, or mortality.

The Service concludes that a 0.25-mile (0.4-km) buffer should be sufficient to protect most known, occupied hibernacula and hibernating colonies. This buffer will provide basic protection for the hibernacula and hibernating bats in winter from direct impacts, such as filling, excavation, blasting, noise, and smoke exposure. This buffer will also protect some roosting and foraging habitat around the hibernacula. Northern long-eared bats have been found up to 8.2 miles (13.2 km) from their hibernacula during the fall, although the majority of roosts were within 1.6 miles (2.6 km) (Lowe 2012, p. 32), using habitat within that area for roosting, foraging, and swarming. However, given that northern long-eared bats are not locally abundant and compose a small proportion of the total number of bats in any given hibernaculum (Barbour and Davis 1969, p. 77; Mills 1971, p. 625; Caire *et al.* 1979, p. 405; Caceres and Barclay 2000, pp. 2–3) and the species is rarely recorded in concentrations of more than 100 in a single hibernaculum (Barbour and Davis, 1969, p. 77), we do not expect that all of the habitat around a hibernaculum would be necessary for these purposes. Therefore, our best judgment is that protection of the habitat within 0.25 mile (0.4 km) of hibernacula should provide sufficient habitat to meet the needs of most hibernating populations.

The Service concludes that, in addition to preservation of actual known maternity roosts, a 0.25-mile (0.4-km) buffer for all clearcutting activities will be sufficient to protect the habitat surrounding known maternity roosts during the pup season. This buffer will prevent the cutting of known occupied maternity roost trees during the pup season from clearcutting activities and protect some habitat for known maternity colonies. Northern long-eared bats in the summer have an approximate average maximum foraging distance of 1.5 miles (2.4 km) from a roost tree (Sasse and Perkins, 1996, p. 95; Badin, 2014, p. 76), and average home range size has been documented between 44–460 acres (Lacki et al. 2009, p. 1169; Owen et al. 2003, p. 353; Carter and Feldhamer 2005, p. 264). Based on this information, our best judgment is that the amount of land within 0.25 mile (0.4 km) of a maternity roost, or 128 acres, will provide sufficient roosting, foraging, and commuting habitat to sustain most colonies for the duration of the pup season.

Forest Management

The Service proposes that incidental take that is caused by forest management, when carried out in accordance with the conservation measures, will not be prohibited. Forest management includes the suite of activities used to maintain and manage forest ecosystems, including, but not limited to, timber harvest and other silvicultural treatments, prescribed burning, invasive species control, wildlife openings, and temporary roads. Such activities should also adhere to any applicable State water quality best management practices, where they exist. Although forest ecosystems may include non-forested land cover types, such as wetlands and upland openings, this category of activities generally maintains forested landcover. We do not consider conversion of a mixed forest into an intensively managed monoculture pine plantation as forest management covered under this

proposed rule, as typically these types of monoculture pine plantations provide very poor-quality bat habitat.

Where northern long-eared bats are present when these forest management activities are performed, bats could be exposed to habitat alteration or loss or direct disturbance (*i.e.,* heavy machinery) or removal of maternity roost trees (*i.e.,* harvest). In general, however, the northern long-eared bat is considered to have more flexible habitat requirements than other bat species (Carter and Feldhamer 2005, pp. 265–266; Timpone et al. 2010, pp. 120–121), and most types of forest management should provide suitable habitat for the species over the long term (with the exception of conversion to monoculture pine forest, as discussed above). Based upon information obtained during previous comment periods on the proposed rule to list the bat as an endangered species, approximately 2 percent of forests in States within the range of the northern long-eared bat are impacted by forest management activities annually (Boggess et al, 2014, p. 9). Of this amount, in any given year a smaller fraction of forested habitat is impacted during the active season when pups and female bats are most vulnerable. These impacts are addressed by the above conservation measures proposed for inclusion in this rule.

Therefore, we anticipate that habitat modifications resulting from activities that manage forests would not significantly affect the conservation of the northern long-eared bat. Further, although activities performed during the species' active season (roughly April through October) may directly kill or injure individuals, implementation of the conservation measures provided for in the proposed rule will limit overall take by protecting currently known populations during their more vulnerable life stages.

Maintenance and Limited Expansion of Existing Rights-of-Way and Transmission Corridors

The Service proposes that incidental take that is caused by activities for the purpose of maintenance and limited expansion of existing rights-of-way and transmission corridors, when carried out in accordance with the conservation measures, will not be prohibited (*i.e.,* will be excepted from the prohibitions). Rights-of-way (ROW) and transmission corridors are in place for activities such as transportation (*i.e.,* highways, railways), utility transmission lines, and energy delivery (pipelines), though they are not limited to just these types of corridors. The Service proposes that take of the northern long-eared bat will not be prohibited provided the take is incidental to activities within the following categories:

(1) Routine maintenance within an existing corridor or ROW, carried out in accordance with the previous described conservation measures.

(2) Expansion of a corridor or ROW by up to 100 feet (30 m) from the edge of an existing cleared corridor or ROW, carried out in accordance with the previously described conservation measures.

General routine maintenance is designed to limit vegetation growth, within an existing footprint, so that operations can continue smoothly. These activities may include tree trimming or removal, mowing, and herbicide spraying. However, depending on the purpose of the corridor or ROW, maintenance may only be performed infrequently and trees and shrubs may encroach into, or be allowed to grow within, the ROW until such a time as maintenance is required. Expansion of these areas requires removal of vegetation along the existing ROW to increase capacity (*e.g.,* road widening).

Northern long-eared bats can occupy various species and sizes of trees when roosting. Because of their wide variety of habitat use when roosting and foraging, it is possible that they may be using trees within or near existing ROWs. Therefore, vegetation removal within or adjacent to an existing ROW may remove maternity roost trees and foraging habitat. Individuals may also temporarily abandon the areas, avoiding the physical disturbance until the work is complete. While ROW corridors can be large in overall distance, due to the small scale of the habitat alteration involved in maintenance of the existing footprint, potential take is limited. No new forest fragmentation is expected as this expands existing open corridors. We also expect that excepting take prohibitions from ROW maintenance and limited expansion will encourage co-location of new linear projects within existing corridors. We conclude that the overall impact of ROW maintenance and limited expansion activities is not expected to adversely affect conservation and recovery efforts for the species.

Prairie Management

The Service proposes that incidental take that is caused by activities for the purpose of prairie management, when carried out in accordance with the conservation measures, will not be prohibited (*i.e.,* will be excepted from the prohibitions). In some areas of the northern long-eared bat range, tree and shrub species are overtaking prairie areas. Landowners and agencies working to establish or conserve prairies have to remove trees and brush in order to maintain grasslands. Maintenance activities include cutting, mowing, burning, or herbicide use on woody vegetation to minimize encroachment into prairies (Grassland Heritage Foundation Web site, accessed December 23, 2014). If these prairies are not managed, they can eventually become shrub or forest lands sometimes in as few as 40 years (Briggs et al. 2002 and Ratajczak et. al 2001). We conclude that the overall impact of prairie management is not expected to adversely affect conservation and recovery efforts for the species.

Projects Resulting in Minimal Tree Removal

The Service proposes that incidental take that results from projects causing minimal tree removal, when carried out in accordance with the conservation measures, will not be prohibited (*i.e.,* will be excepted from the prohibitions). Throughout the millions of acres of forest habitat in the northern long-eared bat range, many activities involve cutting or removal of individual or limited numbers of trees, but do not significantly change the overall nature and function of the local forested habitat. Some of these activities include firewood cutting, shelterbelt renovation, removal of diseased trees, tree removal for other small projects (*i.e.,* culvert replacement), habitat restoration for fish and wildlife conservation, and backyard landscaping. These ongoing activities can occur throughout the northern long-eared bat range, but we do not believe they materially affect the local forest habitat for this species and in some cases increase habitat availability in the long term. We conclude that the overall impact of projects causing minimal tree removal is not expected to adversely affect conservation and recovery efforts for the species.

Hazardous Tree Removal

The Service proposes that incidental take that is caused by removal and management of hazardous trees will not be prohibited (*i.e.,* will be excepted from the prohibitions). Removal of hazardous trees is typically done as deemed necessary for human safety or for the protection of human facilities. Hazardous trees typically have defects in their roots, trunk, or branches that make them likely to fall, with the likelihood of causing personal injury or property damage. The limited removal of these hazardous trees may be widely dispersed but limited, and should result in very minimal incidental take of

northern long-eared bat. Therefore, the Service proposes that take incidental to the removal of hazardous trees will not be prohibited. We recommend that, wherever possible, removal of hazardous trees be done during the winter, when these trees will not be occupied by bats. We conclude that the overall impact of removing hazardous trees is not expected to adversely affect conservation and recovery efforts for the species.

Removal of Bats From and Disturbance Within Human Dwellings

The Service proposes that take that is caused by removal of bats from and disturbance within human dwellings will not be prohibited (*i.e.,* will be excepted from the prohibitions), provided those actions comply with all applicable State laws. Northern long-eared bats have further been documented roosting in human-made 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.). We conclude that the overall impact of bat removal from human dwellings is not expected to adversely affect conservation and recovery efforts for the species. In addition, we provide the following recommendations:

(A) Minimize use of pesticides (*e.g.,* rodenticides) and avoid use of sticky traps in and around structures with roosting bats.

(B) If bats (of any species) are using structures (*e.g.,* barns or other outbuildings) as roosts, and these structures are proposed for removal, removal should be performed outside of the summer maternity season, unless there are human health or safety concerns associated with the structure. Contact a nuisance wildlife specialist for humane exclusion techniques.

Capture, Handling, Attachment of Radio Transmitters, and Tracking Northern Long-Eared Bats for 1 Year

For a limited period of 1 year from the effective date of this rule, the Service proposes that purposeful take that is caused by the authorized capture, handling, attachment of radio transmitters, and tracking of northern long-eared bats by individuals permitted to conduct these same activities for other listed bats will be excepted from the prohibitions. One method of determining presence/probable absence of northern long-eared bats is to conduct mist-netting at summer sites or harp trapping at hibernacula. Gathering of this information is essential to monitor the distribution and status of northern long-eared bats over time. In addition, northern long-eared bats are often captured incidentally to survey and study efforts targeted at other bat species (*e.g.,* Indiana bats). It is necessary and advisable for the conservation of northern long-eared bats to provide an exception for the purposeful take associated with these normal survey activities conducted by qualified individuals to promote and encourage the gathering of information following standard procedures (including decontamination) as these data will help us conserve and recover this species. To receive an exception, proponents must have an existing research permit under section 10(a)(1)(A) of the Act (or similar State collector's permit applications in the northeast region of the Service) for other listed bat species. The rationale for this limited time period is that a final listing decision is expected at the start of the bat field season, and it will be difficult to amend all permits in time for this year.

The Service concludes, for the reasons specified above, that all of the conservation measures, prohibitions, and exceptions identified herein individually and cumulatively are necessary and advisable for the conservation of the northern long-eared bat and will promote the conservation of the species across its range.

Table 1 (below) summarizes the details of the species-specific proposed 4(d) rule for the northern long-eared bat.

Is the area affected by WNS (WNS buffer zone)?	Take prohibitions at 50 CFR 17.31 and 17.32	Take exceptions	
		Purposeful	Incidental
No	All apply, with the following exceptions listed here.	Actions with the intent to remove northern long-eared bats from within human dwellings and that comply with all applicable State regulations. Actions relating to capture, handling, attachment of radio transmitters, and tracking of northern long-eared bats by individuals permitted to conduct these same activities for other bats, for a period of 1 year following the effective date of the final rule.	Any incidental take of northern long-eared bats resulting from otherwise lawful activities.
Yes	All apply, with the following exceptions listed here.	Actions with the intent to remove northern long-eared bats from within human dwellings and that comply with all applicable State regulations.	Implementation of forest management, maintenance and expansion of existing rights-of-way and transmission corridors, native prairie management, and minimal tree removal projects that: • Occur more than 0.25 mile (0.4 km) from a known, occupied hibernacula; • avoid cutting or destroying known, occupied maternity roost trees during the pup season (June 1–July 31); and • avoid clearcuts within 0.25 (0.4 km) miles of known, occupied maternity roost trees during the pup season (June 1–July 31).

Is the area affected by WNS (WNS buffer zone)?	Take prohibitions at 50 CFR 17.31 and 17.32	Take exceptions	
		Purposeful	Incidental
		Actions relating to capture, handling, attachment of radio transmitters, and tracking of northern long-eared bat by individuals permitted to conduct these same activities for other bats, for a period of 1 year following the effective date of the final rule.	Removal of hazard trees for the protection of human life and property.

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 such review is to ensure that our determination of status for this species is based on scientifically sound data, assumptions, and analyses. We will send peer reviewers copies of this proposed rule concurrent with publication in the **Federal Register**. We will invite these peer reviewers to comment, during the reopening of the public comment period, on our use and interpretation of the science used in developing our proposed rule to list the northern long-eared bat and this proposed rule under section 4(d) of the Act.

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.

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: (a) Be logically organized; (b) use the active voice to address readers directly; (c) use clear language rather than jargon; (d) be divided into short sections and sentences; and (e) use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the proposed 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.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501, et seq.)

This rule does not contain any collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (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 of 1969, 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). We intend to incorporate this proposed rule under section 4(d) of the Act into our final determination concerning the listing of the species or withdrawal of the proposal if new information is provided that supports that decision.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal–Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

By letter dated July 29, 2014, we contacted known federally recognized tribal governments throughout the historical range of the northern long-eared bat. We sought their input on our development of a proposed rule to list the northern long-eared bat and encouraged them to contact the Midwest Regional Office or Regional Native American contacts if any portion of our request was unclear or to request additional information. We did not receive any comments regarding this request.

References Cited

A complete list of all references cited in this proposed rule is available on the Internet at *http://www.regulations.gov* at Docket No. FWS–R5–ES–2011–0024 or upon request from the Endangered Species Chief, Midwest Regional Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Midwest Regional Office (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to further amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as proposed to be amended at 78 FR 61046 (October 2, 2013) 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, northern long-eared'' to the List of Endangered and Threatened Wildlife in alphabetical order under Mammals to read as set forth below:

§ 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, 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	T	.....	NA	17.40(n)
*	*	*	*	*	*	*	*

■ 3. Amend § 17.40 by adding paragraph (n) to read as follows:

§ 17.40 Special rules—mammals.

* * * * *

(n) Northern long-eared bat (*Myotis septentrionalis*). The provisions of this rule are based upon the occurrence of white-nose syndrome (WNS), a disease affecting many U.S. bat populations. The term ''WNS buffer zone'' identifies the portion of the range of the northern long-eared bat within 150 miles of the boundaries of U.S. counties or Canadian districts where the fungus *Pseudogymnoascus destructans* or WNS has been detected. For current information regarding the WNS buffer zone, contact your local Service field office. Field office contact information may be obtained from the Service regional offices, the addresses of which are listed in 50 CFR 2.2.

(1) Outside the WNS buffer zone, the following provisions apply to the northern long-eared bat:

(i) *Prohibitions.* Except as noted in paragraphs (n)(1)(ii)(A) and (B) of this section, all the prohibitions and provisions of §§ 17.31 and 17.32 apply to the northern long-eared bat.

(ii) *Exceptions from prohibitions.*

(A) Purposeful take:

(1) Take resulting from actions taken to remove northern long-eared bats from within human dwellings, if the actions comply with all applicable State regulations.

(2) Take resulting from actions relating to capture, handling, attachment of radio transmitters, and tracking of northern long-eared bats by individuals permitted to conduct these same activities for other species of bat listed in § 17.11(h) until [INSERT DATE 1 YEAR AFTER EFFECTIVE DATE OF FINAL RULE].

(B) Any incidental (non-purposeful) take of northern long-eared bats resulting from otherwise lawful activities.

(2) Inside the WNS buffer zone, the following provisions apply to the northern long-eared bat:

(i) *Prohibitions.* Except as noted in paragraphs (n)(2)(ii)(A) and (B) of this section, all prohibitions and provisions of §§ 17.31 and 17.32 apply to the northern long-eared bat.

(ii) *Exceptions from prohibitions.* Take of northern long-eared bat is not prohibited in the following circumstances:

(A) Purposeful take:

(1) Take resulting from actions taken to remove northern long-eared bats from within human dwellings, if the actions comply with all applicable State regulations.

(2) Take resulting from actions relating to capture, handling, attachment of radio transmitters, and tracking of northern long-eared bats by individuals permitted to conduct these same activities for other species of bat listed in § 17.11(h) until [INSERT DATE 1 YEAR AFTER EFFECTIVE DATE OF FINAL RULE].

(B) Incidental take:

(1) Implementation of forest management, maintenance and expansion of existing rights-of-way and transmission corridors, native prairie management, and minimal tree removal projects that:

(*i*) Occur more than 0.25 mile (0.4 km) from a known, occupied hibernacula;

(*ii*) Avoid cutting or destroying known, occupied maternity roost trees during the pup season (June 1–July 31); and

(*iii*) Avoid clearcuts within 0.25 (0.4 km) mile of known, occupied maternity roost trees during the pup season (June 1–July 31).

(2) Removal of hazardous trees for the protection of human life and property.

* * * * *

Dated: January 12, 2015.

Daniel M. Ashe,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2015–00644 Filed 1–15–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648–BE47

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 40

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

ACTION: Notice of availability; request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) has submitted Amendment 40 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) for review, approval, and implementation by NMFS. Amendment 40 includes actions to establish a Federal charter vessel/headboat (for-hire) component and private angling component within the recreational sector, allocate the red snapper recreational quota and annual catch target (ACT) between the components based on historical and recent landings, and establish separate red snapper season closure provisions for the Federal for-hire and private angling components. These measures would sunset after 3 years unless the Council takes additional action. The intent of Amendment 40 is to define distinct private angling and Federal for-hire components of the recreational sector who fish for red snapper, and allocate the recreational quota between these two components, to increase the stability for the for-hire component, provide a basis for increased flexibility in future management of the recreational sector, and minimize the chance for recreational quota overruns, which could negatively impact the rebuilding of the red snapper stock.

DATES: Written comments must be received on or before March 17, 2015.

ADDRESSES: You may submit comments on the amendment identified by ''NOAA–NMFS–2014–0107'' by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0107,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Peter Hood, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of Amendment 40, which includes an environmental impact statement, a fishery impact statement, a Regulatory Flexibility Act analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Peter Hood, Southeast Regional Office, NMFS, telephone: 727–824–5305; email: *Peter.Hood@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any FMP or amendment to NMFS for review and approval, partial approval, or disapproval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or amendment, publish an announcement in the **Federal Register** notifying the public that the plan or amendment is available for review and comment.

The FMP being revised by Amendment 40 was prepared by the Council and implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the optimum yield (OY) from federally managed fish stocks. These mandates are intended to ensure fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems. Amendment 40 includes actions to define distinct private angling and Federal for-hire components of the reef fish recreational sector fishing for red snapper and allocate red snapper resources between these recreational components. Establishing these separate components is intended to increase the stability for the for-hire component, provide a basis for increased flexibility in future management of the recreational sector, and reduce the likelihood for recreational quota overruns. As a result, the actions are intended to prevent overfishing while achieving the OY, particularly with respect to recreational fishing opportunities, while rebuilding the red snapper stock.

Recreational Red Snapper Fishing

The Gulf red snapper stock is overfished and currently under a rebuilding plan until 2032. The recreational sector, which has experienced quota overages and more recently, shorter seasons, is managed under a quota, bag and size limits, and closed seasons.

The recreational sector in the Gulf includes a private angling component (which includes state-permitted guide boats) and a for-hire component. Those for-hire vessels with a Federal charter vessel/headboat permit for Gulf reef fish are allowed to fish for red snapper in Federal waters, and those for-hire vessels without Federal permits are restricted to fishing for red snapper in state waters. Current recreational management measures are typically applied to the recreational sector as a whole, without making a distinction between the private and for-hire components. This approach results in less flexible management for the two distinct components of the recreational sector, where goals and needs differ between components.

Federal charter vessel/headboat permits for Gulf reef fish are limited-entry permits, thus there are no additional permits being issued. In addition, federally permitted reef fish charter vessels and headboats are prohibited from harvesting red snapper in state waters when the Federal season is closed. In contrast, there is no limit on the number of anglers fishing from private recreational vessels and the number of state-permitted for-hire vessels operating in state waters. Over time, the number of private recreational anglers (state licensed) has increased, while the number of vessels with Federal charter vessels/headboat permits for Gulf reef fish has decreased. As a result, private vessel landings over

time have represented a greater proportion of the recreational harvest as a whole.

Management Measures Contained in Amendment 40

Establishing Private Angling and Federal For-Hire Components

The Council has recommended partitioning the recreational sector that fishes for red snapper into two components. One component would be a Federal for-hire component including federally permitted for-hire operators and their angler clients. The other component would be the private angling component, including anglers fishing from private vessels and state-permitted for-hire vessels.

Sunset Provision

The Council selected a 3-year sunset provision for the establishment of the Federal for-hire and private angling components and associated management measures included in Amendment 40. If management measures from Amendment 40 are implemented in time for the June 1, 2015, Federal recreational fishing season, the components and associated management measures would be effective through December 31, 2017. The Council would need to take further action for these components and management measures to extend beyond 3 years.

Allocation

In determining the allocation for each recreational component, the Council considered eight alternatives that were based on average percentages of red snapper harvested by the federal for-hire and the private angling components during various time intervals between 1986 and 2013. The Council selected the alternative that combined the longest time period of available landings (1986–2013) with landings from a more recent range of years (2006–2013). Average percentages from each of the two time periods were then equally weighted to determine the allocation. The Council selected this allocation because it reflects both historical changes in the recreational sector as well as more current conditions, and is an approach previously used by the Council in setting allocations for other species. The resultant allocation percentages for the Federal for-hire and private angling components are 42.3 and 57.7 percent, respectively. Given a 2015 recreational quota of 5.390 million lb (2.445 million kg), this would result in Federal for-hire and private angling quotas of 2,279,970 lb (1,034,177 kg), round weight and 3,110,030 lb (1,410,686 kg), round weight, respectively.

Recreational Season Closure Provisions

With the establishment of the two components, the Council selected separate red snapper season closure provisions for the Federal for-hire and private angling components based on component ACTs. By applying a 20-percent buffer to quotas, the Federal charter vessel/headboat component ACT would be 1.824 million lb (0.827 million kg), round weight, and the private angling ACT would be 2.488 million lb (1.129 million kg), round weight. Both components' red snapper seasons would begin on June 1 and a component would close when its ACT is projected to be caught. Season lengths will be determined when 2014 recreational landings data are available and the results of an updated red snapper stock assessment are available. Amendment 40 contains season length projections that estimate the Federal for-hire and private angling fishing seasons if sector separation had been implemented in 2014. In 2014, state seasons were open for various times off all states when Federal waters were closed. Inconsistent state seasons reduce the length of the private angling component's Federal season but provide fishing opportunities for the private angling component that are not available to the Federal for-hire component.

Proposed Rule for Amendment 40

A proposed rule that would implement Amendment 40 has been drafted. In accordance with the Magnuson-Stevens Act, NMFS is evaluating Amendment 40 to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If the preliminary determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Consideration of Public Comments

The Council submitted Amendment 40 for Secretarial review, approval, and implementation. Comments received by March 17, 2015, whether specifically directed to the amendment or the proposed rule, will be considered by NMFS in its decision to approve, partially approve, or disapprove Amendment 40. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on the amendment or the proposed rule during their respective comment periods will be addressed in the final rule.

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

Dated: January 12, 2015.

Alan D. Risenhoover,

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

[FR Doc. 2015–00587 Filed 1–15–15; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 80, No. 11
Friday, January 16, 2015

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

GULF COAST ECOSYSTEM RESTORATION COUNCIL

National Environmental Policy Act Implementing Procedures and Categorical Exclusions

AGENCY: Gulf Coast Ecosystem Restoration Council.

ACTION: Proposed procedure; request for public comment.

SUMMARY: The Gulf Coast Ecosystem Restoration Council (Council) requests public comment on proposed procedures for implementing the National Environmental Policy Act (NEPA). The Council also requests public comment on proposed categorical exclusions of actions the Council has determined do not individually or cumulatively have a significant effect on the human environment and, thus, should be categorically excluded from the requirement to prepare an Environmental Assessment (EA) or Environmental Impact Statement (EIS) under NEPA.

DATES: Comments on the proposed NEPA procedures and categorical exclusions must be received by February 17, 2015.

ADDRESSES: Comments may be submitted through one of these methods:

Electronic Submission of Comments: Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Council to make them available to the public.

Mail: Send to Gulf Coast Ecosystem Restoration Council, Attention John Ettinger, 500 Poydras Street, Suite 1117, New Orleans, LA 70130.

Email: Send to *nepaprocedures@restorethegulf.gov.*

In general, the Council will make such comments available for public inspection and copying on its Web site, *http://www.restorethegulf.gov* without change, including any business or personal information provided, such as names, addresses, email addresses, or telephone numbers. All comments received, including attachments and other supporting materials, will be part of the public record and subject to public disclosure. You should only submit information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Please send questions by email to *nepaprocedures@restorethegulf.gov,* or contact John Ettinger, (504) 444–3522.

SUPPLEMENTARY INFORMATION:

I. Background

On July 6, 2012, the President signed the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (''RESTORE Act'' or ''Act'') into law. The Act establishes a new trust fund in the Treasury of the United States, known as the Gulf Coast Restoration Trust Fund (Trust Fund). Eighty percent of the administrative and civil penalties paid after July 6, 2012, under the Federal Water Pollution Control Act in connection with the DEEPWATER HORIZON Oil Spill will be deposited into the Trust Fund. Under terms described in the Act, amounts in the Trust Fund will be available for projects and programs that restore and protect the environment and economy of the Gulf Coast region.

The Act is focused on the Gulf Coast region and has five components. The Direct Component sets aside 35 percent of the penalties paid into the Trust Fund for eligible activities proposed by the five Gulf Coast states—Alabama, Florida, Louisiana, Mississippi, and Texas—including local governments within Florida and Louisiana. The Council-Selected Restoration Component sets aside 30 percent of the penalties, plus half of all interest earned on Trust Fund investments, to be managed by a new independent entity in the Federal government called the Gulf Coast Ecosystem Restoration Council (Council). The Council is comprised of members from six Federal agencies or departments and the five Gulf Coast states. One of the Federal members, the Secretary of Commerce, currently serves as Chairperson of the Council. The Council will direct Council-Selected Restoration Component funds to projects and programs for the restoration of the Gulf Coast region, pursuant to an Initial Comprehensive Plan that has been developed by the Council. Under the Spill Impact Component, the Gulf Coast states can use an additional 30 percent of penalties in the Trust Fund for eligible activities pursuant to plans developed by the states and approved by the Council. The remaining five percent of penalties, plus one-half of all interest earned on Trust Fund investments, will be divided equally between the National Oceanic and Atmospheric Administration (NOAA) RESTORE Act Science Program and a Centers of Excellence Research Grants Program.

II. This Proposed Procedure

This proposed procedure, upon enactment, would establish the Council's policy and procedures to ensure compliance with NEPA and Council on Environmental Quality (CEQ) regulations for implementing NEPA. Each Federal agency is required to develop NEPA procedures as a supplement to the CEQ regulations. The Council's major responsibilities are set out in greater detail in the RESTORE Act, and responsibilities relative to the administration of Council-Selected Restoration Component are further described below. The Council continues to deliberate policies and procedures relative to implementation of the Spill Impact Component. Information on such matters will be available at a later date.

The NEPA procedures proposed below are applicable to Council actions. Activities funded pursuant to any component of the Act may also be subject to an environmental review under NEPA in instances where there is a separate Federal action. For example, a restoration project funded under the Direct Component would be subject to NEPA if it required a permit to fill wetlands pursuant to Section 404 of the Clean Water Act.

Council-Selected Restoration Component

The Act provides 30 percent of penalties deposited into the Trust Fund to the Council, plus one-half of the interest earned on Trust Fund

investments, to carry out a Comprehensive Plan. In August 2013, the Council issued the Initial Comprehensive Plan for Restoring the Gulf Coast's ecosystem and economy. This Initial Comprehensive Plan provides a framework to implement a coordinated region-wide restoration effort to restore, protect, and revitalize the Gulf Coast. The Initial Comprehensive Plan was accompanied by a Programmatic Environmental Assessment.

Pursuant to the Act, the Council will develop a ''Funded Priority List'' (or FPL) of projects and programs to be carried out to advance the goals and objectives set forth in the Initial Comprehensive Plan, subject to available funding. The Council will periodically update the Initial Comprehensive Plan and the FPL, in accordance with the Act.

The FPL and subsequent updates will consist of a list of projects and programs which the Council intends to fund for planning, technical assistance, or implementation purposes. The Council anticipates that once the full amount ultimately to be paid into the Trust Fund is known, future amendments to the FPL will include significantly larger projects and project lists that reflect the full amount available to be spent for restoration activities. A Council commitment to fund implementation of a project or program in the FPL is a Federal action which requires the appropriate level of NEPA review. Examples of NEPA compliance include application of a categorical exclusion, adoption of existing NEPA documentation, or preparation of new NEPA documentation, as warranted. The FPL may commit planning and technical assistance funds for activities such as engineering, design, and environmental compliance for projects and programs. According to the Initial Comprehensive Plan, a Council commitment of planning or technical assistance funds for a project or program in an FPL does not necessarily guarantee that the Council will subsequently fund implementation of the project or program. Should the Council subsequently decide to fund implementation of the particular project or program, it will ensure the appropriate level of NEPA compliance at that time.

In developing and updating the FPL, the Council will seek to ensure that the projects and programs contained therein reflect a comprehensive approach for Gulf restoration, consistent with the Act and the Initial Comprehensive Plan. To that end, the Council will build upon existing restoration plans and strategies, engage the public, ensure the FPL is based on sound science, and assess the cumulative environmental impacts of projects and programs contained in the FPL, as appropriate.

There has been extensive Gulf coast restoration planning conducted at Federal, state, and local levels. This includes the Gulf Coast Ecosystem Restoration Task Force Strategy (Task Force Strategy), as well as state-level efforts, such as the Louisiana Comprehensive Master Plan for a Sustainable Coast and the Mississippi Coastal Improvement Program (MsCIP). In addition, watershed-level planning efforts have been conducted by Gulf-based National Estuary Programs and other stakeholder groups. The Council intends to build upon these planning efforts in developing the initial FPL and subsequent updates.

The Council will engage the public in the development of the FPL and subsequent updates. Public engagement conducted by the Council members prior to development of the draft FPL will be considered in the Council's project review and selection process. The public will also have an opportunity to review and comment on the draft FPL. Where applicable, the NEPA processes for specific projects and programs in the FPL will also provide opportunities for public input. The public would have the opportunity to provide input during the scoping of Environmental Impact Statements (EISs) as well as an opportunity to review and comment on draft EISs. Under some circumstances, as detailed in the draft NEPA procedures, the public would also have an opportunity to review and comment on draft Environmental Assessments (EAs).

Independent scientific review of the projects and programs nominated for inclusion in the FPL will help ensure that all funded activities are based on the best available science. The Council anticipates that a number of the projects and programs nominated for inclusion in the FPL will be derived from existing restoration plans, which have already undergone independent scientific review. In such cases, the Council's independent scientific review process would complement the scientific foundation established within the respective planning process.

The Council will ensure that the evaluations of projects and programs in the initial FPL and subsequent updates effectively assess potential cumulative impacts in accordance with NEPA, which requires a Federal agency to consider the incremental environmental impacts of the proposed action when combined with relevant past, present, and reasonably foreseeable future actions. The cumulative impact assessments will generally be tailored to the area of influence of the given activity. For example, a project with a large area of influence (such as a river diversion) would have a commensurately broader assessment of cumulative effects, while one with a limited area of influence (such as a small vegetative planting project) would have a more limited assessment of potential cumulative effects. To the extent appropriate, the assessment of cumulative impacts will draw upon existing information in relevant ongoing and completed NEPA documents, including the Initial Comprehensive Plan Programmatic EA, the Deepwater Horizon Natural Resources Damage Assessment Early Restoration Programmatic EIS, the Louisiana Coastal Area Ecosystem Restoration Plan Programmatic EIS, the MsCIP Programmatic EIS, and others. Among other potential benefits, effective cumulative impact assessments can help ensure that Council decisions regarding specific restoration projects are informed with a broader understanding of the relationship between such projects and other restoration activities, whether supported by the RESTORE Act or another funding source.

III. Classification

Regulatory Planning and Review (Executive Orders 12866 and 13563)

As an independent Federal entity that is composed of, in part, six Federal agencies, including the Departments of Agriculture, the Army, Commerce, and the Interior, the Department in which the Coast Guard is operating, and the Environmental Protection Agency, the requirements of Executive Orders 12866 and 13563 are inapplicable to these proposed procedures.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the Council to consider whether a document would have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. The proposed NEPA procedures would apply to Council actions and applicants for funding under the Council-Selected Restoration Component of the Act. These applicants are limited by the Act to the Federal and state members of the Council. Therefore, the Council hereby

certifies that these proposed procedures would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act, the Council must have approval from the Office of Management and Budget (OMB) before collecting information from the public (such as forms, general questionnaires, surveys, instructions, and other types of collections). According to these proposed NEPA procedures, applicants for funding under the Council-Selected Restoration Component could be required to prepare and submit NEPA documentation to the Council prior to a decision on whether to fund a given activity. These applicants would be limited to the Federal and state members of the Council and NEPA submissions would be unique to each individual project or program selected for inclusion in the FPL. These proposed procedures would not lead to the collection of information. On this basis, the Council has determined that these proposed procedures would not create any new information collection requirements for the public.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 requires the Council to engage in regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications. ''Policies that have tribal implications'' refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. These proposed NEPA procedures apply to the Council and its members, insofar as such members choose to apply for funding under the Council-Selected Restoration Component of the Act. Among other policies, these proposed NEPA procedures establish Council policy regarding coordination and consultation with tribal governments in NEPA processes conducted under the Council-Selected Restoration Component, where applicable. These proposed NEPA procedures do not in any way alter the right of tribal governments to engage in NEPA processes conducted by the Council. These proposed NEPA procedures are intended to foster effective communication with tribal governments in that regard. The Council has therefore determined that these proposed NEPA procedures would not have tribal implications as the term is used pursuant to Executive Order 13175.

Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 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/or low-income populations. The Council's proposed NEPA procedures specifically call for the consideration of potential environmental justice issues in the development of Environmental Impact Statements, and reference the need to address Executive Order 12898, where applicable. The Council has therefore determined that these proposed NEPA procedures do not raise any environmental justice concerns.

National Environmental Policy Act

The Council on Environmental Quality regulations do not direct agencies to prepare a NEPA analysis or document before establishing Agency procedures (such as those proposed here) that supplement the CEQ regulations for implementing NEPA. Agencies are required to adopt NEPA procedures that establish specific criteria for, and identification of, three classes of actions: those that normally require preparation of an environmental impact statement; those that normally require preparation of an environmental assessment; and those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). Categorical exclusions are one part of those agency procedures, and therefore establishing categorical exclusions does not require preparation of a NEPA analysis or document. *Sierra Club* v. *Bosworth,* 510 F.3d 1016, 1025–26 (9th Cir. 2007); *Heartwood, Inc.* v. *U.S. Forest Service,* 230 F.3d 947, 954–55 (7th Cir. 2000). Agency NEPA procedures are procedural guidance to assist agencies in the fulfillment of agency responsibilities under NEPA, but are not the agency's final determination of what level of NEPA analysis is required for a particular proposed action. The requirements for establishing agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3.

Gulf Coast Ecosystem Restoration Council's Procedures for Considering Environmental Impacts

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Sec. 1. Purpose

This document establishes the Gulf Coast Ecosystem Restoration Council's (Council) policy and procedures (Procedures) to ensure compliance with the requirements set forth in the Council on Environmental Quality (CEQ) regulations 40 CFR parts 1500 through 1508 implementing the provisions of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321–4347. These procedures also address compliance with other related statutes and directives. More specifically, these Procedures implement the CEQ NEPA regulations requirement that agencies adopt supplemental NEPA procedures.

Sec. 2. Authority

NEPA and its implementing regulations establish a broad national policy to protect and enhance the quality of the human environment, and develop programs and measures to meet national environmental goals. Section 101 of NEPA sets forth Federal policies and goals to encourage productive harmony between people and their environment. Section 102(2) provides specific direction to Federal agencies, described as ''action-forcing'' in the CEQ regulations, to further the goals of NEPA. These major provisions include requirements to use a systematic, interdisciplinary approach to planning and decision-making (section 102(2)(A)) and develop methods and procedures to ensure appropriate consideration of environmental values (section 102(2)(B)). Section 102(2)(C) requires preparation of a detailed statement for major Federal actions significantly affecting the quality of the human

environment that analyzes the impact of and alternatives to the action.

Policy. It is the Council's policy to:

(a) Comply with NEPA and other environmental laws, regulations, policies, and Executive Orders applicable to Council actions;

(b) Seek and develop partnerships and cooperative arrangements with other Federal, tribal, state, and local governments early in the NEPA process to help ensure efficient regulatory review of Council actions;

(c) Ensure that applicable NEPA compliance and its documentation includes public involvement appropriate to the action being proposed and its potential impacts;

(d) Interpret and administer Federal laws, regulations, Executive Orders, and policies in accordance with the policies set forth pursuant to NEPA, to the fullest extent possible;

(e) Consider the potential environmental impacts of Council actions as early in the planning process as possible; and

(f) Consult, coordinate with, and consider policies, procedures, and activities of other Federal agencies, as well as tribal, state, and local governments.

Applicability. These Procedures are intended to supplement CEQ's NEPA regulations, which also apply to proposed actions by the Council and are incorporated herein by reference.

Depending on the nature of the proposed action and its potential impacts on the human environment, Council actions may be categorically excluded (CE) from additional NEPA review by the Council, or require the preparation of an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). An EA results in a Finding of No Significant Impact (FONSI) or a decision to prepare an EIS. The Council need not prepare an EA prior to an EIS; rather, if the Council believes the proposed action may significantly affect the quality of the human environment, it may proceed directly to preparation of an EIS. An applicant for funding may assist the Council, either by preparing the appropriate level of environmental analysis or hiring an environmental consultant to do so, as appropriate, for proposed actions. These Procedures will apply to the fullest extent practicable to proposed Council actions and environmental documents begun but not completed before these Procedures take effect. They do not apply, however, to decisions made and draft or final environmental documents completed prior to the date on which these Procedures take effect.

Sec. 3. Definitions and Acronyms

The definitions contained within CEQ's regulation at 40 CFR part 1508 apply to these Procedures. Additional and expanded definitions and acronyms are as follows:

(a) ''Council'' means the Gulf Coast Ecosystem Restoration Council.

(b) ''Council Action'' is an action taken by the Council potentially subject to NEPA. Council Actions may be wholly or partially funded by the Council. Council Actions include but are not limited to awarding grants, contracts, purchases, leases, construction, research activities, rulemakings, and amendment or revision of a Comprehensive Plan.

(c) ''CE'' means Categorical Exclusion.

(d) ''CEQ'' means the Council on Environmental Quality.

(e) ''EA'' means an Environmental Assessment.

(f) ''EIS'' means an Environmental Impact Statement.

(g) ''EPA'' means the U.S. Environmental Protection Agency.

(h) ''Executive Director'' means the Executive Director of the Gulf Coast Ecosystem Restoration Council.

(i) ''FONSI'' means a Finding of No Significant Impact.

(j) ''NEPA Documents'' are any of the following:

(1) Documentation associated with use of a CE;

(2) Environmental Assessment;

(3) Finding of No Significant Impact;

(4) Notice of Intent to Prepare an EIS;

(5) Draft, Final, or Supplemental Environmental Impact Statement;

(6) Record of Decision; and

(7) Notice of Intent to Adopt an EA or EIS.

(k) ''Project Sponsor'' or ''Applicant'' is the entity that seeks Council Action to fund a project or program.

(l) ''Record of Decision'' or ''ROD'', in cases requiring an EIS, is the decision and public document based on the EIS (*see* 40 CFR 1505.2).

(m) ''Responsible Official'' is the person delegated authority by the Council to make recommendations to the Council (or the Council's designated decision-maker) regarding compliance with NEPA and in some cases to implement decisions pertaining to NEPA (as described in these Procedures or in the Council's Standard Operating Procedures).

Sec. 4. Actions Covered

(a) *General Rule.* The requirements of sections 5 through 15 of these Procedures apply to Council Actions that are determined to be Federal actions in accordance with this section.

(b) *Federal Actions.* For purposes of these Procedures, a Federal action is any Council Action:

(1) With effects that may be major; and

(2) That is potentially subject to the Federal control and responsibility of the Council. As described in the CEQ regulations, the term ''major'' does not have a meaning independent of the term ''significantly'' (*see* 40 CFR 1508.18).

(c) *Actions Categorically Excluded.* The Council has determined that certain categories of actions are eligible to use a CE for compliance with NEPA, as they do not have a significant impact individually or cumulatively on the quality of the human environment. A proposal is categorically excluded if the Council determines the following:

(1) The proposed action fits within a class of actions that is listed below;

(2) There are no extraordinary circumstances indicating the action may have a significant effect (*see* subsection (e) of this Section); and

(3) The proposal has not been segmented to meet the definition of a CE.

(d) The following categories of Council Actions are categorically excluded from further NEPA review in an EA or EIS:

(1) *Administrative and Routine Office Activities:*

i. Administrative procurements (*e.g.,* for general supplies) and contracts for personnel services.

ii. Routine fiscal and administrative activities involving personnel (*e.g.,* recruiting, hiring, detailing, processing, paying, supervising, and recordkeeping).

iii. Routine procurement of goods and services to support operations and infrastructure, including routine utility services and contracts, conducted in accordance with applicable procurement regulations, Executive Orders, and policies.

iv. Routine administrative office functions (*e.g.,* recordkeeping; inspecting, examining, and auditing papers, books, and records; processing correspondence; developing and approving budgets; responding to requests for information).

v. Routine activities and operations conducted in an existing structure that are within the scope and compatibility of the present functional use of the building, will not result in a substantial increase in waste discharge to the environment, will not result in substantially different waste discharges from current or previous activities, and will not result in emissions that exceed established permit limits, if any.

vi. Council meetings, hearings, site visits, technical assistance, public affairs activities, and/or training in classrooms, meeting rooms, other facilities, or via the Internet.

(2) *Regulation, Monitoring, and Oversight of RESTORE Act Activities:*

i. Promulgation or publication of regulations, procedures, manuals, and guidance documents that are of an administrative, financial, legal, technical, or procedural nature.

ii. Internal orders and procedures that need not be published in the **Federal Register** under the Administrative Procedure Act, 5 U.S.C. 552.

iii. Preparation of studies, reports, or investigations that do not propose a policy, plan, program, or action.

(3) *Council Activities for Planning, Research or Design Activities (Documentation Required*):

i. Funding or procurements for activities which do not involve or lead directly to ground-disturbing activities which may have significant effects individually or cumulatively, and do not commit the Council or its applicants to a particular course of action affecting the environment, such as grants to prepare environmental documents, planning, technical assistance, engineering and design activities, or certain research. Use of this CE will be documented following the procedures described in Section 4(f) of these Procedures.

(4) *Council Funded Activities that Fall Under a CE of a Federal Council Member (Documentation Required*):

i. Any environmental restoration, conservation, or protection activity that falls within a CE established by a Federal agency Council member, provided no extraordinary circumstances preclude the use of the CE and the Federal agency that established the CE is involved in the Council action. A Federal agency Council member is involved in the Council action when that Federal agency advises the Council that use of the CE would be appropriate for the specific action under consideration by the Council. Use of this CE will be documented following the procedures described in Section 4(f) of these Procedures.

(e) *Extraordinary Circumstances.* Some Council Actions that would normally be categorically excluded from further NEPA review in an EA or EIS may not qualify for a CE because extraordinary circumstances exist (*see* 40 CFR 1508.4). The Responsible Official, in cooperation with the applicant as appropriate, will conduct a review to determine if there are extraordinary circumstances. Such extraordinary circumstances are:

(1) A reasonable likelihood of substantial controversy regarding the potential environmental impacts of the proposed action.

(2) Tribal concerns with actions that impact tribal lands or resources.

(3) A reasonable likelihood of adversely affecting environmentally sensitive resources. Environmentally sensitive resources include but are not limited to:

i. Species that are federally listed or proposed for listing as threatened or endangered, or their proposed or designated critical habitats; and

ii. Properties listed or eligible for listing on the National Register of Historic Places.

(4) A reasonable likelihood of impacts that are highly uncertain or involve unknown risks or if there is a substantial scientific controversy over the effects.

(5) A reasonable likelihood of air pollution at levels of concern or otherwise requiring a formal conformity determination under the Clean Air Act.

(6) A reasonable likelihood of a disproportionately high and adverse effect on low income or minority populations (*see* Executive Order 12898).

(7) A reasonable likelihood of contributing to the introduction or spread of noxious weeds or non-native invasive species or actions that may promote the introduction, or spread of such species (*see* Federal Noxious Weed Control Act and Executive Order 13112).

(8) A reasonable likelihood of a release of petroleum, oils, or lubricants (except from a properly functioning engine or vehicle) or reportable releases of hazardous or toxic substances as specified in 40 CFR part 302 (Designation, Reportable Quantities, and Notification); or where the proposed action results in the requirement to develop or amend a Spill Prevention, Control, or Countermeasures Plan in accordance with the Oil Pollution Prevention regulation.

The mere existence of any of the circumstances described above will not necessarily trigger preparation of an EA or EIS. The determination that an extraordinary circumstance exists and an EA or EIS is needed will be based on the potential significance of the proposed action's effects on the environment. If it is not clear whether a CE is appropriate, the Responsible Official, after consulting with the Council, may require preparation of an EA.

(f) *Documented Categorical Exclusion.* The purpose of CEs is to reduce paperwork and streamline the project implementation process. The NEPA does not require the Council to document actions that qualify for a CE and do not involve extraordinary circumstances (*see* 40 CFR 1500.4(p)). When the Responsible Official chooses to document use of a CE in addition to those identified in Section 4(d)(3) and Section 4(d)(4) of these Procedures, the documentation should include:

(1) A description of the proposed action.

(2) The CE relied upon, including the information or process used to determine that no extraordinary circumstances are present.

(3) A determination by the Responsible Official that the CE applies.

As a general matter, the Council will post documented CEs on its Web site. The Council, however, generally will not publicly post documentation supporting a CE for activities occurring on:

(1) Private lands; or

(2) Other lands under consideration by the Council for a project if the release of such information could lead to impacts to sensitive lands.

(g) *Emergency Actions/Alternate Arrangements:* In the event of an emergency situation, the Council may need to take an action to prevent or reduce the risk to the environment or public health or safety that may affect the quality of human environment without having the time to evaluate those impacts under NEPA. In some cases, the emergency action may be covered by an existing NEPA analysis or a CE, while in other cases, it may not.

(1) In cases where the Responsible Official, in consultation with the Council, determines that an EIS is appropriate, the Council will consult with CEQ about alternative arrangements for complying with NEPA in accordance with 40 CFR 1506.11.

(2) In cases where the Responsible Official determines that an environmental assessment is appropriate, the Responsible Official shall consult with the Council to establish alternative arrangements for the environmental assessment. Any such alternative arrangement for an EA must be documented and a copy provided to CEQ.

(h) *Actions Exempt from the Requirements of NEPA.* Certain Council Actions may be covered by a statutory exemption or EPA's functional equivalence under existing law. The Council will document its use of such an exemption pursuant to applicable requirements.

Sec. 5. Timing

(a) *General.* The potential environmental effects of a proposed Council Action will be considered at the earliest practicable time along with appropriate scientific, technical, and economic studies. Coordination with appropriate federal, state, tribal, and local authorities and, to the extent appropriate and described in these Procedures, the public meetings, should begin at the earliest practicable time. As a general matter, the project planning process should include all environmental permit evaluation and review requirements, including applicable timeframes when possible, so that applicants for funding can collect necessary information and provide it to the agency with jurisdiction or special expertise in a timely manner. Applicants or consultants should complete these tasks at the earliest possible time during project planning to ensure full consideration of all environmental resources and facilitate the Council's NEPA process.

(b) *Applications for Funding.* The Applicant may be responsible for preparation of the appropriate level of proposed NEPA analysis for the Council. An EA, EIS, or CE determination, as appropriate, will be completed prior to the final decision by the Council to fund a proposed project or program and should accompany the application through the decision-making process.

(c) *Council Initiated Actions.* The EA or EIS, as appropriate, will be completed prior to a decision by the Council to implement an action that would have impacts on the environment and should accompany the proposed action through the decision-making process.

Sec. 6. Coordinating NEPA on Joint Actions

Interagency coordination and collaboration can help ensure efficient and effective NEPA processes. To that end, the Council will serve as a Joint Lead, Lead Agency, or Cooperating Agency as appropriate for the preparation of NEPA documents relevant to its activities. Subsections (a) through (c) of this Section describe the circumstances in which the Council may serve as Joint Lead, Lead Agency, or Cooperating Agency, along with the general roles and responsibilities associated with each. In general, the Council will either be the Lead or Joint Lead Agency on all Council-initiated actions subject to NEPA.

(a) *Joint Actions.* Where one or more Federal agencies, together with the Council propose or are involved in the same action; are involved in a group of actions directly related because of functional interdependence or geographical proximity; or are involved in a single program, the Responsible Official for the Council should seek to join all such agencies in performing a joint NEPA analysis and, where appropriate, other necessary environmental documentation.

(b) *Lead Agency.*

(1) The Council will follow CEQ's regulation regarding designation of a Lead Agency when multiple Federal agencies are involved (40 CFR 1501.5). The Lead Agency should consult with the other participating agencies to ensure that the joint action makes the best use of the participating agencies' areas of jurisdiction and special expertise, that the views of participating agencies are considered in the course of the NEPA process, and that the compliance requirements of all participating agencies are met.

(2) When another Federal agency is the Lead Agency, the Council may act as either a Co-Lead Agency or a Cooperating Agency (as detailed in subsection (c) of this Section), as appropriate.

(c) *Cooperating Agency.* When another Federal agency is a Lead Agency for the preparation of a NEPA review (*i.e.,* CE, EA, EIS) for a proposed activity, the Council may be a Cooperating Agency. When the Council is a Cooperating Agency on a joint action, the Responsible Official will perform the functions stated in 40 CFR 1501.6(b) and review the work of the Lead Agency to ensure that its work product will satisfy the requirements of the Council under these Procedures. After acting as a Cooperating Agency, the Council may adopt the NEPA document prepared by the Lead Agency, consistent with 40 CFR 1506.3. The Council will comply with the review and approval responsibilities contained in these Procedures prior to signing any final NEPA decision document.

Sec. 7. Applicants for Funding

(a) *General.* The Council may require an applicant for funding to prepare the requisite draft NEPA analysis of the proposed project and to submit that analysis with the application. The Council may also require an applicant to prepare and submit environmental information in the form of a proposed EIS, proposed EA, or proposed documentation supporting the application of a CE. This could include, for example, a proposed draft EIS, proposed draft EA, proposed final EIS, or proposed final EA, pending Council adoption/approval. Documentation supporting application of a CE will normally be limited to a description of the proposed activity, the CE relied upon, and the information or process used to determine there are no extraordinary circumstances. The Council may require the applicant to act as a Joint Lead Agency, depending on whether the applicant is a Federal agency. Where appropriate, the Council will cooperate with state and local agencies to conduct joint processes, including joint environmental assessments and joint environmental impact statements, provided such cooperation is fully consistent with 40 CFR 1506.2.

(b) *Information Required.* When an applicant is required to submit environmental documentation for a proposed project or program, the Responsible Official, where appropriate, will specify the types and extent of information required, consistent with the CEQ regulations, these Procedures and any other applicable laws, regulations, Executive Orders, or policies. The Responsible Official will work with applicants early in the process, as appropriate, to assist in the development of information responsive to sections 10 through 13 of these Procedures. The project planning process should include all environmental permitting and review requirements, including applicable timeframes when possible, so that applicants for funding can collect necessary information and provide it to the agency with jurisdiction or special expertise in a timely manner.

(c) *Limits on Actions by the Applicant.* The Responsible Official will inform an applicant that the applicant may not take any action within the Council's jurisdiction that would have an adverse environmental impact or limit the choice of reasonable alternatives, prior to completion of the environmental review process by the Council (*see* 40 CFR 1506.1).

(d) *Council Responsibility.* The Council is responsible for its own compliance with Federal environmental laws, regulations, Executive Orders, and policies. As appropriate, the Responsible Official will solicit comments from interested parties on the environmental consequences of any application.

The Responsible Official will independently evaluate and prepare a recommendation to the Council regarding whether an applicant's environmental documentation satisfies the requirements of the CEQ regulations and these Procedures. In conducting this review, the Responsible Official

will seek the advice of the Council Members and/or subject matter experts, as appropriate. Upon approval by the Council, the documentation will be considered to have been prepared by the Council for purposes of sections 9 through 15 of these Procedures.

Sec. 8. Consultants

(a) *General.* The Council or applicants to the Council for funding may use consultants in the performance of NEPA analysis and the preparation of other environmental documents. The Responsible Official must approve the use of a selected consultant before the consultant begins performing analyses or preparing environmental documents related to Council-funded proposals. The Responsible Official will review any analysis performed and any documents prepared by a consultant to ensure that they satisfy the requirements of these Procedures.

(b) *Conflicts of Interest (40 CFR 1506.5(c)).* The Responsible Official will exercise care in selecting consultants and reviewing their work to ensure that their analysis is complete and objective. Consultants will execute a disclosure statement prepared by the Responsible Official, certifying that they have no financial or other interest in the outcome of the project.

(c) *Council Responsibility (40 CFR 1506.5).* The Council is responsible for its own compliance with Federal environmental laws, regulations, policies and Executive Orders, and cannot delegate this responsibility to consultants. The Responsible Official will independently evaluate any analysis performed and any documents prepared by a consultant to ensure that they satisfy the requirements of these Procedures. The Responsible Official will seek the advice of subject matter experts and/or Council members, as appropriate.

Sec. 9. Public and Tribal Involvement for Environmental Impact Statements

(a) *Policy.* Public involvement is encouraged in the environmental analysis and review of a proposed Council Action.

(b) *Procedures.* After determining that a draft EIS should be prepared, the Lead or Co-Lead agency will implement the following procedures, at a minimum, to engage affected members of the public and solicit public input:

(1) Develop a list of interested parties, including Federal, regional, state, and local authorities, tribes, environmental groups, individuals, businesses, and community organizations, as applicable.

(2) Publish a notice of intent in the **Federal Register**, and initiate scoping in accordance with 40 CFR 1501.7 and 1508.22, and notify directly those officials, agencies, organizations, tribes and individuals with particular interest in the proposal. The Council shall engage in Nation-to-Nation consultation, as required.

(3) Hold public scoping meetings as appropriate to the action.

(4) Circulate the draft EIS for comment to interested parties.

(5) Publicize the availability of the draft EIS by press release, advertisement in local newspapers of general circulation, or other suitable means such as posting the draft EIS on the Council's Web site. As appropriate, the Council will also circulate the draft EIS and supporting documents to public depositories, such as libraries. The EPA will publish a notice of availability in the **Federal Register** which will determine the appropriate duration of the public review and comment period.

(6) If necessary or desirable, using the criteria in 40 CFR 1506.6(c), hold a public meeting or public hearing on the draft EIS. If a public hearing is held, the draft EIS should be made available at least 15 days prior to the hearing.

(7) Consider and respond to all substantive comments in the final EIS and provide copies of the final EIS to all who request a copy of the final EIS.

(c) *List of Contacts.* Interested persons may obtain information on the Council's environmental process and on the status of EIS's issued by the Council from the Responsible Official. The Council will provide contact information on the Council's Web site and in other public notices.

Sec. 10. Environmental Assessment

(a) *Policy.* The Responsible Official should perform, participate in, or coordinate, as appropriate, the process of considering the environmental impacts of a proposed Council Action at the earliest practical time in the planning process. To the fullest extent possible, steps to comply with all environmental laws, regulations, policies and Executive Orders, as well as the requirements of the RESTORE Act, will be undertaken concurrently.

(b) *Scope.* An EA should contain a brief discussion of the proposed action; the purpose and need for the proposed action; an appropriate range of reasonable alternatives to the proposed action, including a no action alternative; an evaluation of the environmental impacts of the proposed action and any identified alternatives; a list of the agencies and persons consulted; a list of alternatives eliminated from further analysis with an explanation of why they were eliminated; a list of all applicable Federal environmental laws and requirements; and mitigation measures needed to reduce environmental impacts to below the level of significance (if applicable). The scope of environmental impacts considered in the EA should include both beneficial and adverse impacts; direct, indirect, and cumulative impacts; impacts of both long- and short-term duration; as well as analysis of the effects of any appropriate mitigation measures or best management practices that are considered. The mitigation measures can be analyzed either as elements of alternatives or in a separate discussion of mitigation.

The level of detail and depth of impact analysis should be limited to documenting the potential impacts of the proposed action and whether the proposed action would result in any significant adverse environmental impacts. The EA should contain objective analyses to support its environmental impact conclusions.

(c) *Using Existing Environmental Analyses Prepared Pursuant to NEPA and the CEQ Regulations.*

(1) When available, the Responsible Official, or applicant if applicable, should use existing NEPA analyses for assessing the impacts of a proposed action and reasonable alternatives. Procedures for adoption or incorporation by reference of such analyses must be followed where applicable.

(2) If existing NEPA analyses include data and assumptions appropriate for the analysis at hand, the Responsible Official, or applicant if applicable, should use these existing NEPA analyses and/or their underlying data and assumptions where feasible.

(3) An existing environmental analysis prepared pursuant to NEPA and the CEQ regulations may be used in its entirety if the Responsible Official determines, with appropriate supporting documentation, that it adequately assesses the environmental effects of the proposed action and reasonable alternatives. The supporting record must include an evaluation of whether new circumstances, new information or changes in the action or its impacts not previously analyzed may result in significantly different environmental effects.

(4) The Responsible Official, or applicant if applicable, should make the best use of existing NEPA documents by supplementing, tiering to, incorporating by reference, or adopting previous environmental analyses to avoid redundancy and unnecessary paperwork.

(d) *Public Coordination on the EA/FONSI.*

(1) Normally a draft FONSI need not be coordinated in advance outside the Council prior to its issuance. Copies of approved FONSIs will be available to the public, government agencies, or Congress upon request at any time.

(2) The Council will post final EAs and approved FONSIs on its Web site.

(3) To the extent appropriate and practicable, the Council may provide the public with an opportunity to review and comment on draft EAs. When the proposed action is, or is closely similar to, one which normally requires an EIS as identified in Section 12 of these Procedures, or when the nature of the proposed action is one without precedent, the Council will make a draft EA available to the public for review for a period of not less than 30 days before the final determination is made by the Council. The Council will consider any and all comments received prior to making a final decision regarding the associated FONSI.

(e) *Level of Analysis.* The EA process should assess each impact identified as relevant to the proposed action or alternatives. The level of analysis of each impact should be guided by the following factors:

(1) The likelihood of the potential effects;

(2) The magnitude of the potential effects; and

(3) Whether any adverse effects on the environment may be significant, even if on balance the proposed project may be beneficial.

(f) *Determination Based on the EA.* On the basis of the EA, the Responsible Official will determine whether the proposed action has a potentially significant impact on the human environment and will make a recommendation to the Council as to whether an EIS is needed. Based on the Council's decision, the Responsible Official will take action in accordance with subsections (f)(1) through (3) of this Section, as applicable:

(1) If the Council decides that the proposed action will not have a significant impact on the human environment, the Responsible Official will prepare a draft FONSI in accordance with Section 11 of these Procedures.

(2) If the Council decides that the proposed action has a potentially significant impact, the Responsible Official will prepare a NOI to prepare an EIS, and begin the scoping process (40 CFR 1501.7).

(3) If the proposed action will occur in a wetland or in a 100-year floodplain, the Council will ensure an opportunity for public comment on a draft of the EA. If such a situation is present, the EA also will follow Section 13(h)(6) or (8) of these Procedures, as applicable.

Sec. 11. Finding of No Significant Impact

(a) *General.* A FONSI, as determined in accordance with Section 10 of these Procedures, is prepared for all Council Actions for which an EIS is not required and a CE does not apply.

(b) *Decision-making on the Proposed Action.* The Council may not commit itself or its resources to an action requiring an EA (but not an EIS) until a FONSI has been approved in accordance with this Section.

(c) *Staff Responsibilities.*

(1) When required, the Responsible Official will prepare a draft FONSI, which will include the EA, or a summary of it, and note any other related environmental documents.

(2) After complying with subsection (c)(1) of this Section, the Responsible Official will present the finding to the Council, which will approve the FONSI or decide an EIS will be prepared. The Council will authorize the Executive Director to sign FONSIs on behalf of the Council.

(d) *Representations of Mitigation.* There may be situations in which the Council relies on the implementation of certain measures to mitigate the significance of the proposed action's environmental impacts and bases its FONSI on the implementation of such measures. Under such situations, the Council will ensure that the mitigation measures are implemented. Where applicable, the Council will work with the applicant to include appropriate mitigation measures as a grant condition or as a contract provision. *See,* CEQ's Memorandum, ''Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact.''

(e) *Changes and Supplements.* If, prior to taking a final Council Action for which a FONSI was prepared, a significant change is made that would alter environmental impacts, or if significant new information becomes available regarding the environmental impacts, the Responsible Official, or applicant if applicable, will reevaluate the EA to determine whether supplementation is necessary. If the EA is not sufficient, the Responsible Official, or applicant if applicable, will supplement the existing EA or prepare a new EA to determine whether the changes or new information indicate the action may have a significant impact. If, because of the change or new information, the proposed action may have a significant impact, the Responsible Official, after consulting with the Council, will issue an NOI to prepare an EIS and begin the scoping process.

(f) *Contents of a FONSI (40 CFR 1508.13).* A FONSI may include the EA or it may incorporate the EA by reference, in accordance with CEQ's regulations. The FONSI may be combined with a Council decision-making document or it may be limited to determining that an EIS is not required. A FONSI should contain at least the following:

(1) Identification of the document as a FONSI;

(2) Identification of the Council;

(3) The title of the action;

(4) The preparer(s) of the document (*i.e.,* a list of those persons or organizations assisting in the preparation of the document);

(5) The month and year of preparation of the document;

(6) The name, title, address, and phone number of the person in the Council who should be contacted to supply further information about the document;

(7) A brief description of the proposed action;

(8) A brief description of, or reference to the page/section in the EA that discusses, the alternatives considered;

(9) A brief discussion of, or reference to the page/section in the EA that discusses, the environmental effects of the proposed action;

(10) Documentation of compliance with Sections 13(h)(6) and (8) of these Procedures, if the proposed action will occur in a wetland or in a 100-year floodplain;

(11) Reference to the page/section in the EA that provides the list of all Federal permits, licenses, and any other approvals or consultations which must be obtained in order to proceed with the proposal;

(12) A discussion of mitigation measures and environmental commitments that will be implemented, if applicable;

(13) A conclusion that the preferred alternative, and where appropriate any other reasonable alternative(s), has no potentially significant impact; and

(14) The Executive Director's signature indicating the approval of the Council as detailed in subsection (c) of this Section.

Sec. 12. Environmental Impact Statement

(a) *General.* The Council will prepare an EIS for Council Actions with potentially significantly impacts, as

determined in accordance with Section 10 of these Procedures.

(b) *Decision-making on the Proposed Action.* The Council may seek a waiver from the EPA of the time limit requirements of 40 CFR 1506.10 for compelling reasons of national policy.

(c) *Staff Responsibilities and Timing.*

(1) The Council, or applicant if applicable, should begin the process for preparation of an EIS as soon as it determines, or the EA performed in accordance with Section 10 of these Procedures discloses, that the proposed action has potentially significantly environmental impacts.

(2) If the Council is the Lead Agency or Joint Lead, the Responsible Official will issue an NOI and undertake the scoping process identified in 40 CFR 1501.7 as soon as the Council decides to prepare an EIS.

(3) In preparing a draft EIS, the Responsible Official, or applicant if applicable, will consider any scoping comments, develop the relevant analysis, and engage in applicable coordination in accordance with CEQ's regulations and Section 13 of these Procedures.

(4) The Responsible Official will submit the proposed draft EIS to the Council.

(5) A draft EIS may be formally released outside the Council only after approval by the Council.

(6) The Responsible Official will direct electronic distribution of the draft EIS as follows: EPA; all interested Council regional and state offices; all Federal agencies that have jurisdiction by law or special expertise with respect to the environmental impacts of the proposed action; tribal, state, and local government authorities; to the extent practicable and appropriate, public libraries in the area to be affected by the proposed action; and all other interested parties identified during the preparation of the draft EIS that have requested a copy. Hard copies will be made available upon request. Public notice will be designed to reach potentially interested or affected individuals, governments, and organizations. In addition, the draft EIS will be made available on the Council's Web site concurrently with the public comment period.

(7) The draft EIS will be made available for public and agency comment for at least 45 days from the date when EPA publishes its Notice of Availability (NOA) in the **Federal Register**. The time period for comments on the draft EIS will be specified in a prominent place in the NOA and on the coversheet of the draft EIS. Public comments must be provided to the person designated in the public notice.

(8) Where a public hearing is to be held on the draft EIS, as determined in accordance with Section 9(b)(6) of these Procedures, the draft EIS will be made available to the public at least 15 days prior to the hearing (*see* 40 CFR 1506.6).

(9) The Responsible Official will consider substantive comments received on the draft EIS. If a final EIS is not submitted to the Council for approval within three years from the date of the draft EIS circulation, the Responsible Official or applicant, as appropriate, will prepare a written reevaluation of the draft to determine whether the draft EIS warrants supplementation due to changed circumstances or new information. If so, a supplement to the draft EIS or a new draft EIS will be prepared and circulated as required by subsections (c)(1) through (9) of this Section. If the draft EIS does not warrant supplementation, the Responsible Official will prepare the final EIS.

(10) The Responsible Official will submit the final EIS and draft ROD to the Council for a decision (*see* Section 15 of these Procedures).

(11) The ROD will become final upon signature of the Executive Director. The Council will delegate authority for signature of RODs to the Executive Director, provided such RODs are first approved by the Council.

(12) The Responsible Official will direct electronic distribution of the final EIS and ROD as follows: EPA; all interested Council regional and state offices; state, tribal, and local authorities; to the extent practicable, public libraries in the area affected by the proposed action; Federal agencies and other parties who commented substantively on the draft EIS; and all agencies, organizations, or individuals that have requested a copy. Hard copies will be provided upon request. The final EIS and ROD will be posted on the Council's Web site and notice will go out to interested parties who have asked to receive notice.

(13) If major steps toward implementation of the proposed action have not commenced, or a major decision point for actions implemented in stages has not occurred, within three years from the date of publication of the final EIS, the Responsible Official will prepare a written evaluation of whether the final EIS warrants supplementation. The Responsible Official will submit this evaluation to the Council.

(d) *Changes and Supplements.* Where a draft or final EIS has been prepared for a proposed Council Action, and substantial changes to the proposal are made or significant new circumstances or information comes to light that is relevant to environmental concerns and bears on the proposed action or its impacts, the Responsible Official, or applicant if appropriate, will prepare a supplement to the original draft or final EIS. Such a supplement will be processed in accordance with subsections (c)(3) through (13) of this Section. The Responsible Official will determine whether, and to what extent, any portion of the proposed action is unaffected by the planning change or new information. Where appropriate, Council decision-making on portions of the proposed action having utility independent of the affected portion may go forward regardless of the concurrent processing of the supplement, so long as the EIS and ROD are completed for those actions having independent utility and the NOI for the supplemental NEPA analysis and documentation articulates the basis for determining independent utility.

(e) *Representations of Mitigation.* Where a final EIS has represented that certain measures will be taken to mitigate the adverse environmental impacts of an action, the Council will include the mitigation measures, and any appropriate monitoring wherever appropriate, as a condition of funding or, where appropriate, contract provisions. If necessary, the Council may take steps to enforce implementation of such mitigation measures.

(f) *Contents of an EIS.* The contents of both a draft and final EIS are detailed in the CEQ regulations and Section 13 of these Procedures. Recognizing that CEQ regulations allow the combination of NEPA documents with other agency documents and that the Council may find it practical to do so, format and page limitations on EIS's should follow those set out in 40 CFR 1502.7 and 1502.10, to the extent practicable. An EIS should avoid extraneous data and discussion. The text of an EIS should be written in plain language, comprehensible to a lay person. Technical materials should be placed into appendices, produced as stand-alone reports available on the Council's Web site, or made available in hard copy by request. Graphics and drawings, maps, and photographs may be used as necessary to clarify the proposal and its alternatives. The sources of all data used in an EIS will be noted or referenced in the EIS. Previous NEPA analyses should be used, where available, to ensure efficient preparation of an EIS. As appropriate, previous NEPA analyses can be tiered to, incorporated by reference, or may be adopted into the document consistent with CEQ's

regulations and the process detailed above in Section 10(c) of these Procedures. *See* 40 CFR 1502.20, 1502.21, and 1508.28.

Sec. 13. Contents of an Environmental Impact Statement

To the fullest extent possible, the Responsible Official, Lead Agency, or applicant, will concurrently draft the EIS while seeking compliance with other applicable environmental requirements.

In addition to the requirements of 40 CFR 1502.10 through 1502.18, and subject to the general provisions of Section 12 of these Procedures, an EIS should contain the following:

(a) Identification of the Council.

(b) The Responsible Official who prepared or oversaw preparation of the document.

(c) The month and year the document was prepared.

(d) In a draft EIS, the name, title, and address of the person in the Council to whom comments on the document should be addressed, and the date by which comments must be received to be considered. Typically this will be the Responsible Official.

(e) A list of those persons, organizations, or agencies assisting the Council in the preparation of the document.

(f) In a final EIS, a list of all agencies, organizations, or persons from whom comments were received on the draft EIS.

(g) A short, introductory description of the environment likely to be affected by the proposed action, including a list of all states, counties, and local areas likely to be affected.

(h) Consistent with the description provided in 40 CFR 1502.16, an analysis of the environmental consequences of the proposed action. The following areas should be considered in the environmental analysis, although their discussion—and the extent of that discussion—in the EIS is dependent on their relevance:

(1) Air quality. There should be an assessment of the consistency of the proposal and alternatives with Federal and state plans for the attainment and maintenance of air quality standards.

(2) Water quality. There should be an assessment of the consistency of the alternatives with Federal and state standards concerning drinking water, storm sewer drainage, sedimentation control, and non-point source discharges such as runoff from construction operations. The need for any permits under sections 402 and 404 of the Clean Water Act (33 U.S.C. 1342 and 1344) and Section 10 of the Rivers and Harbors Act should also be assessed.

(3) Noise. The alternatives should be assessed with respect to applicable Federal, state, and local noise standards.

(4) Solid waste disposal. The alternatives should be assessed with respect to state and local standards for sanitary landfill and solid waste disposal.

(5) Natural ecological systems. The EIS should assess both short-term (*e.g.,* construction period) and long-term impacts of the alternatives on wildlife, vegetation, and ecological processes in the affected environment.

(6) Wetlands. In accordance with Executive Order 11990, the EIS should determine whether any of the alternatives will be located in a wetland area. If the proposed action is located in a wetland area, the final EIS should document a determination by the Responsible Official that there is no practicable alternative to such location, and that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use.

(7) Protected species. If applicable, the EIS will discuss the impacts of the alternatives on species that are listed or proposed for listing as threatened or endangered under the Endangered Species Act, or the proposed or designated critical habitats for such species; protected species under the Marine Mammal Protection Act; and birds protected under the Migratory Bird Treaty Act. In such cases, the EIS should discuss any consultation or coordination, as appropriate, with the appropriate Federal agency.

(8) Flood hazard evaluation and floodplain management. Under E.O. 11988, Federal agencies proposing activities in a 100-year floodplain are directed to consider alternatives to avoid adverse effects and incompatible development in the floodplain. If no practicable alternatives exist to siting an action in the floodplain, the EIS should discuss how the action will be designed to minimize potential harm to or within the floodplain.

(9) Coastal zone management. If applicable, the EIS should discuss to what extent the alternatives are consistent with approved coastal zone management programs in affected states, as required by section 307(c)(2) of the Coastal Zone Management Act, 16 U.S.C. 1456(c)(2).

(10) Essential Fish Habitat (EFH). If applicable, the EIS will identify any EFH that could be impacted by the alternatives. Actions that could have the potential to affect EFH require consultation with the National Oceanic and Atmospheric Administration under the Magnuson-Stevens Act to evaluate potential impacts to designated EFH and minimize these impacts. The final EIS should document these consultations.

(11) Use of natural resources other than energy, such as water, minerals, or timber.

(12) Aesthetic environment and scenic resources. The EIS should identify any significant aesthetic changes likely to occur in the natural landscape and in the developed environment.

(13) Land use. The EIS should assess the impacts of each alternative on local land use controls and comprehensive regional planning, as well as on development within the affected environment, including, where applicable, other proposed federal actions in the area.

(14) Socioeconomic environment. The EIS should assess the number and kinds of available jobs likely to be affected by the alternatives. For each alternative considered, the EIS should also discuss the potential for community disruption or cohesion, the possibility of demographic shifts, and impacts on local government services and revenues.

(15) Public health and public safety. The EIS should assess potential environmental impacts relevant to public health and safety. For example, the EIS should assess the transportation or use of any hazardous materials that may be involved in the alternatives, and the level of protection afforded residents of the affected environment from construction period and long-term operations associated with the alternatives.

(16) Recreation areas and opportunities. The EIS should assess the impacts of the alternatives on recreational activities, including impacts on non-site-specific activities, such as hiking and bicycling, and impacts on non-activity-specific sites such as those designated ''open space.''

(17) Environmental Justice. The EIS should address environmental justice considerations as required by Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.''

(18) Sites of historical, archeological, architectural, or cultural significance. In accordance with Section 106 of the National Historic Preservation Act, 16 U.S.C. 470(f), and its implementing regulations, 36 CFR part 800, the EIS should identify all properties included in or eligible for inclusion in the National Register of Historic Places that may be affected by the preferred alternative and other reasonable

alternatives. The EIS also should include documentation of the status of consultation with the appropriate State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO). The EIS should discuss the criteria of adverse effect on historic properties (36 CFR 800.5) with regard to each alternative. The final EIS should include documentation of the status of consultation with the appropriate SHPO(s) or THPO(s). In the event that the Responsible Official, in consultation with the SHPO or THPO, finds that a proposed action will have an adverse effect on such a site, the final EIS also should include documentation of the status of subsequent consultation with the Advisory Council on Historic Preservation.

(19) Climate Change. The EIS should estimate the greenhouse gas emissions associated with the alternatives, as appropriate, and consider mitigation measures. The EIS should also consider the effects that climate change may have on the proposed alternatives, and consider adaptation alternatives, where appropriate.

(20) Hazardous, radioactive, and toxic waste. The EIS should assess the consistency of the alternatives with Federal and state requirements concerning hazardous, radioactive, and toxic waste management in the program or project area.

(i) A description of the impacts of the alternatives and a detailed description of mitigation measures available or planned to avoid, minimize, rectify, reduce over time, or compensate each adverse impact, if not included in the alternatives. Impacts and mitigation measures should be identified in a table as long-term and/or short-term as applicable. This part of the EIS should also include a summary of any irreversible or irretrievable commitments of resources that would be likely to result from the alternatives.

(j) A brief discussion of the relationship between local short-term uses of the environment affected by the alternatives, and the maintenance and enhancement of long-term productivity.

(k) A compilation of all applicable Federal, state, and tribal permits, licenses, and approvals which are required before the proposed action may commence. The final EIS should document compliance with the requirements of all applicable Federal environmental laws, regulations, Executive Orders, and policies. If compliance is not possible by the time of final EIS issuance, the final EIS should discuss the status of compliance and should specify that all applicable environmental compliance requirements must be addressed prior to project implementation.

(l) The final EIS should provide a synopsis or compilation of substantive comments received on the draft EIS, whether made in writing or orally at a public hearing, and responses to comments. The response to those comments should be consistent with the procedures set forth in CEQ's regulations (40 CFR 1503.4). Comments may be collected and summarized, except for comments by other Federal agencies which should be provided in total and where otherwise required by Federal law or regulation. Before the EIS is put into final form, every effort should be made to resolve significant issues with the Federal or state agencies administering Federal laws. The final EIS will describe such issues, consultations and efforts to resolve such issues, and provide an explanation of why any remaining issues have not been resolved.

Sec. 14. Programmatic Environmental Review

(a) A programmatic NEPA analysis is used to assess the environmental impacts of a proposed action that is broad in reach; analysis of subsequent actions that fall within the program may be tiered to such analyses, as described in the CEQ regulations (40 CFR 1502.20 and 1508.28). A programmatic analysis may be used for proposed policies, plans, and programs that address a given geographic area, common environmental impacts to a class of actions, or activities that are not location-specific.

(b) Programmatic NEPA analyses may take the form of a programmatic environmental assessment or environmental impact statement.

(c) Programmatic NEPA analyses may be used when there are limitations on available information or uncertainty regarding the timing, location, and environmental impacts of subsequent implementing actions.

(d) A programmatic NEPA analysis may also provide the basis for decisions regarding proposed projects prior to the Council's consideration of the impacts for specific projects (*e.g.,* applicable mitigation measures, identifying alternatives). This analysis can also programmatically address potential cumulative and indirect effects. This provides an opportunity to tier the consideration of the subsequent action to the programmatic analysis, avoiding duplicative efforts.

(e) The document should identify program-level alternatives and assess the broad program-wide environmental impacts. To the extent information is available, it should also identify the reasonable alternatives to and potential impacts of project-specific Council Actions within the program, and the impacts on resources.

(f) Where a programmatic environmental document has been prepared, the Responsible Official may examine each project-level action encompassed by the programmatic document to determine whether the project-level action has been sufficiently analyzed in the programmatic document to determine whether and what additional analysis is appropriate.

(g) For any project-level action, the Council, or project applicant, will prepare additional environmental documentation as required by these Procedures, unless the documentation prepared for the programmatic action satisfies the requirements of these Procedures. Project-level documentation should reference and summarize the programmatic document and limit the discussion to the unique alternatives to, impacts of, and mitigation for the project.

(h) An environmental assessment prepared in support of an individual proposed action can be tiered to a programmatic or other broader-scope environmental impact statement. An environmental assessment may be prepared, and a finding of no significant impact reached, for a proposed action with significant effects, whether direct, indirect, or cumulative, if the environmental assessment is tiered to a broader environmental impact statement which fully analyzed those significant effects. Tiering to the programmatic or broader-scope environmental impact statement would allow the preparation of an environmental assessment and a finding of no significant impact for the individual proposed action, so long as any previously unanalyzed effects are not significant. A finding of no significant impact other than those already disclosed and analyzed in the environmental impact statement to which the environmental assessment is tiered may also be called a ''finding of no new significant impact.''

Sec. 15. Record of Decision

(a) *General.* The Responsible Official will prepare a draft ROD when the Council is prepared to make a final decision on the proposed action. The timing of the agency's decision will follow the requirements of 40 CFR 1506.10. The draft ROD may be processed concurrently with the final EIS. If the draft ROD is processed subsequently, it will follow the same approval process as a final EIS.

(b) *Contents.* The ROD will include a description of the proposed action and the environmental information specified in 40 CFR 1505.2. A ROD may be conditioned upon the approval of permits, licenses, and/or approvals that were not complete prior to issuance of the ROD.

(c) *Changes.* If the Council wishes to take an action not identified as the preferred alternative in the final EIS, or proposes to make substantial changes to the findings discussed in a draft ROD, the Council will revise the ROD and process it internally in the same manner as EIS approval, in accordance with Section 12(c) of these Procedures.

Will D. Spoon,

Program Analyst.

[FR Doc. 2015–00681 Filed 1–15–15; 8:45 am]

BILLING CODE 6560–58–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting

TIME AND DATE: January 28, 2015, 6:00 p.m.–9:00 p.m. PST.

PLACE: Richmond City Hall, 450 Civic Center Plaza, Richmond, CA 94804.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Chemical Safety and Hazard Investigation Board (CSB) will convene a public meeting on January 28, 2015, starting at 6:00 p.m. PST at the Richmond City Hall, 450 Civic Center Plaza, Richmond, CA 94804. At the public meeting, the Board will consider and vote on the final report of the CSB's investigation into the August 6, 2012, fire at the Chevron-Richmond refinery that endangered 19 workers and sent more than 15,000 local residents to seek medical attention.

The public meeting is intended to provide the affected community and interested stakeholders with findings, conclusions and recommendations resulting from the CSB's investigation into the Chevron incident.

Following the staff presentation, the Board will hear comments from the public. All staff presentations are preliminary and are intended solely to allow the Board to consider in a public forum the issues and factors involved in the case. No factual analyses, conclusions, or findings presented by staff should be considered final. At the conclusion of the staff presentation, the Board may vote on the final product(s).

Lastly, the Board may also consider such other items of business as determined by the Chairperson.

Additional Information

The meeting is free and open to the public. If you require a translator or interpreter, please notify the individual listed below as the ''Contact Person for Further Information,'' at least five business days prior to the meeting.

The CSB is an independent federal agency charged with investigating accidents and hazards that result, or may result, in the catastrophic release of extremely hazardous substances. The agency's Board Members are appointed by the President and confirmed by the Senate. CSB investigations look into all aspects of chemical accidents and hazards, including physical causes such as equipment failure as well as inadequacies in regulations, industry standards, and safety management systems.

Public Comment

Members of the public are invited to make brief statements to the Board at the conclusion of the staff presentation. The time provided for public statements will depend upon the number of people who wish to speak. Speakers should assume that their presentations will be limited to five minutes or less, but commenters may submit written statements for the record.

Contact Person for Further Information

Hillary J. Cohen, Communications Manager, *hillary.cohen@csb.gov* or (202) 446–8094. General information about the CSB can be found on the agency Web site at: *www.csb.gov.*

Dated: January 14, 2015.

Daniel M. Horowitz,

Managing Director.

[FR Doc. 2015–00765 Filed 1–14–15; 4:15 pm]

BILLING CODE 6350–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Wyoming State Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that an orientation and planning meeting of the Wyoming State Advisory Committee to the Commission will convene at 11:00 a.m. (MDT) on Saturday, February 7, 2015, in the Sage Room, Laramie County Library, 2200 Pioneer Avenue, Cheyenne, WY 82001. The purpose of the orientation meeting is to inform the newly appointed Committee members about the rules of operation of federal advisory committees and to select additional officers, as determined by the Committee. The purpose of the planning meeting is to discuss potential topics that the Committee may wish to study.

Persons who desire additional information may contact the Rocky Mountain Regional Office, U.S. Commission on Civil Rights, 1961 Stout Street, Suite 13–201, Denver, CO 80294, phone 303–866–1040 and fax 303–866–1050, or email to Evelyn Bohor at *ebohor@usccr.gov.*

Persons needing accessibility services should contact the Rocky Mountain Regional Office at least 10 working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Rocky Mountain Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Rocky Mountain Regional Office at the above phone number, email or street address.

The meeting will be conducted pursuant to the provision of the rules and regulations of the Commission and FACA.

Dated: January 12, 2015.

David Mussatt,

Chief, Regional Programs Coordination Unit.

[FR Doc. 2015–00582 Filed 1–15–15; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Mexico Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that an orientation and planning meeting of the New Mexico Advisory Committee to the Commission will convene at 1:00 p.m. (MDT) on Tuesday, February 10, 2015, in the Wells Fargo Board Room, Albuquerque Hispano Chamber of commerce, 1309 Fourth Street NW., Albuquerque, NM 87102. The purpose of the orientation meeting is to inform the newly appointed Committee members about the rules of operation of federal advisory committees and to select additional officers, as determined by the Committee. The purpose of the planning meeting is to discuss potential topics that the Committee may wish to study.

Persons who desire additional information may contact the Rocky Mountain Regional Office, U.S. Commission on Civil Rights, 1961 Stout Street, Suite 13–201, Denver, CO 80294, phone 303–866–1040 and fax 303–866–1050, or email to Evelyn Bohor at *ebohor@usccr.gov.*

Persons needing accessibility services should contact the Rocky Mountain Regional Office at least 10 working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Rocky Mountain Regional Office, as they become available, both before and after the meeting. Persons interested in the word of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Rocky Mountain Regional Office at the above phone number, email or street address.

The meeting will be conducted pursuant to the provision of the rules and regulations of the Commission and FACA.

Dated January 12, 2015.

David Mussatt,

Chief, Regional Programs Coordination Unit.

[FR Doc. 2015–00581 Filed 1–15–15; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Ad*ministration (NOAA).*

Title: Alaska Rockfish Program: Permits and Reports.

OMB Control Number: 0648–0545.

Form Number(s): None.

Type of Request: Regular (revision and extension of a currently approved information collection).

Number of Respondents: 9.

Average Hours per Response: Application for Rockfish Cooperative Fishing Quota (CQ), 2 hours; Application for Inter-Cooperative Transfer of Rockfish CQ and Rockfish Volume & Value Report, 30 minutes; Annual Rockfish Cooperative Report, 40 hours; Vessel Check-in/Check-out & Termination Report and Rockfish Fee Payment, 10 minutes each.

Burden Hours: 498.

Needs and Uses: This request is for revision and extension of a currently approved information collection.

The Rockfish Program determines the access and allocation of the Central Gulf of Alaska (GOA) rockfish fisheries and associated halibut prohibited species catch (PSC), also known as the rights of access to the fishery. Cooperatives were established to receive exclusive harvest privileges for rockfish primary and secondary species. These resource allocations are used to assign the available resources in an economic way. In the case of halibut, a specific amount of halibut mortality is assigned to the cooperative, because halibut is often caught incidentally with rockfish.

The rockfish fisheries are conducted in Federal waters near Kodiak, Alaska, primarily by trawl vessels, and to a lesser extent by longline vessels. The Rockfish Program allocates harvest privileges to holders of License Limitation Program (LLP) licenses with a history of Central GOA rockfish landings associated with those licenses.

Revision: Two forms that are no longer applicable have been removed, and one has been added.

Affected Public: Business or other for-profit organizations.

Frequency: Annually and on occasion.

Respondent's Obligation: Required to obtain or retain benefits.

This information collection request may be viewed at *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: January 13, 2015.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2015–00631 Filed 1–15–15; 8:45 am]

BILLING CODE 3510–22–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: Highly Migratory Species Vessel Logbooks and Cost-Earnings Data Reports.

OMB Control Number: 0648–0371.

Form Number(s): NOAA 88–191.

Type of Request: Regular (extension of a currently approved information collection).

Number of Respondents: 10,216.

Average Hours per Response: Cost/earnings summaries attached to logbook reports, 10 minutes; annual expenditure forms, 30 minutes; logbook catch reports, 12 minutes; negative logbook catch reports, 2 minutes.

Burden Hours: 36,189.

Needs and Uses: This request is for extension of a currently approved information collection.

Under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), the National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) is responsible for management of the nation's marine fisheries. In addition, NMFS must comply with the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971 *et seq.*), which implements the International Commission for the Conservation of Atlantic Tunas (ICCAT) recommendations.

NMFS collects information via vessel logbooks to monitor the U.S. catch of Atlantic swordfish, sharks, billfish, and tunas in relation to the quotas, thereby ensuring that the United States complies with its domestic and international obligations. HMS logbooks are verified using observer data that is collected under OMB Control No. 0648–0593 (Observer Programs' Information That Can Be Gathered Only Through Questions). In addition to HMS fisheries, the HMS logbook is also used to report catches of dolphin and wahoo by commercial and charter/headboat fisheries. The HMS logbooks collect data on incidentally-caught species, including sea turtles, which is necessary to evaluate the fisheries in terms of bycatch and encounters with protected species. For both directed and incidentally caught species, the information supplied through vessel logbooks also provides the catch and effort data on a per-set or per-trip level of resolution.

These data are necessary to assess the status of highly migratory species, dolphin, and wahoo in each fishery. International stock assessments for tunas, swordfish, billfish, and some species of sharks are conducted and presented to the ICCAT periodically and provide, in part, the basis for ICCAT management recommendations which

are binding on member nations. Domestic stock assessments for most species of sharks and for dolphin and wahoo are often used as the basis of managing these species.

Supplementary information on fishing costs and earnings has been collected via this vessel logbook program. This economic information enables NMFS to assess the economic impacts of regulatory programs on small businesses and fishing communities, consistent with the National Environmental Policy Act (NEPA), Executive Order 12866, the Regulatory Flexibility Act, and other domestic laws.

Affected Public: Business or other for-profit organizations; individuals or households.

Frequency: Annually and per trip.

Respondent's Obligation: Mandatory.

This information collection request may be viewed at *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: January 13, 2015.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2015–00606 Filed 1–15–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–501]

Welded Carbon Steel Standard Pipe and Tube Products From Turkey: Notice of Correction to the Final Results of Antidumping Duty Administrative Review; 2012–2013

AGENCY: Enforcement and Compliance, International Trade Administration, Commerce.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert James, AD/CVD Operations, Office VI, Enforcement and Compliance International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–2924 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION: On December 1, 2014, the Department of Commerce (the Department) published the final results of the 2012–2013 administrative review of the antidumping duty order on welded carbon steel standard pipe and tube products from Turkey.[1] The period of review (POR) is May 1, 2012, through April 30, 2013. In the *Final Results,* the Department misspelled the name of a company on which the Department had initiated a review,[2] but for which record evidence does not exist under that spelling. Specifically, the Department initiated a review of Toscelik Profil ve Sac Endustisi A.S. However, information later placed on the record indicates that no company exists with this spelling (*i.e.,* spelled without an ''r'' in the final word of the name).[3] While we intended to include this company in the list of companies that had made no shipments during the POR, we mistakenly listed the company as Toscelik Profil ve Sac Endustrisi A.S. (*i.e.,* with an ''r'' in the last full word of the name). In the list of companies that had no shipments, the Department intended to spell this company name as Toscelik Profil ve Sac Endustisi A.S. (*i.e.,* without an ''r'' in the last full word of the name).

This correction to the final results of administrative review is issued and published in accordance with sections 751(h) and 777(i) of the Tariff Act of 1930, as amended.

Dated: January 9, 2015.

Gary Taverman,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2015–00646 Filed 1–15–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review; 2012–2013

AGENCY: Enforcement and Compliance, International Trade Administration, Commerce.

SUMMARY: The Department of Commerce (''the Department'') published the *Preliminary Results* of the tenth administrative review of the antidumping duty order on certain frozen fish fillets (''fish fillets'') from the Socialist Republic of Vietnam (''Vietnam'') on July 11, 2014.[1] We gave interested parties an opportunity to comment on the *Preliminary Results.* Based upon our analysis of the comments and information received, we made changes to the margin calculations for these final results. The final dumping margins are listed below in the ''Final Results of the Administrative Review'' section of this notice. The period of review (''POR'') is August 1, 2012, through July 31, 2013.

DATES: *Effective* January 16, 2015.

FOR FURTHER INFORMATION CONTACT: Paul Walker or Steven Hampton, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone 202–482–0413 or 202–482–0116, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the *Preliminary Results* on July 11, 2014.[2] Between September 19 and October 2, 2014, interested parties submitted case and rebuttal briefs. On October 22, 2014, the Department extended the deadline for the final results to December 11, 2014.[3] On November 12, 2014, the Department held a closed hearing and a public hearing limited to issues raised in the case and rebuttal briefs. On November 19, 2014, the Department fully extended the deadline for the final results to January 7, 2015.[4]

[1] *See Welded Carbon Steel Standard Pipe and Tube Products From Turkey: Final Results of Antidumping Duty Administrative Review; 2012–2013,* 79 FR 71087 (December 1, 2014) (*Final Results*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 78 FR 38924 (June 28, 2013).

[3] *See* October 30, 2013, submission by Toscelik Profil ve Sac Endustrisi A.S. at 3. Note that the company that made this submission, and that spells its name with an ''r'' in the final full word of its name, is not the company whose name was misspelled in the *Final Results.*

[1] *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results of the Antidumping Duty Administrative Review; 2012–2013,* 79 FR 40059 (July 11, 2014) (''*Preliminary Results*''), and accompanying Preliminary Decision Memorandum.

[2] *See Preliminary Results.*

[3] *See* Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through James C. Doyle, Director, Office V, Antidumping and Countervailing Duty Operations from Steven Hampton, International Trade Compliance Analyst, Office V, Antidumping and Countervailing Duty Operations regarding Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Deadline for Final Results of Antidumping Duty Administrative Review, dated October 22, 2014.

[4] *See* Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through James C. Doyle, Director, Office V, Antidumping and Countervailing Duty Operations from Steven Hampton, International Trade Compliance Analyst, Office V, Antidumping and Countervailing Duty Operations regarding Certain Frozen Fish Fillets

Scope of the Order

The product covered by the order is frozen fish fillets, including regular, shank, and strip fillets and portions thereof, whether or not breaded or marinated, of the species *Pangasius Bocourti, Pangasius Hypophthalmus* (also known as *Pangasius Pangasius*) and *Pangasius Micronemus.* These products are classifiable under tariff article code 0304.62.0020 (Frozen Fish Fillets of the species *Pangasius,* including basa and tra), and may enter under tariff article codes 0305.59.0000, 1604.19.2100, 1604.19.3100, 1604.19.4100, 1604.19.5100, 1604.19.6100 and 1604.19.8100 of the Harmonized Tariff Schedule of the United States (''HTSUS'').[5] Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.[6]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this review are addressed in the Issues and Decision Memorandum. A list of the issues which parties raised is attached to this notice as an appendix. The Issues and Decision Memorandum is a public document and is on file in the Central Records Unit (''CRU''), Room 7046 of the main Department of Commerce building, as well as electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''ACCESS'').[7] ACCESS is available to registered users at *http://access.trade.gov* and in the CRU. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* and for the reasons explained in the Issues and Decision Memorandum, we revised the margin calculation for HVG.[8] The Surrogate Values Memo contains further explanation of our changes to the surrogate values selected for HVG's factors of production.[9] The Department also has revised the separate rate status for Can Tho Import-Export Joint Stock Company (''CASEAMEX'').[10]

Final Determination of No Shipments

In the *Preliminary Results,* the Department preliminarily determined that An Giang Agriculture and Food Import-Export Joint Stock Company (''Afiex''); Golden Quality Seafood Corporation (''Golden Quality''); Hoa Phat Seafood Import-Export and Processing J.S.C. (''Hoa Phat''); and To Chau Joint Stock Company (''To Chau'') did not have any reviewable transactions during the POR.[11] Consistent with the Department's refinement to its assessment practice in non-market economy (''NME'') cases, we completed the review with respect to the above-named companies.[12] Based on the certifications submitted by Afiex, Golden Quality, Hoa Phat, and To Chau, and our analysis of CBP information, we continue to determine that these companies did not have any reviewable transactions during the POR. As noted in the ''Assessment Rates'' section below, the Department intends to issue appropriate instructions to CBP for the above-named companies based on the final results of the review.

Application of Adverse Facts Available and the Rate Assigned to the Vietnam-Wide Entity

As stated in the *Preliminary Results,* the Vietnam-wide entity, which includes Anvifish Joint Stock Company (''Anvifish''), failed to cooperate to the best of its ability in providing requested information because it withheld requested information, failed to provide the information in a timely manner and in the form requested, and significantly impeded this proceeding.[13] The Department has not received any information since the *Preliminary Results* that calls into question that earlier determination. Accordingly, pursuant to sections 776(a)(2)(A), (B), and (C) and section 776(b) of the Tariff Act of 1930, as amended (''the Act''), we continue to find it appropriate to assign the Vietnam-wide entity a rate based on total adverse facts available (''AFA'').

Final Results of the Review

The dumping margins for the final results of this administrative review are as follows:

from the Socialist Republic of Vietnam: Second Extension of Deadline for Final Results of Antidumping Duty Administrative Review, dated November 19, 2014.

[5] Until June 30, 2004 these products were classifiable under HTSUS 0304.20.6030, 0304.20.6096, 0304.20.6043 and 0304.20.6057. From July 1, 2004 until December 31, 2006 these products were classifiable under HTSUS 0304.20.6033. From January 1, 2007 until December 31, 2011 these products were classifiable under HTSUS 0304.29.6033. On March 2, 2011 the Department added two HTSUS numbers at the request of U.S. Customs and Border Protection (''CBP'') that the subject merchandise may enter under: 1604.19.2000 and 1604.19.3000, which were changed to 1604.19.2100 and 1604.19.3100 on January 1, 2012. On January 1, 2012 the Department added the following HTSUS numbers at the request of CBP: 0304.62.0020, 0305.59.0000, 1604.19.4100, 1604.19.5100, 1604.19.6100 and 1604.19.8100.

[6] For a complete description of the scope of the order, *see* Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, regarding Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Issues and Decision Memorandum for the Final Results of the Tenth Antidumping Duty Administrative Review; 2012–2013, at 2–3 (''Issues and Decision Memorandum''), dated concurrently with and hereby adopted by this notice.

[7] On November 24, 2014, Enforcement and Compliance changed the name of its centralized electronic service system to ACCESS. The Web site location was changed from *http://iaaccess.trade.gov* to *http://access.trade.gov.* The Final Rule changing the references to the centralized electronic service system to ACCESS in the Department's regulations can be found at 79 FR 69046 (November 20, 2014).

[8] The Hung Vuong Group, or ''HVG,'' includes: An Giang Fisheries Import & Export Joint Stock Company, Asia Pangasius Company Limited, Europe Joint Stock Company, Hung Vuong Joint Stock Company, Hung Vuong Mascato Company Limited, Hung Vuong—Vinh Long Co., Ltd., and Hung Vuong—Sa Dec Co., Ltd. *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Review;* 2011–2012, 79 FR 19053 (April 7, 2014) and accompanying Issues and Decision Memorandum at 3.

[9] *See* Memorandum to the File, through Scot T. Fullerton, Program Manager, Office V, Enforcement & Compliance, from Paul Walker, Case Analyst, regarding Tenth Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Surrogate Values for the Final Results, dated concurrently with and hereby adopted by this notice.

[10] *See* accompanying company-specific analysis memoranda, dated concurrently with and hereby adopted by this notice.

[11] *See Preliminary Results,* 79 FR at 40060.

[12] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65694–65695 (October 24, 2011).

[13] *See* Preliminary Decision Memorandum, at 8–12.

Exporter	Margins (dollars/ kilogram) [14]
Hung Vuong Group [15]	0.97
An Giang Agriculture and Food Import-Export Joint Stock Company	(*)
Asia Commerce Fisheries Joint Stock Company	0.97
Binh An Seafood Joint Stock Company	0.97
Cadovimex II Seafood Import-Export and Processing Joint Stock Company	0.97
C.P. Vietnam Corporation	0.97
Cuu Long Fish Joint Stock Company	0.97
Dai Thanh Seafoods Company Limited	0.97
Fatifish Company Limited	0.97
GODACO Seafood Joint Stock Company	0.97
Golden Quality Seafood Corporation	(*)
Hiep Thanh Seafood Joint Stock Company	0.97
Hoang Long Seafood Processing Company Limited	0.97
Hoa Phat Seafood Import-Export and Processing J.S.C.	(*)
International Development and Investment Corporation	0.97
Nam Viet Corporation	0.97
Ngoc Ha Co., Ltd. Foods Processing and Trading	0.97
NTSF Seafoods Joint Stock Company	0.97
Quang Minh Seafood Company Limited	0.97
QVD Food Company Ltd. [16]	0.97
Saigon-Mekong Fishery Co., Ltd.	0.97
Southern Fisheries Industries Company Ltd.	0.97
TG Fishery Holdings Corporation	0.97
Thien Ma Seafood Company Limited	0.97
Thuan An Production Trading and Services Co., Ltd.	0.97
To Chau Joint Stock Company	(*)
Vinh Quang Fisheries Joint-Stock Company	0.97
Vietnam-Wide Rate [17]	2.39

* No Shipments or sales in this review, and the firm has an individual rate from a prior segment of the proceeding in which the firm had shipments or sales.

The Department will disclose calculations performed for these final results to the parties within five days of the date of publication of this notice, in accordance with section 351.224(b) of the Department's regulations.

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this administrative review.

For assessment purposes, we calculated importer (or customer)-specific assessment rates for merchandise subject to this review. We will continue to direct CBP to assess importer specific assessment rates based on the resulting per-unit (*i.e.,* per kg) rates by the weight in kgs of each entry of the subject merchandise during the POR. Specifically, we calculated importer specific duty assessment rates on a per-unit rate basis by dividing the total dumping margins (calculated as the difference between normal value and export price, or constructed export price) for each importer by the total sales quantity of subject merchandise sold to that importer during the POR. If an importer (or customer)-specific assessment rate is de minimis (*i.e.,* less than 0.50 percent), the Department will instruct CBP to assess that importer (or customer's) entries of subject merchandise without regard to antidumping duties, in accordance with 19 CFR 351.106(c)(2).

The Department determines that Afiex, Golden Quality, Hoa Phat, and To Chau did not have any reviewable transactions during the POR. As a result, any suspended entries that entered under these exporter's case numbers (*i.e.,* at that exporter's rate) will be liquidated at the Vietnam-wide rate.[18]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be the rate established in the final results of review (except, if the rate is zero or *de minimis, i.e.,* less than 0.5 percent, a zero cash deposit rate will be required for that company); (2) for

[14] In the third administrative review of this order, the Department determined that it would calculate per-unit assessment and cash deposit rates for all future reviews. *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and Partial Rescission,* 73 FR 15479 (March 24, 2008).

[15] This rate is applicable to the Hung Vuong Group, which includes: An Giang Fisheries Import and Export Joint Stock Company, Asia Pangasius Company Limited, Europe Joint Stock Company, Hung Vuong Joint Stock Company, Hung Vuong Mascato Company Limited, Hung Vuong—Vinh Long Co., Ltd., and Hung Vuong—Sa Dec Co., Ltd.

[16] This rate is also applicable to QVD Dong Thap Food Co., Ltd. (''Dong Thap'') and Thuan Hung Co., Ltd. (''THUFICO''). In the second review of this order, the Department found QVD, Dong Thap and THUFICO to be a single entity, and because there has been no evidence submitted on the record of this review that calls this determination into question, we continue to find these companies to be part of a single entity. Therefore, we will assign this rate to the companies in the single entity. *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty Administrative Review,* 71 FR 53387 (September 11, 2006).

[17] The Vietnam-wide rate also includes the following companies which are under review, but which did not submit a separate rate application or certification: East Sea Seafoods Limited Liability Company and Anvifish Joint Stock Company. The Vietnam-wide rate also includes Can Tho Import-Export Joint Stock Company.

[18] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011); *see also* Preliminary Decision Memorandum, at 4–5.

previously investigated or reviewed Vietnamese and non-Vietnamese exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all Vietnamese exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the Vietnam-wide rate of $2.39 per kg; and (4) for all non-Vietnamese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Vietnamese exporters that supplied that non-Vietnamese exporter. The deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers Regarding the Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these administrative reviews and notice in accordance with sections 751(a)(l) and 777(i) of the Act.

Dated: January 7, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Final Decision Memorandum

General Issues

I. Surrogate Country
  A. Economic Comparability
  B. Significant Producer of Comparable Merchandise
  C. Data Considerations
II. Surrogate Value for Whole, Live Fish
III. Fingerlings
  A. Surrogate Value for Fingerlings
  B. Fingerling Yield Loss
  C. Rejection of Fingerling Data
IV. Surrogate Value for Fish Feed
V. Surrogate Value for Lime
VI. Surrogate Value for Antibiotics
VII. Surrogate Value for Nutrition
VIII. Surrogate Value for Salt
IX. Surrogate Value for Preservatives
X. Surrogate Value for Plastic Bags
XI. Surrogate Value for Tape
XII. Surrogate Value for Strap
XIII. Surrogate Value for Electricity
XIV. Surrogate Value for Diesel
XV. Surrogate Value for Water
XVI. Surrogate Value for Labor
XVII. Movement Expenses
  A. Surrogate Value for Truck Freight
  B. Surrogate Value for Brokerage and Handling
  C. Surrogate Value for International Freight
  D. Surrogate Value for Boat Freight
XVIII. Financial Ratios
XIX. Surrogate Value for *Pangasius* By-Products

Company Specific Issues

XX. Proper Reporting Period for HVG's Factors of Production
XXI. CASEAMEX—Separate Rate Status
XXII. Clerical Error—Draft CBP Instructions
XXIII. Clerical Error—Customer Code

[FR Doc. 2015–00649 Filed 1–15–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Visiting Committee on Advanced Technology (VCAT or Committee), National Institute of Standards and Technology (NIST), will meet in open session on Wednesday, February 4, 2015 from 8:30 a.m. to 4:45 p.m. Eastern Time and Thursday, February 5, 2015 from 8:30 a.m. to 11:30 a.m. Eastern Time. The VCAT is composed of fifteen members appointed by the NIST Director who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations.

DATES: The VCAT will meet on Wednesday, February 4, 2015, from 8:30 a.m. to 4:30 p.m. Eastern Time and Thursday, February 5, 2015, from 8:30 a.m. to 11:30 a.m. Eastern Time.

ADDRESSES: The meeting will be held in the Portrait Room, Administration Building, at NIST, 100 Bureau Drive, Gaithersburg, Maryland 20899. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Stephanie Shaw, VCAT, NIST, 100 Bureau Drive, Mail Stop 1060, Gaithersburg, Maryland 20899–1060, telephone number 301–975–2667. Ms. Shaw's email address is *stephanie.shaw@nist.gov.*

SUPPLEMENTARY INFORMATION:

Authority: 15 U.S.C. 278 and the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

The purpose of this meeting is for the VCAT to review and make recommendations regarding general policy for NIST, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include an update on NIST and presentations and discussions on safety at NIST, NIST's activities related to the Hollings Manufacturing Extension Partnership Program and the Baldrige Performance Excellence Program and NIST's role in international standards. The Committee also will present its initial observations, findings, and recommendations for the 2014 VCAT Annual Report. The agenda may change to accommodate Committee business. The final agenda will be posted on the NIST Web site at *http://www.nist.gov/director/vcat/agenda.cfm.*

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee's affairs are invited to request a place on the agenda. On Thursday February 5, approximately one-half hour in the morning will be reserved for public comments and speaking times will be assigned on a first-come, first-serve basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be about 3 minutes each. The exact time for public comments will be included in the final agenda that will be posted on the NIST Web site at *http://www.nist.gov/director/vcat/agenda.cfm.* Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend in person are invited to submit written statements to VCAT, NIST, 100 Bureau Drive, MS 1060,

Gaithersburg, Maryland 20899, via fax at 301–216–0529 or electronically by email to *Karen.lellock@nist.gov.*

All visitors to the NIST site are required to pre-register to be admitted. Please submit your name, time of arrival, email address and phone number to Stephanie Shaw by 5:00 p.m. Eastern Time, Wednesday, January 28, 2015. Non-U.S. citizens must submit additional information; please contact Ms. Shaw. Ms. Shaw's email address is *stephanie.shaw@nist.gov* and her phone number is 301–975–2667. Also, please note that under the REAL ID Act of 2005 (Pub. L. 109–13), federal agencies, including NIST, can only accept a state-issued driver's license or identification card for access to federal facilities if issued by states that are REAL ID compliant or have an extension. NIST also currently accepts other forms of federally-issued identification in lieu of a state-issued driver's license. For detailed information please contact Ms. Shaw or visit: *http://nist.gov/public_affairs/visitor/.*

Dated: January 8, 2015.

Willie E. May,

Acting Director.

[FR Doc. 2015–00658 Filed 1–15–15; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket Number 141021884–4884–01]

Proposed Withdrawal of Six Federal Information Processing Standards

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; Request for comments.

SUMMARY: The National Institute of Standards and Technology (NIST) proposes to withdraw six (6) Federal Information Processing Standards (FIPS) from the FIPS series. The standards proposed for withdrawal are: FIPS 181, FIPS 185, FIPS 188, FIPS 190, FIPS 191 and FIPS 196.

These FIPS are obsolete because they have not been updated to reference current or revised voluntary industry standards. They also are not updated to reflect the changes and modifications that have been made by the organizations that develop and maintain the specifications and data representations. In addition, FIPS 188 adopts specifications and data standards that are developed and maintained by other Federal government agencies and by voluntary industry standards organizations.

Prior to the submission of this proposed withdrawal of FIPS to the Secretary of Commerce for review and approval, NIST invites comments from the public, users, the information technology industry, and Federal, State and local governments and government organizations concerning the withdrawal of the FIPS.

DATES: Comments on the proposed withdrawal of the FIPS must be received no later than 5 p.m. Eastern Time on March 2, 2015.

ADDRESSES: Written comments concerning the withdrawal of the FIPS should be sent to Information Technology Laboratory, ATTN: Proposed Withdrawal of 6 FIPS, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8930, Gaithersburg, MD 20899–8930.

Electronic comments should be sent to: *fipswithdrawal@nist.gov.*

Information about the FIPS is available on the NIST Web pages *http://csrc.nist.gov/publications/PubsFIPS.html.*

Comments received in response to this notice will be published electronically at *http://csrc.nist.gov/publications/PubsFIPS.html* without change or redaction, so commenters should not include information they do not wish to be posted (*e.g.,* personal or confidential business information).

FOR FURTHER INFORMATION CONTACT: Ms. Diane Honeycutt, telephone (301) 975–8443, National Institute of Standards and Technology, 100 Bureau Drive, MS 8930, Gaithersburg, MD 20899–8930 or via email at *dhoneycutt@nist.gov.*

SUPPLEMENTARY INFORMATION: The following Federal Information Processing Standards (FIPS) Publications are proposed for withdrawal from the FIPS series:

FIPS 181, Automated Password Generator,
FIPS 185, Escrowed Encryption Standard,
FIPS 188, Standard Security Label for Information Transfer,
FIPS 190, Guideline for the Use of Advanced Authentication Technology Alternatives,
FIPS 191, Guideline for the Analysis of Local Area Network Security, and
FIPS 196, Entity Authentication using Public Key Cryptography.

These FIPS are being proposed for withdrawal because they are obsolete or have not been updated to adopt current voluntary industry standards, federal specifications, or federal data standards. Federal agencies are responsible for using current voluntary industry standards and current federal specifications and data standards in their acquisition and management activities.

The Information Technology Management Reform Act of 1996 (Division E of Pub. L. 104–106) and Executive Order 13011 emphasize agency management of information technology and Government-wide interagency support activities to improve productivity, security, interoperability, and coordination of Government resources. Under the National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) Federal agencies and departments are directed to use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments. Voluntary industry standards are the preferred source of standards to be used by the Federal government. The use of voluntary industry standards eliminates the cost to the government of developing its own standards, and furthers the policy of reliance upon the private sector to supply goods and services to the government.

FIPS 181, FIPS 190 and FIPS 196 are Federal standards on electronic authentication technologies. NIST proposes withdrawing these standards because they reference withdrawn cryptographic standards and newer guidance has been developed based on modern technologies.

FIPS 191 is being withdrawn because new technologies, techniques and threats to computer networks have made the standard obsolete.

FIPS 185 is being withdrawn because it references a cryptographic algorithm that is no longer approved for U.S. government use. FIPS 185, Escrowed Encryption Standard, specifies use of a symmetric-key encryption (and decryption) algorithm (SKIPJACK) and a Law Enforcement Access Field (LEAF) creation method which was intended to support lawfully authorized electronic surveillance. The SKIPJACK algorithm is no longer approved to protect sensitive government information, and NIST recommends the use of newer techniques for data security based on current algorithms.

NIST proposes the withdrawal of FIPS 188 because it is a Federal data standard that is now maintained, updated and kept current by Federal government agencies other than NIST. Executive Order 13556 ''Controlled Unclassified Information'' assigns the responsibility for this data standard to the National

Archives and Records Administration, and it is available through their Web pages.

Should the Secretary of Commerce approve the withdrawal of these FIPS, NIST will keep references to the withdrawn FIPS on its FIPS Web pages and will link to current versions of these standards and specifications where appropriate.

Withdrawal means that these FIPS would no longer be part of a subscription service that is provided by the National Technical Information Service and federal agencies will no longer be required to comply with these FIPS. NIST will continue to provide relevant information on standards and guidelines by means of electronic dissemination methods.

Comments received in response to this notice will be published electronically at *http://csrc.nist.gov/publications/PubsFIPS.html* without change or redaction, so commenters should not include information they do not wish to be posted (*e.g.,* personal or confidential business information).

Authority: Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce, pursuant to Section 5131 of the Information Technology Management Reform Act of 1996 (Pub. L. 104–106), and the Federal Information Security Management Act of 2002 (Pub. L. 107–347).

Dated: January 6, 2015.

Richard Cavanagh,

Acting Associate Director for Laboratory Programs.

[FR Doc. 2015–00657 Filed 1–15–15; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD707

North Pacific Fishery Management Council (NPFMC); Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: There will be a joint meeting of the North Pacific Fishery Management Council (Council) and International Pacific Halibut Commission (IPHC) in Seattle, WA.

DATES: The meeting will be held on Thursday, February 5, 2015, from 10 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Renaissance Hotel, 515 Madison Street, South Room, Seattle, WA.

Council address: North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: David Witherell, Council staff; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION:

Council/IPHC agenda:

1. Introductions/opening comments
2. Brief history of NPFMC/IPHC/NMFS interactions
3. Brief description of respective management authorities and applicable laws
4. Current data/information collection issues relative to stock assessment and management; Reconciling bycatch estimates for use in stock assessment and Catch Limit Fishing Mortality Rate (FCEY) determinations; Improving estimates of discard mortalities and discard mortality rates (DMRs(\) in the directed halibut and other fisheries
5. Discussion of current management measures and issues of mutual interest; IPHC Total mortality accounting framework and Scientific Statistical Committee (SSC) review; Council BSAI halibut Prohibited Species Catch (PSC) reduction package and SSC review; Abundance-based PSC limits (background discussion being drafted by NPFMC/IPHC)
6. Identify areas of mutual interest in research and facilitation of management
7. Public comment
8. Council/IPHC discussion of all agenda items

The Agenda is subject to change, and the latest version will be posted at *http://www.npfmc.org.* Background documents, reports, and analyses for review are posted on the Council Web site in advance of the meeting.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: January 13, 2015.

Tracey L. Thompson,

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

[FR Doc. 2015–00610 Filed 1–15–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD716

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Highly Migratory Species Management Team (HMSMT) will hold a meeting, which is open to the public.

DATES: The HMSMT will meet Wednesday, February 4 to Friday, February 6, 2015. This meeting will start at 8:30 a.m. and continue until business is concluded on each day.

ADDRESSES: The meeting will be held at the following location: Best Western Plus Inn by the Sea, Wind and Sea Room, 7830 Fay Avenue, La Jolla, CA 92037.

Council address: Pacific Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Dr. Kit Dahl, Pacific Council; telephone: (503) 820–2422.

SUPPLEMENTARY INFORMATION: The HMSMT will discuss assignments and develop reports for HMS topics to be taken up at Pacific Council meetings in 2015. Topics on the March 2015 Council agenda that the HMSMT will focus on include: (1) Developing a Drift Gillnet Management and Monitoring Plan purpose and need statement and contents; (2) analyzing the range of alternatives adopted by the Council in November 2014 for bycatch reduction and monitoring for the California drift gillnet fishery; and (3) reviewing and making recommendations on exempted fishing permit proposals. The HMSMT will also discuss the planned management strategy evaluation for North Pacific albacore tuna to be conducted by the International Scientific Committee for Tuna and Tuna-Like Species in the North Pacific Ocean and potential Council advice to the U.S. delegation. Time-permitting, the HMSMT may discuss initial planning for topics on future Council meetings including the authorization of a shallow-set longline fishery outside the west coast Exclusive Economic Zone and creating a Federal limited entry permit for the California drift gillnet fishery.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820–2425 at least 5 days prior to the meeting date.

Dated: January 13, 2015.

Tracey L. Thompson,

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

[FR Doc. 2015–00612 Filed 1–15–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0684–XD708

North Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings, February 4–10, 2015.

DATES: The Council will begin its plenary session at 8 a.m. on Wednesday, February 4, 2015 continuing through Tuesday, February 10, 2015. The Scientific Statistical Committee (SSC) will begin at 8 a.m. on Monday, February 2 and continue through Wednesday, February 4, 2015. The Council's Advisory Panel (AP) will begin at 8 a.m. on Tuesday, February 3, and continue through Saturday, February 7, 2015. The Enforcement Committee will meet from 1 p.m. to 4 p.m. on Tuesday, February 3, 2015. All meetings are open to the public, except executive sessions.

ADDRESSES: The meetings will be held at the Renaissance Hotel, 515 Madison Street, Seattle, WA.

Council address: North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: David Witherell, Council staff, telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION:

Council Plenary Session: The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

1. Executive Director's Report (including NOAA Climate Strategy and Arctic Update (T)) NMFS Management Report (including an update on the Aleutian Island sanctuary nomination).

ADF&G Report
U.S. Coast Guard Report
USFWS Report
International Pacific Halibut Commission Report
Protected Species Report

2. Final action on CDQ Pacific Cod Fishery Development;

3. Review of Electronic Monitoring (EM) research plan;

4. Initial review of AI Pacific cod Allocation discussion paper;

5. SSC review of Halibut Total Mortality Accounting;

6. Initial review of Bering Sea Halibut Prohibited Species Catch (PSC); Update on Industry sector reports on Bering Sea halibut bycatch; Halibut Deck Sorting Scales Exempted Fishing Permit (EFP);

7. Discussion paper on GOA Tendering (2015);

8. BSAI Crab 10-year Review: Develop Workplan (T);

9. Norton Sound Red King Crab Overfishing Level/Acceptable Biological Catch (OFL/ABCs);

10. Crab Modeling Report (SSC Only);

11. Research Priorities plan team report: SSC only;

12. Essential Fish Habitat (EFH) 5-year Review update: SSC only;

13. Staff Tasking.

The Advisory Panel will address most of the same agenda issues as the Council except B reports.

The SSC agenda will include the following issues:

1. EM Research Plan
2. Norton Sound RKC OFL/ABCs
3. Crab remodeling report
4. Research Priorities
5. EFH 5-year review
6. Halibut Total mortality
7. Bering Sea Halibut PSC
8. Review Economic Stock Assessment Evaluation Report

In addition to providing ongoing scientific advice for fishery management decisions, the SSC functions as the Councils primary peer review panel for scientific information as described by the Magnuson-Stevens Act section 302(g)(1)(e), and the National Standard 2 guidelines (78 FR 43066). The peer review process is also deemed to satisfy the requirements of the Information Quality Act, including the OMB Peer Review Bulletin guidelines.

The Agenda is subject to change, and the latest version will be posted at *http://www.npfmc.org.* Background documents, reports, and analyses for review are posted on the Council Web site in advance of the meeting. The names and organizational affiliations of SSC members are also posted on the Web site.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: January 13, 2015.

Tracey L. Thompson,

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

[FR Doc. 2015–00611 Filed 1–15–15; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to the Procurement List.

SUMMARY: The Committee is proposing to add a product and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Comments Must Be Received On Or Before:* 2/16/2015.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 10800, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons

an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the product and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following product and services are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Product

PRODUCT NAME/NSN: Small Web Door Assembly/NSN: 3915–04–000–4368

MANDATORY FOR PURCHASE BY: U.S. Postal Service, Topeka, KS

MANDATORY SOURCE OF SUPPLY: Four Rivers Resource Services, Inc., Linton, IN

CONTRACTING ACTIVITY: U.S. Postal Service, Topeka Purchasing Center, Topeka, KS

LIST TYPE: C-List

Services

SERVICE TYPE: Furniture Design and Configuration Service

SERVICE IS MANDATORY FOR: Rhode Island National Guard, 330 Camp Street, Providence, RI

MANDATORY SOURCE OF SUPPLY: Industries for the Blind Inc., West Allis, WI

CONTRACTING ACTIVITY: United States Property and Fiscal Office for Rhode Island, Rhode Island National Guard, Providence, RI

SERVICE TYPE: Janitorial Service

SERVICE IS MANDATORY FOR: USDA, Agricultural Research Service, Southern Plains Agricultural Research Center, 2881 F&B Road, College Station, TX

MANDATORY SOURCE OF SUPPLY: Rising Star Resource Development Corporation, Dallas, TX

CONTRACTING ACTIVITY: Dept of Agriculture, Agricultural Research Service, ARS WBSC 32SD, Beltsville, MD

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2015–00628 Filed 1–15–15; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds products and a service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products and a service from the Procurement List previously furnished by such agencies.

DATES: *Effective Date:* 2/16/2015

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 10800, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 6/13/2014 (79 FR 33911–33912) and 10/24/2014 (79 FR 63605), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and service and impact of the additions on the current or most recent contractors, the Committee has determined that the products and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and service to the Government.

2. The action will result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and service are added to the Procurement List:

Products

PRODUCT NAME/NSNs: Toner Cartridge, Remanufactured Lexmark
NSN: 7510–00–NSH–0212—Optra T630/T632/T634 Series Compatible
NSN: 7510–00–NSH–1010—Optra T644/X644/X646 Series Compatible
NSN: 7510–00–NSH–1060—E260/E360/E460/E462 Series Compatible
NSN: 7510–00–NSH–1061—E360/E460/E462 Series Compatible
NSN: 7510–00–NSH–1063—Multiple T & X Series, Compatible, 25,000 page
NSN: 7510–00–NSH–1064—Multiple T & X Compatible, 36,000 page
MANDATORY FOR PURCHASE BY: Total Government Requirement
MANDATORY SOURCE OF SUPPLY: TRI Industries NFP, Chicago, IL
CONTRACTING ACTIVITY: General Services Administration, New York, NY
LIST TYPE: A-List

Service

SERVICE TYPE: Facilities Maintenance Service
SERVICE IS MANDATORY FOR: U.S. Coast Guard, U.S. Coast Guard Yard, Curtis Bay, 2401 Hawkins Point Road, Baltimore, MD
MANDATORY SOURCE OF SUPPLY: Skookum Educational Programs, Bremerton, WA
CONTRACTING ACTIVITY: Dept of Homeland Security, U.S. Coast Guard, SFLC Procurement, Branch 3, Baltimore, MD

Deletions

On 12/5/2014 (79 FR 72171) and 12/12/2014 (79 FR 73886), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and service listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and service deleted from the Procurement List.

End of Certification

Accordingly, the following products and service are deleted from the Procurement List:

Products

PRODUCT NAME/NSN: Bag, Protective/ NSN: 6545–01–222–0684
MANDATORY SOURCE OF SUPPLY: Mount Rogers Community Services Board, Wytheville, VA
CONTRACTING ACTIVITY: Defense Logistics Agency Troop Support, Philadelphia, PA
PRODUCT NAME/NSN: Cover, Telescope Mounting/NSN: 6650–00–773–2030
MANDATORY SOURCE OF SUPPLY: Huntsville Rehabilitation Foundation, Huntsville, AL
CONTRACTING ACTIVITY: Defense Logistics Agency Troop Support, Philadelphia, PA

Service

SERVICE TYPE: Mess Attendant Service
SERVICE IS MANDATORY FOR: 121st Air Refueling Wing, 7370 Minuteman Way, Redtail Dining Facility, Bldg. 917, Columbus, OH
MANDATORY SOURCE OF SUPPLY: First Capital Enterprises, Inc, Chillicothe, OH
CONTRACTING ACTIVITY: Dept of the Army, W7NU USPFO Activity OH ARNG, Columbus, OH

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2015–00629 Filed 1–15–15; 8:45 am]

BILLING CODE 6353–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2015–0002]

Consumer Advisory Board and Councils Solicitation of Applications for Membership

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice.

SUMMARY: Pursuant to the authorities given to the Director of the Consumer Financial Protection Bureau (''Bureau'') under the Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') Director Richard Cordray invites the public to apply for membership for appointment to its Consumer Advisory Board (the ''Board''), Community Bank Advisory Council, and Credit Union Advisory Council. Membership of the Board and Advisory Councils includes representatives of consumers, communities, the financial services industry and academics. Appointments to the Advisory Board are typically for three years and appointments to the Advisory Councils are typically for two years. However, the Director may amend the respective Board and Council charters from time to time during the charter terms as the Director deems necessary to accomplish the purpose of the Board and Councils. The Bureau expects to announce the selection of new members in August 2015.

DATES: Complete application packets received on or before February 28, 2015 will be given consideration for membership on the Board and Councils.

ADDRESSES: Complete application packets must include a résumé for each applicant, a completed application, and a letter of recommendation from a third party. The appropriate forms can be accessed at: *consumerfinance.gov.*

If electronic submission is not feasible, the completed application packet can be mailed to Crystal Dully, Consumer Financial Protection Bureau, 1275 First Street NE., 1223–A, Washington, DC 20002.

All applications for membership on the Board and Advisory Council should be sent:

- *Electronically: CFPB_BoardandCouncilApps@cfpb.gov.* We strongly encourage electronic submissions.
- *Mail:* Crystal Dully, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552, 1700 G Street NW., Washington, DC 20002. Submissions must be postmarked on or before 5:00 p.m. eastern standard time on February 28, 2015.
- *Hand Delivery/Courier in Lieu of Mail:* Crystal Dully, Consumer Financial Protection Bureau, 1275 First Street NE., 1223–A, Washington, DC 20002. Submissions must be received on or before 5:00 p.m. Eastern Standard Time on February 28, 2015.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Crystal Dully, Consumer Financial Protection Bureau, (202) 435–9588.

SUPPLEMENTARY INFORMATION:

I. Background

The Bureau is charged with regulating ''the offering and provision of consumer financial products or services under the Federal consumer financial laws,'' so as to ensure that ''all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.'' Pursuant to Section 1021(c) of the Wall Street Reform and Consumer Protection Act, Public Law 111–203 (''Dodd-Frank Act''), the Bureau's primary functions are:

1. Conducting financial education programs;
2. Collecting, investigating, and responding to consumer complaints;
3. Collecting, researching, monitoring, and publishing information relevant to the function of markets for consumer financial products and services to identify risks to consumers and the proper functioning of such markets;
4. Supervising persons covered under the Dodd-Frank Act for compliance with Federal consumer financial law, and taking appropriate enforcement action to address violations of Federal consumer financial law;
5. Issuing rules, orders, and guidance implementing Federal consumer financial law; and
6. Performing such support activities as may be needed or useful to facilitate the other functions of the Bureau.

As described in more detail below, Section 1014 of the Dodd-Frank Act calls for the Director of the Bureau to establish a Consumer Advisory Board to advise and consult with the Bureau regarding its functions, and to provide information on emerging trends and practices in the consumer financial markets.

III. Qualifications

Pursuant to Section 1014(b) of the Dodd-Frank Act, in appointing members to the Board, ''the Director shall seek to assemble experts in consumer protection, financial services, community development, fair lending and civil rights, and consumer financial products or services and representatives of depository institutions that primarily serve underserved communities, and representatives of communities that have been significantly impacted by higher-priced mortgage loans, and seek representation of the interests of covered persons and consumers, without regard to party affiliation.'' The determinants of ''expertise'' shall

depend, in part, on the constituency, interests, or industry sector the nominee seeks to represent, and where appropriate, shall include significant experience as a direct service provider to consumers.

Pursuant to Section 5 of the Community Bank Advisory Council Charter, in appointing members to the Advisory Council the Director shall seek to assemble experts in consumer protection, financial services, community development, fair lending and civil rights, and consumer financial products or services and representatives of community banks that primarily serve underserved communities, and representatives of communities that have been significantly impacted by higher-priced mortgage loans, and shall strive to have diversity in terms of points of view. Only current bank or thrift employees (CEOs, compliance officers, government relations officials, etc.) will be considered for membership. Membership is limited to employees of banks and thrifts with total assets of $10 billion or less that are not affiliates of depository institutions or credit unions with total assets of more than $10 billion.

Pursuant to section 5 of the Credit Union Advisory Council Charter, in appointing members to the Advisory Council the Director shall seek to assemble experts in consumer protection, financial services, community development, fair lending and civil rights, and consumer financial products or services and representatives of credit unions that primarily serve underserved communities, and representatives of communities that have been significantly impacted by higher-priced mortgage loans, and shall strive to have diversity in terms of points of view. Only current credit union employees (CEOs, compliance officers, government relations officials, etc.) will be considered for membership. Membership is limited to employees of credit unions with total assets of $10 billion or less that are not affiliates of depository institutions or credit unions with total assets of more than $10 billion.

The Bureau has a special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on the Board and Councils, and therefore, encourages applications from qualified candidates from these groups. The Bureau also has a special interest in establishing a Board that is represented by a diversity of viewpoints and constituencies, and therefore encourages applications from qualified candidates who:

1. Represent the United States' geographic diversity; and

2. Represent the interests of special populations identified in the Dodd-Frank Act, including service members, older Americans, students, and traditionally underserved consumers and communities.

IV. Application Procedures

Any interested person may apply for membership on the Board or Advisory Council.

A complete application packet must include:

1. A recommendation letter from a third party describing the applicant's interests and qualifications to serve on the Board or Council;

2. A complete résumé or curriculum vitae for the applicant; and

3. A complete application.

To evaluate potential sources of conflicts of interest, the Bureau will ask potential candidates to provide information related to financial holdings and/or professional affiliations, and to allow the Bureau to perform a background check. The Bureau will not review applications and will not answer questions from internal or external parties regarding applications until the application period has closed.

The Bureau will not entertain applications of federally registered lobbyists and individuals who have been convicted of a felony for a position on the Board and Councils.

Only complete applications will be given consideration for review of membership on the Board and Councils.

Dated: January 9, 2015.

Christopher D'Angelo,

Chief of Staff, Bureau of Consumer Financial Protection.

[FR Doc. 2015–00565 Filed 1–15–15; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF EDUCATION

Applications for New Awards; State Personnel Development Grants (SPDG) Program

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Applications for New Awards; extension of the application period.

SUMMARY: On December 15, 2014, we published in the **Federal Register** a notice inviting applications for new awards under the SPDG competition. That notice established a January 29, 2015, deadline for the submission of applications, and a deadline of March 30, 2015, for intergovernmental review. We are extending both deadlines by fifteen (15) days.

Catalog of Federal Domestic Assistance (CFDA) Number:

84.323A.

Dates:

Applications Available: December 15, 2014.

Deadline for Transmittal of Applications: February 13, 2015.

Deadline for Intergovernmental Review: April 14, 2015.

FOR FURTHER INFORMATION CONTACT: Jennifer Coffey, U.S. Department of Education, Office of Special Education Programs, 400 Maryland Avenue SW., Room 4097, Potomac Center Plaza, Washington, DC 20202–2600. Telephone: (202) 245–6673 or by email: *jennifer.coffey@ed.gov.*

SUPPLEMENTARY INFORMATION: On December 15, 2015, the Secretary invited applications for new awards for fiscal year (FY) 2015 under the SPDG competition (79 FR 74071). The purpose of this program, authorized by the Individuals with Disabilities Education Act (IDEA), is to assist State educational agencies (SEAs) in reforming and improving their systems for personnel preparation and professional development in early intervention, educational, and transition services in order to improve results for children with disabilities.

The notice inviting applications established a January 29, 2015, deadline for the submission of applications. To ensure that all interested parties are provided a minimum of 60 days to submit their applications, we are extending the application period for fifteen (15) days to February 13, 2015. Consequently, we are also extending the deadline for intergovernmental review to April 14, 2015. All other information in the December 15, 2014, notice, including the two absolute priorities, remains the same.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document

Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: January 12, 2015.

Michael K. Yudin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2015–00605 Filed 1–15–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Engineered High Energy Crop Programs Draft Programmatic Environmental Impact Statement, Southeastern United States

AGENCY: Department of Energy.

ACTION: Notice of availability and public hearings.

SUMMARY: The U.S. Department of Energy (DOE) Advanced Research Projects Agency-Energy (ARPA–E) announces the availability of the Engineered High Energy Crop (EHEC) Programs Draft Programmatic Environmental Impact Statement (or Draft PEIS) (DOE/EIS–0481). DOE also announces one in-person public hearing to be held in Washington, DC, and two Web-based public hearings, to receive comments on the Draft PEIS. The Draft PEIS evaluates the potential environmental impacts associated with DOE's Proposed Action to implement one or more programs to catalyze the development and demonstration of crops specifically engineered for increased energy production. A main component of the proposed programs would be providing financial assistance to conduct field trials to test the effectiveness of EHECs in the Southeastern United States, specifically in Alabama, Florida (excluding the Everglades/Southern Florida coastal plain ecoregion), Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia.

DATES: Comments on the Draft PEIS Notice of Availability (NOA) will be accepted until March 17, 2015. During the public comment period, DOE will host one in-person public hearing and two Web-based public hearings to receive comments on the Draft PEIS. Comments submitted during this public comment period will be considered in preparation of a Final PEIS and used by DOE in its decision-making process for the Proposed Action. DOE will consider late comments to the extent practicable. DOE will conduct public hearings:

- February 17, 2015, from 5:00–7:00 p.m., at the Holiday Inn Washington Capitol, 550 C Street Southwest, Washington, DC 20024.
- February 24, 2015, from 2:00–4:00 p.m., Web-based.
- February 26, 2015, from 2:00–4:00 p.m., Web-based.

Information on how to register for the Web-based public hearings will be available on the DOE EHEC PEIS project Web site (See **ADDRESSES** section).

ADDRESSES: Written comments on the Draft PEIS may be submitted by any of the following methods:

- *EHEC Web site: http://engineeredhighenergycropsPEIS.com*
- *Email: comments@engineeredhighenergycropsPEIS.com*
- *Mail:* Dr. Jonathan Burbaum, Program Director, ARPA–E, U.S. Department of Energy, ATTN: EHEC PEIS, 1000 Independence Avenue SW., Mailstop-950–8043, Washington, DC 20585. Note: Comments submitted by U.S. Postal Service may be delayed by mail screening.

This NOA, the EPA NOA, and the Draft PEIS will be posted on the DOE NEPA Web site at *http://energy.gov/nepa.* These documents, and additional materials relating to this Draft PEIS, will also be available on the EHEC PEIS project Web site at: *http://engineeredhighenergycropsPEIS.com.*

FOR FURTHER INFORMATION CONTACT: For more information on the PEIS, contact Dr. Jonathan Burbaum, Program Director, by one of the methods described in the **ADDRESSES** section, or by telephone at (202) 287–5453. For general information on the DOE NEPA process, contact Carol Borgstrom, Director, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, or telephone at (202) 586–4600, voicemail at (800) 472–2756, or email at *askNEPA@hq.doe.gov*. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact (800) 877–8339.

SUPPLEMENTARY INFORMATION: The EHEC PEIS (DOE/EIS–0481) is being prepared in accordance with NEPA (42 U.S.C. 4321 *et seq.*) requirements, the Council on Environmental Quality's NEPA regulations (40 CFR parts 1500–1508), and DOE's NEPA Implementing Procedures (10 CFR part 1021).

The Draft PEIS evaluates the potential environmental impacts of the Proposed Action and alternatives to develop and implement one or more programs to catalyze the research, development, and demonstration of EHECs in the Southeastern United States. EHECs are agriculturally-viable photosynthetic species containing genetic material that has been intentionally introduced through biotechnology, interspecific hybridization, or other engineering processes (excluding processes that occur in nature without human intervention), specifically engineered to increase the amount of energy produced per acre (*e.g.,* improving the photosynthetic process), without increasing the amount of biomass. These approaches are referred to in this PEIS as approaches ''independent of increasing the amount of biomass.'' A main component of the proposed EHEC Programs would be DOE or other Federal or state agencies providing financial assistance for confined field trials to evaluate the performance of EHECs that could facilitate the commercial development and deployment of biofuels. The field trials would demonstrate the EHEC's biological and economic viability and further DOE ARPA–E's mission. Confined field trials may range in size and could include development scale (up to 5 acres), pilot scale (up to 250 acres), or demonstration scale (up to 15,000 acres). The Draft PEIS evaluates the potential environmental impacts of these scaled alternatives, which reflect the range of reasonable alternatives.

Signed in Washington, DC, this 12th day of January, 2015.

Jonathan Burbaum,

Program Director, Advanced Research Projects Agency-Energy.

[FR Doc. 2015–00601 Filed 1–15–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Agency Information Collection Extension

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

ACTION: Notice and Request for OMB Review and Comment.

SUMMARY: The Department of Energy (DOE) has submitted to the Office of Management and Budget (OMB) for clearance, pursuant to the Paperwork Reduction Act of 1995, a three-year

extension to its collection of information titled: *Budget Justification,* OMB No. 1910–5162. The proposed collection will establish application consistency for numerous Grant and Cooperative Agreement application packages from potential and chosen recipients. This effort will also streamline processes and provide applicants with a clear and straightforward tool to assist with project budgeting. In addition it will endow DOE reviewers with adequate information to determine if proposed costs are allowable, allocable, and reasonable.

DATES: Comments regarding this collection must be received on or before February 17, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the DOE Desk Officer at OMB of your intention to make a submission as soon as possible. The Desk Officer can be reached at 202–395–4650.

ADDRESSES: Written comments should be sent to:

DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW., Washington, DC 20503.

And to:

U.S. Department of Energy, Golden Field Office, 15013 Denver West Parkway Golden, CO 80401–3111, Attn: James Cash.

FOR FURTHER INFORMATION CONTACT: Questions may be directed to James Cash at (720) 356–1456 or by email at *james.cash@ee.doe.gov.* The information collection instrument titled, Budget Justification, may also be viewed at *http://www1.eere.energy.gov/financing/resources.html.*

SUPPLEMENTARY INFORMATION: This information collection request contains:

(1) *OMB No.:* 1910–5162, Budget Justification;

(2) *Information Collection Request Title:* Budget Justification;

(3) *Type of Request:* Renewal;

(4) *Purpose:* This collection of information is necessary in order for DOE to identify allowable, allocable, and reasonable recipient project costs eligible for Grants and Cooperative Agreements under EERE programs;

(5) *Annual Estimated Number of Respondents:* 400;

(6) *Annual Estimated Number of Total Responses:* 400;

(7) *Annual Estimated Number of Burden Hours:* 24 hours, per response;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $899.04 per one time response;

(9) *Authority:* 10 CFR 600.112.

Issued in Golden, CO, on December 27, 2014.

James Cash,

Contracting Officer.

[FR Doc. 2015–00603 Filed 1–15–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC15–2–000]

Commission Information Collection Activities: FERC–65, FERC–65A, FERC–65B, FERC–585, and FERC–921; Consolidated Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of information collections and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the requirements and burden [1] of the information collections described below. *Please note* that this is the first time FERC has issued a consolidated notice involving otherwise unrelated information collections.

DATES: Comments on the collections of information are due March 17, 2015.

ADDRESSES: You may submit comments (identified by Docket No. IC15–2–000) by either of the following methods:

- *eFiling at Commission's Web site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Please reference the specific collection number and/or title in your comments.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Type of Request: Three-year extension of the information collection requirements for all collections described below with no changes to the current reporting requirements. Please note that each collection is distinct from the next.

Comments: Comments are invited on: (1) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collections; and (4) ways to minimize the burden of the collections of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FERC–65 (Notice of Holding Company Status), FERC–65A (Exemption Notification of Holding Company Status), and FERC–65B (Waiver Notification of Holding Company Status)

OMB Control No.: 1902–0218.

Abstract: Pursuant to Section 366.4 of the Commission's rules and regulations, persons who meet the definition of a holding company shall provide the Commission notification of holding company status.

The FERC–65 is a one-time informational filing outlined in the Commission's regulations at 18 Code of Federal Regulations (CFR) 366.4. The FERC–65 must be submitted within 30 days of becoming a holding company[2].

[1] The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

[2] Persons that meet the definition of a holding company as provided by § 366.1 as of February 8, 2006 shall notify the Commission of their status as a holding company no later than June 15, 2006. Holding companies formed after February 8, 2006 shall notify the Commission of their status as a holding company, no later than the latter of June

Continued

While the Commission does not require the information to be reported in a specific format, the filing needs to consist of the name of the holding company, the name of public utilities, the name of natural gas companies in the holding company system, and the names of service companies. In addition, the Commission requires the filing to include the names of special-purpose subsidiaries (which provide non-power goods and services) and the names of all affiliates and subsidiaries (and their corporate interrelationship) to each other. Filings may be submitted in hardcopy or electronically through the Commission's eFiling system.

FERC–65A (Exemption Notification of Holding Company Status)

While noting the previously outlined requirements of the FERC–65, the Commission has allowed for an exemption from the requirement of providing the Commission with a FERC–65 if the books, accounts, memoranda, and other records of any person are not relevant to the jurisdictional rates of a public utility or natural gas company; or if any class of transactions is not relevant to the jurisdictional rates of a public utility or natural gas company. Persons seeking this exemption file the FERC–65A, which must include a form of notice suitable for publication in the **Federal Register**. Those who file a FERC–65A in good faith will have a temporary exemption upon filing, after 60 days if the Commission has taken no action, the exemption will be deemed granted. Commission regulations within 18 CFR 366.3 describe the criteria in more specificity.

FERC–65B (Waiver Notification of Holding Company Status)

If an entity meets the requirements in 18 CFR 366.3(c), they may file a FERC–65B waiver notification pursuant to the procedures outlined in 18 CFR 366.4. Specifically, the Commission waives the requirement of providing it with a FERC–65 for any holding company with respect to one or more of the following: (1) Single-state holding company systems; (2) holding companies that own generating facilities that total 100 MW or less in size and are used fundamentally for their own load or for sales to affiliated end-users; or (3) investors in independent transmission-only companies. Filings may be made in hardcopy or electronically through the Commission's Web site.

Type of Respondent: Public utility companies, natural gas companies, electric wholesale generators, foreign utility holding companies.

Estimate of Annual Burden: The Commission estimates the annual public reporting burden for the information collection as:

FERC–65 (NOTIFICATION OF HOLDING COMPANY STATUS), FERC–65A (EXEMPTION NOTIFICATION OF HOLDING COMPANY STATUS), AND FERC–65B (WAIVER NOTIFICATION OF HOLDING COMPANY STATUS)

	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden & cost per response [3]	Total annual burden hours & total annual cost	Cost per respondent ($)
	(1)	(2)	(1)*(2)=(3)	(4)	(3)*(4)=(5)	(5)÷(1)
FERC–65	8	1	8	3, $216	24, $1728	216
FERC–65A	1	1	1	1, $72	1, $72	72
FERC–65B	0	1	0	1, $72	0, $0	0
Total			9		25, $1,800	

FERC–585 (Reporting of Electric Shortages and Contingency Plans Under PURPA 206)

OMB Control No.: 1902–0138.

Abstract: The information collected under the requirements of FERC–585, ''Reporting of Electric Energy Shortages and Contingency Plans under PURPA'', is used by the Commission to implement the statutory provisions of section 206 of the Public Utility Regulatory Policies Act of 1979 (PURPA) Public Law 95–617, 92 Stat. 3117. Section 206 of PURPA amended the Federal Power Act (FPA) by adding a new subsection (g) to section 202, under which the Commission by rule, was to require each public utility to (1) report to the Commission and appropriate state regulatory authorities of any anticipated shortages of electric energy or capacity which would affect the utility's capability to serve its wholesale customers; and (2) report to the Commission and any appropriate state regulatory authority contingency plan that would outline what circumstances might give rise to such occurrences.

In Order No. 575,[4] the Commission modified the reporting requirements in 18 CFR 294.101(b) to provide that, if a public utility includes in its rates schedule, provisions that: (a) During electric energy and capacity shortages it will treat firm power wholesale customers without undue discrimination or preference; and (b) it will report any modifications to its contingency plan for accommodating shortages within 15 days to the appropriate state regulatory agency and to the affected wholesale customers, then the utility need not file with the Commission an additional statement of contingency plan for accommodating such shortages. This revision merely changed the reporting mechanism; the public utility's contingency plan would be located in its filed rate rather than in a separate document.

In Order No. 659,[5] the Commission modified the reporting requirements in 18 CFR 294.101(e) to provide that the means by which public utilities must comply with the requirements to report shortages and anticipated shortages is to submit this information electronically using the Office of Electric Reliability's pager system at *emergency@ferc.gov* in lieu of submitting an original and two copies with the Secretary of the Commission.

The Commission uses the information to evaluate and formulate an

15, 2006 or 30 days after they become holding companies.

[3] The estimates for cost per response are derived using the following formula: Average Burden Hours per Response * 70.50 per Hour = Average Cost per Response. The Cost per hour figure is the 2015 FERC average salary plus benefits.

[4] 60 FR 4859 (25 Jan 1995).

[5] 70 FR 35028 (16 Jun 2005).

appropriate option for action in the event an unanticipated shortage is reported and/or materializes. Without this information, the Commission and State agencies would be unable to: (1) examine and approve or modify utility actions, (2) prepare a response to anticipated disruptions in electric energy, and (3) ensure equitable treatment of all public utility customers under the shortage situations. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 294.

Type of Respondent: Public utilities.

Estimate of Annual Burden: The Commission estimates the annual public reporting burden for the information collection as:

FERC–585 (Reporting of Electric Shortages and Contingency Plans Under PURPA 206)

	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden & cost per response [3]	Total annual burden hours & total annual cost	Cost per respondent ($)
	(1)	(2)	(1)*(2)=(3)	(4)	(3)*(4)=(5)	(5)÷(1)
Contingency Plan	1	1	1	73, $5,256	73, $5,256	5,256
Capacity Shortage	1	1	1	0.25, $18	0.25, $18	18
Total					73.25, $5,274	5,274

FERC–921 (Ongoing Electronic Delivery of Data From Regional Transmission Organization and Independent System Operators)

OMB Control No.: 1902–0257.

Abstract: The collection of data in the FERC–921 is an effort by the Commission to detect potential anti-competitive or manipulative behavior or ineffective market rules by requiring Regional Transmission Organizations (RTO) and Independent System Operators (ISO) [6] to electronically submit, on a continuous basis, data relating to physical and virtual offers and bids, market awards, resource outputs, marginal cost estimates, shift factors, financial transmission rights, internal bilateral contracts, uplift, and interchange pricing. Individual datasets that the Commission is requesting may be produced or retained by the market monitoring units (MMUs). The Commission directed each RTO and ISO either to: (1) Request such data from its MMU, so that the RTO or ISO can deliver such data to the Commission; or (2) request its MMU to deliver such data directly to the Commission. Any burden associated with the delivery of such data is counted as burden on the RTO or ISO.

Type of Respondent: Regional transmission organizations and independent system operators.

Estimate of Annual Burden: The Commission estimates the annual public reporting burden for the information collection as:

FERC–921 (Ongoing Electronic Delivery of Data from Regional Transmission Organizations and Independent System Operators)

Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden & cost per response [7]	Total annual recurring operating burden hours & cost	Cost per respondent ($)
(1)	(2)	(1)*(2)=(3)	(4)	(3)*(4)=(5)	(5)÷(1)
6	1	6	98, $9,830	588, $58,980	$9,830

Dated: January 9, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–00573 Filed 1–15–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14657–000]

Appalachian Mountain Club; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Minor License.

b. *Project No.:* 14657–000.

c. *Date filed:* December 29, 2014.

d. *Applicant:* Appalachian Mountain Club.

e. *Name of Project:* Zealand Falls Hydroelectric Project.

f. *Location:* On Whitehall Brook, in the Town of Bethlehem, Grafton County, New Hampshire. The project would occupy 0.66 acres of federal land managed by the U.S. Forest Service.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

[6] Per Final Rule RM–11–17–000 regionally organized markets would not be required to collect any additional data from market participants; requiring regional organized markets to provide data to the Commission that is already collected.

[7] The estimates for cost per response are derived using the following formula: Average Burden Hours per Response * $100.30 per Hour = Average Cost per Response.

h. *Applicant Contact:* James Wrigley, Appalachian Mountain Club, P.O. Box 298, Gorham, New Hampshire 03581, (603) 466–8110.

i. *FERC Contact:* John Baummer, (202) 502–6837, *john.baummer@ferc.gov.*

j. *Cooperating agencies:* Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission by the deadline listed in item l below.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* With this notice, we are waiving the 60-day timeframe in Section 4.32(b)(7) of 18 CFR for requesting additional studies and requests for cooperating agency status. Instead, requests for studies and cooperating agency status are due 30 days from the date of this notice.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14657–000.

m. The application is not ready for environmental analysis at this time.

n. The existing, unlicensed Zealand Falls Hydroelectric Project consists of: (1) A 27-foot-long, 3-inch diameter intake pipe with a 1/8-inch welded wire debris screen; (2) a 50.5-inch-long, 26.5-inch-wide, 31-inch-high settling tank; (3) a 1,374-foot-long penstock consisting of a 970-foot-long, 3-inch-diameter section connected to a 404-foot-long, 2-inch diameter section; (4) a 47.75-inch-wide, 41.25-inch-long generator shed; (5) a single turbine-generator unit with an installed capacity of 2.5 kilowatts; (6) a 6.5-foot-long, 3-inch diameter drain line; (7) a buried 300-foot-long, 48-volt transmission line connecting the turbine-generator unit to Zealand Falls Hut; and (8) appurtenant facilities. The project generates approximately 1,010 kilowatt-hours annually. The applicant proposes to continue operating the project in a run-of-river mode.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. Procedural schedule: The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Issue Notice Ready for Environmental Analysis.	March 2015.
Issue Notice of the Availability of the EA.	June 2015.

Dated: January 9, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–00574 Filed 1–15–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER15–192–000]

Arizona Public Service Company; Notice of Designation of Certain Commission Personnel as Non-Decisional

Commission staff member Stephen Pointer of the Office of Energy Market Regulation is assigned to assist in resolving issues in a dispute concerning two unexecuted firm transmission service agreements filed in the above-referenced docket.

As ''non-decisional'' staff, Mr. Pointer will not participate in an advisory capacity in the Commission's review of any future filings in the above-referenced docket, including offers of settlement or settlement agreements.

Different Commission ''advisory staff'' will be assigned to review and process subsequent filings that are made in the above-referenced docket, including any offer of settlement or settlement agreement. Non-decisional staff and advisory staff are prohibited from subsequent communications with one another concerning matters in the above-referenced docket.

Dated: January 9, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–00571 Filed 1–15–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL15–22–000]

Nevada Power Company; Notice Setting Due Date for Intervention in Section 206 Proceeding

On December 9, 2014, the Commission issued an order in Docket Nos. EL15–22–000, ER10–2475–006, ER10–2474–006, ER10–3246–003, ER13–520–002, ER13–521–002, ER13–1441–002, ER13–1442–002, ER12–1626–003, ER13–1266–003, ER13–1267–002, ER13–1268–002, ER13–1269–002, ER13–1270–002, ER13–1271–002, ER13–1272–002, ER13–1273–002, and ER10–2605–006, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2012), instituting an investigation concerning the justness and reasonableness of the Berkshire MBR Sellers' and their affiliates' market-based rates in the PacifiCorp-East, PacifiCorp-West, Idaho Power, and NorthWestern balancing authority areas. *Nevada Power Company,* 149 FERC ¶ 61,219 (2014). On January 5, 2015, the Commission issued a notice establishing a refund effective date.

Any interested person desiring to become a party in the above-referenced proceeding must file a notice of intervention or motion to intervene, as appropriate, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) by 5:00 p.m. Eastern time on January 20, 2015. The Commission encourages electronic submission of interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.*

Persons unable to file electronically should submit an original hard copy of the intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: January 9, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–00570 Filed 1–15–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP14–553–000]

Texas Gas Transmission, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed Ohio-Louisiana Access Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Ohio-Louisiana Access Project (Project) involving construction and operation of facilities by Texas Gas Transmission, LLC (Texas Gas) in Caldwell Parish, Acadia Parish, Rapides Parish in Louisiana, and Dearborn County, Indiana. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the Project. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Please note that the scoping period will close on February 8, 2015.

This notice is being sent to the Commission's current environmental mailing list for this Project. State and local government representatives should notify their constituents of this proposed Project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the Project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

Texas Gas provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What do I Need to Know?'' This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*www.ferc.gov*).

Summary of the Proposed Project

The purpose of the Project would be to flow gas from the northern end of the Texas Gas system to new markets in the Midwest and South. In order to enable gas to flow from north to south, Texas Gas must make yard and station piping modifications at four existing compressor stations along its system. The Project would consist of the following facilities:

- Installation of a new single 10,915 horsepower (hp) natural gas compressor station (Bosco Compressor Station), located in Ouachita Parish, Louisiana;
- installation of yard and station piping, and other auxiliary facilities at the existing Columbia Compressor Station in Caldwell Parish, Louisiana; Eunice Compressor Station in Acadia Parish, Louisiana; Pineville Compressor Station in Rapides Parish, Louisiana and Dillsboro Compressor Station in Dearborn County, Indiana; and
- installation of piping and valve modifications and installation of bi-directional metering at the existing Gulf South-Bosco Meter Station in Ouachita Parish, Louisiana.

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

The total land requirement for construction and operation of the Project is about 120 acres, of which 15 acres would be permanently affected by the facilities operation.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. The NEPA also requires us[2] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed Project under these general headings:

- Geology and soils;
- land use;
- water bodies, fisheries, and wetlands;
- cultural resources;
- vegetation and wildlife;
- air quality and noise;
- endangered and threatened species; and
- public safety.

We will also evaluate reasonable alternatives to the proposed Project or portions of the Project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before making our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the Public Participation section of this notice.

With this notice, we are asking agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] ''We'', ''us'', and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

implementing regulations for Section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with applicable State Historic Preservation Offices (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the Project's potential effects on historic properties.[3] We will define the Project-specific Area of Potential Effects (APE) in consultation with the SHPOs as the Project develops. On natural gas projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this Project will document our findings on the impacts on historic properties and summarize the status on consultations under Section 106.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the Project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC on or before February 8, 2015.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the Project docket number (CP14–553–000) with your submission. The Commission encourages electronic filing of comments and has expert eFiling staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the *eComment* feature, which is located on the Commission's Web site at *www.ferc.gov* under the link to *Documents and Filings.* An eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the *eFiling* feature, which is located on the Commission's Web site at *www.ferc.gov* under the link to *Documents and Filings.* With eFiling you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing;'' or

(3) You may file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental groups and non-governmental organizations; interested Indian tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for Project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the Project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If the EA is published for distribution, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the compact disc version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling.

An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the ''e-filing'' link on the Commission's Web site.

Additional Information

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC or on the FERC Web site at *www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits, in the Docket Number field (*i.e.,* CP14–553). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/docs-filing/esubscription.asp.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: January 9, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–00572 Filed 1–15–15; 8:45 am]

BILLING CODE 6717–01–P

[3] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Historic properties are defined in those regulations as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register for Historic Places.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–14–000]

Texas Gas Transmission, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed Southern Indiana Market Lateral Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Southern Indiana Market Lateral Project involving construction and operation of facilities by Texas Gas Transmission, LLC (Texas Gas) in Henderson County, Kentucky and Posey County, Indiana. The Commission will

use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Please note that the scoping period will close on February 9, 2015.

You may submit comments in written form or verbally. Further details on how to submit written comments are in the Public Participation section of this notice. If you sent comments on this project to the Commission before the opening of this docket on November 12, 2014, you will need to file those comments in Docket No. CP15–14–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

Texas Gas provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*www.ferc.gov*).

Summary of the Proposed Project

Texas Gas proposes to construct and operate a new approximately 29.9-mile-long, 20-inch-diameter natural gas pipeline lateral and an approximate 0.9-mile-long, 10-inch-diameter natural gas pipeline lateral extending from Texas Gas' facilities in Henderson County, Kentucky to interconnections with two industrial facilities in Posey County, Indiana. The Southern Indiana Market Lateral Project would provide about 166,000 million British thermal units per day of firm transportation capacity. According to Texas Gas, its project would provide two new customers with natural gas service.

The Southern Indiana Market Lateral Project would consist of the following facilities:

- About 29.9 miles of 20-inch-diameter natural gas pipeline lateral;
- about 0.9 mile of 10-inch-diameter natural gas pipeline lateral; and
- a mainline inspection launcher, mainline valve, and two meter and regulator stations.

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

Construction of the proposed facilities would disturb about 611.2 acres of land for the aboveground facilities and the pipeline. Following construction, Texas Gas would maintain about 198.4 acres for permanent operation of the project's facilities; the remaining acreage would be restored and revert to former uses. About 6 percent of the proposed pipeline route parallels existing pipeline, utility, or road rights-of-way.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [2] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- land use;
- water resources, fisheries, and wetlands;
- cultural resources;
- vegetation and wildlife;
- air quality and noise;
- endangered and threatened species; and
- public safety.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section below.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate with us in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for Section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the applicable State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under Section 106.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be.

To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before February 9, 2015.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the project docket number (CP15–14–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You can file your comments electronically using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If we publish and distribute the EA, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the User's Guide under the ''e-filing'' link on the Commission's Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* CP15–14). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: January 9, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–00568 Filed 1–15–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL14–89–000]

New York Independent System Operator, Inc.; Notice of Filing

Take notice that on January 9, 2015, New York Independent System Operator, Inc. filed a refund report to comply with the Federal Energy Regulatory Commission's (Commission) Order on Complaint issued December 18, 2014.[1]

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the

[1] *GDF Suez Energy Resources, NA* v. *New York Independent System Operator, Inc. and Consolidated Edison Company of New York, Inc.,* 149 FERC ¶ 61,257 (2014).

Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on January 30, 2015.

Dated: January 9, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–00569 Filed 1–15–15; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2012–0803] [ER–FRL–9018–9]

Availability of an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Environmental Assessment (EA)/Finding of No Significant Impact (FONSI).

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4307h), the Council on Environmental Quality's NEPA regulations (40 CFR part 1500–1508), and EPA's regulations for implementing NEPA (40 CFR part 6), EPA has prepared an Environmental Assessment (EA) to analyze the potential environmental impacts related to the reissuance of the National Pollutant Discharge Elimination System (NPDES) General Permit for stormwater discharges associated with Industrial Activity (the ''2015 Multi-Sector General Permit''). The EA evaluates the potential environmental impacts from the discharge of pollutants in stormwater discharges associated with industrial activities where EPA is the permitting authority. Based on the environmental impact analysis in the EA, EPA has made a preliminary determination that no significant environmental impacts are anticipated from the issuance of the 2015 Multi-Sector General Permit.

This notice initiates the 30-day review period and invites comments from Federal, State, and local agencies, Indian tribes, and the public regarding EPA's preliminary determination.

DATES: Comments must be received by February 16, 2015.

ADDRESSES: You may submit comments to the Docket ID No. EPA–HQ–OW–2012–0803 by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments by clicking on ''Help'' or ''FAQs.''
- *Mail:* ATTN: MSGP Comments, U.S. Environmental Protection Agency, Office of Wastewater Management, 1200 Pennsylvania Avenue NW., Mail Code: 4203 M, Washington, DC 20460
- *Courier:* ATTN: MSGP Comments, U.S. Environmental Protection Agency, Office of Wastewater Management, 1200 Pennsylvania Avenue NW., Rm # 7235A, Washington, DC 20004, between 9 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

Comments should be received within 30 days of the date of the publication of this notice in the **Federal Register**. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov*. 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 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 FURTHER INFORMATION CONTACT: Jessica Trice, NEPA Compliance Division, Office of Federal Activities, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Mail Code: 2252A, Washington, DC 20460. Telephone: (202) 564–6646.

SUPPLEMENTARY INFORMATION: EPA is seeking public comment regarding its preliminary Finding of No Significant Impact (FONSI) to document its determination that no significant environmental impacts are anticipated from the issuance of the 2015 Multi-Sector General Permit. EPA invites the public to submit comments through Regulations.gov or by mail to the address cited in the **ADDRESSES** section during the 30-day comment period following the publication of this notice in the **Federal Register**.

Since 1995, EPA has issued a series of NPDES Multi-Sector General Permits (MSGP) that cover areas where EPA is the permitting authority. At present, EPA is the permitting authority in Idaho, Massachusetts, New Hampshire, and New Mexico, Indian Country Lands, Puerto Rico, Washington, DC, and U.S. territories and protectorates. EPA's current MSGP became effective on September 29, 2008 (73 FR 56572) and expired at midnight on September 29, 2013. The proposed action, would replace the 2008 MSGP. EPA proposes to issue the MSGP for five (5) years during which time the permit will provide coverage to eligible existing and new dischargers for the ten categories of industrial activities identified in 40 CFR 122.26(b)(14)(i)–(xi) where EPA is the NPDES permitting authority. On November 15, 2013, EPA initiated scoping for the development of the environmental issues and reasonable alternatives to be addressed in the EA. 78 FR 68835.

The environmental review process, which is documented by the Environmental Assessment (EA), indicates that no potential significant adverse environmental impacts are anticipated from the proposed action. The EA, which analyzed the potential environmental impacts of issuing the new MSGP, considered the potential environmental impacts from the discharge of pollutants in stormwater discharges associated with industrial activities where EPA is the permitting authority.

Based on the environmental impact analysis in the EA, EPA has determined that no significant environmental impacts are anticipated from the issuance of the 2015 Multi-Sector General Permit and the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, making the preparation of an Environmental Impact Statement (EIS) unnecessary. Therefore,

EPA is issuing a preliminary Finding of No Significant Impact (FONSI).

Dated: January 13, 2015.

Cliff Rader,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2015–00634 Filed 1–15–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9019–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 01/05/2015 Through 01/09/2015 Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20150001, Final Supplement, NMFS, FL, Amendment 16 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico, U.S. Waters, *Review Period Ends:* 02/17/2015, *Contact:* Susan Gerhart 727–824–5305.

EIS No. 20150002, Final EIS, NPS, TX, Lake Meredith National Recreation Area Off-Road Vehicle Management Plan, *Review Period Ends:* 02/17/2015, *Contact:* Robert Maguire 806–857–3151.

EIS No. 20150003, Draft EIS, BLM, WY, Sheep Mountain Uranium Project, *Comment Period Ends:* 03/02/2015, *Contact:* Chris Krassin 307–332–8400.

EIS No. 20150004, Draft EIS, FDA, 00, Proposed Rule: Standards for Growing, Harvesting, Packing, and Holding of Produce for Human Consumption, *Comment Period Ends:* 03/13/2015, *Contact:* Annette McCarthy 240–402–1057.

EIS No. 20150005, Draft EIS, USFS, CO, Chimney Rock National Monument Management Plan, *Comment Period Ends:* 03/02/2015, *Contact:* Sara Brinton 970–264–1532.

EIS No. 20150006, Draft EIS, BR, WA, Kachess Drought Relief Pumping Plant and Keechelus Reservoir-to-Kachess Reservoir Conveyance, *Comment Period Ends:* 03/10/2015, *Contact:* Candace McKinley 509–575–5848~ext. 603.

EIS No. 20150007, Draft EIS, BLM, CO, Bull Mountain Unit Master Development Plan, *Comment Period Ends:* 03/02/2015, *Contact:* Gina Jones 970–240–5300.

EIS No. 20150008, Final EIS, NMFS, WA, Harvest Specifications and Management Measures for 2015–2016 and Biennial Periods Thereafter, *Review Period Ends:* 02/17/2015, *Contact:* Becky Renko 206–526–6110.

EIS No. 20150009, Draft EIS, DOE, 00, PROGRAMMATIC—Engineered High Energy Crop Programs, *Comment Period Ends:* 03/17/2015, *Contact:* Jonathan Burbaum 202 287 5453.

EIS No. 20150010, Draft EIS, USFS, UT, Monroe Mountain Aspen Ecosystems Restoration Project, *Comment Period Ends:* 03/02/2015, *Contact:* Jason Kling (435) 896–1080.

EIS No. 20150011, Draft EIS, BR, CA, North Valley Regional Recycled Water Program, *Comment Period Ends:* 03/03/2015, *Contact:* Benjamin Lawrence (559) 487–5039.

EIS No. 20150012, Draft EIS, USA, KY, PROGRAMMATIC—Training Mission and Mission Support Activities at Fort Campbell, *Comment Period Ends:* 03/02/2015, *Contact:* Gene Zirkle 270.798.9854 .

EIS No. 20150013, Final EIS, WAPA, NE., Interconnection of the Grande Prairie Wind Farm, *Review Period Ends:* 02/17/2015, *Contact:* Rod O'Sullivan 720–962–7260.

EIS No. 20150014, Draft EIS, USFS, CO, Breckenridge Ski Resort, Multi-Season Recreation Projects, *Comment Period Ends:* 03/02/2015, *Contact:* Roger Poirier 970–945–3245.

Amended Notices

EIS No. 20140300, Draft EIS, BLM, NV, Las Vegas and Pahrump Field Offices Draft Resource Management Plan, *Comment Period Ends:* 02/06/2015, *Contact:* Lee Kirk 702–515–5026. Revision to FR Notice Published 10/10/2014; Extending Comment Period from 01/07/2015 to 02/06/2015.

EIS No. 20140333, Draft EIS, BR, CA, Central Valley Project Municipal and Industrial Water Shortage Policy, *Comment Period Ends:* 03/13/2015, *Contact:* Tim Rust 916–978–5516. Revision to FR Notice Published 11/28/2014; Extending Comment Period from 01/12/2015 to 03/13/2015.

Dated: January 13, 2015.

Cliff Rader,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2015–00633 Filed 1–15–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9921–58–ORD]

Notice of Workshop on Ultrafine Particulate Matter Metrics and Research

AGENCY: Environmental Protection Agency.

ACTION: Notice of Workshop.

SUMMARY: The U.S. Environmental Protection Agency's (EPA) Office of Research and Development's Air, Climate, and Energy (ACE) program is organizing a workshop on Ultrafine Particulate Matter (UFP) metrics and research. This workshop is intended to provide an overview of the state-of-the-science on UFP emissions, air quality impacts, exposures, and health effects, as well as promote discussions on relevant UFP metrics to promote consistency and collaboration in current and future research. The workshop will be held on February 11–13, 2015 in Research Triangle Park, North Carolina. The workshop will be open to attendance by interested public observers on a first-come, first-served basis up to the limits of available space.

DATES: The workshop will be held on February 11–13, 2015.

ADDRESSES: The workshop will be held at U.S. EPA, 109 T.W. Alexander Drive, Research Triangle Park, North Carolina. To register, please visit the Web site: *https://www.eventbrite.com/e/us-epa-workshop-on-ultrafine-particles-tickets-13583846651*. In addition to participating in person, there will be access to the plenary sessions via webinar. The pre-registration deadline is January 27, 2015.

FOR FURTHER INFORMATION CONTACT: For details on workshop registration or logistics, please contact Rich Baldauf at (919) 541–4386, or *baldauf.richard@epa.gov*.

SUPPLEMENTARY INFORMATION: The EPA is organizing a workshop to bring together internal and external experts from multiple disciplines including, but not limited to, atmospheric science, monitoring, air quality analysis, and health assessment, to discuss new and emerging research related to ultrafine particles. The workshop will consist of platform presentations and panel discussions on UFP-relevant science related to emissions, ambient air quality, exposures, and health effects. State-of-the-science presentations will be provided on combustion emissions and control issues, health effects evidence, and previous policy considerations in the United States and

Europe. Presentations and discussions will occur on metrics and indicators relevant to air quality and health impacts, and instruments and methods that can be used to measure and evaluate these metrics. The workshop will also provide researchers with the opportunity to describe on-going and planned UFP research to promote collaboration and communication within the scientific community.

Members of the public may attend the workshop as observers. Space is limited, and reservations will be accepted on a first-come, first-served basis.

Dated: January 7, 2015.

Daniel L. Costa,

Director, Air, Climate and Energy Research Program.

[FR Doc. 2015–00637 Filed 1–15–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9921–74–OA]

Notification of a Public Teleconference and Meeting of the Science Advisory Board Chemical Assessment Advisory Committee Augmented for the Review of EPA's draft Benzo[a]pyrene IRIS Assessment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office announces two meetings of the Chemical Assessment Advisory Committee Augmented for the Review of the Draft Benzo[a]pyrene IRIS Assessment (CAAC—Benzo[a]pyrene Panel). A public teleconference will be held to learn about the development of the Agency's draft IRIS Toxicological Review of Benzo[a]pyrene (September, 2014) and to discuss draft charge questions for the peer review of the document. A face-to-face meeting will be held in the Washington, DC metro area to conduct a peer review of the agency's draft IRIS *Toxicological Review of Benzo[a]pyrene (External Review Draft–September 2014).*

DATES: The public teleconference will be held on Wednesday, March 4, 2015, from 1:00 p.m. to 4:00 p.m. (Eastern Time). The public face-to-face meeting will be held on Wednesday, April 15, 2015 from 9:00 a.m. to 5:30 p.m. (Eastern Time), Thursday, April 16, 2015, and Friday, April 17, 2015, from 8:30 a.m. to 5:00 p.m. (Eastern Time).

ADDRESSES: The public teleconference will be conducted by telephone only. The public face-to-face meeting will be held at Milken Institute School of Public Health, Convening Center Room, George Washington University, 950 New Hampshire Avenue NW., Washington, DC 20052.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this meeting may contact Dr. Diana Wong, Designated Federal Officer (DFO), SAB Staff Office, by telephone/voice mail at (202) 564–2049 or via email at *wong.diana-M@epa.gov.* General information concerning the EPA Science Advisory Board can be found at the EPA SAB Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDAA) codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to FACA and EPA policy, notice is hereby given that the SAB CAAC—Benzo[a]pyrene Panel will hold a public teleconference and a public face-to-face meeting. The purpose of the teleconference is to learn about the development of the agency's draft IRIS *Toxicological Review of Benzo[a]pyrene (External Review Draft–September 2014)* and to discuss the draft charge questions for the peer review of the document. The purpose of the face-to-face meeting is to conduct a peer review of the agency's draft IRIS *Toxicological Review of Benzo[a]pyrene (External Review Draft–September 2014).* This SAB panel will provide advice to the Administrator through the chartered SAB.

Background: EPA's Office of Research and Development (ORD) requested that the SAB conduct a peer review of the draft *Toxicological Review of Benzo[a]pyrene (External Review Draft–September 2014).* The EPA SAB Staff Office augmented the SAB CAAC with subject matter experts to provide advice through the chartered SAB regarding this IRIS assessment.

Technical Contacts: Any technical questions concerning EPA's draft *Toxicological Review of Benzo[a]pyrene (External Review Draft–September 2014)* should be directed to Dr. Samantha Jones by telephone at 703–347–8580 or by email at *jones.samantha@epa.gov.*

Availability of Meeting Materials: Prior to the meeting, the agenda and other materials will be accessible through the calendar link on the blue navigation bar at *http://www.epa.gov/sab/.* Materials may also be accessed at the following SAB Web page *http://yosemite.epa.gov/sab/sabproduct.nsf/02ad90b136fc21ef85256eba00436459/4dcfd0e5f45a8cad85257b65005b17c8!OpenDocument*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to the EPA. Interested members of the public may submit relevant information on the topic of this advisory activity, for the group conducting the activity, for the SAB to consider during the advisory process. Input from the public to the SAB will have the most impact if it provides specific scientific or technical information or analysis for SAB committees and panels to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should contact the DFO directly. *Oral Statements:* In general, individuals or groups requesting an oral presentation on a public teleconference will be limited to three minutes and an oral presentation at the face-to-face meeting will be limited to five minutes. Interested parties wishing to provide comments should contact Dr. Diana Wong, DFO (preferably via email), at the contact information noted above, by February 25, 2015 to be placed on the list of public speakers for the teleconference and by April 8, 2015 to be placed on the list of public speakers for the face-to-face meeting. *Written Statements:* Written statements will be accepted throughout the advisory process; however, for timely consideration by Committee/Panel members, statements should be supplied to the DFO via email at the contact information noted above at least one week prior to a public meeting so that the information may be made available to the SAB Panel for their consideration. Written statements should be supplied in one of the electronic formats: Adobe Acrobat PDF, WordPerfect, MS PowerPoint, or Rich

Text files in IBM–PC/Windows 98/2000/XP format. It is the SAB Staff Office general policy to post written comments on the Web page for the advisory meeting or teleconference. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its Web sites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB Web site. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Diana Wong at (202) 564–2049 or *wong.diana-M@epa.gov.* To request accommodation of a disability, please contact Dr. Wong preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: January 8, 2015.

Thomas H. Brennan,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2015–00638 Filed 1–15–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[WT Docket No. 14–161; DA 14–1846]

Enhancements to the Commission's Universal Licensing System and Antenna Structure Registration System for Providing Access to Official Electronic Authorizations

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Wireless Telecommunications Bureau (Bureau) announces the implementation of further enhancements to the Commission's Universal Licensing System and Antenna Structure Registration System for providing access to official electronic authorizations through those systems or by email, while providing options for receiving authorizations on paper through the U.S. Postal Service.

DATES: Effective February 17, 2015.

FOR FURTHER INFORMATION CONTACT: Mary Bucher at (202) 418–2656 or via email at *Mary.Bucher@fcc.gov* or the Licensing Support Center at (877) 480–3201, Option 2; TTY (888) 225–5322, Option 2, or via its Web page at *https://esupport.fcc.gov/request.htm.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice (*Notice*), DA 14–1846, released on December 18, 2014. The complete text of this document is available for viewing via the Commission's ECFS Web site by entering the docket number, WT Docket No. 14–161. The complete text of this document is also available for public inspection and copying during business hours at the FCC Reference Information Center on the Court Yard Level (Room CY–A257), 445 12th Street SW., Washington, DC (telephone: 202–418–0270; TTY 202–418–2555). In addition, copies of this document may be purchased through the FCC's duplication contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554; Telephone 202–488–5300; Fax 202–488–5563; TTY 202–488–5562. BCPI may be reached by email at *fcc@bcpiweb.com* or via its Web site at *http://www.BCPIWEB.com.* When ordering documents from BCPI, please provide the appropriate FCC document number, for example, DA 14–1846. Alternate formats of this Public Notice (computer diskette, large print, audio recording, and Braille) are available to persons with disabilities by contacting the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY), or by sending an email to *fcc504@fcc.gov.*

In the *Notice,* the Bureau announces the implementation of further enhancements to the Commission's Universal Licensing System (ULS) and Antenna Structure Registration (ASR) System and adopts final procedures for providing access to official electronic authorizations through these systems. Under these procedures, all commercial, private and public safety wireless service licensees and ASR registrants will access their current official authorizations in ''Active'' status only through License Manager in ULS or ASR Dashboard in the ASR System or by email, unless a licensee or registrant notifies the Commission that it wishes to receive its official authorizations on paper through the U.S. Postal Service. For purposes of the Notice, the term ''authorization'' includes all current commercial, private, and public safety wireless service licenses, commercial radio operator permits, vessel exemptions, and spectrum leases in ''Active'' status authorized under parts 1, 13, 20, 22, 24, 26, 27, 74, 80, 87, 90, 95, 97 and 101 of the Commission's rules. The term also includes all current FCC Forms 854R, Antenna Structure Registrations, in ''Active'' status, including ''Granted'' or ''Constructed,'' authorized under part 17 of the Commission's rules. The term does not include current authorizations in any status other than ''Active,'' including, for example, current authorizations in ''Expired,'' ''Cancelled,'' or ''Terminated'' status in ULS, or ''Cancelled,'' ''Dismantled,'' or ''Terminated'' status in the ASR System. In addition, the term does not include spectrum subleases or private commons arrangements, which the Bureau will continue to process on a manual basis, nor does the term include authorizations archived in ULS. Antenna Structure Registrations are not archived in the ASR System. Finally, while other Commission Bureaus manage other licensing systems, the enhancements and final procedures in the Notice apply only to ULS and the ASR System. The action taken in the *Notice* marks another step in the Commission's process reform efforts, and allows the Bureau to modernize the Commission's wireless service licensing and antenna structure registration processes. As discussed in detail in the Notice, the Bureau takes the following actions:

- All licensees and registrants can access their official authorizations in Active status by securely logging into License Manager in ULS or ASR Dashboard in the ASR System. Once accessed, the licensee or registrant can download, save and print official authorizations, to the extent needed.
- A licensee or registrant can also obtain an electronic version of its authorization through email once its application is granted if the licensee or registrant voluntarily includes a valid email address in the application that it files through ULS or the ASR System, or that it provides to a private organization through which the applicant files applications, *e.g.,* a Frequency Coordinator, Volunteer Examiner Coordinator (VEC), or a Commercial Operator License Examination Manager (COLEM).
- Each official authorization will include a watermark ''Official Copy'' imprinted across the face of each page of the authorization to authenticate the official status of the license or registration.
- If a licensee or registrant chooses to notify the Bureau that it wishes to receive its official authorization(s) on paper through the mail, it may do so electronically, by telephone, or in writing. The Commission also retains the process by which licensees and registrants may apply through ULS or the ASR System to have duplicate paper copies of official authorizations mailed through the U.S. Postal Service.

• Finally, the Commission continues to provide unofficial reference copies of authorizations online through ULS and the ASR System. The unofficial copies include the watermark ''Reference Copy'' imprinted on the face of each page of the authorization.

An interim test period adopted in the Initial Public Notice (DA 14–1478) released in this proceeding will continue until these final procedures become effective. The Initial Public Notice was published in the **Federal Register** on October 29, 2014. During the interim test period, the Commission will continue to print authorizations on paper and mail them out through the U.S. Postal Service to licensees or registrants unless a licensee or registrant notifies the Commission that it wishes to stop receiving authorizations on paper through the mail. In the Initial Public Notice, the Bureau sought comment to better inform its decision-making process even though section 4(b) of the Administrative Procedure Act (APA) exempts agencies like the Federal Communications Commission from the general APA requirements to provide the public with advance notice and opportunity for comment when promulgating ''rules of agency organization, procedure, or practice''—so-called ''procedural rules.'' Section 3(a) of the APA requires agencies to publish their ''rules of procedure'' in the **Federal Register** and section 4(d) generally requires an agency to publish its substantive rules 30 days prior to the date on which the rules become effective. Because section 4(d) expressly applies to substantive rules and not to procedural rules, the requirement to publish the final procedures adopted in the Notice 30 days before they become effective is inapplicable in this proceeding. The Bureau has nevertheless decided to provide for a 30-day period after publication in the **Federal Register** before the final procedures become effective to provide licensees and registrants with an ample measure of time to facilitate their use of these new procedures. After the effective date of these final procedures is published in the **Federal Register**, the Bureau anticipates releasing, as additional outreach, a further public notice reminding licensees and registrants of that effective date.

Background

Stations in Wireless Radio Services may be operated only with a valid authorization granted by the Commission, and owners of antenna structures that require notice of proposed construction to the Federal Aviation Administration (FAA) must register the structure with the Commission. Once an application is granted, ULS or the ASR System generates an authorization from information provided in the granted application. Historically, the Bureau has then printed each authorization on paper, placed it in a postage-paid envelope, and mailed it out through the U.S. Postal Service to the licensee or registrant.

On February 14, 2014, the FCC Staff Working Group released the Commission's ''Report on FCC Process Reform,'' recommending that, ''to the extent permitted by Federal records retention requirements,'' licensing Bureaus ''should eliminate paper copies of licenses.'' To implement this recommendation, in October 2014, the Commission enhanced ULS and the ASR System so that all licensees and registrants can now access the official electronic versions of their current authorizations in Active status by securely logging into License Manager or a registrant's ASR Dashboard. Once logged in, the licensee or registrant can download, save, and print copies of its authorizations, to the extent needed.

In conjunction with the Commission's enhancements to ULS and the ASR System, the Bureau released the Initial Public Notice, in which the Bureau deemed the electronic version of an authorization stored in ULS or the ASR System as the official Commission document and sought comment on certain final procedures for licensees and registrants to access official authorizations electronically through License Manager, through ASR Dashboard, and by email. The Bureau also noted in the Initial Public Notice that lifetime commercial radio operator licenses issued prior to implementation of ULS that were not converted into the ULS database remain valid even though the licenses themselves are not stored in ULS. The Initial Public Notice also sought comment on options for receiving official authorizations on paper through the U.S. Postal Service. The comment period ended on November 10, 2014. The Bureau received 11 comments in response to the Initial Public Notice. Eight comments were filed on behalf of amateur service licensees: Michael D. Adams (Adams); the American Radio Relay League, Incorporated (ARRL); Richard S. Jandrt (Jandrt); David W. Johnson (Johnson); Nickolaus E. Leggett (Leggett); Victor Magana (Magana); W. Lee McVey (McVey); and Edward F. Pataky (Pataky). The remaining comments were filed by AT&T Services, Inc. (AT&T); the Enterprise Wireless Alliance (EWA); and the National Association of Manufacturers and MRFAC, Inc. (NAM/MRFAC). Finally, the Initial Public Notice provided for an interim test period, which will continue until final procedures become effective.

Discussion

A. Official Electronic Authorizations

Background. As explained in the Initial Public Notice, the Bureau's goal in this proceeding is to stop printing and mailing out official authorizations to the greatest extent possible. While the Bureau is currently continuing to print and mail out authorizations on paper unless otherwise notified, in October of this year, the Commission enhanced ULS and the ASR System so that all licensees and registrants can also access the official electronic versions of their current authorizations in Active status through License Manager or ASR Dashboard. The final procedures set forth in the Initial Public Notice would modify ULS and the ASR System so that the default setting would be not to print and mail out these authorizations. The Bureau sought comment on whether this process for providing current official electronic authorizations in Active status through License Manager or ASR Dashboard sufficiently meets the needs of licensees and registrants. The Bureau also proposed a method by which a licensee or registrant could receive its official authorizations electronically through email.

Discussion. The Bureau adopts the procedures as proposed. Once final procedures become effective, when an application is granted, ULS or the ASR System will generate an official electronic authorization. The Bureau, however, will no longer print out the authorization on paper or mail it to the licensee or registrant unless a licensee or registrant notifies the Bureau that it wishes to receive its official authorization(s) on paper. The Bureau finds this electronic process will improve efficiency by simplifying access to official authorizations in ULS and the ASR System, shortening the time period between grant of an application and access to the official authorization, and reducing regulatory costs. As described below, links to download authorizations in ULS can be found on the License Manager homepage and a registrant may download authorizations through its ASR Dashboard. Licensees and registrants may also download more than one authorization at a time. Once downloaded, licensees and registrants can save and print official authorizations, to the extent needed.

The Bureau further adopts the proposed method by which licensees and registrants can obtain electronic versions of their authorizations by email. The Bureau finds that this procedure serves the public interest by providing licensees or registrants an additional method by which they may obtain electronic versions of official authorizations, in this case without accessing ULS or the ASR System. If an applicant includes a valid email address under ''Applicant Information'' (licensee) in a ULS application or under ''Antenna Structure Ownership Information'' (registrant) in an ASR System application, the Bureau will send the official electronic authorization via email to the licensee or registrant upon grant of the application. While in most cases a single authorization will be attached to a single email, the Bureau will attach all authorizations granted on the same day within the same system to a single email, to the extent capacity allows.

The Bureau further notes that if an application is pending in ULS or the ASR System once final procedures become effective, and if the applicant or registrant did not include a valid email address in the pending application, the licensee or registrant may access the electronic version of the official authorization through License Manager or ASR Dashboard once the application is granted. An applicant or registrant may also amend a pending application to include a valid email address. To add an email address to or update email information included in an application pending in ULS or the ASR System, an applicant or registrant must file an application for ''Administrative Update (AU).'' In that case, once the application is granted, the Bureau will email an electronic version of the official authorization to the licensee or registrant as already described.

The Bureau reminds licensees and registrants that this is a voluntary process and if a licensee or registrant does not wish to provide an email address in an application, it can instead continue to access official electronic authorizations through License Manager or ASR Dashboard. While the Bureau will email the licensee or registrant its official authorizations, the new procedure does not include sending an official electronic authorization by email to a ''contact'' listed on the application. Finally, the Bureau will send official electronic authorizations to valid licensee or registrant email addresses regardless of whether a licensee or registrant obtains its authorization(s) electronically through License Manager or ASR Dashboard, or elects to receive official authorizations on paper through the U.S. Postal Service. Several commenters support these procedures. EWA, a Commission-certified Frequency Coordinator that coordinates and files with the Commission approximately 9,000 to 10,000 part 90 applications each year, ''anticipates that a significant number of parties will choose to rely on electronic documents, if not immediately, then over time as the process becomes more familiar.'' The National Association of Manufacturers (NAM), which represents 14,000 small and large manufacturers in every industrial sector, in all 50 states, and MRFAC, Inc., a Commission-certified Frequency Coordinator for private land mobile bands and the frequency coordinating arm for NAM, support the Bureau's proposals as ''a more expeditious and economical means of providing official authorizations to Commission licensees.'' AT&T also ''welcomes and supports'' the Bureau's proposals noting that the ''changes will lead to a more efficient system to transmit authorizations, save Commission resources and reduce workloads for Commission licensees and registrants.'' AT&T further notes that ''authorizations sent to an email address that a licensee or registrant provides for receipt are likely to arrive at their ultimate destination and be processed more quickly than if sent by United States mail.'' AT&T concludes that providing authorizations electronically ''reduces the paperwork collection burden on licensees and registrants'' and that it has ''found License Manager and ASR Dashboard to be sufficient to meet its needs when official authorizations are needed.''

Those filing comments on behalf of amateur service licensees, however, raise concerns about electronic access as the default method for obtaining authorizations. In particular, ARRL, the national association for amateur radio, strongly recommends that the Commission continue sending paper authorizations to new amateur licensees along with instructions to the licensee on how to access electronic versions or request paper copies of official modified or renewed licenses issued after the licensee receives his or her initial license. ARRL's concern is that licensees do not interact with ULS during the current licensing process for the amateur service and that the new procedures could ''discourage newcomers'' to the amateur service or ''make their experience difficult from the outset.'' In addition, ARRL and other amateur radio commenters are concerned about ensuring the authenticity of licenses printed by a licensee from License Manager.

With respect to the interaction of amateur licensees with ULS, the Commission currently authorizes 14 Volunteer Examiner Coordinators (VECs) to coordinate the efforts of Volunteer Examiner (VE) teams in preparing and administering amateur service operation license examinations. Before taking the examination, a candidate must provide to the VE team certain information needed for submitting a license application through ULS. In most cases, the candidate fills out either online or on paper an NCVEC Quick-Form 605 Application for Amateur Operator/Primary Station License (NCVEC Form 605) produced by the VECs for use by VE teams. Candidates who have not already obtained an FCC Registration Number (FRN) through the Commission's Registration System (CORES) before taking the examination also provide the VE team with a social security number. Once a candidate passes the examination, the VE team certifies that the candidate is qualified for a particular operator license class, and forwards the candidate's information to the coordinating VEC. The VEC submits all application information received from the VE team in electronic batch files. CORES then generates FRNs as needed and ULS produces and processes FCC Form 605 applications from those files.

Once an application is granted, a new licensee who did not provide an FRN at the examination receives three separate mailings through the U.S. Postal Service: (1) A CORES-generated document providing his or her FRN; (2) another CORES-generated document that provides a temporary password for the FRN, along with instructions on how to obtain a permanent password; and (3) an official ULS-generated license printed on paper. While the new licensee may then access CORES to obtain a permanent password, ARRL is concerned that, under the new procedures, licensees will also be required to access ULS to obtain their license electronically when they currently do not necessarily interact with ULS.

The Bureau is cognizant that the new procedures may create confusion for amateur service licensees; however, it finds that ARRL's concerns are overstated. Most importantly, the new procedures will not require any amateur service applicant to interact directly with ULS. To the contrary, if an applicant includes an email address when providing contact and other

information to VE teams, that address will be processed as part of the ULS application and, once granted, ULS will email the electronic version of the new official authorization directly to the licensee. While amateur licensees may access ULS to request paper copies of their authorizations or to download authorizations from License Manager if they choose, they are not required to do so and may avail themselves of the alternate methods described below.

The Bureau agrees with ARRL that providing additional outreach and education regarding this transition would be highly beneficial. On the day the final procedures become effective, the Bureau will add a link on the ULS homepage and the homepages of certain wireless services to a new Web page entitled ''How to Obtain Your Official Authorization,'' which explains how licensees can access both the electronic and paper versions of their authorizations. The Bureau will also add a link on the ASR System homepage to a new Web page, entitled ''How to Obtain Your Official Registration,'' providing the same information for obtaining Antenna Structure Registrations. The information included on these new explanatory Web pages is set forth below.

In addition to adding explanatory Web pages in ULS and the ASR System, Bureau staff will work with each VEC, COLEM and Frequency Coordinator to educate new and existing licensees about the new procedures. The Bureau notes that EWA, in its comments, states that ''it will work with its members to familiarize them with the various options . . . [and] assist those who need help in navigating License Manager in ULS or ASR Dashboard in the ASR System.'' EWA explains that it ''provides this assistance today and will continue to do so as entities familiarize themselves with the authorization delivery options'' adopted in the Notice. The Bureau believes that the Notice, the explanatory Web pages it is adding to the ULS and ASR System homepages, and additional outreach from these private organizations, taken together, will provide the vast majority of licensees with the information they need about the new procedures.

ARRL, as well as other commenters in the amateur service, also raises concerns about ensuring the authenticity of authorizations that licensees download and print from License Manager. Commenters note certain circumstances in which the Commission, as well as foreign, state, and local governments, requires paper copies of amateur service licenses. According to ARRL, the most urgent of these circumstances occurs when an amateur operator seeking an upgrade in license class must provide both an original and a copy of his or her current license to the VE team. Commenters also note that requirements for obtaining European Conference of Postal and Telecommunications Administrations (CEPT) operating authority for reciprocal operation in CEPT countries and for obtaining an International Amateur Radio Permit necessitate a convenient method for licensees to obtain ''demonstrably authentic license documents.'' Finally, commenters list certain situations where a state or local government may require a copy of an official license, including, for example, when an amateur radio operator who wishes to install an antenna at his or her residence files an application for a land-use authorization.

Commenters contend that the type of paper the Bureau has used for printing authorizations substantiates the authenticity of a Commission-issued paper license. For example, ARRL states that ''[i]f there is not a license printed on distinctive license stock by the Commission, authentication issues arise and the possibility of electronic alteration of a license document is created.'' To remedy the situation, ARRL suggests that the Bureau issue a separate public notice ''explaining to third parties that a licensee-generated license document printed from the official license file in the ULS has the same validity and authenticity as a Commission-issued paper document.'' ARRL contends that an amateur service licensee could use the public notice ''to persuade non-Federal authorities of the validity of a license document.'' The Bureau first notes that it stopped using ''distinctive stock'' and started using standard white recycled paper for printing authorizations earlier this year. The paper the Bureau used previously was six times more expensive than the standard white recycled paper it now uses. Thus, any plausible distinction between a Commission-printed authorization and a licensee- or registrant-printed authorization based on the type of paper used no longer exists. To address commenters' concerns, however, the watermark ''Official Copy'' will be imprinted on each page of an official authorization that a licensee or registrant prints out from License Manager or ASR Dashboard and licenses and registrations printed and mailed by the Bureau will also include the watermark ''Official Copy'' on each page of the authorization. While this enhancement should address ARRL's concerns about ''maintaining the integrity of the amateur radio examination process,'' which ''might be more difficult where something other than a Commission-printed license document on distinctive paper stock is presented to VEs at an examination session,'' the Bureau also notes that VE teams regularly use other methods to authenticate the current license status of the examination candidate.

Finally, in its comments, AT&T contends that those licensees and registrants that elect to stop receiving authorizations on paper during the interim test period and that have provided an email address on a pending application that is granted during that time period should receive an email with the authorization attached, or at a minimum, an email that includes a link to the authorization in ULS or the ASR System. The Bureau declines to provide electronic authorizations by email during the interim test period. The Bureau first notes that no other person or entity has made a similar request. The Bureau also finds that providing email-delivery during this interim period only to licensees and registrants that have elected to stop receiving authorizations on paper during the interim test period would complicate the process and create additional expense. If the Bureau were to implement immediately the entire email-delivery procedure adopted in the Notice, all applicants that have included an email address on an application currently pending in ULS or the ASR System, including those who continue to receive paper authorizations through the mail, would, without notice, begin receiving electronic authorizations delivered by email. It is important to note that the Bureau is working diligently to make all of the final procedures effective for everyone shortly.

B. Official Paper Authorizations

Background. While under the Bureau's final procedures, the Commission, by default, will no longer print and mail out official authorizations, the Bureau proposed and sought comment in its Initial Public Notice on several options by which a licensee or registrant could notify the Bureau that it wishes to receive its official authorization(s) on paper through the U.S. Postal Service.

Discussion. The Bureau adopts each option as proposed. License Manager and ASR Dashboard both now include settings that allow a licensee or registrant to notify the Bureau whether it wishes to receive official authorization(s) on paper. Once final procedures become effective designating

electronic access as the default, if a licensee or registrant wishes to receive official authorizations on paper, the licensee or registrant can change the setting so that once an application is granted, the Bureau will print and mail out on paper the resulting official authorization(s) associated with the licensee's or registrant's FRN. Licensees or registrants that use more than one FRN must change the default setting for each FRN in each applicable system, ULS and ASR, to the extent they wish to receive official paper authorizations specifically associated with a particular FRN. The procedures for changing the setting(s) are detailed below.

In addition, a licensee or registrant may contact the Licensing Support Center via Web page, phone, or mail to request paper authorizations. These methods are also detailed below. The Bureau notes that even if a licensee or registrant elects to receive paper authorizations using any of these options, the licensee or registrant may also continue to access its authorizations electronically through License Manager or ASR Dashboard, or by email where the applicant or registrant provides a valid email address in its application.

Finally, the Bureau notes that the process for obtaining duplicate paper copies of licenses or registrations by filing an application, along with any applicable filing fee, through ULS or the ASR System remains available under the Bureau's final procedures. While under this modernized process the need to request a duplicate paper license or registration is virtually eliminated, the Commission has retained the capability in ULS and the ASR System as an option for obtaining paper copies of official authorizations.

The Bureau finds that these options serve the public interest by providing licensees and registrants a variety of methods, electronic as well as by telephone or in writing, to notify the Bureau that they wish to receive official authorizations on paper through the mail. The Bureau agrees with EWA, which supports the options, explaining that ''[e]ntities have different internal processes for handling FCC authorizations that may be better suited to one approach versus another, at least initially, although [EWA] would hope that electronic documents will become the norm.''

C. Unofficial Reference Copies of Authorizations

As explained in the Initial Public Notice, electronically stored application and licensing data for authorizations in wireless radio services and application and registration data on antenna structures is available for public inspection via the ULS and ASR System Web sites. The final procedures that the Bureau adopts in the Notice do not change this access. The Commission will continue providing unofficial reference copies of authorizations online through ULS and the ASR System with the watermark ''Reference Copy'' imprinted on each page. The reference copy includes the most recent information on the authorization, thus providing the public with current licensing or registration data without compromising the official status of the official authorization.

D. Posting, Record Retention and Other Rules Are Unaffected

Background. The Bureau explained in the Initial Public Notice that some of the Commission's wireless service-specific rules require licensees to retain current authorizations as part of their station records, and, for some services, licensees must post paper copies of their station authorizations at certain locations. In addition, the Bureau explained that Commission rules require antenna structure owners to post the Antenna Structure Registration Number at each facility, and to provide all tenant licensees (and permittees) on the structure access to a copy of the FCC Form 854R, Antenna Structure Registration. The Bureau further stated that enhancing the Commission's licensing and Antenna Structure Registration systems to replace official paper authorizations with official electronic authorizations does not affect any of these rules. The Bureau further notes that the Commission adopted revisions to its part 17 rules, which became effective October 24, 2014, including modified requirements for posting Antenna Structure Registration Numbers and mailing registrations to tenant licensees and permittees. The enhancements and final procedures adopted in the Notice are independent of the proposals adopted in that rulemaking. Finally, the Bureau explained that while the default setting under the final procedures would be set so that the Bureau would no longer print and mail out official paper authorizations, the setting would have no effect on how the Commission processed other applicant, licensee or registrant correspondence and notices generated by ULS or the ASR System.

Discussion. ARRL and other commenters argue that certain rules regarding posting of authorizations and processing of correspondence should change to effectuate the new procedures. ARRL first contends that if the Commission eliminates the default mailing of paper licenses to amateur service licensees, it should consider eliminating rules that require posting of paper licenses at transmitter sites. Similarly, while it supports the requirement that licensees retain copies of their authorizations as part of their station records, EWA recommends that the Commission consider eliminating the rules that require part 90 licensees to maintain physical copies of their authorizations for base and other fixed stations at every station control point. Finally, NAM/MRFAC urge the Commission to consider using electronic delivery for letters that ULS generates when an application is returned as defective. The Bureau does not disagree with commenters' recommendations that amendment or elimination of these rules or processes should be considered one day. EWA, however, is correct that its recommendation falls outside the scope of this proceeding, as do the other commenters' suggestions. The Bureau similarly rejects, as outside the scope of this proceeding, ARRL's argument that Section 97.23, which requires each amateur license grant to include the licensee's mailing address, which must be in an area where the licensee can receive U.S. Postal Service, should be amended to replace mailing addresses with other alternatives, including email addresses, for use in Commission correspondence.

Finally, the Bureau rejects ARRL's contention that Section 97.29 must be amended. Section 97.29 provides that ''[e]ach grantee whose amateur station license grant document is lost, mutilated or destroyed may apply to the FCC for a replacement in accordance with § 1.913 of this chapter.'' As the Bureau stated earlier, it is retaining the capability for licensees to file applications through ULS as an optional means of requesting duplicate paper copies of official authorizations. Moreover, in the event a copy of an amateur service licensee's official authorization is lost or destroyed, the rule, which is permissive, does not preclude the licensee from obtaining a replacement using other methods that do not require Commission action, including downloading and printing an official authorization from License Manager.

Instructions for Downloading Official Authorizations in ULS

The Commission currently provides both temporary and permanent links on the License Manager homepage to download current authorizations in Active status. The temporary link,

''download your official electronic authorizations *now*,'' can be found on a green bar across the top of the License Manager homepage. The permanent link, ''Download Electronic Authorizations,'' can be found in the navigation bar on the left side of the License Manager homepage.

Instructions for Downloading Official Registrations in ASR

The Commission provides a link, ''Download Official Registration,'' on a registrant's ASR Dashboard homepage and under the ''My Registrations'' tab on its ASR Dashboard to download current Antenna Structure Registrations in Active status.

Instructions for Accessing Electronic-Only Official Authorizations in ULS

The Commission provides both temporary and permanent links on the License Manager homepage to access the default setting that allows licensees and registrants to notify the Commission whether they wish to receive authorizations on paper through the U.S. Postal Service. The temporary link, ''Change your paper authorization preferences *here*,'' can be found on a green bar across the top of the License Manager homepage. The permanent link, ''Set Paper Authorization Preferences,'' can be found in the navigation bar on the left side of the License Manager homepage. Once final procedures become effective, the default setting will look like this:

''Receive Paper Authorizations? __ Yes x No''

If licensees wish to obtain official authorizations only electronically through ULS, they do not need to make any changes to the setting in License Manager. If the licensee does not change the setting, the Commission will no longer print and mail out official authorizations on paper through the U.S. Postal Service.

Instructions for Accessing Electronic-Only Official Registrations in ASR

The Commission provides a link on the registrant's ASR Dashboard homepage to access the default setting that allows registrants to notify the Commission whether they wish to receive registrations on paper through the U.S. Postal Service. Once final procedures become effective, the default setting will look like this:

''Receive Paper Registrations? __ Yes x No''

If registrants wish to obtain official registrations only electronically through the ASR System, they do not need to make any changes to the setting in ASR Dashboard. If a registrant does not change the setting, the Commission will no longer print and mail out official authorizations on paper through the U.S. Postal Service.

Instructions for Receiving Official Paper Authorizations From ULS and ASR

If a licensee or registrant wishes to receive official authorizations on paper, the licensee or registrant can change the default setting(s) described above by checking the ''Yes'' box in ULS or the ASR System. Licensees and registrants using multiple FRNs must choose the setting for each FRN in each system.

OR

The licensee or registrant may contact the Licensing Support Center via phone, web or mail. All requests must include the licensee's or registrant's FRN(s), and whether the request applies to ULS or the ASR System or both.

Phone: (877) 480–3201, Option 2; TTY (888) 225–5322, Option 2.

Web: https://esupport.fcc.gov/request.htm.

Mail: Send a letter to the Wireless Telecommunications Bureau, Technologies, Systems and Innovation Division, 1270 Fairfield Road, Gettysburg, Pennsylvania 17325–7245.

If a licensee or registrant changes the setting(s) described above to ''Yes'' or uses any of these other options, once an application is granted, the Commission will print and mail out on paper the resulting official authorization(s) associated with the licensee's or registrant's FRN(s). If a licensee or registrant elects to receive paper authorizations, the licensee or registrant can also continue to access its authorizations electronically through License Manager or ASR Dashboard, or by email where the licensee or registrant includes a valid email address in its application.

Federal Communications Commission.

Jean Kiddoo,

Deputy Bureau Chief, Wireless Telecommunications Bureau.

[FR Doc. 2015–00622 Filed 1–15–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Wednesday, January 21, 2015, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' Meetings.

Memorandum and resolution re: Notice of Proposed Rulemaking Amending the Securitization Safe Harbor (12 CFR 360.6).

Memorandum and resolution re: Review of FDIC Regulations in Accordance with the EGRPRA.

Memorandum and resolution re: Rescission and Removal of Regulations Transferred from the Office of Thrift Supervision: Part 390, Subpart N—Possession by Conservators and Receivers for Federal and State Savings Associations.

Memorandum and resolution re: Final Rule Regarding Removal of Transferred OTS Regulations 12 CFR part 390, Subparts B, C, D, and E Relating to Rules of Practice and Procedure and Amendments to 12 CFR part 308, Subparts A, B, C, K, and N of the FDIC Rules and Regulations.

Memorandum and resolution re: Notice of Proposed Rulemaking on Fair Credit Reporting Regulations, Part 334 and Part 391, Subpart C: Review and Removal of Regulations Transferred from the Former Office of Thrift Supervision; Removal of Regulations Transferred to the Consumer Financial Protection Bureau; Amendment of Red Flag Identity Theft Rules.

Memorandum and resolution re: Review of Regulations Transferred from the Former Office of Thrift Supervision: Part 391, Subpart B—Safety and Soundness Guidelines and Compliance Procedures.

Reports of actions taken pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum and resolution re: Regulatory Capital Rules, Liquidity Coverage Ratio, Proposed Revisions to the Definition of Qualifying Master Netting Agreement and Related Definitions.

The meeting will be held in the Board Room temporarily located on the fourth floor of the FDIC Building located at 550 17th Street NW., Washington, DC.

This Board meeting will be Webcast live via the Internet and subsequently made available on-demand approximately one week after the event. Visit *https://*

fdic.primetime.mediaplatform.com/#!/channel/1232003497484/Board+Meetings to view the event. If you need any technical assistance, please visit our Video Help page at: *http://www.fdic.gov/video.html.*

The FDIC will provide attendees with auxiliary aids (*e.g.,* sign language interpretation) required for this meeting. Those attendees needing such assistance should call 703–562–2404 (Voice) or 703–649–4354 (Video Phone) to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at 202–898–7043.

Dated: January 14, 2015.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2015–00800 Filed 1–14–15; 4:15 pm]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE & TIME: Tuesday, January 13, 2015 AT 10:00 a.m. and its continuation on Thursday January 15, 2015 at the conclusion of the open meeting.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

Federal Register Citation of Previous Announcement—80 FR 1030 (January 8, 2015)

CHANGE IN THE MEETING: The Commission also discussed information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shelley E. Garr,

Deputy Secretary of the Commission.

[FR Doc. 2015–00771 Filed 1–14–15; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Notice

January 14, 2015

TIME AND DATE: 10:00 a.m., Thursday, January 29, 2015.

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (enter from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument in the matter *Mill Branch Coal Corp.* v. *Secretary of Labor,* Docket Nos. VA 2012–435–R et al. (Issues include whether the Administrative Law Judge erred in upholding certain imminent danger orders.)

Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Sarah L. Stewart,

Deputy General Counsel.

[FR Doc. 2015–00720 Filed 1–14–15; 4:15 pm]

BILLING CODE 6735–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 12, 2015.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *CB Edinburg Holdings, Inc.,* Edinburg, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Bank of Edinburg, Edinburg, Illinois.

Board of Governors of the Federal Reserve System, January 13, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015–00615 Filed 1–15–15; 8:45 am]

BILLING CODE 6210–01–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 February 2, 2015.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Saltzman Family (Theodore G. Saltzman, Jr.; Shennen S.C. Saltzman, both of Dakota Dunes, South Dakota; and Sundae M. Saltzman Haggerty, South Sioux City, Nebraska*) as a group acting in concert; to retain control of Pioneer Development Company, Sergeant Bluff, Iowa, and thereby indirectly control of Pioneer Bank, Sergeant Bluff, Iowa.

Board of Governors of the Federal Reserve System, January 12, 2015.

Michael J. Lewandowski,

Assistant Secretary of the Board.

[FR Doc. 2015–00559 Filed 1–15–15; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Federal Trade Commission (''Commission'' or ''FTC'').

ACTION: Notice; request for comments.

SUMMARY: The Commission plans to conduct a study to update and expand on the divestiture study it conducted in the mid-1990s to assess the effectiveness of the Commission's policies and practices regarding remedial orders where the Commission has permitted a merger but required a divestiture or other remedy, and identify the factors that contributed to the Commission successfully or unsuccessfully achieving the remedial goals of the orders. This is the first of two notices required under the Paperwork Reduction Act (''PRA'') in which the Commission seeks public comment on its proposed study before requesting Office of Management and Budget (''OMB'') review of, and clearance for, the collection of information discussed herein.

DATES: Comments must be received on or before March 17, 2015.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Remedy Study, FTC File No. P143100'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/hsr2014divestiturestudypra* by following the instructions on the web-based form. If you prefer to file your comment on paper, write ''Remedy Study, FTC File No. P143100'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Daniel P. Ducore, Assistant Director, 202–326–2526, Compliance Division, Bureau of Competition, Federal Trade Commission, Washington, DC 20580, or Timothy Deyak, Associate Director, 202–326–3742, Bureau of Economics, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Summary

The FTC, along with the Antitrust Division of the Department of Justice, enforces the antitrust laws. Under this authority, the Commission examines consummated and proposed transactions to determine whether anticompetitive effects are likely because of the transaction. Each year, the Commission challenges a number of transactions. Most of those are resolved through a consent order providing a remedy to address the competitive concern. In horizontal mergers, the Commission typically requires a divestiture of assets to remedy the probable anticompetitive effects of the transaction. In a study that began in 1995 and culminated with the publication of a report in August 1999, the FTC's Bureau of Competition evaluated those divestitures the Commission ordered from FY 1990 through FY 1994. The Commission refined and improved its divestiture orders partly as a result of that study. The Commission now proposes a new study to focus on more recent orders, both divestiture orders that incorporated modifications based on the prior study and orders that required remedies other than divestitures.

II. Background

In the mid-1990s, taking advantage of its unique research and study function, the Commission authorized a study of Commission-ordered divestitures. As part of that study, which was conducted by the Bureaus of Competition and Economics, Commission staff interviewed thirty-seven buyers out of the fifty that acquired assets under the thirty-five orders the Commission issued from FY 1990 through FY 1994. The study yielded valuable information. The FTC's Bureau of Competition synthesized, summarized, and made available to the public the learning gained from the interviews, in a report the Bureau of Competition issued in August 1999. The report is available on the FTC's Web site at *http://www.ftc.gov/sites/default/files/attachments/merger-review/divestiture.pdf.*

Based on the study, the Commission implemented several changes to its divestiture process. First, it shortened the divestiture period from a largely standard twelve months to six or fewer months. Second, recognizing the risks posed by divestitures of assets that comprised less than an on-going business, the Commission began more consistently requiring up-front buyers in cases in which it allowed such a divestiture. Third, the Commission began requiring monitors more frequently, particularly in divestitures in technology and pharmaceutical industries. These changes were implemented almost immediately, and the Commission and its staff still rely on the findings from the study as they craft and enforce the Commission's remedies.

The FTC has not conducted a broad review of its divestitures since the earlier study and the resulting modifications based on it. Accordingly, the Commission now proposes a new study to focus on more recent orders, many of which incorporated these modifications, and to include some orders that did not require divestitures.

III. FTC's Proposed Study

A. Description of the Collection of Information and Proposed Use

Since the period covered by the prior remedy study through 2013, the Commission issued 281 orders in merger cases. Of those, the Commission proposes to study all ninety-two orders issued from 2006 through 2012. The Commission chose the latter period because it is not so long ago that the parties are likely to have forgotten details, but it is sufficiently long to assess whether divestiture orders created new competitors and whether merger orders, including divestiture orders, achieved their remedial goals.[1] The industries covered in this period are generally representative of those in the longer period from 1995 through 2013.

The Commission proposes to use a similar case study method as was used in the earlier study to evaluate the majority of the orders the Commission issued during this period. Staff will employ this approach on the fifty-three orders in which the Commission required a remedy in a variety of markets ranging from fishing lines, pipelines, and specialty metals to medical market research, pesticides, rock salt, and chemical rust inhibitors. The Appendix lists the fifty-three orders in chronological order based on the date first accepted by the Commission. Of the fifty-three merger orders the Commission issued during this period, forty-three orders required divestitures;

[1] The purpose of this remedy study differs from the aims of other more specific, in-depth merger retrospectives, such as those examining hospital, petroleum, and grocery store mergers.

under those orders, the Commission approved divestitures to forty-seven different buyers. The Commission proposes interviewing the forty-seven buyers as well as, on average, two other competitors, including the respondent, and, on average, two customers in each of the affected markets. For the ten orders in which the Commission ordered only non-structural relief, and where there are therefore no buyers, the Commission proposes interviewing, on average, two competitors, including the respondent, and, on average, two customers in each market.

Although the FTC will seek voluntary interviews in the first instance, it may rely on compulsory process where necessary to obtain the information it needs for the study. The interviews will, to the extent possible, be conducted by attorneys and economists who are familiar with the order from their work during the time it was issued. Each interviewer will use similar outlines for the interviews, focusing broadly on the same topics. To the extent unique issues arise with respect to particular divestitures, the interviewer will pursue those issues as well.

Although the buyer interviews will be similar to those in the earlier study, staff will focus on several specific issues, some of which arose from the changes made based on the earlier study. Those issues include:

- Whether the increased use of buyers-up-front hindered the buyer's ability to conduct adequate due diligence.
- Whether shortening the divestiture period had any adverse effect on the buyers and the process.
- To what extent the staff's review of buyers and monitors may have been inadequate.
- Whether the orders have effectively defined the assets of an autonomous business (when that was the purpose).
- Whether assets outside of the relevant market have been properly included in the divestiture package when necessary.
- Whether Commission orders have effectively required sufficient technical assistance or other nurturing provisions when necessary.
- Whether monitors have provided the oversight that the Commission expected.
- Whether the respondent impeded the buyer's ability to compete in the market.

In addition to interviewing buyers, the Commission will also interview customers and other competitors (including the respondent) in each affected market. The additional interviews will be used (along with the buyer interviews) to attempt to assess further whether the Commission's orders achieved their remedial goals. These interviews will address some additional points, and, where appropriate, will cover some of the issues noted above. These additional points include:

- Identifying the leading suppliers (and their market shares) of the product before and after the remedy.
- Whether the buyer competed in a manner that was as effective as the previous owner of the divested assets.
- Whether any other significant changes took place in the market after the remedy was implemented (*e.g.,* entry, exit, or other merger).
- The interviewee's views on how the merger would have affected the competitive environment absent the remedy.
- The interviewee's views about the market's competitiveness before and after the acquisition and remedy.

All interviews will be conducted in a flexible manner, and certain specific questions will be explored as particular cases, and interview responses, indicate.

In addition to conducting interviews, the FTC will require information from each buyer and significant competitor, including the respondent, in each market by issuing orders to file special reports under its authority in Section 6(b) of the Federal Trade Commission Act. Information will be sought from as many as 280 participants. The special reports will request very limited annual unit and dollar sales data for the year the remedy took place, three years before the remedy, and three years after it. These data will supplement and complement the interview information for the assessment of whether the Commission's orders achieved their remedial goals.[2]

The Commission proposes to use a different method to evaluate merger orders in certain other industries. The Commission has extensive expertise in crafting remedies for mergers in certain industries, including supermarkets, drug stores, funeral homes, hospitals and other clinics, and pharmaceuticals. It has implemented remedies relating to mergers in those industries using well-established methods and standard provisions tailored to each industry.

Thus, for the fifteen orders the Commission issued from 2006 through 2012 in which the Commission required over forty divestitures of supermarkets, drug stores, funeral homes, and hospitals and other clinics, also listed in the Appendix, the Commission does not propose interviewing all buyers. Instead, it proposes sending for voluntary response brief questionnaires to those buyers asking focused, specific questions that have arisen with respect to divestitures in those industries. For example, if the divested assets comprised a combination of assets of the acquiring party and of the acquired party, or if the divested assets comprised less than all of one merging firm's assets in the particular market, did either situation disadvantage the firm buying the assets? Did allowing divestiture of a small subset of a large network of assets disadvantage the buyer in relation to a large respondent? Did asset deterioration issues arise in cases other than the supermarket cases[3] that might warrant up-front divestitures in those other industries? Interviews with all buyers are not necessary because repeated enforcement actions in each of these industries have informed staff's approach to crafting subsequent orders. Once staff receives responses to the questionnaires, it will determine, on a case-by-case basis, whether follow-up phone calls with the buyers may be necessary.

For the twenty-four orders that the Commission issued from 2006 through 2012 requiring divestitures in the pharmaceutical industry, staff will synthesize the information the Commission already has; the Commission does not plan to interview the buyers of those divested assets. The Bureau of Competition's Compliance Division maintains close contact with the monitors appointed in the majority of these orders, and the monitors and respondents file periodic reports as required by the orders. As a result, staff has a great deal of information on the status of the pharmaceutical divestitures, particularly with respect to whether the buyers have obtained appropriate regulatory approvals and

[2] The Commission plans to ask recipients of the 6(b) report request to provide their annual net sales in dollars and units of the relevant product in the geographic market, for the calendar year in which the remedy took place and for each of the three calendar years before and after the remedy took place. If a company has fiscal year dollar and unit sales figures that are not calendar year sales, it will be asked to describe its fiscal year, provide the data requested for the company's fiscal years closest to the calendar years requested, to estimate the requested calendar year dollar and unit sales, and to describe the basis upon which those estimates were made. If the requested data are not available for the product and the geographic market, the company will be asked to estimate the dollar and unit sales data requested and to describe the basis upon which its estimates were made.

[3] The Commission has consistently required upfront buyers in supermarket cases since it obtained civil penalties and additional relief from Schnuck Markets, Inc., resulting from its failure to adequately maintain supermarket assets pending their divestiture. *See FTC v. Schnuck Markets, Inc.,* No. 4:97CV01830CEJ (E.D. Mo. Sept. 16, 1997).

whether the buyers have introduced the product(s). Rather than attempt to interview all of these buyers, staff will collect the information it has and contact the monitors for follow-up information if necessary. Occasionally, follow-up phone calls with the buyers may be necessary; however, staff will decide that on a case-by-case basis.

The Commission anticipates results from this study to be instructive. Partly in response to the prior study's results, the Commission immediately implemented various modifications to its divestiture process, and it still relies on the learning from that study's interviews to craft and enforce remedies today. The Commission has not systematically evaluated the effects of those changes in achieving the remedial goals of the orders and believes it is appropriate to do so now.

B. PRA Burden Analysis

1. Estimated Hours Burden

a. Interviews and Questionnaires

As described above, one component of the proposed study concerns fifty-three merger orders approving forty-seven buyers of divested assets. Commission staff will attempt to interview the forty-seven buyers as well as, on average, two customers and two competitors of each buyer in each affected market. Ten of the fifty-three orders required only non-structural relief, so there are no buyers for those ten; the Commission proposes to interview, on average, two customers and two competitors in each of those affected markets. In several of the orders, the relief applies to more than one relevant geographic or product market, even though there may be only one buyer of divested assets (or no buyer in the orders requiring only non-structural relief). In other words, although only one buyer acquired assets, those assets enabled the one buyer to operate in more than one geographic market and/or more than one product market; there are potentially different customers and competitors of the one buyer in each of the different markets. There are approximately ten additional such markets in which there may be additional customers and competitors. Commission staff estimates that there will be 315 interviews [(47 buyers) + (47 × 4 customers/competitors) + (10 non-structural remedies × 4 customers/competitors) + (10 additional markets × 4 customers/competitors)]. Commission staff anticipates that for each interview, two people will participate on behalf of the interviewee, and in many cases, an attorney may also participate. The interview will last approximately an hour to an hour-and-a-half. Commission staff estimates that an hour of preparation time for each interviewee and three hours for the attorney may be required. The estimated total time involved for three participants in this part of the study will thus be 2,993 hours [315 interviews × (4.5 interview hours + 5 preparation time hours)].

As another component of the study, the Commission proposes sending brief questionnaires to the approximately forty buyers of divested assets under the fifteen orders issued from 2006 through 2012 requiring divestiture of supermarkets, drug stores, funeral homes, and hospitals and other clinics.[4] Commission staff anticipates that it will take an hour for the CEO or other top-level manager and two hours for a marketing or sales manager to complete the questionnaire and then approximately three hours for an attorney to review it. The estimated total time involved for three participants in this part of the study will thus be 240 hours [40 participants × 6 hours].

b. Sales Data Component

As an additional component of this study, the FTC proposes obtaining and analyzing sales data in order to assess the relative health and success of divested entities approved in the fifty-three orders, and, to the extent possible, whether the order achieved its remedial goal. Specifically, the FTC will issue orders to file special reports requesting annual sales data (in units and dollars) for all significant competitors in each remedied market for the calendar year of the remedy, for each of the three calendar years prior to the remedy, and for each of the three calendar years following the remedy. This data can be derived from the data that firms collect as a part of their normal course of business, so for many, if not all, of the companies the limited data requested will not pose significant burdens for the relevant parties.

While the majority of these fifty-three remedied matters involve only a single market, others implicate multiple geographic and product markets. As a result, the FTC anticipates sending special reports to market competitors in approximately seventy markets. A review of the study sample further indicates that, on average, staff will send special reports to four market competitors in each of the remedied markets, resulting in 280 orders to file special reports [70 markets x 4 competitors/market].[5] The Commission estimates that three people will be involved in the response to each special report—a senior finance executive, an accountant or financial analyst, and an attorney—and that the total time involved in responding to each report will be ten hours. Accordingly, the total amount of time involved for the participants in this part of the study will be approximately 2,800 hours [280 special reports × 10 hours/report].

2. Estimated Cost Burden

a. Interviews and Questionnaires

The majority of costs incurred for each firm interviewed will be labor costs. Commission staff anticipates minimal capital or other non-labor costs. Staff also anticipates that top-level managers will participate in each of the interviews, possibly the CEO or president and a marketing or sales manager. In many cases, the firms will likely request that the firm's attorney also participate. Based on external wage data, the estimated hourly wages[6] for the expected participants are:

CEO $655
Sales/Marketing Manager $215
Attorney $135

The interview will take approximately an hour-and-a-half; the interviewees will spend approximately an hour to prepare, and the attorney will spend three hours preparing and reviewing. If all three individuals participate, for each firm total wages, rounded, will be approximately $2,783 [($655 × 2.5) + ($215 × 2.5) + ($135 × 4.5)]. If the FTC staff interviews 315 different entities, total labor cost will be $878,645 [315 × $2,783].

Commission staff anticipates that to fill out the questionnaires, respondents will incur primarily labor costs, with minimal capital or other non-labor costs. Commission staff estimates that those labor costs, to complete and review the questionnaire, will be broken down as follows: one hour for the CEO, president, or other top-level manager; two hours for a marketing or sales manager; and up to three hours for an attorney to review the material. For each

[4] FTC staff will give recipients of the questionnaires the option of responding to the questionnaire via telephone interview rather than responding in writing. Because the time and cost involved under either option will be similar, for purposes of estimating the burden, FTC staff has assumed written responses from the recipients.

[5] The FTC will request data from all significant market competitors, which will include those firms that are interviewed (the buyer and, on average, two other competitors), but may include additional firms as well.

[6] Figures based on national median salaries, including bonuses and benefits, divided by a 2,080 hour work year (52 weeks × 40 hours/week), for a ''Chief Executive Officer,'' ''Top Sales & Marketing Executive,'' and ''Managing Attorney,'' respectively, at *www.salary.com*.

firm, total wages will be $1,490 [$655 + ($215 × 2) + ($135 × 3)]. Staff anticipates obtaining completed questionnaires from the approximately forty buyers, for an associated labor cost total of $59,600 [40 × $1,490].

b. Sales Data Component

As was the case above, the majority of the costs incurred for compliance with the special reports will be labor costs. The Commission anticipates that a top-level financial manager, an accountant or financial analyst, and an attorney will be involved in any discussions relating to the special reports and in responding to the special reports. Specifically, it is expected that each of these individuals would be involved in a two-hour discussion with Commission staff prior to compliance, and that the financial analyst would require four hours to compile the data. Based on external wage data, the estimated hourly wages for the expected participants are: [7]

Financial Manager $75
Accountant $55
Attorney $135

Total wage costs for each special report will be $750 [($75 × 2) + ($135 × 2) + ($55 × 6)]. If the Commission issues 280 special reports, the total cost of complying with compulsory process will be $210,000 [280 × $750].

IV. Confidentiality

Some of the information the Commission will receive in connection with the study is information of a confidential nature. Under Section 6(f) of the FTC Act, such information is protected from public disclosure for as long as it qualifies as a trade secret or confidential commercial or financial information. 15 U.S.C. 46(f). Material protected by Section 6(f) also would be exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552. Moreover, under Section 21(c) of the FTC Act, a submitter who designates information as confidential is entitled to 10 days' advance notice of any anticipated public disclosure by the Commission, assuming that the Commission has determined that the information does not, in fact, constitute Section 6(f) material. 15 U.S.C. 57b–2(c). Although materials covered by these sections are protected by stringent confidentiality constraints, the FTC Act and the Commission's rules authorize disclosure in limited circumstances (*e.g.,* official requests by Congress, requests from other agencies for law enforcement purposes, administrative or judicial proceedings). Even in those limited contexts, however, the Commission's rules may afford protections to the submitter, such as advance notice to seek a protective order prior to disclosure in an administrative or judicial proceeding. See 15 U.S.C. 57b–2(c); 16 CFR 4.9–4.11.

V. Request for Comment

Under the PRA, 44 U.S.C. 3501–3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB approve the collection of information for the study.

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) Whether participation in the study is necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (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.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before March 17, 2015. Write ''Remedy Study, P143100'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is . . . privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you must follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[8] Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/hsr2014divestiturestudypra,* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Remedy Study, P143100'' on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as

[7] Figures based on national median salaries, including bonuses and benefits, divided by a 2,080 hour work year (52 weeks × 40 hours/week), for a ''Financial Reporting Manager'' and ''Lead Accountant,'' respectively, at *www.salary.com.* See also *supra* note 6 (attorney salary source data).

[8] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

appropriate. The Commission will consider all timely and responsive public comments that it receives on or before March 17, 2015. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *http://www.ftc.gov/ftc/privacy.htm.*

Appendix

Date first accepted by the commission	Docket No.	Matter name
Interviews		
1. 04/20/06	C 4164	Boston Scientific Corp/Guidant Corp.
2. 07/07/06	C 4165	Hologic, Inc./Fischer Imaging.
3. 07/18/06	C 4163	Linde/BOC.
4. 08/18/06	C 4173	EPCO/TEPPCO.
5. 10/03/06	C 4188	The Boeing Company/Lockheed Martin Corp.
6. 10/17/06	C 4170	Thermo Electron/Fisher Scientific.
7. 12/28/06	C 4181	General Dynamics OTS.
8. 01/25/07	C 4183	Kinder Morgan inc.
9. 08/09/07	C 4196	Jarden Corporation/K2, Inc.
10. 09/15/07	C 4202	Fresenius AG/American Renal Association.
11. 10/09/07	C 4201	Kyphon, Inc/Disc-o-tech.
12. 10/26/07	C 4210	Compagnie de Saint-Gobain/Owens Corning.
13. 04/28/08	C 4228	Talx Corporation.
14. 05/05/08	C 4219	Agrium Inc./UAP Holding Corporation.
15. 06/30/08	C 4233	Carlyle Partners/JP Morgan.
16. 07/10/08	C 4231	Flow International Corporation/Omax Corp.
17. 07/17/08	C 4224	Pernod Ricard/V&S Spirits.
18. 07/30/08	C 4225	McCormick & Company/Unilever Group.
19. 09/15/08	C 4236	Fresenius SE/Daiichi Sankyo.
20. 09/16/08	C 4257	Reed Elsevier PLC/ChoicePoint Inc.
21. 12/23/08	C 4244	Inverness Medical Innovations, Inc./ACON.
22. 01/23/09	C 4243	Dow Chemical/Rohm & Haas.
23. 01/29/09	C 4251	Getinge AB/Datascope Corp.
24. 02/26/09	C 4254	Lubrizol/Lockhart Chemical.
25. 04/02/09	C 4253	BASF/Ciba Specialty Chemicals.
26. 09/25/09	C 4273	K&S AG/Dow Chemical.
27. 11/24/09	C 4274	Panasonic/Sanyo.
28. 01/27/10	C 4283	Danaher Corp/MDS.
29. 02/26/10	C 4301	PepsiCo Inc./Pepsi Bottling.
30. 05/07/10	D 9342	MDR (The Dun & Bradstreet Corp)/QED.
31. 05/14/10	C 4292	Varian, Inc./Agilent, Inc.
32. 06/30/10	C 4293	Pilot/Flying J.
33. 07/14/10	C 4297	AEA Investors/Wilh.Werhahn.
34. 07/16/10	C 4300	Fidelity/LandAmerica.
35. 07/28/10	C 4298	NuFarm/A.H. Marks Holdings, Ltd.
36. 09/10/10	C 4299	Airgas/Air Products and Chemicals.
37. 09/27/10	C 4305	Coca-Cola/Coca-Cola Enterprise.
38. 10/11/10	C 4307	Simon Property Group/Prime Outlets.
39. 12/29/10	C 4314	Keystone/Compagnie de Saint-Gobain.
40. 05/26/11	C 4328	Irving/Exxon Mobil.
41. 10/28/11	C 4340	IMS Health/SDI Health.
42. 12/08/11	C 4341	LabCorp/Orchid Cellmark.
43. 01/11/12	C 4346	Amerigas/ETP.
44. 02/29/12	C 4349	Carpenter/HHEP-Latrobe.
45. 03/05/12	C 4350	Western Digital/Hitachi.
46. 04/26/12	C 4368	CoStar/Loopnet.
47. 05/01/12	C 4355	Kinder Morgan/El Paso.
48. 06/11/12	C 4363	Johnson & Johnson/Synthes.
49. 08/06/12	C 4366	Renown Health/Reno Heart Physicians.
50. 10/12/12	C 4381	Magnesium Elektron.
51. 10/31/12	C 4380	Corning, Inc.
52. 11/15/12	C 4376	Hertz Global Holdings.
53. 11/26/12	C 4377	Robert Bosch.
Questionnaires		
Supermarkets and drug stores		
1. 06/04/07	C 4191	Rite Aid/Eckerd.
2. 06/05/07	D 9324	Whole Foods.
3. 11/27/07	C 4209	A&P/Pathmark.
4. 08/04/10	C 4295	Topps.
5. 06/15/12	C 4367	Giant/Safeway.
Funeral homes		
6. 11/22/06	C 4174	SCI/Alderwoods.

Date first accepted by the commission	Docket No.	Matter name
7. 11/24/09	C 4275	SCI/Palm.
8. 3/25/10	C 4284	SCI/Keystone.
Hospitals and other clinics		
9. 03/30/06	C 4159	Fresenius AG.
10. 10/07/09	D 9338	Carilion Clinic.
11. 11/25/10	C 4309	Universal/PSI.
12. 07/21/11	C 4339	Cardinal/Biotech.
13. 09/02/11	C 4334	Davita/DSI.
14. 02/28/12	C 4348	Fresenius AG.
15. 10/5/12	C 4372	Universal/Ascend.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2015–00666 Filed 1–15–15; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Advisory Council on Alzheimer's Research, Care, and Services; Meeting

AGENCY: Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces the public meeting of the Advisory Council on Alzheimer's Research, Care, and Services (Advisory Council). The Advisory Council on Alzheimer's Research, Care, and Services provides advice on how to prevent or reduce the burden of Alzheimer's disease and related dementias on people with the disease and their caregivers. During the January meeting, the Advisory Council will hear a presentation on IOM's final expert panel on Advanced Dementia, which will provide additional recommendations for the Council to consider. The Advisory Council will spend the majority of the meeting considering recommendations made by each of the three subcommittees for updates to the 2015 National Plan.

DATES: The meeting will be held on January 26th, 2014 from 9 a.m. to 5 p.m. EDT.

ADDRESSES: The meeting will be held in the Great Hall in the Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

Comments: Time is allocated mid-morning on the agenda to hear public comments. The time for oral comments will be limited to two (2) minutes per individual. In lieu of oral comments, formal written comments may be submitted for the record to Rohini Khillan, OASPE, 200 Independence Avenue SW., Room 424E, Washington, DC 20201. Comments may also be sent to *napa@hhs.gov*. Those submitting written comments should identify themselves and any relevant organizational affiliations.

FOR FURTHER INFORMATION CONTACT: Rohini Khillan (202) 690–5932, *rohini.khillan@hhs.gov*. Note: Seating may be limited. Those wishing to attend the meeting must send an email to *napa@hhs.gov* and put ''January 26 Meeting Attendance'' in the Subject line by Friday, January 16, so that their names may be put on a list of expected attendees and forwarded to the security officers at the Department of Health and Human Services. Any interested member of the public who is a non-U.S. citizen should include this information at the time of registration to ensure that the appropriate security procedure to gain entry to the building is carried out. Although the meeting is open to the public, procedures governing security and the entrance to Federal buildings may change without notice. If you wish to make a public comment, you must note that within your email.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)). Topics of the Meeting: The Advisory Council will hear presentations on the basics of long-term care, including presentations on programs, settings, and payers. The Council will use a portion of the meeting to review the work it has accomplished thus far towards the 2025 goals, and then discuss the process for developing recommendations for the 2015 update to the National Plan. The Council will also hear presentations from the three subcommittees (Research, Clinical Care, Long-Term Services and Supports, and Ethics).

Procedure and Agenda: This meeting is open to the public. Please allow 30 minutes to go through security and walk to the meeting room. The meeting will also be webcast at *www.hhs.gov/live*.

Authority: 42 U.S.C. 11225; Section 2(e)(3) of the National Alzheimer's Project Act. The panel is governed by provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

Dated: January 5, 2015.

Richard G. Frank,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 2015–00517 Filed 1–15–15; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–15–14AYC]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through

the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Behavioral Risk Factor Surveillance System (BRFSS)—Existing Collection Without an OMB Control Number—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP)—Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is requesting OMB approval to conduct information collection for the Behavioral Risk Factor Surveillance System (BRFSS) for three years beginning with the 2015 data collection cycle. The BRFSS is a nationwide system of customized, cross-sectional telephone health surveys sponsored by CDC. Information collection is conducted in a continuous, three-part telephone interview process: screening, participation in a common BRFSS core survey, and participation in optional question modules that states use to customize survey content. BRFSS coordinators in health departments in U.S. states, territories, and the District of Columbia (collectively referred to as states) are responsible for questionnaire content and survey administration. CDC provides the states with technical and methodological assistance.

The BRFSS produces state-level information on adults 18 years and older primarily on the health risk behaviors, health conditions, and preventive health practices that are associated with chronic diseases, infectious diseases, and injury. This information is used by state and local health departments to plan and evaluate public health programs at the state or sub-state level. For most states and territories, the BRFSS provides the only source of data amenable to state and local level health and health risk indicators.

Information collected through the BRFSS is also used by the federal government and other entities. CDC makes annual BRFSS data sets available for public use and provides guidance on statistically appropriate uses of the data. CDC's authority to collect this information is provided by the Public Health Service Act. Participation in the BRFSS is voluntary and there are no costs to respondents other than their time. The total estimated annualized burden hours are 255,915.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hr)
U.S. General Population	Landline Screener	440,486	1	1/60
	Cell Phone Screener	223,334	1	1/60
Adults ≥ 18 Years	BRFSS Core Survey	494,650	1	15/60
	BRFSS Optional Modules	484,757	1	15/60

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2015–00562 Filed 1–15–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10114]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by *February 17, 2015.*

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR*, Email: *OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

3. *Type of Information Collection Request:* Extension of a currently approved collection;

Title of Information Collection: National Provider Identifier (NPI) Application and Update Form and Supporting Regulations in 45 CFR 142.408, 45 CFR 162.406, 45 CFR 162.408; *Use:* The National Provider Identifier (NPI) Application and Update Form is used by health care providers to apply for NPIs and furnish updates to the information they supplied on their initial applications. The form is also used to deactivate their NPIs if necessary. The NPI Application/Update form has been revised to provide additional guidance on how to accurately complete the form. The NPI Application/Update form has been revised to provide additional guidance on how to accurately complete the form. This collection includes clarification on information that is required on applications/changes. Minor changes on the application/update form include adding a 'Subpart' check box in the Other Name section and a revision within the PRA Disclosure Statement. This collection also includes changes to the instructions. *Form Number:* CMS–10114 (OMB control number: 0938–0931); *Frequency:* Reporting—On occasion; *Affected Public:* Business or other for-profit, Not-for-profit institutions, and Federal government; *Number of Respondents:* 608,880; *Total Annual Responses:* 608,880; *Total Annual Hours:* 112,660. (For policy questions regarding this collection contact Kim McPhillips at 410–786–5374.)

Dated: January 13, 2015.

Martique Jones,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2015–00626 Filed 1–15–15; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–372(S), CMS–10500, CMS–10221 and CMS–R–263]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by March 17, 2015.

ADDRESSES: When commenting, please reference the document identifier or OMB control number (OCN). To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–372(S) Annual Report on Home and Community Based Services Waivers and Supporting Regulations

CMS–10500 Outpatient/Ambulatory Surgery Patient Experience of Care Survey (O/ASPECS)

CMS–10221 Site Investigation for Independent Diagnostic Testing Facilities (IDTFs)

CMS–R–263 Site Investigation for Suppliers of Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS)

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA

requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Annual Report on Home and Community Based Services Waivers and Supporting Regulations; *Use:* We use this report to compare actual data to the approved waiver estimates. In conjunction with the waiver compliance review reports, the information provided will be compared to that in the Medicaid Statistical Information System (MSIS) (CMS–R–284; OMB control number 0938–0345) report and FFP claimed on a state's Quarterly Expenditure Report (CMS–64; OMB control number 0938–1265), to determine whether to continue the state's home and community-based services waiver. States' estimates of cost and utilization for renewal purposes are based upon the data compiled in the CMS–372(S) reports. *Form Number:* CMS–372(S) (OMB Control Number: 0938–0272); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 48; *Total Annual Responses:* 315; *Total Annual Hours:* 13,545. (For policy questions regarding this collection contact Ralph Lollar at 410–786–0777).

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Outpatient/Ambulatory Surgery Patient Experience of Care Survey (O/ASPECS); *Use:* The information collected in the national implementation of Outpatient/Ambulatory Surgery Patient Experience of Care Survey (A/ASPECS) will be used to: (1) Provide a source of information from which selected measures can be publicly reported to beneficiaries to help them make informed decisions for outpatient surgery facility selection; (2) aid facilities with their internal quality improvement efforts and external benchmarking with other facilities; and (3) provide us with information for monitoring and public reporting purposes. *Form Number:* CMS–10500 (OMB Control Number: 0938–1240); *Frequency:* Once; *Affected Public:* Individuals and households; *Number of Respondents:* 2,813,610; *Total Annual Responses:* 2,813,610; *Total Annual Hours:* 365,769. (For policy questions regarding this collection contact Memuna Ifedirah at 410–786–6849).

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Site Investigation for Independent Diagnostic Testing Facilities (IDTFs); *Use:* We enroll Independent Diagnostic Testing Facilities (IDTFs) into the Medicare program via a uniform application, the CMS 855B. Implementation of enhanced procedures for verifying the enrollment information has improved the enrollment process as well as identified and prevented fraudulent IDTFs from entering the Medicare program. As part of this process, verification of compliance with IDTF performance standards is necessary. The primary function of the site investigation form for IDTFs is to provide a standardized, uniform tool to gather information from an IDTF that tells us whether it meets certain standards to be a IDTF (as found in 42 CFR 410.33(g)) and where it practices or renders its services. The site investigation form has been used in the past to aid in verifying compliance with the required performance standards found in 42 CFR 410.33(g). No revisions have been made to this form since the last submission for OMB approval. *Form Number:* CMS–10221 (OMB Control Number: 0938–1029); *Frequency:* Occasionally; *Affected Public:* Private Sector (Business or other for-profits and Not-for-profit institutions); *Number of Respondents:* 900; *Total Annual Responses:* 900; *Total Annual Hours:* 1,800. (For policy questions regarding this collection contact Kim McPhillips at 410–786–5374).

4. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Site Investigation for Suppliers of Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS); *Use:* We enroll suppliers of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) into the Medicare program via a uniform application, the CMS 855S. Implementation of enhanced procedures for verifying the enrollment information has improved the enrollment process as well as identified and prevented fraudulent DMEPOS suppliers from entering the Medicare program. As part of this process, verification of compliance with supplier standards is necessary. The primary function of the site investigation form is to provide a standardized, uniform tool to gather information from a DMEPOS supplier that tells us whether it meets certain qualifications to be a DMEPOS supplier (as found in 42 CFR 424.57(c)) and where it practices or renders its services. The site investigation form has been used in the past to aid in verifying compliance with the required supplier standards found in 42 CFR 424.57(c). No revisions have been made to this form since the last submission for OMB approval. *Form Number:* CMS–R–263 (OMB Control Number: 0938–0749); *Frequency:* Occasionally; *Affected Public:* Private Sector (Business or other for-profits and Not-for-profit institutions); *Number of Respondents:* 30,000; *Total Annual Responses:* 30,000; *Total Annual Hours:* 15,000. (For policy questions regarding this collection contact Kim McPhillips at 410–786–5374).

Dated: January 13, 2015.

Martique Jones,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2015–00627 Filed 1–15–15; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[OMB No.: 0970–0167]

Submission for OMB Review; Comment Request: Child Care Quarterly Case Record Report—ACF–801

Description: Section 658K of the Child Care and Development Block Grant Act (42 U.S.C. 9858) requires that States and Territories submit monthly case-level data on the children and families receiving direct services under the Child Care and Development Fund (CCDF). The implementing regulations for the statutorily required reporting are at 45 CFR 98.70. Case-level reports, submitted quarterly or monthly (at grantee option), include monthly sample or full population case-level data. The data elements to be included in these reports are represented in the ACF–801. ACF uses disaggregate data to determine program and participant characteristics as well as costs and levels of child care services provided. This provides ACF with the information necessary to make reports to Congress, address national child care needs, offer technical assistance to grantees, meet performance measures, and conduct research. On November 19, 2014, the President signed the Child Care and Development Block Grant Act of 2014

(Pub. L. 113–86) which reauthorized the CCDF program and made some changes to ACF–801 reporting requirements. Owing to the need to consult with CCDF administrators and other interested parties on these changes, and a limited amount of time before the current ACF–801 form expires, ACF is not proposing changes to the ACF–801 at this time. We request to extend the ACF–801 without changes in order to ensure the form does not expire. In the near future, ACF plans to initiate a new clearance process under the Paperwork Reduction Act to implement the data reporting changes in the newly-reauthorized law.

Respondents: States, the District of Columbia, and Territories including Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Marianna Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–801	56	4	25	5,600

Estimated Total Annual Burden Hours: 5,600.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2015–00560 Filed 1–15–15; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–2300]

Evaluating Drug Effects on the Ability To Operate a Motor Vehicle; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Evaluating Drug Effects on the Ability to Operate a Motor Vehicle.'' The purpose of this guidance is to assist sponsors in the evaluation of the effects of psychoactive drugs on the ability to operate a motor vehicle. Driving is a complex activity involving a wide range of cognitive, perceptual, and motor activities. Reducing the incidence of motor vehicle accidents (MVAs) that occur because of drug-impaired driving is a public health priority. This draft guidance recommends using a systematic effort to identify drugs that increase the risk of MVAs as a critical component of assessing drug risk and designing strategies to reduce this risk.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by March 17, 2015.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Aaron Sherman, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 4339, Silver Spring, MD 20993–0002, 240–402–0493.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Evaluating Drug Effects on the Ability to Operate a Motor Vehicle.'' The purpose of this guidance is to assist sponsors in the evaluation of the effects of psychoactive drugs on the ability to operate a motor vehicle.

Driving is a complex activity involving a wide range of cognitive, perceptual, and motor activities that can be adversely affected by therapeutic drugs. Reducing the incidence of MVAs that occur because of drug-impaired driving is a public health priority.[1]

Drugs that impair driving ability may also impair the ability to judge the extent of one's own impairment. This increases the need for objective evaluation of the presence and degree of driving impairment, with risk mitigation strategies based on that information. This guidance recommends a systematic effort to identify drugs for which evaluation of effects on driving abilities may be needed, and the types of studies that such an evaluation entails.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on evaluating drug effects on the ability to operate a motor vehicle. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

[1] See the Drugged Driving Web page on the Office of National Drug Control Policy Web site at *http://www.whitehouse.gov/ondcp/drugged-driving.*

II. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR parts 312 and 314 have been approved under OMB control numbers 0910–0014 and 0910–0001, respectively. The collection of information for prescription drug product labeling is approved under OMB control number 0910–0572.

III. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov*.

Dated: January 12, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–00596 Filed 1–15–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group Child Psychopathology and Developmental Disabilities Study Section.

Date: February 12–13, 2015.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco, 700 F Street NW., Washington, DC 20001.

Contact Person: Jane A Doussard-Roosevelt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–4445, *doussarj@csr.nih.gov*.

Name of Committee: Oncology 1—Basic Translational Integrated Review Group Cancer Etiology Study Section.

Date: February 12–13, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Long Beach and Executive Center, 701 West Ocean Boulevard, Long Beach, CA 90831.

Contact Person: Svetlana Kotliarova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, Bethesda, MD 20892, 301–594–7945, *kotliars@mail.nih.gov*.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group Macromolecular Structure and Function B Study Section.

Date: February 12–13, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: C. L. Albert Wang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7806, Bethesda, MD 20892, 301–435–1016, *wangca@csr.nih.gov*.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group Macromolecular Structure and Function D Study Section.

Date: February 12, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

Contact Person: James W Mack, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–2037, *mackj2@csr.nih.gov*.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group Cardiovascular Differentiation and Development Study Section.

Date: February 12, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Seattle Hotel, 515 Madison Street, Seattle, WA 98104.

Contact Person: Sara Ahlgren, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4136, Bethesda, MD 20817–7814, 301–435–0904, *sara.ahlgren@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel PAR13–132: Understanding and Promoting Health Literacy.

Date: February 13, 2015.

Time: 11:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Mayflower Park Hotel, 405 Olive Way, Seattle, WA 98101.

Contact Person: Rebecca Henry, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, 301–435–1717, *henryrr@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel PAR13–213: Outcome Measures for Use in Treatment Trials for Individuals with Intellectual and Developmental Disabilities (R01).

Date: February 13, 2015.

Time: 2:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco, 700 F Street NW., Washington, DC 20001.

Contact Person: Jane A. Doussard-Roosevelt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–4445, *doussarj@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Oral, Dental, and Craniofacial Sciences SBIR/STTR.

Date: February 17–18, 2015.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Yi-Hsin Liu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, 301–435–1781, *liuyh@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Fellowships: Synthetic and Biological Chemistry.

Date: February 17–18, 2015.

Time: 8:30 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michael Eissenstat, Ph.D., Scientific Review Officer, BCMB IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4166, MSC 7806, Bethesda, MD 20892, 301–435–1722, *eissenstatma@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Genetic Approaches In Neuroscience and Neuropsychology.

Date: February 17, 2015.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Yvonne Bennett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5199, MSC 7846, Bethesda, MD 20892, 301–379–3793, *bennetty@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 12, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–00567 Filed 1–15–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4205–DR; Docket ID FEMA–2014–0003]

Mississippi; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Mississippi (FEMA–4205–DR), dated January 7, 2015, and related determinations.

DATES: *Effective Date:* January 7, 2015.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 7, 2015, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Mississippi resulting from severe storms and tornadoes on December 23, 2014, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Mississippi.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, William C. Watrel, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Mississippi have been designated as adversely affected by this major disaster:

Marion County for Public Assistance.

All areas within the State of Mississippi are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2015–00619 Filed 1–15–15; 8:45 am]

BILLING CODE 9110–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2007–0008]

National Advisory Council; Request for Applicants for Appointment

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Committee Management; Request for Applicants for Appointment to the National Advisory Council.

SUMMARY: The Federal Emergency Management Agency (FEMA) is requesting individuals who are interested in serving on the FEMA National Advisory Council (NAC) to apply for appointment as identified in this notice. Pursuant to the *Post-Katrina Emergency Management Reform Act of 2006* (PKEMRA), the NAC shall advise the Administrator of FEMA on all aspects of emergency management. The NAC shall incorporate state, local, tribal, and territorial government, non-profit and private sector input in the development and revision of national emergency management doctrine, policy, and plans. The NAC consists of up to 35 members, all of whom are experts and leaders in their respective fields. FEMA seeks to appoint individuals to seven (7) positions, or disciplines, on the NAC that will be open due to term expiration. If other positions are vacated during the application process, candidates may be selected from the pool of applicants to fill the vacated positions.

DATES: Applications will be accepted until 11:59 p.m. EST on February 17, 2015.

ADDRESSES: The preferred method of submission for application packages is via email. However, application packages may also be submitted by fax or mail. Please only submit by ONE of the following methods:

- *Email: FEMA-NAC@fema.dhs.gov.* Please save the document as ''LAST NAME_FIRST NAME'' and attach to the email.
- *Fax:* (540) 504–2331.
- *Mail:* Office of the National Advisory Council, Federal Emergency Management Agency, 8th Floor, 500 C Street SW., Washington, DC 20472–3184.

FOR FURTHER INFORMATION CONTACT: Alexandra Woodruff, Alternate Designated Federal Officer, The Office of the National Advisory Council, Federal Emergency Management Agency, 8th Floor, 500 C Street SW.,

Washington, DC 20472–3184; telephone (202) 646–2700; fax (540) 504–2331; and email *FEMA-NAC@fema.dhs.gov.* For more information on the NAC, please visit *http://www.fema.gov/national-advisory-council.*

SUPPLEMENTARY INFORMATION: The NAC is an advisory committee established in accordance with the provisions of the *Federal Advisory Committee Act* (FACA), 5 U.S.C. Appendix. As required by PKEMRA, the Secretary of Homeland Security established the NAC to ensure effective and ongoing coordination of Federal preparedness, protection, response, recovery, and mitigation for natural disasters, acts of terrorism, and other man-made disasters. FEMA is requesting individuals who are interested in serving on the NAC to apply for appointment. Individuals selected for appointment will serve as either a Special Government Employee (SGE) or a representative in the disciplines listed below for three-year terms (total of 7 appointments): Elected State Government Officials (one representative appointment), In-Patient Medical Providers (one SGE appointment), Elected Local Government Officials (one representative appointment), Emergency Management (one representative appointment), Emergency Response Providers (two representative appointments), Cyber Security (one SGE appointment). These appointments will be for three-year terms. The Administrator may appoint additional candidates to serve as FEMA Administrator Selections (as SGE appointments). More information about the disciplines can be found in the NAC Charter: *http://www.fema.gov/media-library-data/18059cd64e864a278afab92581092481/NAC+Charter_CMO+filed+23APR2013+508c.pdf.*

Individuals interested in serving on the NAC are invited to apply for consideration of appointment by submitting an application package to the Office of the NAC as listed in the **ADDRESSES** section of this notice. There is no application form; however, each application package MUST include the following information:

- Cover letter, addressed to the Office of the NAC, detailing the discipline area(s) being applied for, current position title and organization, mailing address, a current telephone number and email address;
- Resume or Curriculum Vitae (CV); and
- Letters of Recommendation addressed to the Office of the NAC (if applicable—not required).

Incomplete applications will not be considered. Current NAC members whose terms are ending should notify the Office of the NAC of their interest in reappointment in lieu of submitting a new application, and if desired, provide updated application materials for consideration.

Each application will be scored based on the following criteria:

1. Demonstrated knowledge of Federal disasters and emergency response functions;
2. Demonstrated skill in working with high level officials and governments representing divergent points of view;
3. Experience coordinating and integrating activities with Federal, State, Local, Tribal or Territorial governments, professional associations, and practitioner groups;
4. Proven leadership experience in specified discipline area(s) of interest;
5. Demonstrated knowledge of national emergency management policies and doctrine;
6. Demonstrated service on national, State, or Local task force, committee, or advisory body dealing with emergency preparedness and response;
7. Demonstrated experience in a senior management and leadership position, providing supervisory direction to an organization responsible for effective administration of complex policies and programs;
8. Demonstrated knowledge of and experience with the strategic planning process for an organization or a committee;
9. Proven ability to provide expert technical advice, guidance, and recommendations on critical program issues requiring new approaches, establishment of precedents or the interpretation of controversial law, regulation, or past practice; and
10. Demonstrated ability to communicate effectively orally and in writing.

Appointees may be designated as a SGE as defined in section 202(a) of title 18, United States Code, or as a representative member. Candidates selected for appointment as SGEs are required to complete a Confidential Financial Disclosure Form (Office of Government Ethics (OGE) Form 450). This form can be obtained by visiting the Web site of the Office of Government Ethics (*http://www.oge.gov*). Please do not submit this form with your application.

The NAC meets in person approximately two times a year. Members may be reimbursed for travel and per diem, and all travel for NAC business must be approved in advance by the Designated Federal Officer. NAC members are expected to serve on one of the three NAC Subcommittees, which regularly meet by teleconference throughout the year. 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. Current DHS and FEMA employees, FEMA Disaster Assistance Employees, FEMA Reservists, and DHS and FEMA contractors and potential contractors will not be considered for membership. Federally registered lobbyists may apply for positions designated as representative appointments but are not eligible for positions that are designated as SGE appointments.

Dated: December 17, 2014.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2015–00664 Filed 1–15–15; 8:45 am]

BILLING CODE 9111–48–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Comment Request; New Information Collection

ACTION: 30-Day Notice of Information Collection for review; Allegation of Counterfeiting and Intellectual Piracy; OMB Control No. 1653–NEW.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE), is submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. The information collection was previously published in the **Federal Register** on November 5, 2014, Vol. 79, No. 26248 allowing for a 60 day comment period. No comments were received on this information collection. The purpose of this notice is to allow an additional 30 days for public comments.

Written comments and suggestions regarding items contained in this notice and especially with regard to the estimated public burden and associated

response time should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for U.S. Immigration and Customs Enforcement, Department of Homeland Security, and sent via electronic mail to *oirs_submission@omb.eop.gov* or faxed to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* Allegation of Counterfeiting and Intellectual Piracy.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This electronic form/collection will be utilized by the public and law enforcement partners as part of an automated allegation and deconfilication program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

Number of respondents	Form name/form number	Average burden per response (in hours)
12,000	Allegation of Counterfeiting and Intellectual Piracy	.033

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,890 annual burden hours.

Dated: January 13, 2015.

Scott Elmore,

Program Manager, Forms Management Office, Office of the Chief Information Officer, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2015–00600 Filed 1–15–15; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5828–N–03]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7262, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: January 8, 2015.

Brian P. Fitzmaurice,

Director, Division of Community Assistance, Office of Special Needs Assistance Programs.

[FR Doc. 2015–00338 Filed 1–15–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WYW 183391]

Notice of Application for Withdrawal and Opportunity for Public Meeting, Burgess Junction Visitor Center and Administrative Site; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Forest Service (USFS) has filed an application with the Bureau of Land Management (BLM) requesting that the Secretary of the Interior withdraw approximately 73 acres of National Forest System land from location and entry under the mining laws in order to protect capital improvements constructed for the Burgess Junction Visitor Center and Administrative Site in the Bighorn National Forest. This notice temporarily segregates the land for up to 2 years from location and entry under the United States mining laws while the withdrawal application is being processed. This notice also gives the public an opportunity to comment on the withdrawal application and to request a public meeting. The land has been and will remain open to such forms of disposition allowed by law on National Forest System land and to mineral leasing.

DATES: Comments and requests for a public meeting must be received on or before April 16, 2015.

ADDRESSES: Comments and meeting requests should be sent to the BLM Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009.

FOR FURTHER INFORMATION CONTACT: Gayle Laurent, USDA Forest Service, Region 2, Supervisors Office, 2013 Eastside Second Street, Sheridan,

Wyoming 82801; telephone 307–674–2656; email *glaurent@fs.fed.us*; or Janelle Wrigley, BLM Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009; telephone 307–775–6257; email *jwrigley@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individuals. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The applicant is the USFS. The application requests the Secretary of the Interior to withdraw, subject to valid existing rights, the following described National Forest System land from location and entry under the United States mining laws, but not from leasing under the mineral leasing laws, for a period of 20 years, to protect the capital improvements constructed for the Burgess Junction Visitor Center and Administrative Site:

Bighorn National Forest

Sixth Principal Meridian
T. 56 N., R. 88 W.,
Sec. 31, S½NE¼NE¼NE¼, S½NW¼NE¼NE¼, S½NE¼NE¼, N½SE¼NE¼, N½SW¼SE¼NE¼, and SE¼SE¼NE¼, those portions lying northwesterly of the centerline of United States Highway 14;
Sec. 32, S½NW¼NW¼NW¼, SW¼NW¼NW¼, and NW¼SW¼NW¼, those portions lying northeasterly of the centerline of United States Highway 14.

The area described contains approximately 73 acres in Sheridan County. The purpose of the requested withdrawal is to protect the capital improvements constructed for the administrative site. The use of a right-of-way, interagency or cooperative agreement would not adequately constrain nondiscretionary uses which could result in permanent loss of the facilities at the site.

There are no suitable alternative sites as the described lands contain a fully constructed visitor center and administrative site. Moving the facilities to a different location would not be economical or practical.

No additional water rights would be needed to fulfill the purpose of the requested withdrawal. There is a well on the site for domestic purposes and a water rights permit is in place to the United States.

Records relating to the application may be examined by contacting Janelle Wrigley, BLM Wyoming State Office, at the above address; telephone 307–775–6257; email *jwrigley@blm.gov*.

For the period until April 16, 2015, all persons who wish to submit comments, suggestions or objections in connection with the withdrawal application may present their views in writing to the BLM Wyoming State Office at the address noted above. Comments, including names and street addresses of respondents, will be available for public review at the BLM Wyoming State Office at the address above during regular business hours 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including personal identifying information—may be made publicly available at any time. While you may 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. Notice is hereby given that an opportunity for a public meeting is afforded in connection with the application for withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the application for withdrawal must submit a written request to the BLM Wyoming State Director no later than April 16, 2015. If the authorized officer determines that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** and through local newspapers, at least 30 days before the scheduled date of the meeting.

For a period until January 16, 2017, subject to existing rights, the land described in this notice will be segregated from location and entry under the United States mining laws unless the application is denied or cancelled or the withdrawal is approved prior to that date. Licenses, permits, cooperative agreements or discretionary land use authorizations of a temporary nature which will not significantly impact the values to be protected by the withdrawal may be allowed with the approval of the authorized officer of the USFS during the temporary segregative period.

This application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

Donald A. Simpson,

State Director, Wyoming.

[FR Doc. 2015–00598 Filed 1–15–15; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWYR05000.L51100000.GN0000.LVEMK 11CW630–WYW168184]

Notice of Availability of the Draft Environmental Impact Statement for the Sheep Mountain Uranium Project, Fremont County, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy Act of 1976 (FLPMA) and associated regulations, the Bureau of Land Management (BLM) has prepared a Draft Environmental Impact Statement (EIS) for the Sheep Mountain Uranium Project and by this notice is announcing the opening of the comment period.

DATES: To ensure comments will be considered, the BLM must receive written comments on the Sheep Mountain Uranium Project Draft EIS within 45 days following the date the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**. The BLM will announce future meetings or hearings and any other public involvement activities related to this Draft EIS at least 15 days in advance through public notices, media releases and/or mailings.

ADDRESSES: Comments on the Draft EIS may be submitted by any of the following methods:

- *Web site: http://www.blm.gov/wy/st/en/info/NEPA/documents/lfo/gashills.html.*
- *Email: blm_wy_sheep_mountain_eis@blm.gov.*
- *Mail:* Chris Krassin, Project Manager, BLM Lander Field Office, 1335 Main Street, Lander, WY 82520.

Copies of the Sheep Mountain Uranium Project Draft EIS are available in the Lander Field Office at the above address, the BLM Wyoming State Office in Cheyenne, Wyoming, and online at the above Web site.

FOR FURTHER INFORMATION CONTACT: Chris Krassin, Project Manager, telephone: 307–332–8400; address: BLM Lander Field Office, 1335 Main Street, Lander, WY 82520; or email: *blm_wy_sheep_mountain_eis@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a

day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Titan Uranium USA Inc., a wholly owned subsidiary of Titan Uranium Inc., submitted a 43 CFR 3809 Plan of Operations (Plan) to the BLM Lander Field Office (LFO) for the Sheep Mountain Uranium Project (Project) in Fremont County, Wyoming, on June 16, 2011. On February 29, 2012, Energy Fuels Inc. merged with Titan Uranium Inc. and all of its subsidiaries are now wholly-owned subsidiaries of Energy Fuels Resources (USA) Inc. (Energy Fuels). Energy Fuels will continue as the owner and operator of the Sheep Mountain Project. Energy Fuels submitted revised Plans to the BLM on July 16, 2012, August 29, 2013, and January 14, 2014. The 2014 revision consisted of a revision to the Wyoming Department of Environmental Quality—Land Quality Division (WDEQ–LQD) Mine Permit 381C and a final update to the Plan for which the EIS is based.

The Project is located 8 road miles south of Jeffrey City, Wyoming, in south-central Fremont County, in the Crooks Gap-Green Mountain District which was extensively mined starting in the 1950s. This area lies 62 road miles southeast of Riverton, Wyoming and 105 road miles west of Casper, Wyoming. The Project is within an active State of Wyoming Permit to Mine (No.381C) administered by the WDEQ–LQD. Revisions to the WDEQ–LQD permit have been submitted by Energy Fuels. Energy Fuels is currently considering applying for a U.S. Nuclear Regulatory Commission (NRC) Source Materials License for the proposed heap leach and processing facility.

Energy Fuels proposes to explore for and develop uranium reserves to produce approximately 1.0 million to 2.0 million pounds of uranium per year over an anticipated project life of 20 years. Uranium would be extracted using conventional open-pit and underground mining methods. Ore processing into yellowcake (U_3O_8) would occur either on-site using a heap leach and solvent extraction/ion exchange or offsite utilizing the existing conventional Sweetwater Uranium Mill approximately 30 miles to the south (NRC License SUA–1350). The boundary of the Sheep Mountain Project Area (Project Area) is within the active WDEQ–LQD 381C Mine Permit Area, encompassing approximately 3,611 acres (5.6 square miles) of which approximately 929 acres would be disturbed under the Proposed Action Alternative. Approximately 62 percent (572.5 acres) of the surface within the Proposed Action disturbance area historically was disturbed by previous mining and exploration activities.

The Draft EIS addresses the direct, indirect and cumulative impacts of the Proposed Action and two alternatives including the No Action Alternative and the BLM Mitigation Alternative.

The No Action Alternative, as required by NEPA, describes conditions that would occur if the proposed project were denied. This includes existing reclamation efforts on 227 acres of existing disturbance within the Project Area as required by the financial guarantee held for Mine Permit 381C. This reclamation includes a portion of the McIntosh pit and the existing underground mines, roads and facilities. Reclamation of the entire McIntosh Pit would be completed by the Wyoming Department of Environmental Quality—Abandoned Mine Lands program (WDEQ–AML) in coordination with Energy Fuels.

The Proposed Action Alternative is the project as proposed by Energy Fuels in their Plan, as amended, and the revised WDEQ–LQD Mine Permit 381C.

The BLM Mitigation Alternative would utilize the same conventional mining techniques over the same period as under the Proposed Action, but modifications to the proposed reclamation plan and development of a transportation plan would be required. In addition, the BLM Mitigation Alternative would identify opportunities to apply hierarchical mitigation strategies for on-site, regional and compensatory mitigation strategies and identify areas appropriate to apply landscape-level conservation and management actions to achieve regional mitigation objectives.

The Notice of Intent to prepare an EIS was published in the **Federal Register** on August 23, 2011 (76 FR 52688). Key issues identified during scoping were related to the development of additional alternatives, cumulative impacts, mitigation and monitoring and potential impacts to range, water, recreation, and wildlife resources.

The public is encouraged to comment on any of these alternatives. The BLM asks that those submitting comments make them as specific as possible with reference to chapters, page numbers and paragraphs in the Draft EIS document. Comments that contain only opinions or preferences will not receive a formal response; however, they will be considered and included as part of the BLM decision-making process. The most useful comments will include new technical or scientific information, identification of data gaps in the impact analysis, or technical or scientific rationale for opinions or preference.

Please note that public comments and information submitted including names, street addresses, and email addresses of persons who submit comments will be available for public review and disclosure at the above address during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except holidays.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Donald A. Simpson,

State Director.

[FR Doc. 2015–00453 Filed 1–15–15; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCOS05000.L13100000.EJ0000.241A]

Notice of Availability of the Draft Environmental Impact Statement for the Bull Mountain Unit Master Development Plan, Gunnison County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, the Bureau of Land Management (BLM) prepared a Draft Environmental Impact Statement (EIS) for the Bull Mountain Unit Master Development Plan (MDP) and by this notice is announcing the opening of the comment period.

DATES: To ensure comments will be considered, the BLM must receive written comments on the Bull Mountain MDP Draft EIS within 45 days following the date the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**. The BLM will announce future meetings or hearings and any other public involvement activities at least 15 days in advance through public notices, media releases and/or mailings.

ADDRESSES: You may submit comments related to the Bull Mountain MDP Draft EIS by any of the following methods:

- *Email: bullmtneis@blm.gov.*
- *Fax:* 970–240–5368.
- *Mail:* Bureau of Land Management, Uncompahgre Field Office, Attn: Jerry Jones, 2465 South Townsend Avenue, Montrose, CO 81401.

Copies of the Bull Mountain MDP Draft EIS are available for download on the project Web site (*www.blm.gov/co/st/en/BLM_Information/nepa/ufo/Bull_Mountain_EIS.html*) and on CD from the Uncompahgre Field Office at the above address.

FOR FURTHER INFORMATION CONTACT: Jerry Jones, Bull Mountain MDP Project Manager, at 970–240–5300, *j2jones@blm.gov,* or at the address above. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM Uncompahgre Field Office received a proposed MDP for natural gas exploration and development from SG Interests I, Ltd. (SGI) for the Bull Mountain Unit. An MDP provides information common to multiple planned wells, including drilling plans, Surface Use Plans of Operations, and plans for future production.

The Bull Mountain Unit MDP Draft EIS describes the exploration and development of up to 146 natural gas wells, four water disposal wells and associated infrastructure on Federal and private mineral leases within a federally unitized area known as the Bull Mountain Unit. SGI decided to develop the unit after their exploration wells demonstrated the potential for economically viable reserves of natural gas.

The Bull Mountain Unit is located within the Colorado River basin, approximately 30 miles northeast of the Town of Paonia and is bisected by State Highway 133. The boundaries of the unit encompass approximately 19,670 acres, Federal and private oil, and gas mineral estate in Gunnison County, Colorado. The unit consists of 440 acres of BLM Federal surface and subsurface land; 12,900 acres of split-estate lands consisting of private surface and Federal subsurface minerals administered by the BLM; and 6,330 acres of fee land consisting of private surface and private subsurface minerals.

The BLM is considering three alternatives in the Draft EIS: The No Action alternative, the MDP as submitted, and a third alternative developed by the BLM to help evaluate the effects of various modification and mitigation possibilities.

Work on the MDP began with a preliminary Environmental Assessment in 2009. The BLM determined that an EIS was necessary due to potential significant impacts to air quality in nearby Class 1 air sheds, water, socioeconomics and wildlife.

Please note that public comments and information submitted including names, street addresses and email addresses of persons who submit comments will be available for public review and disclosure at the above address during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except holidays.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6, 40 CFR 1506.10.

Ruth Welch,

BLM Colorado State Director.

[FR Doc. 2015–00458 Filed 1–15–15; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCON00000 L10200000 DF0000.LXSS080C0000]

Notice of Public Meetings, Northwest Colorado Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Northwest Colorado Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Northwest Colorado RAC has scheduled meetings February 19, June 4, August 20 and December 3, 2015, from 8 a.m. to 3 p.m., with public comment periods regarding matters on the agenda at 10 a.m. and 2 p.m. A specific agenda for each meeting will be available prior to the meetings at *http://www.blm.gov/co/st/en/BLM_Resources/racs/nwrac.html.*

ADDRESSES: The February 19 meeting will be held in the BLM Colorado River Valley Field Office, 2300 River Frontage Road, Silt, CO 81652; the June 4 meeting will be held at the Allington Inn of Kremmling, 215 West Central Avenue, Kremmling, CO 80459; the August 20 meeting will be held at the Rio Blanco Fairgrounds, 779 Sulphur Creek Road, Meeker, CO 81641; and the December 3 meeting will be held at the Springhill Suites, 236 Main Street, Grand Junction, CO 81501.

FOR FURTHER INFORMATION CONTACT: Chris Joyner, Public Affairs Specialist, Grand Junction Field Office, 2815 H Road, Grand Junction, CO 81506. Phone: (970) 244–3097. Email: *cbjoyner@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Northwest Colorado RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of public land issues in northwestern Colorado.

Topics of discussion during Northwest Colorado RAC meetings may include management of the Greater Sage-Grouse, working group reports, recreation, fire management, land use planning, invasive species management, energy and minerals management, travel management, wilderness, wild horse herd management, land exchange proposals, cultural resource management, and other issues as appropriate. Subcommittees under this RAC may meet this year regarding travel management in the White River Field Office. Active subcommittees report to the Northwest Colorado RAC at each council meeting. RAC and subcommittee meetings are open to the public. More information is available at *http://www.blm.gov/co/st/en/BLM_Resources/racs/nwrac.html.* The public may present written comments to the RACs. Each formal RAC meeting will also have time, as identified above, allocated for hearing public comments. Depending on the number of persons wishing to comment and time available,

the time for individual oral comments may be limited.

Ruth Welch,

State Director.

[FR Doc. 2014–30293 Filed 1–15–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAC06000.L11500000.DR0000.14X]

Notice of Availability of the Record of Decision for the Bakersfield Field Office Resource Management Plan Final Environmental Impact Statement, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for the Approved Resource Management Plan (RMP) for the Bakersfield Field Office located in Kings, Madera, San Luis Obispo, Santa Barbara, Tulare, Ventura, eastern Fresno, and western Kern counties in south-central California. The California State Director signed the ROD on December 22, 2014, which constitutes the BLM's final decision and makes the Approved RMP effective immediately.

ADDRESSES: Copies of the ROD/Approved RMP are available upon request from the Field Manager, Bakersfield Field Office, Bureau of Land Management, 3801 Pegasus Drive, Bakersfield, CA 93308 or via the internet at *www.blm.gov/ca/bakersfield.* Copies of the ROD/Approved RMP are available for public inspection at the Bakersfield Field Office and California State Office, 2800 Cottage Way, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: Sue Porter, Planning & Environmental Coordinator, Bakersfield Field Office, telephone: 661–391–6022; address: Bakersfield Field Office, 3801 Pegasus Drive, Bakersfield, CA 93308; email: *blm_ca_bakersfield_rmp@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Bakersfield Approved RMP addresses public land and resources managed by the Bakersfield Field Office in an 8 county, 17-million acre region of central California and provides management direction for approximately 400,000 acres of BLM-administered public land and 1.2 million acres of Federal mineral estate under Federal, State, and private surface ownership.

The Bakersfield Approved RMP—

- Establishes the goals, objectives, and management actions to meet desired resource conditions;
- Identifies comprehensive management direction for all resources and uses, including application of on-site, off-site (including compensation), and regional mitigation strategies, as applicable, and landscape-level conservation and management actions to achieve resource objectives;
- Identifies lands that are open or available for certain uses along with associated surface restrictions;
- Identifies lands closed to certain uses; and
- Makes broad-scale decisions to guide future site-specific project implementation for renewable energy, fluid minerals, livestock grazing, and recreation management in the Bakersfield Field Office.

The selected alternative for the Approved RMP is the agency proposed plan (Alternative B) in the Proposed RMP/Final Environmental Impact Statement (EIS), with the minor modifications described below.

After publication of the Proposed RMP/Final EIS on August 31, 2012, the BLM received 21 protest letters. The BLM modified the proposed plan based on protest resolution as reflected in the Approved RMP. These changes include, but are not limited to, designation of the Salinas River as an Area of Critical Environmental Concern (ACEC) and adoption of the special management attention for this area as outlined in Alternative C of the Proposed RMP/Final EIS. The BLM also corrected acreages for the Bitter Creek and Chico Martinez ACECs, which had been modified in the Proposed RMP/Final EIS based on public comments to exclude lands for which the BLM has no authority to apply management prescriptions.

The California Governor's Office did not identify any inconsistencies between the Proposed RMP/Final EIS and State or local plans, policies, and programs during the 60-day Governor's consistency review.

The ROD/Approved RMP route designation decisions are implementation decisions and are appealable under 43 CFR part 4. Any party adversely affected by an implementation decision may appeal within 30 days of publication of this Notice of Availability pursuant to 43 CFR, part 4, subpart E. The appeal should identify the specific route(s) on which the decision is being appealed. The appeal must be filed with the Bakersfield Field Manager at the above listed address. Please consult the appropriate regulations (43 CFR, part 4, subpart E) for further appeal requirements.

Authority: 40 CFR 1506.6.

Gabriel Garcia,

Field Manager, Bakersfield Field Office.

[FR Doc. 2015–00597 Filed 1–15–15; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–AKR–ANIA–KOVA–WRST–17357; PPAKAKROR4; PPMPRLE1Y.LS0000]

Aniakchak National Monument Subsistence Resource Commission (SRC), the Kobuk Valley National Park SRC, and the Wrangell-St. Elias National Park SRC; Meetings

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: As required by the Federal Advisory Committee Act (5 U.S.C. Appendix 1–16), the National Park Service (NPS) is hereby giving notice that the Aniakchak National Monument Subsistence Resource Commission (SRC), the Kobuk Valley National Park SRC, and the Wrangell-St. Elias National Park SRC will hold meetings to develop and continue work on NPS subsistence program recommendations and other related regulatory proposals and resource management issues. The NPS SRC program is authorized under Section 808 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3118), Title VIII.

Aniakchak National Monument SRC Meeting Date and Location: The Aniakchak National Monument SRC will meet from 1:00 p.m. to 5:00 p.m. or until business is completed on Tuesday, February 3, 2015, at the Community Center in Port Heiden, AK. For more detailed information regarding the Aniakchak National Monument SRC meeting, or if you are interested in applying for SRC membership, contact Designated Federal Official Diane Chung, Superintendent, at (907) 246–3305, or via email *diane_chung@nps.gov,* or Clarence Summers, Subsistence Manager, at (907) 644–3603,

or via email *clarence_summers@nps.gov.*

Kobuk Valley National Park Src Meeting/Teleconference Dates and Location: The Kobuk Valley National Park SRC will meet/teleconference from 9:00 a.m. to 5:00 p.m. or until business is completed on Wednesday, February 11, 2015, at the Northwest Arctic Heritage Center in Kotzebue, AK. The teleconference will be open to the public. Teleconference participants must call Kobuk Valley National Park office at (907) 442–3890 by Tuesday, February 10, 2015, prior to the meeting to receive teleconference passcode information. For more detailed information regarding the Kobuk Valley National Park SRC meetings, or if you are interested in applying for SRC membership, contact Designated Federal Official Frank Hays, Superintendent, at (907) 442–3890, or via email *frank_hays@nps.gov,* or Clarence Summers, Subsistence Manager, at (907) 644–3603, or via email *clarence_summers@nps.gov.*

Wrangell-St. Elias National Park SRC Meeting/Teleconference Dates and Location: The Wrangell-St. Elias National Park SRC will meet/teleconference from 9:00 a.m. to 5:00 p.m. or until business is completed on Thursday, February 26, 2015, and Friday, February 27, 2015, at the Buster Gene Memorial Facility in Gakona, AK. If the work of the SRC is completed on Thursday, February 26, 2015, the SRC will not meet on Friday, February 27, 2015. Teleconference participants must call the Wrangell-St. Elias National Park office at (907) 822–7236 or (907) 822–5234, by Friday, February 20, 2015, prior to the meeting to receive teleconference passcode information. For more detailed information regarding the Wrangell-St. Elias National Park SRC meeting/teleconference, or if you are interested in applying for SRC membership, contact Designated Federal Official Rick Obernesser, Superintendent, at (907) 822–3182, or via email *rick_obernesser@nps.gov,* or Barbara Cellarius, Subsistence Manager, at (907) 822–7236, or via email *barbara_cellarius@nps.gov,* or Clarence Summers, Subsistence Manager, at (907) 644–3603, or via email *clarence_summers@nps.gov.*

Proposed Meeting Agenda: The agenda may change to accommodate SRC business.

The proposed meeting agenda for each meeting includes the following:

1. Call to Order—Confirm Quorum
2. Welcome and Introductions
3. Review and Adoption of Agenda
4. Approval of Minutes
5. Superintendent's Welcome and Review of the Commission Purpose
6. Commission Membership Status
7. SRC Chair and Members' Reports
8. Superintendent's Report—NPS
9. Old Business
10. New Business
11. Federal Subsistence Board Update
12. Alaska Boards of Fish and Game Update
13. National Park Service Reports
    a. Ranger Update
    b. Resource Management Update
    c. Subsistence Manager's Report
14. Public and Other Agency Comments
15. Work Session
16. Set Tentative Date and Location for Next SRC Meeting
17. Adjourn Meeting

SRC meeting locations and dates may change based on inclement weather or exceptional circumstances. If the meeting date and location are changed, the Superintendent will issue a press release and use local newspapers and radio stations to announce the rescheduled meeting.

SUPPLEMENTARY INFORMATION: These meetings are open to the public and will have time allocated for public testimony. The public is welcome to present written or oral comments to the SRC. The meetings will be recorded and meeting minutes will be available upon request from the Superintendent for public inspection approximately six weeks after the meeting. Before including your address, telephone 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 may 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: January 9, 2015.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2015–00668 Filed 1–15–15; 8:45 am]

BILLING CODE 4310–EE–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NERO–GATE–17297; PPNEGATEB0, PPMVSCS1Z.Y00000]

Notice of Meeting for Gateway National Recreation Area Fort Hancock 21st Century Advisory Committee

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 U.S.C. Appendix 1–16), notice is hereby given of the next meeting of the Gateway National Recreation Area Fort Hancock 21st Century Advisory Committee. This meeting will take place on Friday, February 20, 2015, beginning at 9 a.m. (Eastern).

ADDRESSES: This meeting will take place at the Chapel at Sandy Hook, Hartshorne Drive, Middletown, NJ.

Agenda: The Committee will review communication efforts for three Requests for Proposal, released December 12, 2014, and open through April 17, 2015. The final agenda will be posted on *www.forthancock21stcentury.org* prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Further information concerning the meeting may be obtained by mail from John Warren, External Affairs Officer, Gateway National Recreation Area, 26 Hudson Road, Highlands, NJ 07732, or by calling (732) 872–5908, or via email at *forthancock21stcentury@yahoo.com,* or by visiting the committee Web site at *http://www.forthancock21stcentury.org.*

SUPPLEMENTARY INFORMATION: As provided under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix 1–16), the purpose of the Committee is to provide advice to the Secretary of the Interior, through the Director of the National Park Service, on the development of a reuse plan and on matters relating to future uses of certain buildings within the Fort Hancock Historic Landmark District, within the Sandy Hook Unit of Gateway National Recreation Area.

Meetings are open to the public. Interested members of the public may present, either orally or through written comments, opinions or information for the Committee to consider during the public meeting. Attendees and those wishing to provide comment are strongly encouraged to preregister through the contact information provided. The public will be able to comment at the meetings from 1 p.m. to 1:45 p.m. Written comments will be accepted prior to, during or after the meeting. Due to time constraints during the meeting, the Committee is not able to read written public comments submitted into the record. Individuals or groups requesting to make oral comments at the public committee meeting will be limited to no more than five minutes per speaker.

Before including your address, telephone number, email address, or other personal identifying information in your written comments, you should

be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may 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. All comments will be made part of the public record and will be electronically distributed to all Committee members.

Dated: January 9, 2015.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2015–00670 Filed 1–15–15; 8:45 am]

BILLING CODE 4310–EE–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR–2011–0002; DS63610000 DR2PS0000.CH7000 156D0102R2]

States' Decisions on Participating in Accounting and Auditing Relief for Federal Oil and Gas Marginal Properties

AGENCY: Office of Natural Resources Revenue (ONRR), Interior.

ACTION: Notice.

SUMMARY: Final regulations that ONRR published on September 13, 2004 (69 FR 55076), provide two types of accounting and auditing relief for Federal onshore or Outer Continental Shelf lease production from marginal properties. As the regulations require, ONRR provided a list of qualifying marginal Federal oil and gas properties to States that received a portion of Federal royalties. Each State then decided whether to participate in one or both relief options. For calendar year 2015, we provide in this notice the affected States' decisions to allow one or both types of relief.

DATES: Effective January 1, 2015.

FOR FURTHER INFORMATION CONTACT: Maroya Faied, Economic and Market Analysis office, at (303) 231–3744; or email at *maraya.faied@onrr.gov.*

SUPPLEMENTARY INFORMATION: The regulations, codified at 30 CFR part 1204, subpart C, implement certain provisions of section 7 of the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (RSFA) (30 U.S.C. 1726), which allows States to relieve the lessees of marginal properties from certain reporting, accounting, and auditing requirements. States make an annual determination of whether or not to allow relief. Two options for relief are provided: (1) Notification-based relief for annual reporting and (2) other requested relief, as industry proposed and ONRR and the affected State approved. The regulations require ONRR to publish by December 1 of each year a list of the States and their decisions regarding marginal property relief.

To qualify for the first relief option (notification-based relief) for calendar year 2015, properties must produce less than 1,000 barrels-of-oil-equivalent (BOE) per year for the base period (July 1, 2013, through June 30, 2014). Annual reporting relief will begin January 1, 2015, with the annual report and payment due February 28, 2016, or March 31, 2016, if you have an estimated payment on file. To qualify for the second relief option (other requested relief), the combined equivalent production of the marginal properties during the base period must equal an average daily well production of less than 15 BOE per well, per day calculated under 30 CFR 1204.4(c).

The following table shows the States that have qualifying marginal properties and the States' decisions to allow one or both forms of relief.

State	Notification–based relief (less than 1,000 BOE per year)	Request–based relief (less than 15 BOE per well per day)
Alabama	No	No.
Arkansas	No	Yes.
California	No	No.
Colorado	No	No.
Kansas	No	No.
Louisiana	Yes	Yes.
Michigan	Yes	Yes.
Mississippi	No	No.
Montana	No	No.
Nebraska	No	Yes.
Nevada	No	No.
New Mexico	No	Yes.
North Dakota	Yes	Yes.
Oklahoma	No	No.
South Dakota	No	No.
Utah	No	No.
Wyoming	Yes	No.

Federal oil and gas properties located in all other States where ONRR does not share a portion of Federal royalties with the State are eligible for relief if they qualify as marginal under the regulations (See section 117(c) of RSFA (30 U.S.C. 1726(c))). For information on how to obtain relief, please refer to 30 CFR 1204.205 or to the published rule, which you may view at *www.onrr.gov/Laws_R_D/FRNotices/AC30.htm.*

UnTess the information that ONRR received is proprietary data, all correspondence, records, or information that we receive in response to this notice may be subject to disclosure under the Freedom of Information Act (FOIA) (5 U.S.C. 552 *et seq.*). If applicable, please highlight the proprietary portions, including any supporting documentation, or mark the page(s) that contain proprietary data. We protect the proprietary information under the Trade Secrets Act (18 U.S.C. 1905); FOIA, Exemption 4 (5 U.S.C. 552(b)(4)); and Department regulations (43 CFR part 2).

Dated: January 5, 2015.

Gregory J. Gould,

Director, Office of Natural Resources Revenue.

[FR Doc. 2015–00608 Filed 1–15–15; 8:45 am]

BILLING CODE 4335–30–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 Light-Emitting Diode Products and Components Thereof, DN 3051;* 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, 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

[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov.*

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 Cree, Inc. on January 12, 2015. 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 light-emitting diode products and components thereof. The complaint names as respondents Feit Electric Company, Inc. of Pico Rivera, CA; Feit Electric Company, Inc. of China; Unity Opto Technology Co., Ltd. of Taiwan; and Unity Microelectronics, Inc of Plano, TX. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

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;

(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. 3051'') 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: January 13, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–00614 Filed 1–15–15; 8:45 am]

BILLING CODE 7020–02–P

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[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 Nos. 731–TA–753, 754, 756 (Third Review)]

Cut-to-Length Carbon Steel Plate From China, Russia, and Ukraine: Notice of Commission Determinations To Conduct Full Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) to determine whether revocation of the antidumping duty order on cut-to-length carbon steel plate from China or the termination of the suspended investigations on cut-to-length carbon steel plate from Russia and Ukraine would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective* January 5, 2015.

FOR FURTHER INFORMATION CONTACT: Justin Enck (202–205–3363), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov).* The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On January 5, 2015, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c) of the Act. The Commission found that the domestic interested party group response to its notice of institution (79 FR 59294, October 1, 2014) was adequate. The Commission found that

respondent group responses were adequate with respect to the suspended investigations on Russia and Ukraine but inadequate with respect to the order on China. The Commission determined that it will proceed to a full review of the order on China to promote administrative efficiency in light of its decision to proceed to full reviews with respect to the suspended investigations on Russia and Ukraine. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: January 13, 2015.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2015–00585 Filed 1–15–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Youth CareerConnect Grant Program Participant Tracking System

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the information collection request (ICR) proposal titled, ''Youth CareerConnect Grant Program Participant Tracking System,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before February 17, 2015.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr= 201412-1291-001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OASAM, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov*. Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov*.

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov*.

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks PRA authority for the Youth CareerConnect (YCC) Grant Program Participant Tracking System (PTS) information collection. Specifically, YCC grantees will submit participant-level data and quarterly aggregate reports for individuals who receive services through YCC programs and their partnerships with entities administering the workforce investment system as established under the Workforce Investment Act of 1998 (WIA). The reports will include aggregate data on demographic characteristics, types of services received, placements, program outcomes, and follow-up status. Specifically, reports will summarize data on participants who received core YCC program services, (*i.e.,* program enrollment, retention and credential rates, placement services, and other services essential to successful outcomes for YCC program participants). This information correction is authorized by the American Competitiveness and Workforce Improvement Act. *See* 29 U.S.C. 2916a.

This proposed information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. For additional information, see the related notice published in the **Federal Register** on August 1, 2014 (79 FR 44867).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB ICR Reference Number 201412–1291–001. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL.

Title of Collection: Youth CareerConnect Grant Program Participant Tracking System.

OMB ICR Reference Number: 201412–1291–001.

Affected Public: State, Local, and Tribal Governments and Individuals or Households.

Total Estimated Number of Respondents: 16,274.

Total Estimated Number of Responses: 32,596.

Total Estimated Annual Time Burden: 44,677 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: January 12, 2015.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2015–00623 Filed 1–15–15; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Office of the Secretary of Labor

Notice of Intent To Issue Declaratory Order

AGENCY: Office of the Secretary of Labor, Department of Labor.

ACTION: Notice of intent to issue declaratory order; request for comment; extension of comment period.

SUMMARY: On December 17, 2014, the Office of the Secretary of Labor published a **Federal Register** notice of intent to issue declaratory order and request for comment (''Notice''). This Notice (79 FR 75179) states the Secretary of Labor (''Secretary'') is considering issuing on his own motion a declaratory order confirming that he has exclusive authority to make legal and policy determinations based on his statutory and regulatory authority to administer and enforce the H–2B temporary labor certification program. Such a declaratory order would remove uncertainty about that authority created by a decision of the Board of Alien Labor Certification Appeals in *Island Holdings LLC,* 2013–PWD–00002 (BALCA Dec. 3, 2013) (en banc). This Notice was issued pursuant to the authority granted in the Administrative Procedure Act (APA), 5 U.S.C. 554(e), to issue declaratory orders ''to terminate a controversy or remove uncertainty.'' This document extends the comment period for the Notice for fifteen (15) days. If you have already submitted comments in response to the Notice, you do not need to resubmit your comment. The Department will consider all comments received from the date of publication of the Notice through the close of the extended comment period.

DATES: The comment period for the Notice published on December 17, 2014 (79 FR 75179), scheduled to close on January 16, 2015, is extended until February 2, 2015.

ADDRESSES: You may submit comments, identified by docket number ETA–2014–0003, by any one of the following methods:

- *Federal e-Rulemaking Portal www.regulations.gov.* Follow the Web site instructions for submitting comments.
- *Mail or Hand Delivery/Courier:* Please submit all written comments (including disk and CD–ROM submissions) to Adele Gagliardi, Administrator, Office of Policy Development and Research, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–5641, Washington, DC 20210.

Please submit your comments by only one method. Comments received by means other than those listed above or received after the comment period has closed will not be reviewed. The Department will post all comments received on *http://www.regulations.gov* without making any change to the comments, including any personal information provided. The *http://www.regulations.gov* Web site is the Federal e-rulemaking portal and all comments posted there are available and accessible to the public. The Department cautions commenters not to include personal information such as Social Security Numbers, personal addresses, telephone numbers, and email addresses in their comments as such information will become viewable by the public on the *http://www.regulations.gov* Web site. It is the commenter's responsibility to safeguard his or her information. Comments submitted through *http://www.regulations.gov* will not include the commenter's email address unless the commenter chooses to include that information as part of his or her comment.

Postal delivery in Washington, DC, may be delayed due to security concerns. Therefore, the Departments encourage the public to submit comments through the *http://www.regulations.gov* Web site.

Docket: For access to the docket to read background documents or comments received, go to the Federal eRulemaking portal at *http://www.regulations.gov.* The Department will also make all the comments available for public inspection during normal business hours at the Employment and Training Administration (ETA) Office of Policy Development and Research at the above address. If you need assistance to review the comments, DOL will provide you with appropriate aids such as readers or print magnifiers. DOL will make copies of the Notice available, upon request, in large print and as an electronic file on computer disk. DOL will consider providing the Notice in other formats upon request. To schedule an appointment to review the comments and/or obtain the Notice in an alternate format, contact the ETA Office of Policy Development and Research at (202) 693–3700 (VOICE) (this is not a toll-free number) or 1–877–889–5627 (TTY/TDD).

FOR FURTHER INFORMATION CONTACT: For further information, contact William W. Thompson, Acting Administrator, Office of Foreign Labor Certification, ETA, U.S. Department of Labor, 200 Constitution Avenue NW., Room C–4312, Washington, DC 20210; Telephone (202) 693–3010 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On December 17, 2014, the Department published a Notice of Intent to Issue Declaratory Order and Request for Comment (79 FR 75179). The Department was to receive comments on this Notice on or before January 16, 2015.

Several organizations and an individual submitted requests to extend the comment period by an additional 90 days. We considered these requests and determined that it is appropriate to provide an additional 15-day period for comment on the Notice. We are, therefore, extending the comment period until Monday, February 2, 2015.

Extension of Comment Period

The Department determined that the public could use additional time to review the administrative record for this adjudicatory proceeding and to prepare comment in the nature of legal briefing related to the proposed legal determinations stated in the Notice. Therefore, to allow the public sufficient time to review and comment on the Notice, the Department is extending the comment period until February 2, 2015.

Signed at Washington, DC, this 12th day of January, 2015.

Thomas E. Perez,

Secretary of Labor.

[FR Doc. 2015–00580 Filed 1–15–15; 8:45 am]

BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (14–135)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on the ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery '' for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et.*

seq.). This collection was developed as part of a Federal Government-wide effort to streamline the process for seeking feedback from the public on service delivery. This notice announces our intent to submit this collection to OMB for approval and solicits comments on specific aspects for the proposed information collection.

DATES: Consideration will be given to all comments received within 60 days after the date of this publication.

ADDRESSES: All comments should be addressed to Frances Teel, National Aeronautics and Space Administration, Code JF000, Washington, DC 20546–0001, *frances.c.teel@nasa.gov.* Please do not include information of a confidential nature, such as sensitive personal information or proprietary information, in your comments.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Frances Teel, NASA PRA Clearance Officer, NASA Headquarters, 300 E Street SW., Mail Code JF0000, Washington, DC 20546 or *frances.c.teel@nasa.gov.*

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: This is an active information collection. NASA is increasing the projected burden hours to engage more members of the public in discussion groups and focus groups, and increase the number of qualitative customer satisfaction surveys. The proposed information collection activity provides a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable.

The Agency will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency;
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Current Actions: Revision of a currently approved collection.

Type of Review: Regular.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local, or Tribal Government.

Average Expected Annual Number of activities: 1,720.

Average number of Respondents per Activity: Variable.

Annual responses: Variable.

Frequency of Response: Variable.

Average minutes per response: Variable.

Burden hours: 142,000.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. 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. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to

a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

All written comments will be available for public inspection at: Regulations.gov.

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 Office of Management and Budget control number.

Cheryl E. Parker,

Federal Register Liaison Officer.

[FR Doc. 2015–00561 Filed 1–15–15; 8:45 am]

BILLING CODE 7510–13–P

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974: New System of Records

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice of a new system of records.

SUMMARY: The Office of Personnel Management is proposing to add a new system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records maintained by the agency (5 U.S.C. 552a(e)(4)). The Integrity Assurance Officer Control Files (Internal 20) system of records has been operational since February 2005 without incident. Previously, OPM has relied on preexisting Privacy Act system of records notices for the collection and maintenance of these records. In an effort to increase transparency, OPM published a separate notice for this system (**Federal Register**/Volume 79, No. 71/April 14, 2014/page 20931), and no comments were received. At this time we are publishing the complete text of this system of records.

DATES: This addition will be effective without further notice thirty (30) calendar days from the date of this publication, unless we receive comments that result in a contrary determination.

ADDRESSES: Send written comments to the Program Manager for the Freedom of Information and Privacy Act office, Federal Investigative Services, U.S. Office of Personnel Management, 1137 Branchton Road, PO Box 618, Boyers, Pennsylvania 16018.

FOR FURTHER INFORMATION CONTACT: Program Manager, Freedom of Information and Privacy Act office, *FISSORNComments@opm.gov*.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Office of Personnel Management Federal Investigative Services (OPM–FIS) proposes to establish a new system of records titled Integrity Assurance Officer Control Files (Internal 20). This system of records allows OPM–FIS to collect, analyze, coordinate, and report investigations into allegations of misconduct or negligence by OPM Federal and contractor staff. The information in this system documents investigations into allegations or concerns of the following possible misconduct: (1) Fraud against the Government; (2) Theft of Government property; (3) Misuse of Government property and IT systems; and (4) Improper personal conduct.

This information is reported to other OPM components or Federal agencies for criminal, administrative, or any other actions deemed appropriate.

U.S. Office of Personnel Management.

Katherine Archuleta,

Director.

Office of Personnel Management

OPM/INTERNAL–20

SYSTEM NAME:

Internal—Integrity Assurance Officer Control Files

SYSTEM LOCATION:

Records may be maintained in the following locations:

a. United States Office of Personnel Management (OPM), Federal Investigative Services (FIS), 1900 E Street NW., Washington, DC 20415;

b. OPM–FIS, Federal Investigations Processing Center, 1137 Branchton Rd, PO Box 618, Boyers, PA 16018–0618;

c. OPM–FIS, Personnel Investigations Center, 601 10th Street, Ft. Meade, MD 20755.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former individuals who have applied to or who are or were employed by FIS or who work(ed) on an OPM–FIS Contract and were referred to FIS's Integrity Assurance office due to allegations or concerns of the following possible misconduct: (1) Fraud against the Government; (2) Theft of Government property; (3) Misuse of Government property and IT systems; and (4) Improper personal conduct.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applicable records may contain the following information about the covered individual: name, date of birth, Social Security Number, home address, telephone numbers, email addresses, employment history, education history, criminal history, civil court actions, records related to drug and/or alcohol use, interviews with and information obtained from sources and subjects of the integrity investigation, records documenting the individual's work or performance, records documenting the handling of personally identifiable information, time and attendance records, government credit card records, travel records, government issued cellular phone records, personnel and/or training records, public record information to include law enforcement, financial, divorce, bankruptcy, name change and other court information or reports and copies of information appearing in the media; copies of correspondence to and from the individual concerning the items above and copies of inter- and intra-agency correspondence concerning the items above and other information developed and relevant to the investigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; the Federal Records Act, 44 U.S.C. 3101.

PURPOSE(S):

OPM–FIS uses these records to document the outcome of investigations into allegations of misconduct or negligence by OPM Federal and contractor staff or applicants and/or report the results of these investigations to other OPM components or Federal agencies for criminal, administrative, or any other action deemed appropriate.

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 to authorized entities, as is determined to be relevant and necessary, outside OPM as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. For Law Enforcement Purposes—To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order,

where OPM becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

2. For Litigation—To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which OPM is authorized to appear, when:

(a) OPM, or any component thereof; or

(b) Any employee of OPM in his or her official capacity; or

(c) Any employee of OPM in his or her individual capacity where the Department of Justice or OPM has agreed to represent the employee; or

(d) The United States, when OPM determines that litigation is likely to affect OPM or any of its components; is a party to litigation or has an interest in such litigation, and OPM determines that the records are relevant and necessary to the litigation provided, however, that the disclosure is compatible with the purpose for which the records were collected.

3. To another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by OPM or another Federal agency, when the Government is a party to the judicial or administrative proceeding. In those cases where the Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a judge.

4. To an agency, office, or other establishment in the executive, legislative, or judicial branches of the Federal Government in response to its request, in connection with the hiring or retention of an employee or contractor, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

5. To any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation, and to identify the type of information requested.

6. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual. However, the file, or parts thereof, will only be released to a congressional office if OPM receives a notarized authorization or signed statement under 28 U.S.C. 1746 from the subject of the investigation or an unsworn declaration in accordance with 28 U.S.C. 1746, in the following format: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).

7. For the Merit Systems Protection Board—To disclose information to officials of the Merit Systems Protection Board or the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of OPM rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions, *e.g.,* as promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

8. For the Equal Employment Opportunity Commission—To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures or other functions vested in the Commission and to otherwise ensure compliance with the provisions of 5 U.S.C. 7201.

9. For the Federal Labor Relations Authority—To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

10. For National Archives and Records Administration—To disclose information to the National Archives and Records Administration for use in records management inspections.

11. For Non-Federal Personnel—To disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government who have a need to know the information contained within this system.

12. By OPM in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related studies. While published studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

13. To appropriate agencies, entities, and persons when (1) OPM suspects or has confirmed that the security or confidentiality of the information in a system of records has been compromised; (2) OPM has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by OPM or another agency or entity) that rely on the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the OPM's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

14. To another Federal agency that has the authority to conduct background investigations when an individual is suspended or removed from an OPM FIS contract due to misconduct to the extent that the information is relevant and necessary to the Federal agency's decision to retain the individual under contract with their agency.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in a paper format in file folders and electronic databases.

RETRIEVABILITY:

Records are retrieved by the name and/or social security number of the individual about whom they are maintained.

SAFEGUARDS:

Paper file folders are stored in a secured office within a secure facility. Access to the file folders and electronic records in the databases is restricted to authorized employees with a need-to-know.

RETENTION AND DISPOSAL:

a: Records are maintained for 4 years, plus the current year, from the date of the most recent investigative activity or associated action, unless the case is appealed, at which time the records are maintained for 7 years, plus the current year, from the date of the associated action.

b: Hard copy records are destroyed by shredding and recycling and computerized records are destroyed by electronic erasure.

SYSTEM MANAGER AND ADDRESS:

Associate Director, Federal Investigative Services, U. S. Office of Personnel Management, P.O. Box 618, 1137 Branchton Road, Boyers, PA 16018.

NOTIFICATION AND RECORD ACCESS PROCEDURES:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552(c)(3), (d), and (e)(1), regarding providing an accounting of disclosures to the data subject, access to and amendment of records, and maintaining in its records only such information that is relevant and necessary. The section of this notice titled Systems Exempted from Certain Provisions of the Act indicates the kinds of material exempted and the reasons for exempting them from access.

Individuals wishing to determine whether this system of records contains information about them or wishing to request access to their record may do so by writing to FOI/PA, Office of Personnel Management, Federal Investigative Services, PO Box 618, Boyers, PA 16018–0618. Individuals must furnish the following for their records to be located:

a. Full name.
b. Any former name.
c. SSN
d. Signature.
e. Any available information regarding the type of record involved.
f. Dates of employment and by whom the individual was employed.
g. The address to which the record information should be sent.

In addition, the requester must provide an original notarized statement or an unsworn declaration in accordance with 28 U.S.C. 1746, in the following format: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf. The written authorization must also include an original notarized statement or an unsworn declaration in accordance with 28 U.S.C. 1746, in the following format: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on [date]. [Signature].'

Individuals requesting access must also comply with OPM's Privacy Act regulations regarding verification of identity and access to records (5 CFR 297).

AMENDMENT PROCEDURES:

Individuals wishing to request amendment to their non-exempt records should write to FOI/PA, Office of Personnel Management, Federal Investigative Services, PO Box 618, Boyers, PA 16018–0618. Individuals must furnish the following for their records to be located:

a. Full name.
b. Any former name.
c. SSN
d. Signature.
e. Dates of employment and by whom the individual was employed.
f. Precise identification of the information to be amended.
g. The address to which the record information should be sent.

In addition, the requester must provide an original notarized statement or an unsworn declaration in accordance with 28 U.S.C. 1746, in the following format: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf. The written authorization must also include an original notarized statement or an unsworn declaration in accordance with 28 U.S.C. 1746, in the following format: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on [date]. [Signature].'

Individuals requesting amendment must also comply with OPM's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from:

a. The individual to whom the information applies.
b. OPM–FIS investigative files
c. Officials of OPM and OPM–FIS Contractors
d. Federal, State, and local agencies, and internal and external inquiries
e. The public

EXEMPTIONS CLAIMED FOR THE SYSTEM:

All information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(1), (2), (5), or (6) is exempt from the requirements of the Privacy Act that relate to providing an accounting of disclosures to the data subject, access to and amendment of records, and maintaining in its records only such information that is relevant and necessary. (5 U.S.C. 552(c)(3), (d), and (e)(1)).

1. Properly classified information subject to the provisions of section 552(b)(1), which states as follows: (A) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order.

2. Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of this section: Provided, however, that if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

5. Investigatory material compiled solely for the purpose of determining suitability, eligibility or qualifications for Federal civilian employment and Federal contact or access to classified information. Materials may be exempted to the extent that release of the material to the individual whom the information is about would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence or, prior to September 27, 1975, furnished information to the Government under an implied promise that the identity of the source would be held in confidence.

6. Testing and examination materials, compiled during the course of a personnel investigation, that are used solely to determine individual qualifications for appointment or promotion in the Federal service, when disclosure of the material would compromise the objectivity or fairness of the testing or examination process.

[FR Doc. 2015–00613 Filed 1–15–15; 8:45 am]

BILLING CODE 6325–53–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74035; File No. SR–NYSE–2014–63]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change Amending Rules 311 and 313 To Add Limited Liability Companies as Eligible Member Organizations and Delineate the Information Limited Liability Companies Must Submit to the Exchange as Part of the Membership Process; Eliminate the Requirement That a Member Corporation Be Created or Organized, and Maintain Its Principal Place of Business, in the United States; and Make Additional Related Amendments To Update Its Membership Rules

January 12, 2015.

I. Introduction

On November 12, 2014, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] a proposal to amend NYSE Rules 311 and 313 to add limited liability companies (''LLCs'') to the types of eligible member organizations and delineate the information LLCs must submit to the Exchange as part of the membership process; eliminate the requirement that a member corporation be created or organized, and maintain its principal place of business, in the United States; and make additional related amendments to update its membership rules. The proposed rule change was published for comment in the **Federal Register** on November 28, 2014.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

A. Rule 311

NYSE Rule 311 governs the formation and approval of member organizations. The Exchange proposes to revise Rule 311 to explicitly provide for LLCs to apply to become member organizations and eliminate the requirement that a member corporation be created or organized, and maintain its principal place of business, in the United States.

The Exchange's membership rules currently provide for member organizations to be corporations or partnerships, but have not explicitly provided for LLCs.[4] The Exchange proposes to add LLCs to the types of potential member organizations and require LLCs to meet the same requirements currently applicable to partnerships and corporations set forth in Rule 311(b). As part of the proposed revision, the Exchange seeks to add a new section (4) to Rule 311(b) requiring every member of an LLC to be a member, principal executive, or approved person.[5] The Exchange also proposes to amend current Rule 311(b)(6) to reflect that proposed LLC member organizations must, like corporations and partnerships, also comply with any additional requirements as the rules of the Exchange may prescribe. In addition, the Exchange proposes to add new Supplementary Material .16 to Rule 311 to specify that LLC applicants for Exchange membership are subject to Rule 313.24 regarding the submission of copies of proposed or existing limited liability company documents and other agreements.

The Exchange also proposes to amend Rule 311(f) to eliminate the geographic limitation on incorporation and domicile of corporation members and delete the related interpretations of Rule 311(f). The first sentence of Rule 311(f) currently provides that every member corporation be a corporation ''created or organized under the laws of, and shall maintain its principal place of business in, the United States or any State thereof.'' [6] The Exchange does not believe that the Exchange's restriction on whether foreign entities may be a member organization is consistent with either federal rules or those of other self-regulatory organizations (''SRO''). The Exchange states that rules promulgated pursuant to the Act require, under certain circumstances, a foreign broker-dealer to register with the Commission.[7] The Exchange also states that other SROs, including the Financial Industry Regulatory Authority, Inc. (''FINRA''), do not require their members to be domiciled in the United States.[8]

The Exchange believes that the current restriction in Rule 311(f) puts it at a competitive disadvantage because it restricts foreign broker-dealers that are registered with the Commission and are members of another SRO from also becoming Exchange member organizations. The Exchange notes that its rules already require member organizations to meet prerequisites as specified in Rule 2(b). Specifically, regardless of corporate form, all member organizations must be registered broker-dealers that are members of FINRA or another registered securities exchange. If a registered broker-dealer transacts business with public customers or conducts business on the Floor of the Exchange, such member organization must be a member of FINRA.

The Exchange further notes that a member organization will be subject to regulatory examination and jurisdiction for misconduct whether or not it is based in the United States. However, for the avoidance of doubt, as discussed below, the Exchange proposes to add supplementary material to Rule 313 based on NASD Rule 1090 that imposes certain requirements on foreign members that do not maintain an office in the United States.

B. Rule 313

NYSE Rule 313 sets forth certain corporate or partnership documents that each member organization must submit to enter into and continue in NYSE membership. The Rule also sets forth certain restrictions on capital withdrawals and distributions applicable to member corporations and partnerships. The Exchange proposes to amend Rule 313 to delineate the types of documents that LLCs must submit that, as noted, mirror the requirements currently in place for member corporations and partnerships.

First, the Exchange proposes to add a subsection (d) to Rule 313 requiring all

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 73672 (Nov. 21, 2014), 79 FR 70909 (Nov. 28, 2014) (''Notice'').

[4] Current Rule 311(f) permits the Exchange to approve ''entities that have characteristics essentially similar to corporations, partnerships, or both'' as a member organization ''on such terms and conditions as the Exchange may prescribe.''

[5] Rule 311(b)(2) and (b)(3) currently impose the same requirement on the relevant control persons at corporations and partnerships, respectively.

[6] The first sentence of Rule 311(f) also provides that every member firm organization shall be a partnership or corporation. This statement is redundant to Rule 311(b), which the Exchange is amending to add LLCs. Accordingly, the Exchange proposes to delete the first sentence of Rule 311(f) in its entirety.

[7] *See* 17 CFR 240.15a–6 and Commission Guide to Broker-Dealer Registration, Division of Trading and Markets, available at *http://www.sec.gov/divisions/marketreg/bdguide.htm* (foreign broker-dealers that, from the outside of the United States, induce or attempt to induce securities transactions by any person in the United States, or that use the means or instrumentalities of interstate commerce in the United States for this purpose, must register as broker-dealers with the Commission).

[8] *See, e.g.,* NASD Membership and Registration Rules (1000 Series). NASD Rule 1090 imposes specific requirements on members that do not maintain an office in the United States responsible for preparing and maintaining financial and other reports required to be filed with the SEC and the Exchange, which the Exchange proposes to import into Rule 313. *See infra* note 9 and accompanying text. *See also* BATS Exchange, Inc. Rules 2.3, 2.5 and 2.6.

articles of organization and operating documents for LLCs to be submitted for Exchange approval prior to becoming effective. Relatedly, the Exchange proposes to add Supplementary Material .24 setting forth that existing LLCs must promptly submit certified copies (to the extent possible) of articles of organization and operating agreements to the Exchange.

Second, the Exchange proposes to add Supplementary Material .25 providing restrictions on capital withdrawals by LLC members that are substantially the same as those applicable to corporations and partnerships. The Supplementary Material would provide that the capital contribution of any LLC member may not be withdrawn on less than six months' written notice of withdrawal given no sooner than six months after such contribution was first made without the prior written approval of the Exchange. The Supplementary Material would also specify that each member firm shall promptly notify the Exchange of the receipt of any notice of withdrawal of any part of a member's capital contribution or if any withdrawal is not made because prohibited under the provisions of Rule 15c3–1 under the Act.

Third, the Exchange proposes to add Supplementary Material .26 providing that LLCs not organized under the laws of New York State must subject themselves to the following restrictions: No distributions shall be declared or paid that impair the LLC's capital; and no distribution of assets shall be made to any member unless the value of the LLC's assets remaining after such payment or distribution is at least equal to the aggregate of its debts and liabilities, including capital. These proposed restrictions are based on existing restrictions applicable to member corporations and partnerships.

In addition, as noted above, the Exchange proposes to add new Supplementary Material .27 to Rule 313 specifying the requirements applicable to Foreign Member Organizations. The proposed new rule text would adopt, without substantive change, paragraphs (a), (b), and (c) of NASD Rule 1090 (Foreign Members), which impose specific requirements on FINRA members that do not maintain an office in the United States responsible for preparing and maintaining financial and other reports required to be filed by the SEC and FINRA.[9] As proposed, foreign member organizations that do not maintain an office in the United States responsible for preparing and maintaining financial and other reports required to be filed with the Commission and the Exchange would be required to: (1) Prepare all such reports, and maintain a general ledger chart of account and any description thereof, in English and U.S. dollars; (2) reimburse the Exchange or its representatives for expenses incurred in connection with examinations of the member organization to the extent that such expenses exceed the cost of examining a member organization located within the continental United States in the geographic location most distant from the Exchange's principal office or, in such other amount as the Exchange may deem to be an equitable allocation of such expenses; and (3) ensure the availability of an individual fluent in English and knowledgeable in securities and financial matters to assist representatives of the Exchange during examinations.

The Exchange also proposes to eliminate certain restrictions, which the Exchange considers redundant, on member organizations and prospective member organizations organized as partnerships and corporations. The Exchange proposes to eliminate the requirement in Rule 313.11 that the partnership articles of each member firm provide that capital withdrawals by partners cannot be made without the prior written approval of the Exchange. Rule 313.11 already requires the Exchange's prior written approval for any such capital withdrawals, and member organizations need to monitor for and comply with the prohibition, including whether particular withdrawals violate net capital requirements. The Exchange believes that because Exchange rules already govern this behavior, a partnership seeking approval as a member organization would not need to amend its partnership articles to reflect this existing rule requirement.[10]

Further, the Exchange proposes to eliminate the requirement in Rule 313.20 that prospective member corporations submit an opinion of counsel stating, among other things, that the corporation is duly organized and existing, that its stock is validly issued and outstanding, and that the restrictions and provisions required by the Exchange on the transfer, issuance, conversion and redemption of its stock have been made legally effective. Corporate members are required under the Rule to submit relevant corporate documents, including articles of incorporation, that contain the same information required in the opinion of counsel. The Exchange represents that requiring a legal opinion attesting to facts contained in a corporation's public filings is redundant and, given the expense, potentially a disincentive to smaller entities applying for Exchange membership.

Similarly, the Exchange proposes to remove the requirement in Rule 313.23 that the opinion of counsel submitted to the Exchange at the time the corporation applies for approval under Rule 313.20 state the extent to which the corporation has made the following prohibitions legally effective: The prohibition on declaring or paying a dividend that impairs the capital of the corporation and the prohibition on distributing assets to any stockholder unless the value of the corporate assets remaining after such payment or distribution is at least equal to the aggregate of its debts and liabilities, including capital. Rule 313.23 would continue to prohibit corporation members from declaring or paying dividends or distributing corporate assets that impair the corporation's capital, and member corporations would not be relieved of the obligation to monitor and enforce these prohibitions. The Exchange believes that requiring these representations in a separate legal opinion is redundant and serves no necessary regulatory or other purpose.[11]

Finally, the Exchange proposes to make certain miscellaneous amendments to Rule 313. Specifically, the Exchange proposes to replace outdated references to ''Regulation and Surveillance'' with ''the Exchange'' in

[9] The Exchange is not proposing to adopt a rule similar to NASD Rule 1090(d), which requires foreign members to ''utilize, either directly or indirectly, the services of a broker/dealer registered with the Commission, a bank or a clearing agency registered with the Commission located in the United States in clearing all transactions involving members of the Association, except where both parties to a transaction agree otherwise.'' The Exchange agrees with FINRA, which similarly recommended skipping paragraph (d) as part of its contemplated adoption of NASD Rule 1090, that the provision is ''outdated'' and that clearing arrangements are better addressed by FINRA Rule 4311 (Carrying Agreements). *See* FINRA Regulatory Notice 13–29 at 27 (Sept. 2013). FINRA Rule 4311 governs the requirements applicable to members when entering into agreements for the carrying of any customer accounts in which securities transactions can be effected.

[10] *See also infra* note 11.

[11] FINRA Rule 4110 (Capital Compliance) contains similar prohibitions on capital withdrawals by FINRA members without requiring that the prohibitions be reflected in a firm's partnership articles or requiring a legal opinion that the member has made the prohibitions legally effective. *See* FINRA Rule 4110(c)(1) (''No equity capital of a member may be withdrawn for a period of one year from the date such equity capital is contributed, unless otherwise permitted by FINRA in writing.'').

Rules 313.10 and 313.20.[12] Similarly, the Exchange proposes to replace outdated references to ''photostatic'' copies in Rules 313.10 and 313.20 in connection with the submission of documents to the Exchange and replace them with ''electronically or mechanically reproduced.''

As noted above, the Commission received no comments on the proposed rule change.

III. Discussion and Commission Findings

After carefully considering the proposal, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[13] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[14] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission agrees with the Exchange that adding LLCs to the list of eligible member organizations would remove impediments to and perfect the mechanism of a free and open market and a national market system by expanding the types of organizational forms a member organization may take. The Exchange also believes that permitting LLCs to become member organizations subject to the same restrictions and requirements currently applicable to corporations and partnerships also protects investors and the public interest by holding LLCs to the same high standards.

In addition, permitting non-United States-based registered broker-dealers that are members of FINRA or another registered securities exchange and that do not have their principal place of business in the United States to become Exchange member organizations would remove impediments to and perfect the mechanism of a free and open market by removing geographic restrictions on Exchange membership that are not required by FINRA or other exchanges. Broadening the Exchange membership pool by facilitating the participation of additional foreign-based U.S. registered broker-dealers would benefit investors and the public interest by increasing market participation and depth at the Exchange. Moreover, adoption of specific requirements for foreign members that do not maintain an office in the United States based on NASD Rule 1090 would further assure that foreign Exchange members, once approved, remain subject to regulatory examination and jurisdiction.

In addition, updating the Exchange's rules to remove requirements that the Exchange believes are redundant—that a member firm's partnership articles provide that capital withdrawals by partners cannot be made without the prior written approval of the Exchange, that prospective member corporations submit an opinion of counsel reciting facts contained in its public filings, and that certain prohibitions have been made legally effective—would remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring that potential member organizations, persons subject to the Exchange's jurisdiction, regulators, and the public could more easily navigate the Exchange's rulebook and better understand what obligations attach and when. Further, updating the Exchange's rules to remove what the Exchange considers redundant requirements also would protect investors as well as the public interest by providing transparency and reducing potential confusion regarding the Exchange membership process that may result from having what the Exchange characterizes as obsolete rules and outdated guidelines in the Exchange's rulebook. For the same reasons, updating the Exchange's rules to remove requirements that the Exchange considers outdated would remove impediments to and perfect the mechanism of a free and open market and a national market system and is equally designed to protect investors as well as the public interest.

Based on the foregoing, the Commission finds the proposed rule change is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–NYSE–2014–63) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Brent J. Fields,

Secretary.

[FR Doc. 2015–00578 Filed 1–15–15; 8:45 am]

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[12] Under Rule 0, references to the Exchange also refer to FINRA staff and FINRA departments acting on behalf of the Exchange pursuant to a Regulatory Services Agreement (''RSA''). FINRA currently provides member application proceedings services to the Exchange pursuant to an RSA.

[13] In approving the proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 74033; File No. SR–FICC–2014–12]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Fee Schedule in the Mortgage-Backed Securities Division Clearing Rules

January 12, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 30, 2014 the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by FICC. FICC filed the proposal pursuant to Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder [4] so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change is filed by FICC and consists of modifications to the fee schedule in the Mortgage-Backed Securities Division (''MBSD'') Clearing Rules (the ''Clearing Rules'').

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC has prepared

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(i) Purpose

FICC is proposing to add a fee (the ''development fee'') to the MBSD Clearing Rules to cover the development cost of the MBSD Novation Service. Clearing members will be assessed the development fee as of January 1, 2015 and it will remain in effect for three (3) consecutive years. FICC will collect this fee on a monthly basis through the cash settlement process and the fee will be identified as line item ''NOV'' on each clearing member's cash obligation settlement report.

The cumulative amount of the development fees collected over the three (3) year period is expected to cover FICC's estimated cost of developing the MBSD Novation Service. If the actual development cost is materially greater than estimated, then FICC may increase transaction fees in order to make up the difference,[5] but will not increase the development fees. If the actual development cost is less than the estimated development cost, FICC will apportion the excess fees collected to other MBSD service enhancements and/or return excess fees to clearing members on a pro rata basis.

The MBSD Novation Service will be the subject of a future FICC rule filing subject to the Commission's review and approval. If FICC does not receive the Commission's approval or materially modifies the proposed service for any reason, FICC will suspend monthly billing of the development fee and, following consultation with members, submit a new fee filing to the Commission that either terminates or modifies the fee structure to account for any changes in development costs associated with the change to the service.

FICC has discussed the development fee with each of the clearing members.

A. MBSD Novation Service—Overview of the Service for Which the Development Fee Is Proposed To Be Charged

Through the MBSD Novation Service, FICC will provide MBSD clearing members an enhancement to the current processing of their transactions from an operational perspective. Specifically, FICC will step in as the counterparty to all subsequent trades resulting from the to-be-announced (''TBA'') netting process; and FICC will also step in as the counterparty to all pool allocations to complete each clearing member's TBA trades in preparation for the pool netting process. This will allow FICC to eliminate the Notification of Settlement[6] (''NOS'') process. Currently, FICC is unaware of each clearing member's allocation activities with respect to their settlement balance order trades, trade-for-trade transactions or specified pool trades. As a result of such activity settling away from FICC, FICC relies on each clearing member's submission of NOS to inform FICC of when such member's trades have settled. With the MBSD Novation Service, all clearing members will submit all trade activity showing FICC as the counterparty which will allow for the elimination of the NOS process.

The MBSD Novation Service will provide further enhancements by allowing additional types of trades to settle with FICC as the counterparty, namely, trades carrying stipulations (referred to as ''STIP trades'') and specified pool trades. Additionally, the service will simplify the processing of specified pool trades by allowing clearing members to match specified pool trades based on pool number or pool CUSIP number without the need for inclusion of a reference to a TBA CUSIP.

B. MBSD Novation Service—Development

FICC will begin the development phase for this initiative during the second quarter of 2015. The overall development will include the following:

1. Technical Specifications & System Build (Second Quarter 2015—Third Quarter 2015)

The technical specifications for this service will include the design of new messaging specifications, the development of a new allocation engine, and the development of a new netting engine to process TBA transactions. Upon completion, FICC's Technology team and Product Management team will confirm that the technical specifications are consistent with FICC's internal business requirements for this service. Next, the Technology team will begin to build the components for the system. The technical specifications are expected to be completed during the second quarter of 2015 and the system build will commence shortly thereafter with completion by the end of the third quarter of 2015.

2. Internal Testing (Fourth Quarter 2015)

The system build for the MBSD Novation Service may connect with DTCC's other existing systems. As a result, each of the existing systems must be thoroughly tested to ensure that they continue to operate as expected.

The existing systems that will be tested include the following:

a. Real-Time Trade Matching (RTTM®),

b. Electronic Pool Notification,

c. Pool Netting,

d. Billing system, and

e. Report Center.

Upon the completion of the system build, the internal testing of existing systems will commence. Internal testing is expected to begin during the fourth quarter of 2015 and continue for approximately 3 to 6 months.

3. External Member Testing (Second Quarter 2016)

During the external member testing phase, all clearing members and service bureaus will test the new processing, including the messaging aspects. Clearing members will be expected to complete their testing with FICC prior to the implementation of the MBSD Novation Service. External member testing is expected to begin during the second quarter of 2016 and continue for approximately 9 to 12 months.

4. Production Phase (Second Quarter 2017)

It is expected that the MBSD Novation Service will be placed into production over a 6 month period. This will provide MBSD and its clearing members with an opportunity to adjust to the new processing. Initially, TBA CUSIPs with limited trade volumes will be processed through the service and TBA CUSIPs with the highest trade volumes will be the last to be processed through the service.

C. Development Fee Calculation

The development fees that FICC is proposing to charge clearing members are based upon the cost estimates for the design, build, testing and production of the MBSD Novation Service as discussed above. FICC has calculated the development fee for each clearing member as summarized below.

FICC will assign each single entity clearing member and family of

[5] Any such fee increase will be subject to rule filing approval by the Commission.

[6] As defined in the MBSD Clearing Rules, the term ''Notification of Settlement'' means an instruction submitted to FICC by a purchasing or selling clearing member pursuant to the MBSD Clearing Rules reflecting settlement of a settlement balance order trade, trade-for-trade transaction or specified pool trade. The MBSD Clearing Rules are available on DTCC's Web site, *http://www.dtcc.com/legal/rules-and-procedures.aspx.*

members [7] to one of four tiers based on the fees paid by such member or family of members, as applicable, during the period of January 1st through August 31st of the previous year (the ''calculation period'').[8] FICC will then charge the tiered development fee to the single entity clearing member or calculate a portion of the tiered fee for each clearing member within the family of members. This portion will be based upon the fees generated by the clearing member during the calculation period. As noted above, the development fee will be collected as part of MBSD's cash settlement process.

The tiered development fee for 2015, 2016 and 2017 will be set during October of the previous year for the calculation period. The 2015 development fee was determined in October 2014 by calculating the amount of fees paid by clearing members from January 1, 2014 through August 31, 2014; the 2016 development fee will be determined in October 2015 by calculating the amount of fees paid by clearing members from January 1, 2015 through August 31, 2015; and the 2017 development fee will be determined in October 2016 by calculating the amount of fees paid by clearing members from the period of January 1, 2016 through August 31, 2016.

Below is the tiered development fee for 2015, 2016 and 2017 which is applicable to single entity clearing members and each family of members, as applicable. Tier 1 represents single entity clearing members and families of members, as applicable, that have generated fees over $1,000,000.00 during the calculation period; Tier 2 represents single entity clearing members and families of members, as applicable, that have generated fees in the amount of $250,000.00 to $999,999.99 during the calculation period; Tier 3 represents single entity clearing members and families of members, as applicable, that have generated fees in the amount of $100,000.00 to $249,999.99 during the calculation period; and Tier 4 represents single entity clearing members and families of members, as applicable, that have generated fees under $100,000.00 during the calculation period. As noted above, once FICC has determined the appropriate tier development fee based on the single entity clearing members or families fees, FICC will charge as follows:

1. Each single entity clearing member will be charged the entire amount of the tiered development fee; and

2. each clearing member within a family will be charged a portion of the tiered development fee based upon such clearing member's fees during the calculation period.

As noted above, all MBSD clearing members will be billed once a month through FICC's cash settlement process.

2015 Monthly development fee		2016 Monthly development fee		2017 Monthly development fee	
Tier 1	$20,000/mo.	Tier 1	$18,000/mo.	Tier 1	$18,000/mo.
Tier 2	$10,000/mo.	Tier 2	$8,000/mo.	Tier 2	$8,000/mo.
Tier 3	$6,000/mo.	Tier 3	$4,000/mo.	Tier 3	$4,000/mo.
Tier 4	$1,000/mo.	Tier 4	$1,000/mo.	Tier 4	$1,000/mo.

The cumulative amount of the development fees collected over the three (3) year period is expected to cover the cost of developing the MBSD Novation Service. FICC believes that the development fees are reasonable because they are based on FICC's estimates of the cost of the project which involves the stages referred to above (design, testing and moving into production). FICC believes that the development fees are proposed to be applied fairly because each clearing member will be charged an amount that is consistent with the previous year's fees that such member has paid, which is directly correlated to the member's (or its overall family's) usage of MBSD's clearing and settlement service.

(ii) Statutory Basis

FICC believes that the proposed rule changes are consistent with the requirements of Section 17A of the Securities Exchange Act of 1934, as amended (the ''Act'').

The proposed development fee will facilitate the establishment of a service that will promote the prompt and accurate clearance and settlement of securities transactions; the MBSD Novation Service will result in more transactions settled with FICC as central counterparty and will provide operational efficiencies for MBSD securities transaction processing.

In connection with Section 17A(b)(3)(F) of the Act [9] the Commission has stated that ''continued and improved understanding of . . . costs associated with using a covered clearing agency's services should promote confidence generally in the covered clearing agency's ability to set and manage appropriately . . . costs.'' [10] The proposed development fee improves the membership's understanding of the associated costs and helps FICC manage the costs by (1) disclosing the specific amount that clearing members will be charged for the development of this service, (2) providing a discrete time period for the allocation of such charges and (3) providing members with the opportunity to budget in advance for the associated costs.

The proposed prefunding fee enables FICC to maintain a certain level of financial resources in accordance with Rule 17Ad–22(c)(1) of the Clearing Agency Standards [11] while balancing the request of clearing members for services that are operationally beneficial for them.

The development fee is also consistent with Section 17A(b)(3)(D) of the Act,[12] which requires that the MBSD Rules provide for the equitable allocation of reasonable fees among its participants. As noted above, the development fee will be applied fairly among the clearing members because the charges are based upon the previous year's activity, which is directly correlated to the member's usage of MBSD's clearing and settlement service.

The proposed fee is reasonable as required by Section 17A(b)(3)(D) of the Act because FICC intends to collect only the approximate cost of developing the service that clearing members have requested. Collecting this amount in

[7] As used herein, ''family of members'' means collectively, each MBSD clearing member that controls or is controlled by another MBSD clearing member and each such member that is under the common control of any organization, entity or individual. ''Control'' for these purposes means the direct or indirect ownership of more than 50% of the voting securities or other voting interests of any organization, entity or person.

[8] FICC selected January 1st through August 31st as the calculation period in order to give clearing members enough time to consider the fees as they assess their budget.

[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] Release No. 34–71699 (March 12, 2014), 79 FR 16865 (March 26, 2014).

[11] Release No. 34–68080 (October 22, 2012), 77 FR 66219 (November 2, 2012).

[12] 5 U.S.C. 78q–1(b)(3)(D).

advance is reasonable because it allows FICC to use amounts collected in a targeted manner to develop this specific service, rather than raising overall fees, where the amount collected over any given period may vary based on transaction volumes and clearing members will have less certainty as to the amounts they will pay.

(B) Clearing Agency's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact, or impose any burden, on competition. As noted above, the development fees will be applied fairly among the clearing members because each clearing member or family of members, as applicable, will be charged an amount that is consistent with the previous year's fees, which is directly correlated to the member's or family's usage of MBSD's clearing and settlement service. FICC does not believe that calculating the proposed development fee with respect to a family of members, where applicable, imposes a burden on competition. If FICC assessed the proposed development fee on an individual entity without regard to the activity of its family members, it is possible that the family of members would be charged a significantly higher fee for the same amount of activity conducted by a single firm with no family members in MBSD (which would result in the fee being cost prohibitive for the family). This aspect of the development fee has been discussed with the MBSD members and no member raised an issue in this regard.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The forgoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [13] and Rule 19b–4(f)(2) [14] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the 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–FICC–2014–12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FICC–2014–12. 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 FICC and on its Web site (*http://www.dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FICC–2014–12 and should be submitted on or before February 6, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Brent J. Fields,

Secretary.

[FR Doc. 2015–00576 Filed 1–15–15; 8:45 am]

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[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 240.19b–4(f)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74038; File No. SR–C2–2014–028]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Amending Rule 8.2(d)

January 13, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 31, 2014, 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 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 remove the registration cost of SPXPM from Exchange Rule 8.2(d) as this class of options is no longer listed or traded on the Exchange. The text of the proposed rule change is provided below.

(additions are *italicized;* deletions are [bracketed])

* * * * *

C2 Options Exchange, Incorporated Rules

* * * * *

Rule 8.2. Continuing Market-Maker Registration

(a)–(c) No change.

(d) Market-Maker Option Class Registration. Absent an exemption by the Exchange, an option class registration of a Market-maker confers the right to quote in that product. A Market-Maker may change its registered classes upon advance notification to the Exchange in a form and manner prescribed by the Exchange.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Each Trading permit held by a Market-Maker has a registration credit of 1.0. A Market-Maker may select for each Trading Permit the Market-Maker holds any combination of option classes, whose aggregate registration cost does not exceed 1.0. Option class ''registration costs'' are set forth below:

Option class	Registration cost
[SPXPM]	[1.0]
All [other] options	.001
(e) No change.	

* * * * *

The text of the proposed rule change is also 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 amend its Rule 8.2(d) regarding registration costs. In the current Exchange Rules, Rule 8.2 describes the registration process and corresponding registration costs for Trading Permit Holders (''TPHs'') on C2. Exchange Rule 8.2(d) lists the registration cost for options classes traded on C2. SPXPM has a registration cost of 1.0, which requires its own Trading Permit. However, SPXPM is no longer a class of options that is traded on C2 and the Exchange is proposing to update Exchange Rule 8.2(d) to reflect that change and to add clarity to the Exchange Rules.

By way of background, the Exchange was granted permission by the Commission in 2011 to list and trade Standard & Poor's 500 Index (''S&P 500'') options with third-Friday-of-the-month (''Expiration Friday'') expiration dates for which the exercise settlement value will be [sic] based on the index value derived from the closing prices of component securities (''P.M. settled'') on C2 on a pilot basis.[3] As a result of the Commission's approval to list and trade SPXPM options on C2, the Exchange filed a subsequent rule filing to amend 8.2(d) to include the registration cost for SPXPM.[4]

Pursuant to Exchange Rule 8.2, an option class registration of a Market-Maker confers the right to quote in that product. Each Trading Permit held by a Market-Maker has a registration credit of 1.0. A Market-Maker may select for trading any combination of available option classes whose aggregate is 1.0 for each Trading Permit held. Since the Exchange has ceased the listing and trading of SPXPM, the Exchange is proposing to amend Rule 8.2(d) to delete the language that lists SPXPM and its registration cost of 1.0. There is no need for the registration cost of SPXPM to be listed under Rule 8.2(d) as this class of options is no longer traded on the Exchange. The Exchange is proposing the proposed change to harmonize the Exchange Rules with the current practices of the Exchange.

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.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] 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)[7] 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 proposed rule filing will more specifically state the options classes that are traded on C2 and their corresponding registration costs for TPHs. The Exchange believes the proposed change is consistent with the Act in that it is merely updating an Exchange Rule to align with the current practices of the Exchange to avoid confusion with respect to registration costs for Market-Makers on C2. In addition, the proposed filing is not unfairly discriminating because SPXPM is no longer traded on C2 and as a result, the removal of SPXPM from the registration costs provided in 8.2(d) will be applied to all Market-Makers on C2. Finally, the proposed filing protects investors and the public interest by relieving confusion that might otherwise arise by having an obsolete reference in the CBOE [sic] Rule Book.

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 that is not necessary or appropriate in furtherance of the purposes of the Act. In particular, the Exchange does not believe that the proposed rule filing will place any burden on intermarket competition because SPXPM is no longer an option class that is traded on C2 and thus, the change will be applied equally to all Market-Makers registered to trade on C2. Additionally, the Exchange does not believe that the proposed rule filing will place any burden on intermarket competition because it is merely updating the Exchange rules to harmonize them with the current practices of the Exchange.

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: (i) Significantly affect

[3] *See* Securities Exchange Act Release No. 34–65256 (September 2, 2011), 76 FR 175 [sic] (September 9, 2011) (SR–C2–2011–008) (order approving listing and trading SPXPM on C2 on a pilot basis); *see also* Securities Exchange Act Release No. 34–68888 (February 8, 2013), 78 FR 31 [sic] (February 14, 2013) (SR–CBOE–2012–120) (order approving listing and trading SPXPM on CBOE on a pilot basis). C2 ceased trading SPXPM on February 19, 2013.

[4] *See* Securities Exchange Act Release No. 34–65452 (September 30, 2011), 76 FR 194 [sic] (October 6, 2011) (SR–C2–2011–023) (immediately effective filing establishing Market-Maker registration costs for SPXPM options).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] *Id.*

the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(6) [9] 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–C2–2014–028 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2014–028. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2014–028 and should be submitted on or before February 6, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Brent J. Fields,

Secretary.

[FR Doc. 2015–00624 Filed 1–15–15; 8:45 am]

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[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74036; File No. SR–NYSEMKT–2014–97]

Self-Regulatory Organizations; NYSE MKT LLC; Order Approving Proposed Rule Change Amending Rules 311—Equities and 313—Equities To Add Limited Liability Companies as Eligible Member Organizations and Delineate the Information Limited Liability Companies Must Submit to the Exchange as Part of the Membership Process; Eliminate the Requirement That a Member Corporation Be Created or Organized, and Maintain Its Principal Place of Business, in the United States; and Make Additional Related Amendments To Update Its Membership Rules

January 12, 2015.

I. Introduction

On November 12, 2014, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] a proposal to amend NYSE MKT Rules 311—Equities (''Rule 311'') and 313—Equities (''Rule 313'') to add limited liability companies (''LLCs'') to the types of eligible member organizations and delineate the information LLCs must submit to the Exchange as part of the membership process; eliminate the requirement that a member corporation be created or organized, and maintain its principal place of business, in the United States; and make additional related amendments to update its membership rules. The proposed rule change was published for comment in the **Federal Register** on November 28, 2014.[3] The Commission received one comment on the proposal.[4] This order approves the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Description of the Proposal

A. Rule 311

NYSE MKT Rule 311 governs the formation and approval of member organizations. The Exchange proposes to revise Rule 311 to explicitly provide for LLCs to apply to become member organizations and eliminate the requirement that a member corporation be created or organized, and maintain its principal place of business, in the United States.

The Exchange's membership rules currently provide for member organizations to be corporations or partnerships, but have not explicitly provided for LLCs.[5] The Exchange proposes to add LLCs to the types of potential member organizations and require LLCs to meet the same requirements currently applicable to partnerships and corporations set forth in Rule 311(b). As part of the proposed revision, the Exchange seeks to add a new section (4) to Rule 311(b) requiring every member of an LLC to be a member, principal executive, or approved person.[6] The Exchange also proposes to amend current Rule 311(b)(6) to reflect that proposed LLC member organizations must, like corporations and partnerships, also comply with any additional requirements as the rules of the Exchange may prescribe. In addition, the Exchange proposes to add new Supplementary Material .16 to Rule 311 to specify that LLC applicants for Exchange membership are subject to Rule 313.24 regarding the submission of copies of proposed or existing limited

[3] *See* Securities Exchange Act Release No. 73671 (Nov. 21, 2014), 79 FR 70900 (Nov. 28, 2014) (''Notice'').

[4] *See* anonymous comment submitted through the Commission's Internet comment form on December 19, 2014.

[5] Current Rule 311(f) permits the Exchange to approve ''entities that have characteristics essentially similar to corporations, partnerships, or both'' as a member organization ''on such terms and conditions as the Exchange may prescribe.''

[6] Rule 311(b)(2) and (b)(3) currently impose the same requirement on the relevant control persons at corporations and partnerships, respectively.

liability company documents and other agreements.

The Exchange also proposes to amend Rule 311(f) to eliminate the geographic limitation on incorporation and domicile of corporation members. The first sentence of Rule 311(f) currently provides that every member corporation be a corporation ''created or organized under the laws of, and shall maintain its principal place of business in, the United States or any State thereof.'' [7] The Exchange does not believe that the Exchange's restriction on whether foreign entities may be a member organization is consistent with either federal rules or those of other self-regulatory organizations (''SRO''). The Exchange states that rules promulgated pursuant to the Act require, under certain circumstances, a foreign broker-dealer to register with the Commission.[8] The Exchange also states that other SROs, including the Financial Industry Regulatory Authority, Inc. (''FINRA''), do not require their members to be domiciled in the United States.[9]

The Exchange believes that the current restriction in Rule 311(f) puts it at a competitive disadvantage because it restricts foreign broker-dealers that are registered with the Commission and are members of another SRO from also becoming Exchange member organizations. The Exchange notes that its rules already require member organizations to meet prerequisites as specified in Rule 2(b). Specifically, regardless of corporate form, all member organizations must be registered broker-dealers that are members of FINRA or another registered securities exchange. If a registered broker-dealer transacts business with public customers or conducts business on the Floor of the Exchange, such member organization must be a member of FINRA.

The Exchange further notes that a member organization will be subject to regulatory examination and jurisdiction for misconduct whether or not it is based in the United States. However, for the avoidance of doubt, as discussed below, the Exchange proposes to add supplementary material to Rule 313 based on NASD Rule 1090 that imposes certain requirements on foreign members that do not maintain an office in the United States.

B. Rule 313

NYSE MKT Rule 313 sets forth certain corporate or partnership documents that each member organization must submit to enter into and continue in NYSE membership. The Rule also sets forth certain restrictions on capital withdrawals and distributions applicable to member corporations and partnerships. The Exchange proposes to amend Rule 313 to delineate the types of documents that LLCs must submit that, as noted, mirror the requirements currently in place for member corporations and partnerships.

First, the Exchange proposes to add a subsection (d) to Rule 313 requiring all articles of organization and operating documents for LLCs to be submitted for Exchange approval prior to becoming effective. Relatedly, the Exchange proposes to add Supplementary Material .24 setting forth that existing LLCs must promptly submit certified copies (to the extent possible) of articles of organization and operating agreements to the Exchange.

Second, the Exchange proposes to add Supplementary Material .25 providing restrictions on capital withdrawals by LLC members that are substantially the same as those applicable to corporations and partnerships. The Supplementary Material would provide that the capital contribution of any LLC member may not be withdrawn on less than six months' written notice of withdrawal given no sooner than six months after such contribution was first made without the prior written approval of the Exchange. The Supplementary Material would also specify that each member firm shall promptly notify the Exchange of the receipt of any notice of withdrawal of any part of a member's capital contribution or if any withdrawal is not made because prohibited under the provisions of Rule 15c3–1 under the Act.

Third, the Exchange proposes to add Supplementary Material .26 providing that LLCs not organized under the laws of New York State must subject themselves to the following restrictions: No distributions shall be declared or paid that impair the LLC's capital; and no distribution of assets shall be made to any member unless the value of the LLC's assets remaining after such payment or distribution is at least equal to the aggregate of its debts and liabilities, including capital. These proposed restrictions are based on existing restrictions applicable to member corporations and partnerships.

In addition, as noted above, the Exchange proposes to add new Supplementary Material .27 to Rule 313 specifying the requirements applicable to Foreign Member Organizations. The proposed new rule text would adopt, without substantive change, paragraphs (a), (b), and (c) of NASD Rule 1090 (Foreign Members), which impose specific requirements on FINRA members that do not maintain an office in the United States responsible for preparing and maintaining financial and other reports required to be filed by the SEC and FINRA.[10] As proposed, foreign member organizations that do not maintain an office in the United States responsible for preparing and maintaining financial and other reports required to be filed with the Commission and the Exchange would be required to: (1) Prepare all such reports, and maintain a general ledger chart of account and any description thereof, in English and U.S. dollars; (2) reimburse the Exchange or its representatives for expenses incurred in connection with examinations of the member organization to the extent that such expenses exceed the cost of examining a member organization located within the continental United States in the geographic location most distant from the Exchange's principal office or, in such other amount as the Exchange may deem to be an equitable allocation of such expenses; and (3) ensure the availability of an individual fluent in English and knowledgeable in securities and financial matters to assist

[7] The first sentence of Rule 311(f) also provides that every member firm organization shall be a partnership or corporation. This statement is redundant to Rule 311(b), which the Exchange is amending to add LLCs. Accordingly, the Exchange proposes to delete the first sentence of Rule 311(f) in its entirety.

[8] *See* 17 CFR 240.15a-6 and Commission Guide to Broker-Dealer Registration, Division of Trading and Markets, available at *http://www.sec.gov/divisions/marketreg/bdguide.htm* (foreign broker-dealers that, from the outside of the United States, induce or attempt to induce securities transactions by any person in the United States, or that use the means or instrumentalities of interstate commerce in the United States for this purpose, must register as broker-dealers with the Commission).

[9] *See, e.g.,* NASD Membership and Registration Rules (1000 Series). NASD Rule 1090 imposes specific requirements on members that do not maintain an office in the United States responsible for preparing and maintaining financial and other reports required to be filed with the SEC and the Exchange, which the Exchange proposes to import into Rule 313. *See infra* note 10 and accompanying text. *See also* BATS Exchange, Inc. Rules 2.3, 2.5 and 2.6.

[10] The Exchange is not proposing to adopt a rule similar to NASD Rule 1090(d), which requires foreign members to ''utilize, either directly or indirectly, the services of a broker/dealer registered with the Commission, a bank or a clearing agency registered with the Commission located in the United States in clearing all transactions involving members of the Association, except where both parties to a transaction agree otherwise.'' The Exchange agrees with FINRA, which similarly recommended skipping paragraph (d) as part of its contemplated adoption of NASD Rule 1090, that the provision is ''outdated'' and that clearing arrangements are better addressed by FINRA Rule 4311 (Carrying Agreements). *See* FINRA Regulatory Notice 13–29 at 27 (Sept. 2013). FINRA Rule 4311 governs the requirements applicable to members when entering into agreements for the carrying of any customer accounts in which securities transactions can be effected.

representatives of the Exchange during examinations.

The Exchange also proposes to eliminate certain restrictions, which the Exchange considers redundant, on member organizations and prospective member organizations organized as partnerships and corporations. The Exchange proposes to eliminate the requirement in Rule 313.11 that the partnership articles of each member firm provide that capital withdrawals by partners cannot be made without the prior written approval of the Exchange. Rule 313.11 already requires the Exchange's prior written approval for any such capital withdrawals, and member organizations need to monitor for and comply with the prohibition, including whether particular withdrawals violate net capital requirements. The Exchange believes that because Exchange rules already govern this behavior, a partnership seeking approval as a member organization would not need to amend its partnership articles to reflect this existing rule requirement.[11]

Further, the Exchange proposes to eliminate the requirement in Rule 313.20 that prospective member corporations submit an opinion of counsel stating, among other things, that the corporation is duly organized and existing, that its stock is validly issued and outstanding, and that the restrictions and provisions required by the Exchange on the transfer, issuance, conversion and redemption of its stock have been made legally effective. Corporate members are required under the Rule to submit relevant corporate documents, including articles of incorporation, that contain the same information required in the opinion of counsel. The Exchange represents that requiring a legal opinion attesting to facts contained in a corporation's public filings is redundant and, given the expense, potentially a disincentive to smaller entities applying for Exchange membership.

Similarly, the Exchange proposes to remove the requirement in Rule 313.23 that the opinion of counsel submitted to the Exchange at the time the corporation applies for approval under Rule 313.20 state the extent to which the corporation has made the following prohibitions legally effective: The prohibition on declaring or paying a dividend that impairs the capital of the corporation and the prohibition on distributing assets to any stockholder unless the value of the corporate assets remaining after such payment or distribution is at least equal to the aggregate of its debts and liabilities, including capital. Rule 313.23 would continue to prohibit corporation members from declaring or paying dividends or distributing corporate assets that impair the corporation's capital, and member corporations would not be relieved of the obligation to monitor and enforce these prohibitions. The Exchange believes that requiring these representations in a separate legal opinion is redundant and serves no necessary regulatory or other purpose.[12]

Finally, the Exchange proposes to make certain miscellaneous amendments to Rule 313. Specifically, the Exchange proposes to replace outdated references to ''Regulation and Surveillance'' with ''the Exchange'' in Rules 313.10 and 313.20.[13] Similarly, the Exchange proposes to replace outdated references to ''photostatic'' copies in Rules 313.10 and 313.20 in connection with the submission of documents to the Exchange and replace them with ''electronically or mechanically reproduced.''

As noted above, the Commission received only one comment on the proposed rule change.[14] The comment expressed the view that the proposed rule change was a ''good idea'' but did not elaborate.

III. Discussion and Commission Findings

After carefully considering the proposal and the one comment submitted, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[15] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[16] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission agrees with the Exchange that adding LLCs to the list of eligible member organizations would remove impediments to and perfect the mechanism of a free and open market and a national market system by expanding the types of organizational forms a member organization may take. The Exchange also believes that permitting LLCs to become member organizations subject to the same restrictions and requirements currently applicable to corporations and partnerships also protects investors and the public interest by holding LLCs to the same high standards.

In addition, permitting non-United States-based registered broker-dealers that are members of FINRA or another registered securities exchange and that do not have their principal place of business in the United States to become Exchange member organizations would remove impediments to and perfect the mechanism of a free and open market by removing geographic restrictions on Exchange membership that are not required by FINRA or other exchanges. Broadening the Exchange membership pool by facilitating the participation of additional foreign-based U.S. registered broker-dealers would benefit investors and the public interest by increasing market participation and depth at the Exchange. Moreover, adoption of specific requirements for foreign members that do not maintain an office in the United States based on NASD Rule 1090 would further assure that foreign Exchange members, once approved, remain subject to regulatory examination and jurisdiction.

In addition, updating the Exchange's rules to remove requirements that the Exchange believes are redundant—that a member firm's partnership articles provide that capital withdrawals by partners cannot be made without the prior written approval of the Exchange, that prospective member corporations submit an opinion of counsel reciting facts contained in its public filings, and that certain prohibitions have been made legally effective—would remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring that potential member organizations, persons subject to the Exchange's jurisdiction, regulators, and

[11] *See also infra* note 12.

[12] FINRA Rule 4110 (Capital Compliance) contains similar prohibitions on capital withdrawals by FINRA members without requiring that the prohibitions be reflected in a firm's partnership articles or requiring a legal opinion that the member has made the prohibitions legally effective. *See* FINRA Rule 4110(c)(1) (''No equity capital of a member may be withdrawn for a period of one year from the date such equity capital is contributed, unless otherwise permitted by FINRA in writing.'').

[13] Under Rule 0—Equities, references to the Exchange also refer to FINRA staff and FINRA departments acting on behalf of the Exchange pursuant to a Regulatory Services Agreement (''RSA''). FINRA currently provides member application proceedings services to the Exchange pursuant to an RSA.

[14] *See supra* note 4.

[15] In approving the proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78f(b)(5).

the public could more easily navigate the Exchange's rulebook and better understand what obligations attach and when. Further, updating the Exchange's rules to remove what the Exchange considers redundant requirements also would protect investors as well as the public interest by providing transparency and reducing potential confusion regarding the Exchange membership process that may result from having what the Exchange characterizes as obsolete rules and outdated guidelines in the Exchange's rulebook. For the same reasons, updating the Exchange's rules to remove requirements that the Exchange considers outdated would remove impediments to and perfect the mechanism of a free and open market and a national market system and is equally designed to protect investors as well as the public interest.

Based on the foregoing, the Commission finds the proposed rule change is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–NYSEMKT–2014–97) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Brent J. Fields,

Secretary.

[FR Doc. 2015–00579 Filed 1–15–15; 8:45 am]

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[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74040; File No. SR–NASDAQ–2015–003]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Extranet Access Fee

January 13, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 5, 2015, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. 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] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes to add new NASDAQ Options Market (''NOM'')[3] Chapter XV, Section 12 to the Exchange's Options Pricing Schedule (''Pricing Schedule''), which includes description about the applicability of the Extranet Access Fee. This will conform the Exchange's Pricing Schedule to that of other markets.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposal is to add new NOM Chapter XV, Section 12 entitled ''Extranet Access Fee'' to the Pricing Schedule, which includes description about the applicability of the Extranet Access Fee. This will conform the Exchange's Pricing Schedule to that of other markets.[4]

Specifically, the Exchange proposes to establish the Extranet Access Fee in proposed new NOM Chapter XV, Section 12 to indicate that certain non-Exchange Customer Premises Equipment (''CPE'') Products shall be assessed a monthly access fee of $1,000 per CPE. The Exchange also proposes to conform the Extranet Access Fee to that of another market, specifically NASDAQ Rule 7025, by also indicating that if an extranet provider uses multiple CPE Configurations[5] to provide market data feeds to any recipient the monthly fee shall apply to each such CPE Configuration; and that no Extranet Access Fee will be charged for connectivity to market data feeds containing only consolidated data. This proposal conforms the Extranet Access Fee in NOM Chapter XV, Section 12 to the equivalent fee in NASDAQ Rule 7025.

The Extranet Access Fee was introduced a decade ago on NASDAQ Rule 7025 as an equity fee.[6] The Extranet Access Fee was introduced about five years ago in on BX and about year ago on PSX.[7] By this proposal, the Exchange normalizes the cost and structure of its Extranet Access Fee on NOM to that of the equivalent decade-old NASDAQ fee.[8]

Proposed NOM Chapter XV, Section 12 indicates the same fee as NASDAQ Rule 7025, namely $1,000 per CPE Configuration, and adds verbatim language from NASDAQ Rule 7025 that explains the application of the fee.[9] As proposed, NOM Chapter XV, Section 12 will read as follows: ''Extranet providers that establish a connection with Nasdaq to offer direct access connectivity to market data feeds shall be assessed a monthly access fee of $1,000 per

[3] NOM is a facility of NASDAQ.

[4] The Exchange, NASDAQ OMX PHLX LLC (''Phlx''), and NASDAQ OMX BX, Inc. (''BX'') are self-regulatory organizations (''SROs'') that are wholly owned subsidiaries of The NASDAQ OMX Group, Inc. (''NASDAQ OMX''). The Exchange, NOM (a facility of the Exchange), BX, BX Options (a facility of BX), Phlx, and PSX (a facility of Phlx) (together with the Exchange known as the ''NASDAQ Markets''), are independently filing proposals to conform their respective Extranet Access Fee rules to NASDAQ Rule 7025.

[5] As defined in proposed NOM Chapter XV, Section 12, a ''Customer Premises Equipment Configuration'' means any line, circuit, router package, or other technical configuration used by an extranet provider to provide a direct access connection to Nasdaq market data feeds to a recipient's site.

[6] *See* Securities Exchange Act Release Nos. 50483 (October 1, 2004), 69 FR 60448 (October 8, 2004) (SR–NASD–2004–118) (establishing the Extranet Access Fee on NASDAQ); and 71199 (December 30, 2013), 79 FR 686 (January 6, 2014) (SR–NASD [sic]–2013–159) (notice of filing and immediate effectiveness increasing the Extranet Access Fee to $1,000).

[7] *See* Securities Exchange Act Release Nos. 59615 (March 20, 2009), 74 FR 14604 (March 31, 2009) (SR–BX–2009–005) (establishing the Extranet Access Fee on BX); and 71841 (April 1, 2014), 79 FR 19129 (April 7, 2014) (SR–BX–2014–015) (notice of filing and immediate effectiveness describing that the Extranet Access Fee is $750). *See also* Securities Exchange Act Release No. 71236 (January 6, 2014), 79 FR 1906 (January 10, 2014) (SR–Phlx–2014–01) (notice of filing and immediate effectiveness establishing the Extranet Access Fee on PSX, and describing that no fee is charged at the time of the filing).

[8] As noted, the NASDAQ Markets are independently filing proposals to conform their respective Extranet Access Fee.

[9] However, the proposed Section 12 language does not, because it deals with options, indicate that consolidated data includes data disseminated by the UTP SIP (as noted in NASDAQ Rule 7025).

recipient Customer Premises Equipment (''CPE'') Configuration. If an extranet provider uses multiple CPE Configurations to provide market data feeds to any recipient, the monthly fee shall apply to each such CPE Configuration. For purposes of this Section 12, the term ''Customer Premises Equipment Configuration'' shall mean any line, circuit, router package, or other technical configuration used by an extranet provider to provide a direct access connection to Nasdaq market data feeds to a recipient's site. No extranet access fee will be charged for connectivity to market data feeds containing only consolidated data. Extranet providers that establish a connection with Nasdaq pursuant to this Section 12 as well as a connection with Nasdaq pursuant to Nasdaq Rule 7025 shall be assessed a total monthly access fee of $1,000 per recipient CPE Configuration.'' The proposal conforms NOM Chapter XV, Section 12 to NASDAQ Rule 7025, and makes them substantively identical.[10] The proposal also makes it clear that if an extranet provider establishes an extranet connection on PSX [sic] as well as on Phlx [sic], the extranet provider will not need to pay a double $1,000 monthly access fee per CPE, but rather only one total monthly access fee of $1,000 per CPE. In addition, as discussed, there is an equity market and an options market under the NASDAQ SRO license. This proposal brings the Extranet Access Fee per NASDAQ Rule 7025 on the equity side to the options side per NOM Chapter XV, Section 12 in conformity with NASDAQ Rule 7025.

The proposed Extranet Access Fee will, as on NASDAQ, be used to help recoup the Exchange's costs associated with maintaining multiple extranet connections with multiple providers. These costs include those associated with overhead and technology infrastructure, administrative, maintenance and operational costs. Since the inception of Extranet Access there have been numerous network infrastructure improvements and administrative controls enacted. Additionally, the Exchange has implemented automated retransmission facilities for most of its data clients that benefit extranet clients by reducing operational costs associated with retransmissions.

As the number of extranets has increased, the management of the downstream customers has expanded and the Exchange has had to ensure appropriate reporting and review processes, which has resulted in a greater cost burden on the Exchange over time. The proposed fee will also help to ensure that the Exchange is better able to closely review reports and uncover reporting errors via audits thus minimizing reporting issues.[11] The network infrastructure has increased in order to keep pace with the increased number of products, which, in turn, has caused an increased administrative burden and higher operational costs associated with delivery via extranets.

Thus, subsequent to the proposal extranet providers that establish a connection with the Exchange to offer direct access connectivity to market data feeds shall be assessed a monthly access fee of $1,000 per CPE Configuration. If, as discussed below, an extranet provider uses multiple CPE Configurations to provide market data feeds to any recipient, the monthly fee shall apply to each such CPE Configuration.

The Exchange proposes two new descriptions to conform the language of NOM Chapter XV, Section 12 to that of NASDAQ Rule 7025. Specifically, the Exchange proposes to indicate that if an extranet provider uses multiple CPE Configurations to provide market data feeds to any recipient, the monthly fee shall apply to each such CPE Configuration; and that no extranet access fee will be charged for connectivity to market data feeds containing only consolidated data. These proposed descriptions should serve to reduce any confusion as to the applicability of the Extranet Access Fee. Moreover, the descriptions would make the Exchange's Extranet Access Fee in NOM Chapter XV, Section 12 work the same as the equivalent fee in NASDAQ Rule 7025, and complete the effort to conform the two rules.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and with Section 6(b)(4) of the Act,[13] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls.

The Exchange believes that its proposal to add the Extranet Access Fee in NOM Chapter XV, Section 12, and to describe the applicability of the Extranet Access Fee and thereby conform the fee with the equivalent fee on NASDAQ, is consistent with the Act.

All similarly situated extranet providers, including the Exchange operating its own extranet, that establish an extranet connection with the Exchange to access market data feeds from the Exchange are subject to the same fee structure.[14] The fee will help the Exchange to offset some of the rising overhead and technology infrastructure, administrative, maintenance and operational costs it incurs in support of the service.

If such costs are covered, the service may provide the Exchange with a profit. As such, the Exchange believes that the proposed fee is reasonable and notes that this proposal conforms similarly-situated Extranet Access Fee rules on NOM options and NASDAQ equities. The extranet costs are separate and different from the colocation facility that is able to recoup these fees by charging for servers within the associated data centers. Additionally, the Exchange believes that the proposed change is equitable and not unreasonably discriminatory. The monthly fee is assessed uniformly to all extranet providers that establish a connection with the Exchange to offer direct access connectivity to market data feeds, and is the same for all at $1,000 per recipient CPE Configuration. Thus, any burden arising from the fees is necessary in the interest of promoting the equitable allocation of a reasonable fee. Moreover, firms make decisions on how much and what types of data to consume on the basis of the total cost of interacting with the Exchange or other markets and, of course, the Extranet Access Fee is but one factor in a total platform analysis.

Additionally, proposed NOM Chapter XV, Section 12 contains description stating that if an extranet provider uses multiple CPE Configurations to provide market data feeds to any recipient, the monthly fee shall apply to each such CPE Configuration; and that no Extranet Access Fee will be charged for connectivity to market data feeds containing only consolidated data. This description should serve to reduce any

[10] The Exchange notes that while NOM Chapter XV, Section 12 and NASDAQ Rule 7025 each contain some language particular to the relevant exchange, with this proposal the language of the two rules is substantively identical. The Exchange notes that the statement that extranet providers shall be assessed a total monthly access fee of $1,000 per recipient CPE Configuration is not in NASDAQ Rule 7025.

[11] The Exchange will inform extranet providers of their reporting responsibilities via its public Web site. This will include, as an example, reporting CPE usage.

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(4).

[14] For example, NASDAQ Technology Services, a subsidiary of the Exchange, pays the applicable fee(s) to the Exchange for services covered under the Extranet Access Fee.

confusion as to the applicability of this fee.

The proposal provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is consistent with the Act.

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.

The proposed fees are applied uniformly among extranet providers, which are not compelled to establish a connection with the Exchange to offer access connectivity to market data feeds. For these reasons, any burden arising from the fees is necessary in the interest of promoting the equitable allocation of a reasonable fee. Additionally, firms make decisions on how much and what types of data to consume on the basis of the total cost of interacting with the Exchange or other exchanges and, of course, the Extranet Access Fee is but one factor in a total platform analysis.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,[15] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2015–003 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2015–003. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2015–003, and should be submitted on or before February 6, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Brent J. Fields,

Secretary.

[FR Doc. 2015–00625 Filed 1–15–15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74031; File No. SR–NYSE–2014–78]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Price List Relating to Fees for Bond Trading License Firms

January 12, 2015.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on December 29, 2014, New York Stock Exchange LLC (''NYSE'' 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List, effective January 1, 2015, to (i) waive new firm application fees for applicants seeking only to obtain a bond trading license (''BTL'') for 2015 and 2016; (ii) establish a separate Regulatory Fee for member organizations that solely operate under a BTL; and (iii) waive the BTL fee for 2015 and 2016. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change

[16] 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.

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 its Price List, effective January 1, 2015, to (i) waive new firm application fees for applicants seeking only to obtain a BTL for 2015 and 2016; (ii) establish a separate Regulatory Fee for member organizations that solely operate under a BTL; and (iii) waive the BTL fee for 2015 and 2016.

The Exchange proposes to waive the New Firm Fee for 2015 and 2016 for new member organization applicants that are seeking only to obtain a BTL and not trade equities at the Exchange. The Exchange currently charges a New Firm Fee ranging from $2,500 to $20,000, depending on the type of firm, that is charged per application for any broker-dealer that applies to be approved as an Exchange member organization. The proposed waiver of the New Firm Fee would be available only to applicants seeking approval as a new member organization, including carrying firms, introducing firms, or non-public organizations, that would be seeking to obtain a BTL at the Exchange and not trade equities. As further proposed, if new firm that is approved as a member organization and has had the New Firm Fee waived converts a BTL to a full trading license within one year of approval, the New Firm Fee would be charged retroactively. The Exchange believes that charging the New Firm Fee retroactively within a year of approval is appropriate because it would discourage applicants to claim that they are applying for a BTL solely to avoid New Firm Fees.

The Exchange also proposes to establish a separate Regulatory Fee for member organizations that operate solely under a BTL. Currently, all member organizations are subject to a monthly gross FOCUS revenue fee, which is calculated based on a firm's gross FOCUS revenues. This fee is intended to cover the Exchange's costs to regulate its members.[4] Because member organizations with a BTL are only eligible to trade on the Exchange's bond platform, the Exchange does not believe that the regulatory costs associated with this membership are as high as they are for member organizations that trade equities at the Exchange. Moreover, the Exchange notes that Exchange member organizations that do business with the public, including trading bonds, must be members of the Financial Industry Regulatory Authority, Inc. (''FINRA'') and therefore are separately subject to regulation by FINRA. To more closely align the regulatory fee for BTLs with the Exchange's associated regulatory cost, the Exchange proposes to set an annual regulatory fee for member organizations that solely operate under a BTL of $500.00.

The Exchange currently charges a BTL fee of $1,000 per year. The Exchange proposes to amend the Price List to waive the BTL fee for 2015 and 2016. The Exchange also proposes a non-substantive change to the Price List to specify that the BTL fee is an annual fee.

The Exchange believes that the proposed fee changes would provide increased incentives for bond trading firms that are not currently Exchange member organizations to apply for Exchange membership and a BTL. The Exchange believes that having more member organizations trading on the Exchange's bond platform would benefit investors through the additional display of liquidity and increased execution opportunities in Exchange-traded bonds at the Exchange.

The proposed change is not otherwise intended to address any other issues, and the Exchange is not aware of any problems that members and member organizations would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[6] 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 it is reasonable to waive the New Firm Fee and the annual BTL fee for 2015 and 2016 to provide an incentive for bond trading firms to apply for Exchange membership and a BTL. The Exchange believes that providing an incentive for bond trading firms that are not currently Exchange member organizations to apply for membership and a BTL would encourage market participants to become members of the Exchange and bring additional liquidity to the only transparent bond market. The proposed waiver of the New Firm Fee and BTL fee is equitable and not unfairly discriminatory because it would be offered to all market participants that wish to trade at the Exchange the narrower class of debt securities only. To the extent the existing New Firm Fees or the BTL fee serves as a disincentive for bond trading firms to become Exchange member organizations, the Exchange believes that the proposed fee change could provide an incentive for additional bonds trading firms to apply for Exchange membership, and therefore is not unfairly discriminatory. The Exchange believes creating incentives for bond trading firms to trade bonds on the Exchange protects investors and the public interest by increasing the competition and liquidity on the only transparent market for bond trading.

The Exchange believes that the proposed Regulatory Fee for member organizations that operate solely under a BTL is reasonable because the proposed change would more closely align the regulatory costs associated with member organizations that only trade bonds on the Exchange with the fee charged to such member organizations. In addition, the Exchange believes that the proposed Regulatory Fee for BTLs is reasonable because it is expected to generate revenues that will be less than or equal to the Exchange's regulatory costs with respect to regulating member organizations that solely trade bonds at the Exchange. The Exchange believes that this is consistent with the Commission's previously stated view that regulatory fees be used for regulatory purposes and not to support the Exchange's business side.

The Exchange further believes that the proposed Regulatory Fee for member organizations that operate solely under a BTL is equitable and not unfairly discriminatory because it would be applied equally to all market participants that wish to trade at the Exchange the narrower class of debt securities only. In particular, the Exchange does not believe that it is unfairly discriminatory to charge member organizations that only trade bonds a different Regulatory Fee than

[4] The current Regulatory Fee is $0.12 per $1,000 in Gross FOCUS revenue, subject to annual minimums for certain classes of member organizations. The Exchange proposes a non-substantive change to the Fee Schedule to delete the Regulatory Fee that was in effect before April 1, 2013.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4), (5).

what is charged to member organizations that trade equities at the Exchange because of the relatively low volume of trading on the bonds platform as compared to the volume of trading on the Exchange's equities platform. The Exchange believes that the current Regulatory Fee for member organizations serves as a disincentive for broker-dealers that trade bonds, but do not trade equities at the Exchange, to become Exchange member organizations for purposes of trading bonds. The Exchange further notes that if a member organization that only has a BTL at the Exchange is conducting business with the public, that member organization must be a member of FINRA and therefore is separately subject to regulation by FINRA.

Finally, recognizing the statements of Commissioners who have expressed concern about the state of the U.S. corporate and municipal bond markets as well as recommendations outlined in the Commission's release of its Report on the Municipal Securities Market (Report), the Exchange believes that expanding the number of member organizations eligible to trade bonds at the Exchange would be an important element in the democratization of the fixed income market.[7] As highlighted in SEC Chair White's statement during the SEC's 2013 Roundtable on Fixed Income Markets, the Report makes recommendations that include (1) improving pre- and post-trade transparency; (2) promoting the use of transparent and open trading venues, and (3) requiring dealers to seek ''best execution'' for customers and to provide customers with relevant pricing information in connection with their transactions.[8] Achieving these recommendations and applying them to both the municipal and corporate bond markets would, in the Exchange's view, assist in lowering the systemic risk that is anticipated to increase as interest rates rise and the closed network of bond trading comes under pressure as retirement and pension managers seek to adjust their positions.

[7] *See* SEC Report on the Municipal Securities Market, *July 2012. http://www.sec.gov/news/studies/2012/munireport073112.pdf;* ''SEC's Gallagher Says Retail Bond Investors Fighting 'Headwinds' '', Jesse Hamilton, Bloomberg News. Sep. 20, 2012. *See http://www.bloomberg.com/news/2012-09-19/sec-s-gallagher-says-retail-bond-investors-fighting-headwinds-.html.*

[8] *See* Opening remarks of Chairman Mary Jo White at SEC Roundtable on Fixed Income Markets. *http://www.sec.gov/News/Speech/Detail/Speech/1365171515300.*

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[9] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Debt securities typically trade in a decentralized over-the-counter (''OTC'') dealer market that is less liquid and transparent than the equities markets. The Exchange believes that the proposed change would increase competition with these OTC venues by reducing the cost of being approved as and operating as an Exchange member organization that solely trades bonds at the Exchange, which the Exchange believes will enhance market quality through the additional display of liquidity and increased execution opportunities in Exchange-traded bonds at the Exchange.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues that are not transparent. In such an environment, the Exchange must continually review, and consider adjusting its fees and rebates to remain competitive with other exchanges as well as with alternative trading systems and other venues that are not required to comply with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed change will impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

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) [10] of the Act and subparagraph (f)(2) of Rule 19b–4 [11] 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) [12] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2014–78 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2014–78. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and

[9] 15 U.S.C. 78f(b)(8).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(2).

[12] 15 U.S.C. 78s(b)(2)(B).

printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for Web site viewing and printing at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* 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–2014–78 and should be submitted on or before February 6, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Brent J. Fields,

Secretary.

[FR Doc. 2015–00575 Filed 1–15–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74034; File No. SR–MIAX–2014–71]

Self-Regulatory Organizations: The Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 807

January 12, 2015.

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 December 30, 2014, 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, 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 Rule 807 to correspond with Section 17(f)(2) of the Act.[3]

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 amend Rule 807 (Fingerprint-Based Background Checks of Exchange Employees and Independent Contractors) in order to mirror the language of Section 17(f)(2) of the Act.[4] Section 17(f)(2) of the Act explicitly directs the Attorney General of the United States (*i.e.,* the Federal Bureau of Investigation) to provide SROs designated by the Commission with access to criminal history record information. Access to the Federal Bureau of Investigation's (''FBI'') (the fingerprint processing arm of the Office of the Attorney General of the United States) database of fingerprint-based records is permitted only when authorized by law. The Exchange recently changed its procedure with regard to Rule 807, replacing manual fingerprinting via fingerprinting cards with a Live-Scan electronic fingerprinting system.[5] As part of this transition and at the specific request of the FBI, the Exchange now seeks to amend the language of Rule 807 to mirror Section 17(f)(2) of the Act.[6]

The Exchange proposes to amend Rule 807 to apply to all partners, directors, officers, and employees of the Exchange in order to more closely align with the requirements for national securities exchanges as provided in Section 17(f)(2) of the Act.[7] Currently, Rule 807(a) applies to (1) all prospective and current Exchange employees, (2) all prospective and current independent contractors who have or are anticipated to have access to the facilities of the Exchange for ten (10) business days or longer, and (3) all prospective and current temporary employees who have or are anticipated to have access to facilities of the Exchange for ten (10) business days or longer.[8] Section 17(f)(2) of the Act does not specifically apply to independent contractors nor temporary employees, but instead references ''partners, directors, officers, and employees'' of the Exchange. Thus, the Exchange proposes to amend Rule 807 to delete references to independent contractors and temporary employees in order to mirror the requirements of Section 17(f)(2) of the Act.[9] In addition, in order to enhance the physical security of the facilities, systems, data, and information of the Exchange, it shall be the policy of the Exchange, outside of Rule 807, to conduct a non-fingerprint-based background check of all prospective and current independent contractors and all prospective and current temporary employees who have or are anticipated to have access to the facilities of the Exchange for ten (10) business days or longer. The Exchange further proposes related technical changes to Rule 807(c) and 807(d).

2. Statutory Basis

The Exchange believes that its proposal is consistent with the Securities Exchange Act of 1934 (the ''Act'')[10] and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act. Specifically, the Exchange believes the proposed change to Rule 807 is consistent with the Section 6(b)(5)[11] 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 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.

In particular, the Exchange believes the proposed change to Rule 807 is consistent with the foregoing requirements of Section 6(b)(5) in that it will allow MIAX to remain compliant with applicable federal law—specifically, Section 17(f)(2) of the

[13] 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. 78q(f)(2).

[4] 15 U.S.C. 78q(f)(2).

[5] *See* Securities Exchange Act Release No. 72600 (July 11, 2014) 79 FR 41717 (July 17, 2014) (SR–MIAX–2014–38).

[6] 15 U.S.C. 78q(f)(2).

[7] 15 U.S.C. 78q(f)(2).

[8] *See* Rule 807(a).

[9] *See* 15 U.S.C. 78q(f)(2).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

Act.[12] Running fingerprint-based background checks is imperative for the Exchange as they help MIAX identify and exclude persons with felony or misdemeanor conviction records that may pose a threat to the safety of Exchange personnel or the security of facilities and records, thereby enhancing business continuity, workplace safety and the security of the Exchange's operations and helping to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

MIAX does not believe that the proposed change to Rule 807 will impose any burden on competition that is not necessary or appropriate in the furtherance of the purposes of the Act. The proposed change under the rule would maintain the security of the Exchange's facilities and records without adding any burden on market participants and allow the Exchange continued compliance with its fingerprinting rules and with Section 17(f)(2) of the Act as amended by the Dodd-Frank Act.[13]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6)[15] 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 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–2014–71 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–MIAX–2014–71. 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–MIAX–2014–71 and should be submitted on or before February 6, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Brent J. Fields,

Secretary.

[FR Doc. 2015–00577 Filed 1–15–15; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78q(f)(2).

[13] *See* Section 929S of the Dodd-Frank Act.

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the optional ''peg'' rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 2.625 (2⅝) percent for the January–March quarter of FY 2015.

Pursuant to 13 CFR 120.921(b), the maximum legal interest rate for any third party lender's commercial loan which funds any portion of the cost of a 504 project (see 13 CFR 120.801) shall be 6% over the New York Prime rate or, if that exceeds the maximum interest rate permitted by the constitution or laws of a given State, the maximum interest rate will be the rate permitted by the constitution or laws of the given State.

Linda S. Rusche,

Director, Office of Financial Assistance.

[FR Doc. 2015–00618 Filed 1–15–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice 9002]

30-Day Notice of Proposed Information Collection: Annual Report—J–NONIMMIGRANT Exchange Visitor Program

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 February 17, 2015.

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 any of 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 Robin J. Lerner, Deputy Assistant Secretary for Private Sector Exchange, ECA/EC, SA–5, Floor 5, Department of State, 2200 C Street NW., Washington, DC 20522–0505, who may be reached on 202–632–3206 or at *JExchanges@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Annual Report—J–NONIMMIGRANT Exchange Visitor Program.
- *OMB Control Number:* 1405–0151.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Educational and Cultural Affairs, Office of Private Sector Exchange, ECA/EC.
- *Form Number:* Form DS–3097.
- *Respondents:* Designated J–NONIMMIGRANT program sponsors.
- *Estimated Number of Respondents:* 1,400.
- *Estimated Number of Responses:* 1,400.
- *Average Time per Response:* 2 hours.
- *Total Estimated Burden Time:* 2,800 hours.
- *Frequency:* Annually.
- *Obligation to Respond:* Required to Obtain or Retain Benefits.

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

Annual reports from designated program sponsors assist the Department in oversight and administration of the J–NONIMMIGRANT Exchange Visitor Program. The reports provide qualitative data on the number of exchange participants an organization sponsored annually per category of exchange. The reports also provide a summary of the activities in which exchange visitors were engaged and indicate information about program effectiveness. Program sponsors include government agencies, academic institutions, and private sector not-for-profit and for-profit entities. Annual reports are completed through the Student and Exchange Visitor Information System (SEVIS) and then printed and signed by a sponsor official, and sent to the Department by mail or fax.

Dated: January 7, 2015.

Robin Lerner,

Deputy Assistant Secretary for Private Sector Exchange, Bureau of Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 2015–00621 Filed 1–15–15; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 9001]

Culturally Significant Objects Imported for Exhibition Determinations: ''On Kawara: Silence'' Exhibition

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 ''On Kawara: Silence,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Solomon R. Guggenheim Museum, New York, New York, from on or about February 6, 2015, until on or about May 3, 2015, 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 lists 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: January 9, 2015.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2015–00620 Filed 1–15–15; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Intelligent Transportation Systems Program Advisory Committee; Notice of Meeting

AGENCY: ITS Joint Program Office, Office of the Assistant Secretary for Research and Technology, U.S. Department of Transportation.

ACTION: Notice.

The Intelligent Transportation Systems (ITS) Program Advisory Committee (ITSPAC) will hold a meeting on February 4, 2015, from 8:00 a.m. to 5:00 p.m. (EST) and on February 5, 2015, from 8:00 a.m. to 4:00 p.m. (EST) in the Potomac Ballroom Salon F of the Crystal City Marriott at Reagan National Airport, 1999 Jefferson Davis Highway, Arlington, VA.

The ITSPAC, established under Section 5305 of Public Law 109–59, Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, August 10, 2005, and re-established under Section 53003 of Public Law 112–141, Moving Ahead for Progress in the 21st Century, July 6, 2012, was created to advise the Secretary of Transportation on all matters relating to the study, development, and implementation of intelligent transportation systems. Through its sponsor, the ITS Joint Program Office (JPO), the ITSPAC makes recommendations to the Secretary

regarding ITS Program needs, objectives, plans, approaches, content, and progress.

The following is a summary of the tentative meeting agenda. February 4: (1) Welcome and Opening Remarks, (2) Future + 10 Year—U.S. DOT Secretary's 30-year Briefing, (3) Data Policy, (4) Multimodal Transportation, (5) Institutional Issues, and (6) Subcommittee Organization. February 5: (1) Connected Vehicle Update, (2) Subcommittee Meetings, (3) Subcommittee Updates to Committee, and (4) Discussion of Action Items and Next Meeting.

The meeting will be open to the public, but limited space will be available on a first-come, first-served basis. Members of the public who wish to participate in the meeting must submit a request to: Mr. Stephen Glasscock, the Committee Designated Federal Official, at (202) 366–9126, not later than January 28, 2015. In addition, for planning purposes, your request must also indicate whether you wish to present oral statements during the meeting.

Questions about the agenda or written comments may be submitted by U.S. Mail to: U.S. Department of Transportation, Office of the Assistant Secretary for Research and Technology, ITS Joint Program Office, Attention: Stephen Glasscock, 1200 New Jersey Avenue SE., HOIT, Washington, DC 20590 or faxed to (202) 493–2027. The ITS JPO requests that written comments be submitted not later than January 28, 2015.

Notice of this meeting is provided in accordance with the Federal Advisory Committee Act and the General Services Administration regulations (41 CFR part 102–3) covering management of Federal advisory committees.

Issued in Washington, DC, on the 13th day of January 2015.

Stephen Glasscock,

Designated Federal Official, ITS Joint Program Office.

[FR Doc. 2015–00589 Filed 1–15–15; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

U.S. Department of Transportation Notice of Practice Regarding Proposed Airline Mergers and Acquisitions

AGENCY: Office of the General Counsel, U.S. Department of Transportation (DOT).

ACTION: Notice of DOT authorities and practice.

SUMMARY: This notice explains the U.S. Department of Transportation's (DOT) authorities and practice in the areas of proposed airline mergers and acquisitions.

SUPPLEMENTARY INFORMATION:

I. Background

This Notice describes the U.S. Department of Transportation's practice and authorities with regard to airline mergers and acquisitions, including those that involve a transfer of slots. The Notice is not proposing any changes, new procedures, or new approaches.

II. Legal Authority To Review Slot Transactions Resulting From Proposed Airline Mergers and Acquisitions

The DOT has authority over slot transactions that stem from proposed airline mergers and acquisitions.[1] The authority arises from several statutory provisions, as outlined below.

Under 49 U.S.C. 41712, DOT is authorized to prohibit airline conduct comparable to antitrust violations. Specifically, DOT may prohibit conduct that it determines is an ''unfair method of competition.'' [2] In addition, like several other agencies with respect to their regulated entities, DOT has independent authority under the Clayton Act.[3] This independent authority derives from 15 U.S.C. 21, under which DOT may prohibit airline acquisitions and mergers that may reduce competition or tend to create a monopoly in the airline industry.[4]

The DOT/Federal Aviation Administration (FAA) also has authority to administer airline slots under 49 U.S.C. 40103.[5] This authority permits the FAA to assign the use of airspace to ensure its efficient use and modify or revoke a slot assignment when required in the public interest. Section 40101, Title 49, directs DOT and the FAA, in carrying out aviation programs, to consider certain enumerated factors, plus additional factors that may be considered in the Secretary or FAA Administrator's discretion, as being in the public interest,[6] including furthering airline competition.

III. The DOT Review of Airline Merger or Acquisition Transactions

With respect to DOT's competition and public interest review authorities, DOT's practice has been to use its expertise with respect to the airline industry to provide the Department's views and otherwise assist the U.S. Department of Justice (DOJ) in DOJ's analysis of airline mergers or acquisitions. The DOT will continue this practice for airline mergers and acquisitions under DOJ review. DOT will consult with DOJ, inform DOJ as early as possible regarding any concerns, and defer to DOJ judgment where DOJ determines that a merger or acquisition violates the antitrust laws and should be enjoined. The DOT will not duplicate review or enforcement activities carried out by DOJ and will not create undue expense or burdens upon parties to an airline merger or acquisition.

In the event that DOT has concerns that fall outside the DOJ competition review process, DOT, in the discretion of the Secretary, may seek independent resolution of these concerns, as has been its practice. In doing so, DOT will work with the relevant parties, including DOJ, as it did in the recent merger between US Airways and American Airlines, to determine whether public interest remedies are appropriate, and if so, to pursue such remedies. In that case, DOT applied the Section 40101 public interest policy considerations to maintain and enhance service to small communities with respect to the merger between US Airways and American Airlines. The DOT entered into an agreement under which the carriers committed to use certain slots at Reagan Washington National Airport to

[1] With respect to slot transactions, this Notice relates to the DOT's practice for reviewing slot transactions that result from proposed airline mergers or acquisitions. It does not apply to DOT's review of standalone slot transactions. For more information regarding DOT's authority and proposed procedures for reviewing standalone slot transactions at the New York City area airports, please see the notice of proposed rulemaking titled, Slot Management and Transparency for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport, RIN 2120–AJ89, available in the docket for the rulemaking at *www.regulations.gov.*

[2] *See* 49 U.S.C. 41712, authorizing DOT to investigate and prohibit any unfair or deceptive practice or an unfair method of competition of an air carrier, foreign air carrier, or ticket agent.

[3] Section 7 of the Clayton Act, 15 U.S.C. 18, prohibits mergers and stock acquisitions whose effect ''may be substantially to lessen competition, or to tend to create a monopoly'' in a relevant market.

[4] *See* 15 U.S.C. 21, authorizing the Secretary to enforce section 7 of the Clayton Act, and 15 U.S.C. 18, prohibiting U.S. and foreign air carrier acquisitions that may substantially lessen competition or tend to create a monopoly.

[5] *See* 49 U.S.C. 40103(b), authorizing the FAA to ''develop plans and policy for the use of the navigable airspace and assign by regulation or order the use of the airspace necessary to ensure . . . the efficient use of airspace [and] to modify or revoke an assignment when required in the public interest.''

[6] *See* 49 U.S.C. 40101(a), which directs the Secretary to consider identified matters, ''among others,'' as being in the public interest. *See also* 49 U.S.C. 40101(d), which directs the Administrator to consider identified matters (including enhancing safety) ''among others,'' as being in the public interest.

preserve nonstop service from DCA to small and medium-sized communities.[7] In the event that DOT exercises its public interest authority, DOT will confer with DOJ to ensure that any public interest remedies it seeks to impose are harmonized with any antitrust relief sought or imposed by DOJ.

Issued in Washington, DC, on January 9, 2015.

Kathryn B. Thomson,

General Counsel.

[FR Doc. 2015–00599 Filed 1–15–15; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2014–0006]

Draft Toll Concessions Public-Private Partnership Model Contract Guide Addendum

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice; Request for comments.

SUMMARY: The Moving Ahead for Progress in the 21st Century Act (MAP–21) requires DOT and FHWA to develop public-private partnership (P3) transaction model contracts for the most popular type of P3s for transportation projects. Based on public input favoring an educational, rather than prescriptive contract model, FHWA is publishing a series of guides describing terms and conditions typically adopted in P3 concession agreements. The publication and deployment of these model contracts is important to supporting the Administration's Build America Investment Initiative. As part of this Initiative, the U.S. Department of Transportation is committed to providing technical assistance to help project sponsors consider project financing options, including P3s.

To address the most popular types of P3s, FHWA is producing separate guides for the two most common agreements for concessionaire compensation: User tolls and availability payments. The Toll Concessions Guide (Guide) is being published in two parts. The first part, addressing the highest profile (core) provisions, comprises chapters 1 through 8 of the Guide. On September 10, 2014, at 79 FR 53825, FHWA published a Final Core Toll Concessions Model Contract Guide (''Core Guide'') incorporating public comments received in response to the Draft Core Guide published February 6, 2014.

The second part, described herein as ''the Draft Addendum,'' addresses additional substantive provisions that are proposed to comprise chapters 9 through 28 of the Guide. It addresses a range of additional topics, such as construction performance security, insurance, lenders' rights and direct agreements, performance standards and non-compliance points, consumer protections, government approvals and permits, and a number of other topics described further below. With this notice, FHWA publishes the Draft Addendum so that the general public and interested stakeholders may provide comments. The Draft Addendum can be found on the Docket (FHWA–2014–0006) and at the following link: *http://www.fhwa.gov/ipd/pdfs/p3/model_p3_toll_concessions_addendum.pdf.* This model contract guide has been prepared solely for informational purposes and should not be construed as a statement of DOT or FHWA policy.

The FHWA values public input in the development of the model contract guides, and seeks continuing input. All documents in this series are available at the same docket (FHWA–2014–0006).

DATES: Comments must be received on or before February 6, 2015. Late comments will be considered to the extent practicable.

ADDRESSES: To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.
- *Instructions:* You must include the agency name and docket number at the beginning of your comments. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mark Sullivan, Office of Innovative Program Delivery, (202) 366–5785, *mark.sullivan@dot.gov,* Federal Highway Administration, 1200 New Jersey Avenue SE., Washington DC 20590; Alla Shaw, Office of the Chief Counsel, (202) 366–1042, *alla.shaw@dot.gov,* Federal Highway Administration, 1200 New Jersey Avenue SE., Washington DC 20590, or Prabhat Diksit, (720) 963–3202, *prabhat.diksit@dot.gov,* 12300 W. Dakota Avenue, Suite 370, Lakewood, CO 80228.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Federal eRulemaking portal at: *http://www.regulations.gov.* The Web site is available 24 hours every day of the year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded from the Office of the Federal Register's home page at: *http://www.archives.gov/federal_register* and the Government Printing Office's Web page at: *http://www.gpoaccess.gov.*

Background

The P3s are contractual arrangements between public and private sector entities that allow for greater participation by the private sector in the delivery of surface transportation projects and associated services. Generally, in addition to designing or building a project, a private partner in a P3 may be involved in financing, operating, and maintaining the project. By transferring certain risks and responsibilities to the private partner, P3s can result in more efficient and effective project delivery. However, P3 contracts are more complex and of a much longer duration than traditional construction contracts. Their terms and conditions address many non-traditional requirements, such as financing arrangements and performance during the lengthy concession period. Public agencies need expertise to negotiate P3 concession agreements successfully. Section 1534(d) of MAP–21 (Pub. L. 112–41; 126 Stat. 405) requires the DOT to develop P3 contracts that could serve as a model to States and other public transportation providers in developing their own P3 contracts.

After considering written comments responding to a notice published at 78 FR 1918 on January 9, 2013, as well as those received during a Listening Session on January 16, 2013, FHWA

[7] *See* Agreement regarding Merger Between US Airways Group, Inc. and AMR Corporation, (Nov. 12, 2013), available at *http://www.dot.gov/sites/dot.dev/files/docs/FinalAgreement_DOT_US_AA_.pdf.* Under the Agreement, New American committed to schedule all DCA commuter slots held or operated by New American entities to serve medium, small and non-hub airports for five years.

chose to develop the model contracts as informational guides, rather than prescriptive templates, for State and local governments entering into P3 transactions.

About the Toll Concessions Model P3 Contract Guide

The Toll Concessions Model P3 Contract Guide focuses on issues critical to achieving public sector objectives and protecting the interest of the taxpaying and traveling public. The Core Guide discusses seven specific issues, per the following Table of Contents:

1. Introduction
2. Tolling Regulation
3. Benefit-Sharing
4. Supervening Events
5. Changes in Equity Interests
6. Change in Law
7. Defaults, Early Termination, and Compensation
8. Handback

The FHWA is not accepting any further comments on the Core Guide, which was published on September 10, 2014, and can be found on the Docket (FHWA–2014–0006) and at *http://www.fhwa.dot.gov/ipd/pdfs/p3/model_p3_core_toll_concessions.pdf.*

There are, of course, many substantive P3 contract provisions in addition to the seven discussed in the Core Guide. With today's publication of the draft Addendum, FHWA proposes to complete the Toll Concessions Guide with the following chapter topics:

9. Construction Performance Security
10. Insurance
11. Lenders Rights and Direct Agreement
12. Department step-in
13. Performance Standards and Non-Compliance Points
14. Consumer Protections
15. Federal Requirements
16. Governmental Approvals and Permits
17. Utilities and Third Party Rights
18. Financial Model Adjustments
19. Department and Developer Changes
20. Additional Capacity Construction Requirements
21. Nature of Proprietary Interest
22. Contract Term
23. Developer Indemnities
24. Dispute Resolution
25. Intellectual Property
26. Amendments to Key Developer Documents
27. Assignment
28. General Provisions

The Draft Addendum also includes the Glossary of Terms developed for the Core Guide. Comments suggesting changes to glossary terms will be evaluated in light of their impact on the entire Toll Concessions Guide.

The Draft Addendum can be found on the Docket (FHWA–2014–0006) and at the following link: *http://www.fhwa.gov/ipd/pdfs/p3/model_p3_toll_concessions_addendum.pdf.*

In coming months, FHWA will publish a draft guide to availability payment concessions, in which government appropriations are the source of compensation to the private sector partner. The use of availability payments in P3 transactions is increasing, and many provisions in the Toll Concessions Model P3 Contract Guide will be germane to the Availability Payment Concessions Model P3 Contract Guide, which will be published from the start as a single, complete draft. Similar to the toll guides, FHWA will invite public comments on the Availability Payment Concessions Model P3 Contract Guide.

Authority: Section 1534 (d) of Moving Ahead for Progress in the 21st Century, MAP–21, enacted October 1, 2012.

Issued on: December 1, 2014.

Gregory G. Nadeau,

Acting Administrator, Federal Highway Administration.

[FR Doc. 2015–00552 Filed 1–15–15; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0196]

Agency Information Collection Activities; New Information Collection Request: FMCSA Annual Grant Program Effectiveness Survey

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. The purpose of this information collection is to acquire the perspectives of FMCSA State partners who support the operation, regulation and enforcement of various mutually-beneficial safety programs. This knowledge will improve the Federal government's understanding of the effectiveness of commercial motor vehicle (CMV) safety related grant programs. The FMCSA is interested in surveying grant recipients to collect information on the strengths, weaknesses, and effectiveness of FMCSA grant programs with the intent of improving our capacity to meet the needs of our grantees. FMCSA needs this information to support program evaluation endeavors, program management, and fiscal decision making. FMCSA will use the results in various analyses conducted by FMCSA designed to assess the effectiveness of existing rules, grant programs, and safety programs. On October 8, 2014, FMCSA published a notice in the **Federal Register** allowing for a 60-day comment period on this ICR. The agency received no comments in response to that notice.

DATES: Please send your comments by February 17, 2015. OMB must receive your comments by this date in order to act on the ICR.

ADDRESSES: All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA–2014–0196. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/Federal Motor Carrier Safety Administration, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Eugene Johnson, Strategic Planning, and Program Evaluation Division, Office of Policy, Strategic Planning and Regulations, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590. Telephone: (202) 366–5490; email *Eugene.Johnson@dot.gov.* Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. If you have questions on viewing material in the docket, contact Docket Operations (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Title: FMCSA Annual Grant Program Effectiveness Survey.

OMB Control Number: 2126–00XX.

Type of Request: New collection.

Respondents: State Grant Recipients.

Estimated Number of Respondents: 50 State Respondents.

Estimated Time per Response: 45 minutes per response.

Expiration Date: N/A. This is a new ICR.

Frequency of Response: Once.

Estimated Total Annual Burden: 63 hours [(50 electronic mail-in

respondents × 45 minutes/60 minutes) + (50 State personnel interviews × 30 minutes/60 minutes) = 63]. Minutes per response = 62.5 rounded to 63.]

Background: The Federal Motor Carriers Safety Administration (FMCSA) needs a survey of its State partner-grant recipients who support the operation, regulation and enforcement of various mutually-beneficial safety programs. This knowledge will improve the Federal government's understanding of the effectiveness of commercial motor vehicle (CMV) safety related grant programs. The FMCSA is interested in surveying grant recipients to collect information on the strengths, weaknesses, and effectiveness of FMCSA grant programs.

In 2009, the Government Accountability Office (GAO) issued a final report on a FMCSA grant program called Performance Registration Information System Management PRISM. The GAO reported was entitled, ''Motor Carrier Safety: Commercial Vehicle Registration Program Has Kept Carriers from Operating, but Effectiveness Is Difficult to Measure, GAO–09–495.'' The GAO recommended FMCSA measure the PRISM program's effectiveness when the number of States that have the ability to deny, suspend, or revoke registrations of CMVs operated by OOS carriers is sufficient to make such measurements meaningful.

The authority to require Federal Agencies to monitor grants is 2 CFR Chapter I, and Chapter II Parts 200, 215, 220, 225, and 230 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. OMB Circular A–110, Reports and Records, sections 50 through 53 set forth the procedures for monitoring and reporting on the recipient's financial and program performance and the necessary standard reporting forms.

The Agency proposes to collect the data for this project via electronic mail surveys and conduct clarifying interviews as appropriate. The information collection supports the DOT's Strategic Goal of Safety, and will help confirm whether the program(s) improve public health and safety by reducing transportation-related fatalities and injuries. Therefore, the purpose of this ICR is to conduct a survey using Form MCSA–5888 to evaluate the effectiveness of FMCSA's grant programs through the use of in-person interviews and electronic surveys. The survey will not be statistical in nature, as the intention is to receive the comments of all affected state partners. The survey will not exceed 30 questions and the complexity of the question structure will be Likert scale and short responses. The decision to use the Likert scale over the ordinal scale is the numbers in the ordinal level indicate the relative position of items, but not the magnitude of difference that you get from the Likert scale. For example, the survey will present a question like ''The grant funding provided in support of your program is adequate to meet all aspects of the mission.'' The response options may include:

1. Strongly disagree
2. Disagree
3. Neutral
3. Agree
4. Strongly agree
5. Not Applicable

The Agency will use this information to establish a baseline of our grant programs from the grantee's perspective for use in future grant-related decision making, to include: (1) Assessing the impacts of proposed rules, (2) identifying potential improvements in its grant supported safety programs, and (3) complement future budget and resource related decisions.

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 FMCSA to perform its functions; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued under the authority delegated in 49 CFR 1.87 on January 5, 2015.

G. Kelly Regal,

Associate Administrator, Office of Research and Information Technology and Chief Information Officer.

[FR Doc. 2015–00607 Filed 1–15–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0297]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 12 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions were granted November 22, 2014. The exemptions expire on November 22, 2016.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, R.N., Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

II. Background

On October 22, 2014, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (79 FR 63211). That notice listed 12 applicants' case histories. The 12 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-

year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 12 applications on their merits and made a determination to grant exemptions to each of them.

III. Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The 12 exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including a scar, amblyopia, complete loss of vision, prosthetic eye, corneal scar, refractive amblyopia, and a corneal transplant. In most cases, their eye conditions were not recently developed. Eight of the applicants were either born with their vision impairments or have had them since childhood.

The four individuals that sustained their vision conditions as adults have had it for a range of 20 to 45 years.

Although each applicant has one eye which does not meet the vision requirement in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing requirements for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 12 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision in careers ranging from 4 to 50 years. In the past three years, one of the drivers was involved in a crash and one was convicted of a moving violation in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the October 22, 2014 notice (79 FR 63211).

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision requirement in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered the medical reports about the applicants' vision as well as their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

FMCSA believes it can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 12 applicants, one of the drivers was involved in a crash, and one was convicted of a moving violation in a CMV. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like

interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 12 applicants listed in the notice of October 22, 2014 (79 FR 63211).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 12 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirement in 49 CFR 391.41(b)(10) and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

V. Discussion of Comments

FMCSA received two comments in this proceeding. The comments are discussed below.

An anonymous commenter and Sonia Sibrian stated that they believe that the current vision requirements are sufficient and that drivers with vision in one eye should not be granted an exemption.

VI. Conclusion

Based upon its evaluation of the 12 exemption applications, FMCSA exempts the following drivers from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)):

Rickie L. Brown (MS)
Brian M. Goehring (PA)
Dewey P. Huffman (OR)
Purvis W. Kills Enemy At Night (SD)
Daniel M. King (OK)
Robby K. Leith II (CA)
Roger F. Love (MN)
Gary G. Medeiros II (ID)
Michael J. Monroe (IA)
Eugene F. Mapieralski (MN)
Benjamin Riegelman (NJ)
Stephen Susino (NJ)

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued On: January 2, 2015.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2015–00604 Filed 1–15–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0300]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions, request for comments.

SUMMARY: FMCSA announces receipt of applications from 51 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce.

DATES: Comments must be received on or before February 17, 2015. All comments will be investigated by FMCSA. The exemptions will be issued the day after the comment period closes.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2014–0300 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* 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.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments

from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, R.N., Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' FMCSA can renew exemptions at the end of each 2-year period. The 51 individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

II. Qualifications of Applicants

David C. Berger

Mr. Berger, 52, has had refractive amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2014, his optometrist stated, ''I certify in my medical opinion that David Berger has sufficient vision to perform driving task required to operate a commercial vehicle.'' Mr. Berger reported that he has driven straight trucks for 29 years, accumulating 165,300 miles. He holds a Class B CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Phillip J. Boes

Mr. Boes, 66, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/200, and in his left eye, 20/30. Following an examination in 2014, his ophthalmologist stated, ''You have been actively driving as a commercial truck driver for years without difficulty and this particular visual issue has not changed over the years. You are qualified in my opinion to continue driving on a commercial basis.'' Mr. Boes reported that he has driven tractor-trailer combinations for 36 years, accumulating 3.6 million miles. He holds a Class A CDL from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Ronald Bostick

Mr. Bostick, 56, has a corneal scar in his right eye due to a traumatic incident in childhood. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2014, his optometrist stated, ''In my opinion, he does have sufficient vision required to perform driving tasks of a commercial vehicle.'' Mr. Bostick reported that he has driven straight trucks for 13 years, accumulating 26,000 miles. He holds an operator's license from South Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Raymond L. Bradshaw

Mr. Bradshaw, 53, has had a macular scar in his right eye since childhood. The visual acuity in his right eye is 20/200, and in his left eye, 20/30. Following an examination in 2014, his optometrist stated, ''Px [*sic*] does have sufficient vision to operate a commercial vehicle.'' Mr. Bradshaw reported that he has driven tractor-trailer combinations for 16 years, accumulating 1.92 million miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV; he exceeded the speed limit by 14 mph.

Ricky D. Cain

Mr. Cain, 54, has had an advanced cataract in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, light perception. Following an examination in 2014, his optometrist stated, ''Mr. Cain has excellent vision in his right eye and can operate a commercial vehicle and perform driving tasks.'' Mr. Cain reported that he has driven straight trucks for 30 years, accumulating 15,000 miles, and tractor-trailer combinations for 30 years, accumulating 1.88 million miles. He holds a Class A CDL from New Mexico. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jeffrey L. Coachman

Mr. Coachman, 50, has had esotropia with amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2014, his ophthalmologist stated, ''He has had long standing Left Esotropia [sic] or a crossed eye with Amblyopia [sic] of 20/200 in his left eye . . . It is my opinion that he can safely drive and operate a commercial vehicle.'' Mr. Coachman reported that he has driven straight trucks for 20 years, accumulating 500,000 miles, and tractor-trailer combinations for 22 years, accumulating 440,000 miles. He holds a Class AM CDL from New York. His driving record for the last 3 years shows one crash, to which he did contribute and for which he was cited, and no convictions for moving violations in a CMV.

Dewayne L. Cunningham

Mr. Cunningham, 48, has aphakia and corneal scars in his left eye due to a traumatic incident in 1988. The visual acuity in his right eye is 20/15, and in his left eye, hand motion. Following an examination in 2014, his optometrist stated, ''Mr. Cunningham does have sufficient vision and can operate a Commercial Vehicle. [*sic*]'' Mr. Cunningham reported that he has driven straight trucks for six years, accumulating 180,000 miles, and tractor-trailer combinations for 9 years, accumulating 495,000 miles. He holds a Class AM CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Robert W. Cushing

Mr. Cushing, 60, has had atypical macular degeneration in his left eye since 2006. The visual acuity in his right eye is 20/20, and in his left eye, 20/60. Following an examination in 2014, his ophthalmologist stated, ''His visual deficiency is stable, and it is being controlled with injections for Eylea on an as-needed basis. I believe that with continued care and, barring any unforeseen complications, Mr. Cushing should be able to perform driving tasks required to operate a commercial vehicle.'' Mr. Cushing reported that he has driven straight trucks for 38 years, accumulating 950,000 miles. He holds a Class A CDL from New Hampshire. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Joel K. Cutchin

Mr. Cutchin, 51, has a prosthetic right eye due to a traumatic incident in 1976. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2014, his optometrist stated, ''His vision is certainly good and stable enough to operate a commercial vehicle.'' Mr. Cutchin reported that he has driven straight trucks for 23 years, accumulating 1.61 million miles. He holds an operator's license from Virginia. His driving record for the last 3 years shows one crash, to which he did not contribute and was not cited, and one conviction for a moving violation in a CMV; he was cited for following too closely.

Keith Dionisi

Mr. Dionisi, 49, has glaucoma in his right eye due to a traumatic incident in 2000. The visual acuity in his right eye is hand motion, and in his left eye, 20/20. Following an examination in 2014, his ophthalmologist stated, ''In my medical opinion, I feel that Mr. Dionisi has sufficient visual acuity as well as visual field to continue to perform his driving tasks as a commercial driver.'' Mr. Dionisi reported that he has driven tractor-trailer combinations for 24 years, accumulating 720,000 miles. He holds a Class CA CDL from Michigan. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Wolfgang K. Faulkingham

Mr. Faulkingham, 53, has had enucleation secondary to angle closure glaucoma in his right eye since 1999. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2014, his optometrist stated, ''In my opinion, based on the excellent corrected visual acuity and full field of vision of the left eye, I feel that Mr. Faulkingham does have sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Faulkingham reported that he has driven straight trucks for 16 years, accumulating 1.12 million miles, and tractor-trailer combinations for 21 years, accumulating 1.26 million miles. He holds a Class A CDL from Maine. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

John D. Fortino Jr.

Mr. Fortino, 54, has had strabismic amblyopia in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2014, his optometrist stated, ''In my medical opinion John has adequate visional [*sic*] function to safely perform the driving tasks to operate a commercial vehicle.'' Mr. Fortino reported that he has driven straight trucks for 33 years, accumulating 1.98 million miles. He holds a Class BM CDL from New York. His driving record for the last 3 years shows 2 crashes, in which he contributed to and was cited for one, and did not contribute and was not cited for the other, and no convictions for moving violations in a CMV.

Ricky J. Franklin

Mr. Franklin, 65, has had a central retinal vein occlusion in his right eye since 2006. The visual acuity in his right eye is light perception, and in his left eye, 20/20. Following an examination in 2014, his optometrist stated, ''Rick has adequate vision to operate a commercial vehicle.'' Mr. Franklin reported that he has driven straight trucks for 48 years, accumulating 48,000 miles, and tractor-trailer combinations for 44 years, accumulating 22,000 miles. He holds a Class A CDL from Oregon. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James P. Gapinski

Mr. Gapinski, 68, has had central retinal vein occlusion in his left eye since 2011. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2014, his ophthalmologist stated, ''I certify that the patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Gapinski reported that he has driven tractor-trailer combinations for 45 years, accumulating 6.3 million miles. He holds a Class A CDL from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Harley D. Gray

Mr. Gray, 26, has had refractive amblyopia in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, 20/100. Following an examination in 2014, his optometrist stated, ''Harley has refractive amblyopia in his left eye. My medical opinion is that Harley is well adapted to this condition and is capable of doing any task presented to him.'' Mr. Gray reported that he has driven straight trucks for 2 years, accumulating 5,200 miles. He holds a Class BM CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

David N. Groff

Mr. Groff, 60, has complete loss of vision in his left eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2014, his optometrist stated, ''Safe to operate Commercial Vehicle! Sufficient Vision demonstrated!'' Mr. Groff reported that he has driven straight trucks for 34 years, accumulating 408,000 miles, and tractor-trailer combinations for 10 years, accumulating 180,000 miles. He holds a Class AM CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Robert J. Hansen

Mr. Hansen, 54, has a prosthetic left eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2014, his optometrist stated, ''In my opinion, Robert Hansen has sufficient vision to perform all the driving tasks required to drive a commercial vehicle.'' Mr. Hansen reported that he has driven straight trucks for 3 years, accumulating 24,000 miles. He holds an operator's license from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Adrian Haro

Mr. Haro, 59, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2014, his ophthalmologist stated, ''I believe Mr. Haro's vision is sufficient to perform all the tasks necessary to operate a commercial vehicle.'' Mr. Haro reported that he has driven straight trucks for 5 years, accumulating 150,000 miles, and tractor-trailer combinations for 30 years, accumulating 2.55 million miles. He holds a Class A CDL from Colorado. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV; he failed to yield to an emergency vehicle.

Kevin L. Himes

Mr. Himes, 56, has had esotropia and optic nerve hypoplasia in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, 20/300. Following an examination in 2014, his ophthalmologist stated, ''In my medical opinion Kevin Himes has sufficient central and peripheral vision

to operate a commercial vehicle.'' Mr. Himes reported that he has driven straight trucks for 37 years, accumulating 1.11 million miles, and tractor-trailer combinations for 37 years, accumulating 37,000 miles. He holds a Class A CDL from Colorado. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Ervin A. James, Jr.

Mr. James, 62, has had a retinal detachment in his right eye since 1970. The visual acuity in his right eye is light perception, and in his left eye, 20/20. Following an examination in 2014, his optometrist stated, ''In my medical opinion, Mr. James has stable vision and is able to operate a commercial vehicle safely without complications or restrictions.'' Mr. James reported that he has driven straight trucks for 33 years, accumulating 346,500 miles. He holds an operator's license from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jeffrey G. Kalla

Mr. Kalla, 49, has had refractive amblyopia in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, counting fingers. Following an examination in 2014, his ophthalmologist stated, ''Amblyopia OS . . . also noted are mylenated nerve fibers OS . . . decreased central acuity and mildly decreased peripheral field . . . Unlikely to interfere with his ability to safely operate a commercial vehicle.'' Mr. Kalla reported that he has driven buses for 9 years, accumulating 180,000 miles. He holds a Class C CDL from Nevada. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jackie Lee

Mr. Lee, 48, has had a macular hole in his left eye since 2010. The visual acuity in his right eye is 20/20, and in his left eye, 20/400. Following an examination in 2014, his optometrist stated, ''In conclusion, it is my professional opinion that Mr. Lee has sufficient visual acuity and field of vision to continue operating commercial vehicle.'' Mr. Lee reported that he has driven straight trucks for 4 years, accumulating 150,000 miles, and tractor-trailer combinations for 4 years, accumulating 140,000 miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Joseph J. Lewis

Mr. Lewis, 64, has had amblyopia in his right eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/200, and in his left eye, 20/25. Following an examination in 2014, his ophthalmologist stated, ''The patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Lewis reported that he has driven straight trucks for 1 year, accumulating 30,000 miles, and tractor-trailer combinations for 12 years, accumulating 1.2 million miles. He holds a Class A CDL from Washington. His driving record for the last 3 years shows two crashes, to which he did not contribute and was not cited, and one conviction for a moving violation in a CMV; he disobeyed a road sign.

Keith A. Looney, Jr.

Mr. Looney, 27, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/60, and in his left eye, 20/20. Following an examination in 2014, his optometrist stated, ''Based on today's findings, November 5, 2014, Keith Looney, JR. [*sic*] displayed sufficient visual ability to operate a commercial vehicle.'' Mr. Looney reported that he has driven straight trucks for 6 years, accumulating 120,000 miles. He holds an operator's license from Arkansas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Van C. Mac

Mr. Mac, 38, has a retinal detachment in his left eye due to a traumatic incident in 1999. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2014, his ophthalmologist stated, ''His vision has been stable for the past 15 years and there is no contraindication to operating a commercial vehicle.'' Mr. Mac reported that he has driven straight trucks for 15 years, accumulating 195,000 miles. He holds an operator's license from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Michael P. McCabe

Mr. McCabe, 56, has decreased vision and loss of central field in his left eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/400. Following an examination in 2014, his ophthalmologist stated, ''I hereby certify that, in my medical opinion, Mr. Mc Cabe [*sic*] has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. McCabe reported that he has driven straight trucks for 6.5 years, accumulating 4,550 miles. He holds a chauffer's license from Michigan. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Chris D. McCance

Mr. McCance, 50, has had myopic macular degeneration in his right eye since 2002. The visual acuity in his right eye is 20/100, and in his left eye, 20/20. Following an examination in 2014, his ophthalmologist stated, ''It is my medical opinion that he has sufficient vision to drive a commercial vehicle.'' Mr. McCance reported that he has driven straight trucks for 17 years, accumulating 425,000 miles. He holds a Class CM CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Michael W. McCann

Mr. McCann, 54, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/400, and in his left eye, 20/20. Following an examination in 2014, his optometrist stated, ''His present visual status is sufficient to perform driving tasks required to operate a commercial vehicle.'' Mr. McCann reported that he has driven straight trucks for 19 years, accumulating 570,000 miles. He holds a Class M CDL from Virginia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

O'Dell M. McKnight

Mr. McKnight, 77, has complete loss of vision in his right eye due to a traumatic incident in 1959. The visual acuity in his right eye is no light perception, and in his left eye, 20/40. Following an examination in 2014, his optometrist stated, ''Certifies that in his/her medical opinion, you have sufficient vision to perform the driving tasks required to operate a commercial vehicle. OK.'' Mr. McKnight reported that he has driven tractor-trailer combinations for 47 years, accumulating 2.1 million miles. He holds a Class A CDL from South Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Anthony R. Melton

Mr. Melton, 44, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/70. Following an examination in 2014, his optometrist

stated, ''His visual deficiency is called amblyopia and has likely been present for many years . . . In my opinion Mr. Melton is capable of operating a commercial vehicle.'' Mr. Melton reported that he has driven straight trucks for 2.5 years, accumulating 4,680 miles. He holds a Class D CDL from South Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Preston S. Nehring

Mr. Nehring, 55, has had complete loss of vision due to a retinal vein occlusion in his left eye since 2010. The visual acuity in his right eye is 20/20, and in his left eye, light perception. Following an examination in 2014, his ophthalmologist stated, ''In my medical opinion, he has sufficient vision to drive a commercial vehicle using his right eye.'' Mr. Nehring reported that he has driven tractor-trailer combinations for 34 years, accumulating 5.3 million miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Dennis J. Oie

Mr. Oie, 55, has had exotropia in his right eye since childhood. The visual acuity in his right eye is 20/400, and in his left eye, 20/20. Following an examination in 2014, his optometrist stated, ''In my medical opinion, Dennis Oie has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Oie reported that he has driven straight trucks for 30 years, accumulating 1.5 million miles. He holds a Class A CDL from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Orlan R. Ott

Mr. Ott, 71, has had ischemic optic neuropathy in his left eye since 1995. The visual acuity in his right eye is 20/20, and in his left eye, 20/50. Following an examination in 2014, his optometrist stated, ''In my opinion Mr. Ott has sufficient stable vision to operate a commercial vehicle.'' Mr. Ott reported that he has driven straight trucks for 50 years, accumulating 250,000 miles, and tractor-trailer combinations for 50 years, accumulating 375,000 miles. He holds a Class A CDL from Iowa. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Rodney W. Phelps

Mr. Phelps, 49, has had refractive amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/400, and in his left eye, 20/20. Following an examination in 2014, his optometrist stated, ''In my medical opinion, Mr. Phelp's [*sic*] has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Phelps reported that he has driven straight trucks for 22 years, accumulating 422,400 miles. He holds an operator's license from Kentucky. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Leonardo Polonski

Mr. Polonski, 61, has had high myopia and amblyopia in his right eye since birth. The visual acuity in his right eye is hand motion, and in his left eye, 20/20. Following an examination in 2014, his ophthalmologist stated, ''I certify that in my medical opinion, as an ophthalmologist and as the main provider of his eye care for the past 15 years, that Mr. Polonski has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Polonski reported that he has driven straight trucks for 43 years, accumulating 946,000 miles. He holds a Class B CDL from Massachusetts. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Don C. Powell, Jr.

Mr. Powell, 59, has had strabismic amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/400. Following an examination in 2014, his ophthalmologist stated, ''Mr. Powell has sufficient vision to perform the driving requirements to operate a commercial vehicle.'' Mr. Powell reported that he has driven buses for 3 years, accumulating 126,000 miles. He holds a Class B CDL from New York. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Luis A. Ramos

Mr. Ramos, 53, has had strabismic amblyopia and exotropia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2014, his optometrist stated, ''The visual deficiency that the patient has in the left eye is stable, and it is in my professional opinion that this patient would be able to perform the functions of commercial vehicle operation.'' Mr. Ramos reported that he has driven straight trucks for 30 years, accumulating 1.2 million miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV; he exceeded the speed limit by 15 mph.

Kevin C. Rich

Mr. Rich, 60, has had retinal vascular occlusion in his right eye since 2009. The visual acuity in his right eye is 20/200, and in his left eye, 20/15. Following an examination in 2014, his optometrist stated, ''It is my professional opinion that he can safely operate a commercial vehicle with his current glasses.'' Mr. Rich reported that he has driven tractor-trailer combinations for 25 years, accumulating 937,500 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Ronald D. Schwab

Mr. Schwab, 63, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/150, and in his left eye, 20/20. Following an examination in 2014, his optometrist stated, ''In my opinion Ronald has sufficient vision to operate a commercial vehicle.'' Mr. Schwab reported that he has driven straight trucks for 10 years, accumulating 300,000 miles, and tractor-trailer combinations for 30 years, accumulating 2.48 million miles. He holds a Class A CDL from Minnesota. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV; he exceeded the speed limit by 15 mph.

Gary W. Shelton, Jr.

Mr. Shelton, 41, has had a full thickness macular hole in his left eye since 1991. The visual acuity in his right eye is 20/20, and in his left eye, 20/100. Following an examination in 2014, his ophthalmologist stated, ''Yes in my medical opinion Mr. Shelton has sufficient vision to drive a commercial vehicle.'' Mr. Shelton reported that he has driven straight trucks for 22 years, accumulating 110,000 miles, and tractor-trailer combinations for one year, accumulating 7,500 miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Gerardo Silva

Mr. Silva, 35, has had refractive amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/100.

Following an examination in 2014, his optometrist stated, ''It is in my professional opinion that Gerardo Silva meets requirements to drive a commercial vehicle equipped with side view mirrors on both right and left sides.'' Mr. Silva reported that he has driven straight trucks for 14 years, accumulating 18,200 miles. He holds an operator's license from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James A. Spittal

Mr. Spittal, 57, has had ophthalmic artery occluded by calcium embolus in his right eye since 1991. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2014, his optometrist stated, ''I certify that Jim Spittal has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Spittal reported that he has driven straight trucks for 12 years, accumulating 201,600 miles, and tractor-trailer combinations for 9 years, accumulating 900,000 miles. He holds a Class A CDL from Oregon. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Paul J. Stewart

Mr. Stewart, 40, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2014, his optometrist stated, ''In my medical opinion, Mr. Stewart has sufficient vision and visual field capabilities to perform the driving tasks required to operate a commercial vehicle.'' Mr. Stewart reported that he has driven tractor-trailer combinations for 17 years, accumulating 467,500 miles. He holds a Class A CDL from Colorado. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

David A. Stinelli

Mr. Stinelli, 57, has complete loss of vision in his right eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2014, his optometrist stated, ''In the state of Pennsylvania the patient exceeds the minimal visual acuity required to operate a motor vehicle. Also, his peripheral vision exceeds 120 degrees in the horizontal meridian. It is my opinion that David can operate a commercial vehicle.'' Mr. Stinelli reported that he has driven straight trucks for 40 years, accumulating two million miles. He holds a Class B CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Ingrid V. Taylor

Ms. Taylor, 49, has had optic nerve damage due to glaucoma in her left eye since 2009. The visual acuity in her right eye is 20/20, and in her left eye, 20/50. Following an examination in 2014, her ophthalmologist stated, ''It is my medical opinion that Ms. Taylor has sufficient vision to operate a commercial vehicle.'' Ms. Taylor reported that she has driven straight trucks for 2 years, accumulating 11,000 miles, and tractor-trailer combinations for 14 years, accumulating 1.33 million miles. She holds a Class CA CDL from Michigan. Her driving record for the last 3 years shows one crash, to which she did contribute, and no convictions for moving violations in a CMV.

Roger A. Thein, Jr.

Mr. Thein, 47, has had amblyopia in his right eye since birth. The visual acuity in his right eye is 20/70, and in his left eye, 20/20. Following an examination in 2014, his optometrist stated, ''I have no concerns of Roger Thein's ability to safely operate a commercial motor vehicle. His vision is stable and has been unchanged his entire life. It is my medical opinion that Roger Thein is safe to drive a commercial motor vehicle.'' Mr. Thein reported that he has driven straight trucks for 13 years, accumulating 78,000 miles. He holds an operator's license from Wisconsin. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Russell E. Ward

Mr. Ward, 57, has had strabismus amblyopia in his right eye since birth. The visual acuity in his right eye is 20/400, and in his left eye, 20/20. Following an examination in 2014, his optometrist stated, ''Patient Russell Ward has adequate vision to drive a 12 ft [*sic*] box truck.'' Mr. Ward reported that he has driven straight trucks for 22 years, accumulating 528,000 miles. He holds an operator's license from New Hampshire. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Bobby M. Warren

Mr. Warren, 58, has had corneal scarring in his left eye due to a traumatic incident in 1979. The visual acuity in his right eye is 20/20, and in his left eye, light perception. Following an examination in 2014, his optometrist stated, ''Based upon my findings and medical expertise, I . . . hereby certify Bobby Warren to be visually able to safely operate a commercial motor vehicle.'' Mr. Warren reported that he has driven straight trucks for 30 years, accumulating 600,000 miles. He holds an operator's license from Kentucky. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Steven E. Williams

Mr. Williams, 44, has had optic nerve damage in his right eye due to a traumatic incident in 1991. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2014, his ophthalmologist stated, ''His condition is stable and he has sufficient vision to perform the driving task required to operate a commercial vehicle.'' Mr. Williams reported that he has driven straight trucks for 6.5 years, accumulating 406,250 miles, and tractor-trailer combinations for 14 years, accumulating 945,000 miles. He holds a Class AM CDL from Georgia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Rex A. Wright

Mr. Wright, 50, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/80. Following an examination in 2014, his optometrist stated, ''It is my impression that his amblyopia would not interfere with Mr. Wright's driving at this time and I feel that his commercial truck driver's license should be renewed.'' Mr. Wright reported that he has driven straight trucks for 22 years, accumulating 52,800 miles. He holds a Class B CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Vantha Yeam

Mr. Yeam, 46, has a dense cataract in his right eye due to a traumatic incident in 1990. The visual acuity in his right eye is light perception, and in his left eye, 20/30. Following an examination in 2014, his optometrist stated, ''Given these results, in my opinion he has sufficient vision and visual fields to drive a commercial vehicle, however it is up to the Department of Transportation to make the final decision.'' Mr. Yeam reported that he has driven straight trucks for 10 years,

accumulating 120,000 miles, and tractor-trailer combinations for 4 years, accumulating 100,000 miles. He holds a Class AM CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

III. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and put the docket number FMCSA–2014–0300 in the ''Keyword'' box, and click ''Search. When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period and may change this notice based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* and insert the docket number.

FMCSA–2014–0300 in the ''Keyword'' box and click ''Search.'' Next, click ''Open Docket Folder'' button and choose the document listed to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Issued on: January 2, 2015.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2015–00602 Filed 1–15–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2014–0308]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA confirms its decision to exempt 52 individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions were effective on December 9, 2014. The exemptions expire on December 9, 2016.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, R.N., Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

II. Background

On November 7, 2014, FMCSA published a notice of receipt of Federal diabetes exemption applications from 52 individuals and requested comments from the public (79 FR 66451). The public comment period closed on December 8, 2014, and one comment was received.

FMCSA has evaluated the eligibility of the 52 applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that ''A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control'' (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These 52 applicants have had ITDM over a range of 1 to 38 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has

demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the November 7, 2014, **Federal Register** notice and they will not be repeated in this notice.

III. Discussion of Comments

FMCSA received one comment in this proceeding. The comment is discussed below.

Erik Lane stated that he wanted the exemption process to move faster as he has been unable to work.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VI. Conclusion

Based upon its evaluation of the 52 exemption applications, FMCSA exempts the following drivers from the diabetes requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above 949 CFR 391.64(b)):

Travis L. Beck (OH)
Corey C. Bennett (MS)
Richard C. Bennett (MA)
Nicholas J. Borelli (NJ)
Bobby L. Brown (MO)
Elvis P. Butler (TN)
John H. Butler (OH)
Michael E. Calvert (TX)
Keith J. Cole (WI)
Kevin E. Conti (OH)
Marsh L. Daggett (TX)
Daniel D. Eisenbise (OK)
Callie W. Freeman (NC)
Brandy D. Green (OK)
Chad E. Hales (UT)
Dennis L. Hooyman (WI)
Lorenza K. Jefferson (VA)
Edward Johnson (TN)
William O. Johnson, Jr. (IN)
Michael E. Kroll (WI)
Thomas J. LaPointe (MA)
Matthew A. Lind (PA)
Cynthia A. Martindale (UT)
Isolina Matos (NJ)
Rex D. McManaway (IL)
Steven A. Metternick (MI)
Daniel P. Miller (PA)
James K. Ollerich (SD)
Scott B. Olson (ND)
Raymond E. Pawloski (MI)
Rodney D. Pedersen (MN)
Loren A. Pingel (CO)
Douglas S. Pitcher (NY)
John E. Pringle (WA)
Terrence A. Proctor (MD)
Salvador Ramirez, Jr. (IL)
Heber E. Rodriguez (VA)
Ethan T. Roy (OH)
Emily J. Runde (WA)
Jerome E. Schwarz (KS)
Lukas N. Skutnik (NE)
Daniel C. Sliman (OH)
Jeffrey A. Sturgill (OH)
Maurice S. Styles (MN)
Steven M. Theys (WI)
Richard J. Thomas (IN)
Kevin E. Tucker (WV)
Robert Vassallo (NY)
Clifford L. White (KS)
Jason L. Woody (KS)
John A. Yarde (IL)
Wesley B. Yokum (PA)

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption is valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: January 8, 2015.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2015–00609 Filed 1–15–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 1122X]

Ouachita Railroad, Inc.—Abandonment Exemption—in Union County, Ark., and Union Parish, La.

Ouachita Railroad, Inc. (Ouachita) has filed a verified notice of exemption under 49 CFR part 1152 subpart F–*Exempt Abandonments* to abandon an approximately 13.4-mile line of railroad between milepost 112, near Junction City, in Union County, Ark., and milepost 125.4, near Lillie, in Union Parish, La. (the Line). The Line traverses United States Postal Service Zip Codes 71749 and 71256.

Ouachita has certified that (1) no local traffic has moved over the Line for at least two years; (2) the line is stub-ended and not capable of handling overhead traffic; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of a complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 18, 2015, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and interim trail use/rail banking requests under 49 CFR 1152.29 must be filed by January 26, 2015. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by February 5, 2015, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to Ouachita's representative: Richard H. Streeter, 5255 Partridge Lane NW., Washington, DC 20016.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

Ouachita has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by January 23, 2015. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service at (800) 877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or interim trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), Ouachita shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by Ouachita's filing of a notice of consummation by January 16, 2016, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at ''*www.stb.dot.gov*.''

Decided: January 13, 2015.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Brendetta S. Jones,

Clearance Clerk.

[FR Doc. 2015–00595 Filed 1–15–15; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 290 (Sub-No. 367X)]

Norfolk Southern Railway Company—Abandonment Exemption—in Erie County, N.Y.

Norfolk Southern Railway Company (NSR) has filed a verified notice of exemption under 49 CFR part 1152, subpart F–*Exempt Abandonments* to abandon approximately 1.60 miles of railroad line in Erie County, N.Y. (the Line). The Line extends between milepost VK 3.90 (near Scrivner Drive) and milepost VK 5.50 (near Indian Church Road) and traverses United States Postal Service Zip Codes 14224 and 14227.

NSR has certified that: (1) No local traffic has moved over the Line for at least two years; (2) no overhead traffic has moved over the Line for at least two years, and overhead traffic, if there were any, could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 12, 2015, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and interim trail use/rail banking requests under 49 CFR 1152.29 must be filed by January 23, 2015. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by February 2, 2015, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to NSR's representative: William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Ave. NW., Suite 300, Washington, DC 20037.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

NSR has filed a combined environmental and historic report that address the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by January 16, 2015. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service at (800) 877–8339. Comments on environmental and historic preservation

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines*, 5 I.C.C. 2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which is currently set at $1,600. *See* 49 CFR 1002.2(f)(25).

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C. 2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which is currently set at $1,600. *See* 49 CFR 1002.2(f)(25).

matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or interim trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by NSR's filing of a notice of consummation by January 13, 2016, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at ''*WWW.STB.DOT.GOV.''*

Decided: January 13, 2015.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2015–00721 Filed 1–15–15; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0386]

Proposed Information Collection (Interest Rate Reduction Refinancing Loan Worksheet): Comment Request

AGENCY: Veterans Benefits Administration, VA.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine whether lenders computed the loan amount on interest rate reduction refinancing loans properly.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 17, 2015.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0386'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Interest Rate Reduction Refinancing Loan Worksheet, VA Form 26–8923.

OMB Control Number: 2900–0386.

Type of Review: Revision of a currently approved collection.

Abstract: Lenders are required to submit VA Form 26–8923, to request a guaranty on all interest rate reduction refinancing loan and provide a receipt as proof that the funding fee was paid or evidence that a claimant was exempt from such fee. VA uses the data collected to ensure lenders computed the funding fee and the maximum permissible loan amount for interest rate reduction refinancing loans correctly.

Affected Public: Business or other for profit.

Estimated Annual Burden: 23,333 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 140,000.

Dated: January 13, 2015.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2015–00635 Filed 1–15–15; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0265]

Proposed Information Collection (Educational/Vocational Counseling Application): Comment Request

AGENCY: Veterans Benefits Administration, VA.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to apply for counseling services.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 17, 2015.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov*. Please refer to ''OMB Control No. 2900–0265'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed

collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Educational/Vocational Counseling Application, VA Form 28–8832.

OMB Control Number: 2900–0265.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 28–8832, Application for Counseling, collects information that the Vocational Rehabilitation and Employment (VR&E) Division needs to quickly assess the applicant's probable entitlement to counseling, to call up further records if necessary, and to contact the applicant to schedule a counseling appointment. Under 38 United States Code 501(a), the Secretary shall obtain information sufficient to establish the right to benefits. A veteran or dependent may use this form as a convenience to apply for counseling services. Without the form, the application could be delayed, particularly in instances where incomplete data is submitted.

Affected Public: Individuals or Households.

Estimated Annual Burden: 2,550 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 5,100.

Dated: January 13, 2015.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2015–00641 Filed 1–15–15; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Funding Availability Under VA's Homeless Providers Grant and Per Diem Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice of funding availability (NOFA)

SUMMARY: The U.S. Department of Veterans Affairs (VA) is announcing the availability of funds for assistance under the Per Diem Only (PDO) component of VA's Homeless Providers Grant and Per Diem (GPD) Program. This Notice of Funding Availability (NOFA) is for those current ''Transition in Place'' (TIP) grantees who seek to renew their 2012 TIP PDO grants. This NOFA contains information concerning the program, application process, and amount of funding available.

DATES: An original signed and dated, request for reapplication letter on agency letterhead for assistance under VA's Homeless Providers GPD Program must be received in the GPD Program Office, by 4:00 p.m. Eastern Time on April 20, 2015, (see Submission Dates and Times below for additional requirements).

In the interest of fairness to all competing applicants, this deadline is firm as to date and hour, and VA will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their material to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

ADDRESSES: An original signed and dated, request for reapplication letter on agency letterhead must be submitted to the following address: VA Homeless Providers Grant and Per Diem Field Office, 10770 North 46th Street, Suite C–200, Tampa, FL 33617.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffery Quarles, Director, VA's Homeless Providers Grant and Per Diem Program, Department of Veterans Affairs, 10770 North 46th Street, Suite C–200, Tampa, FL 33617; (toll-free) (877) 332–0334.

SUPPLEMENTARY INFORMATION: This NOFA announces the availability of renewal funding in the form of per diem payments under VA's Homeless Providers GPD Program for current TIP PDO grantees. The authority for this NOFA is the Homeless Veterans Comprehensive Assistance Act of 2001, Public Law 107–95, sec. 5, codified as amended by Public Law 112–154, at 38 U.S.C. 2011, 2012, 2013, 2061, and 38 CFR part 61.

Award Information: VA is pleased to issue this NOFA under VA's Homeless Providers GPD Program as a part of the effort to end homelessness among our Nation's Veterans. VA expects to fund approximately 500 beds over a 3-year period under this NOFA. The maximum award of $1.2 million will support an average of 25 beds per night, per project, at the current maximum per diem rate of $43.32; taking into consideration that the maximum per diem rate may increase in future years. Note: The final amount awarded may be adjusted based on any remaining funding from the previous award.

Funding Priorities: None.

Funding Actions: Conditionally selected applicants will complete a grant funding agreement with VA in accordance with 38 CFR 61.61 and provide any additional information as required by VA. Upon signature by the Secretary or designated representative final selection will be completed.

VA will make per diem payments in a method consistent with VA policy. Per diem will be paid only for eligible Veterans (*i.e.,* Veterans whom VA refers to the grantee, or for whom VA authorizes the provision of services) and will be available for the periods of awards specified in this NOFA. All payment specifics will be given to the grantee at the time of award. At no time may grantees draw more than the maximum approved per diem rate as authorized by VA's GPD Program Office. All costs charged to the per diem grant must be allowable under the applicable OMB Circulars for Grants Management.

Grant Award Period: For the purposes of this NOFA the award period will be approximately three (3) years beginning at the time of award final selection and announcement (on or about October 1, 2015) and ending approximately on September 30, 2018. Specific start and end dates will be included in the grant agreement between final selectees and VA. For the purposes of this NOFA the award period will not exceed three (3) years.

Eligibility Information: Existing fiscal year (FY) 2012 TIP PDO grantees are eligible to apply for renewal funding under this NOFA.

Cost Sharing or Matching: None.

Application and Submission Information: An application package is not needed for this NOFA. Applicants submitting a letter requesting re-application on their agency's letterhead agree to VA using their previously awarded FY 2012 TIP PDO application for scoring purposes.

Content and Form of Application: Applicants must submit a letter requesting re-application on their agency's letterhead. Failure to submit a re-application letter will result in the agency not being considered for renewal funding.

Applicants who are conditionally selected will be notified of any additional information needed to confirm or clarify information provided in the application. Applicants will then be notified of the deadline to submit

such information. If an applicant is unable to meet any conditions for grant award within the specified time frame, VA reserves the right to not award funds and to use the funds available for other grant and per diem applicants.

Submission Dates and Times: An original signed and dated, request for re-application letter on agency letterhead requesting renewal assistance under VA's Homeless Providers GPD Program must be received in the GPD Program Office, by 4:00 p.m. Eastern Time on April 20, 2015.

In the interest of fairness to all competing applicants, this deadline is firm as to date and hour, and VA will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their material to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

For applications physically delivered (*i.e.,* in person, United States Postal Service, FedEx, United Parcel Service (UPS), or any other type of courier) the VA GPD Program Office staff will accept the application and date stamp it immediately at the time of arrival. This is the date and time that will determine if the deadline is met for those types of delivery. DO NOT fax or email the application as it will be treated as ineligible for consideration.

Funding Restrictions: Applicants may not receive assistance to replace funds provided by any State or local government to assist homeless persons.

Agencies may not increase the number of beds awarded as stated in their FY 2012 grant application.

Other Submission Requirements: None.

Application Review Information

A. *Criteria For Facility Capital Grants:* Rating criteria may be found at 38 CFR 61.13.

B. *Review and Selection Process:* Review and selection process may be found at 38 CFR 61.14.

A full copy of the regulations governing the GPD Program is available at the GPD Web site at *http://www.va.gov/HOMELESS/GPD.asp.*

Award Notice: Although subject to change, the GPD Program Office expects the announcement of grant awards during the late fourth quarter of FY 2015 (September). The initial announcement will be made via news release which will be posted on the GPD Web site at *www.va.gov/homeless/gpd.asp.* Following the initial announcement, the GPD Program Office will mail a notification letter to the grant recipients. Applicants that are not selected will be mailed a declination letter within 2 weeks of the initial announcement.

Administrative and National Policy: It is important to be aware that VA places great emphasis on responsibility and accountability. VA has procedures in place to monitor services provided to homeless Veterans and outcomes associated with the services provided in GPD-funded programs. Applicants should be aware of the following:

Awardees will be required to support their request for payments with adequate fiscal documentation as to project expenses and in the case of per diem payments income and expenses.

All awardees that are selected in response to *this NOFA* must meet the requirements of the current edition of the Life Safety Code of the National Fire Protection Association as it relates to their specific facility. Applicants should note that all facilities are to be protected throughout by an approved automatic sprinkler system unless a facility is specifically exempted under the Life Safety Code. Applicants should make consideration of this when submitting their grant applications as no additional funds will be made available for capital improvements under this NOFA.

Each program seeking per diem will have a liaison appointed from a nearby VA medical facility to provide oversight and monitor services provided to homeless Veterans in the per diem-funded program.

Monitoring will include at a minimum, a quarterly review of each per diem program's progress toward meeting internal goals and objectives in helping Veterans attain housing stability, adequate income support, and self sufficiency as identified in each per diem program's original application. Monitoring will also include a review of the agency's income and expenses as they relate to this project to ensure per diem payment is accurate.

Each per diem-funded program will participate in VA's national program monitoring and evaluation system administered by VA's Northeast Program Evaluation Center (NEPEC). NEPEC's monitoring procedures will be used to determine successful accomplishment of these housing outcomes for each per diem-funded program.

Leases under TIP: Several questions have arisen with regard to leases in the GPD/TIP. The VA National GPD Program Office has developed the following Sub-Lease guidance in regard to TIP under GPD.

Lease Guarantors: When a third party (in this case the grantee) guarantees to pay the lease costs if the lessee (in this case the Veteran) defaults. This is not allowed under this program.

Sub-lease: The sub-lease is ''[a] lease by a lessee (in this case the grantee) to a third party (the Veteran) conveying a subordinate right to occupy or use (as applicable) all or a portion of the leased property, under stipulated terms and conditions. For the sake of clarity, in a sub-lease TIP housing scenario, the landlord is the lessor, the grantee is the lessee, and the Veteran is the sub-lessee.

GPD TIP Grantees may use sub-leases during the transitional housing phase if the sub-lease has been approved by the GPD Program Office and the sub-lease meets the following conditions:

1. Period of sub-lease must be less than entire period of the grantee's lease with the landlord.

2. Grantee lease renewal must be taken into consideration when stating the period of the sub-lease.

3. Sub-lease must be explicit that the grantee is the lessee not the Veteran.

4. Sub-lease must stipulate that it will end (terminate) without any cost or liability owed from the Veteran to the lessee, if the Veteran vacates the sub-leased space prior to program completion.

5. Sub-lease may not contain requirements contrary to GPD regulations, and each sub-lease should expressly state that the lease is subordinate to GPD's regulations.

6. Security deposits may not be charged to Veterans. However, grantee lessees may take other appropriate steps (if available under applicable law) in situations of property destruction.

Lease Assumption: If and when a third party (in this case the Veteran) contractually assumes a lease from a lessee, the original lessee does not retain any legal interest in the lease, unless and to the extent that the assignment contract stipulates otherwise. In no event should any such exceptions violate GPD regulations.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Chief of Staff, Department of Veterans Affairs, approved this document on January 5, 2015, for publication.

Dated: January 13, 2014.

William F. Russo,

Acting Director, Office of Regulation Policy & Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2015–00715 Filed 1–15–15; 8:45 am]

BILLING CODE 8320–01–P



FEDERAL REGISTER

Vol. 80 Friday,
No. 11 January 16, 2015

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Endangered Status for the Mexican Wolf and Regulations for the Nonessential Experimental Population of the Mexican Wolf; Final Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–HQ–ES–2013–0073; FXES11130900000–156–FF09E42000]

RIN 1018–AY00

Endangered and Threatened Wildlife and Plants; Endangered Status for the Mexican Wolf

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered status under the Endangered Species Act of 1973, as amended, for the Mexican wolf (*Canis lupus baileyi*). The effect of this regulation will be to revise the List of Endangered and Threatened Wildlife by making a separate entry for the Mexican wolf. We are separating our determination on the listing of the Mexican wolf as endangered from the determination on our proposal regarding the delisting of the gray wolf in the United States and Mexico. This rule finalizes our determination for the Mexican wolf.

DATES: This rule becomes effective February 17, 2015.

ADDRESSES: This final rule is available on the internet at *http://www.regulations.gov* and *http://www.fws.gov/southwest/es/mexicanwolf/.* Comments and materials we received, as well as some of the supporting documentation we used in preparing 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: Mexican Wolf Recovery Program, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna Road NE., Albuquerque, NM 87113; by telephone 505–761–4704; or by facsimile 505–346–2542.

FOR FURTHER INFORMATION CONTACT: Sherry Barrett, Mexican Wolf Recovery Coordinator, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna Road, NE., Albuquerque, NM 87113; by telephone 505–761–4704; or by facsimile 505–346–2542. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339. Further contact information can be found on the Mexican Wolf Recovery Program's Web site at *http://www.fws.gov/southwest/es/mexicanwolf/.*

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Endangered Species Act (Act), a subspecies warrants protection if it is endangered or threatened throughout all or a significant portion of its range. Listing a subspecies as endangered or threatened can only be completed by issuing a rule. We proposed to delist the gray wolf and maintain protections for the Mexican wolf by listing it as an endangered subspecies on June 13, 2013 (78 FR 35664). At this time, we are finalizing the proposal to list the Mexican wolf as an endangered subspecies. Elsewhere in this **Federal Register**, we are finalizing revisions to the regulations for the nonessential experimental population of the Mexican wolf.

We note that the United States District Court for the District of Columbia recently vacated the final rule at 76 FR 81666 (December 28, 2011) that removed protections of the Act from the gray wolf in the western Great Lakes. *Humane Society* v. *Jewell,* 2014 U.S. Dist. Lexis 175846 (D.D.C. December 19, 2014). The court's action was based, in part, on its conclusion that the Act does not allow the Service to use its authority to identify distinct population segments (DPSs) as ''species'' to remove the protections for part of a listed species. We have determined that the decision in *Humane Society* does not change our conclusions in this final rule. First, the district court's interpretation of the Act is in error, and is in any case not binding on particular matters not at issue in that case. Second, the action here is distinguishable from that in *Humane Society.* Here, the Service is not designating a DPS, but is taking an action with respect to a subspecies of a listed entity. In addition, the Service is not reducing protections for the Mexican wolf or delisting it, but instead is confirming that it is an endangered species.

This rule will finalize the listing of the Mexican wolf as an endangered subspecies.

The basis for our action. Under the Act, a subspecies is determined to be endangered or threatened because of any of the following 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. We have determined the Mexican wolf meets the definition of an endangered subspecies primarily because of illegal killing, inbreeding, loss of heterozygosity, loss of adaptive potential, small population size, and the cumulative effects of the aforementioned threats. Absent protection by the Act, regulatory protection would not be adequate to ensure the survival of the Mexican wolf.

Peer review and public comment. Through the National Center for Ecological Analysis and Synthesis we sought comments from independent specialists to ensure that our designation is based on scientifically sound data, assumptions, and analyses. These peer reviewers were invited to comment on our listing proposal. We also considered all comments and information received during the public comment period.

Background

Previous Federal Actions for Mexican Wolves

Gray wolves were originally listed as subspecies or as regional populations of subspecies in the contiguous United States and Mexico. We listed the Mexican gray wolf subspecies, *Canus lupus baileyi,* as endangered on April 28, 1976 (41 FR 17736), in the southwestern United States and Mexico.

In 1978, we published a rule (43 FR 9607, March 9, 1978) classifying the gray wolf as an endangered population at the species level (*Canis lupus*) throughout the contiguous United States and Mexico, except for the Minnesota gray wolf population, which was classified as threatened. At that time, we considered the gray wolves in Minnesota to be a listable entity under the Act, and we considered the gray wolves in Mexico and the 48 contiguous United States other than Minnesota to be another listable entity (43 FR 9607 and 9610, respectively, March 9, 1978). The separate subspecies listings thus were subsumed into the listings for the gray wolf in Minnesota and the gray wolf in the rest of the contiguous United States and Mexico.

The 1978 listing of the gray wolf was undertaken to address changes in our understanding of gray wolf taxonomy, and recognize the fact that individual wolves sometimes disperse across subspecific boundaries, resulting in intergradation of neighboring populations. The 1978 rule also stipulated that ''biological subspecies

would continue to be maintained and dealt with as separate entities'' (43 FR 9609), and offered ''the firmest assurance that [the Service] will continue to recognize valid biological subspecies for purposes of its research and conservation programs'' (43 FR 9610, March 9, 1978).

Accordingly, we implemented three gray wolf recovery programs in the following regions of the country: the Western Great Lakes (Minnesota, Michigan, and Wisconsin, administered by the Service's Great Lakes, Big Rivers Region), the Northern Rocky Mountains (Idaho, Montana, and Wyoming, administered by the Service's Mountain–Prairie Region and Pacific Region), and the Southwest (Arizona, New Mexico, Texas, Oklahoma, Mexico, administered by the Service's Southwest Region). Recovery plans were developed in each of these areas (the northern Rocky Mountains in 1980, revised in 1987; the Great Lakes in 1978, revised in 1992; and the Southwest in 1982) to establish and prioritize recovery criteria and actions appropriate to the unique local circumstances of the gray wolf. A separate recovery effort for gray wolves formerly listed as *Canis lupus monstrabilis* was not undertaken because this subspecies was subsumed with the Mexican wolf, *C. l. baileyi,* and thus addressed as part of the recovery plan for the Southwest.

In the Southwest, on August 11, 2009, we received a petition dated the same day from the Center for Biological Diversity requesting that we list the Mexican wolf as an endangered subspecies or distinct population segment (DPS) and designate critical habitat under the Act. On August 12, 2009, we received a petition dated August 10, 2009, from WildEarth Guardians and The Rewilding Institute requesting that we list the Mexican wolf as an endangered subspecies and designate critical habitat under the Act. On October 9, 2012, we published a 12-month finding in the **Federal Register** stating that, because all individuals that constitute the petitioned entity already receive the protections of the Act, the petitioned action was not warranted at that time (77 FR 61375).

On February 29, 2012, we concluded a 5-year review of the *Canis lupus* listed entity, recommending that the entity currently described on the List of Endangered and Threatened Wildlife should be revised to reflect the distribution and status of *C. lupus* populations in the contiguous United States and Mexico by removing all areas currently included in the Code of Federal Regulations (CFR) range except where there is a valid species, subspecies, or DPS that is threatened or endangered.

On June 13, 2013 (78 FR 35664), we published a proposed rule to delist the gray wolf and maintain protections for the Mexican wolf by listing it as an endangered subspecies. Upon publication of the proposed rule, we opened the public comment period on the proposal. On September 5 and October 2, 2013, we announced public hearings on the proposed rule (78 FR 54614 and 78 FR 60813). The September 5 document also extended the public comment period for the proposed rule to October 28, 2013. Following delays caused by the Federal Government lapse in appropriations, the Service announced rescheduled dates for three of the public hearings, scheduled a fifth public hearing, and extended the public comment period for the proposed rule to December 17, 2013 (78 FR 64192, October 28, 2013). On February 10, 2014 (79 FR 7627), we reopened the public comment period on the proposal in conjunction with the submission of the peer review report. The comment period closed on March 27, 2014.

Subspecies Information

Taxonomy

The Mexican wolf subspecies, *Canis lupus baileyi,* was originally described by Nelson and Goldman in 1929 as *Canis nubilus baileyi,* with a distribution of ''Southern and western Arizona, southern New Mexico, and the Sierra Madre and adjoining tableland of Mexico as far south, at least, as southern Durango (Nelson and Goldman 1929, pp. 165–166).'' Goldman (1944, pp. 389–636) provided the first comprehensive treatment of North American wolves, in which he renamed *C. n. baileyi* as a subspecies of *lupus* (*i.e., C. l. baileyi*) and shifted the subspecies' range farther south in Arizona. His gray wolf classification scheme was subsequently followed by Hall and Kelson (1959, pp. 847–851; Hall 1981, p. 932). Since that time, gray wolf taxonomy has undergone substantial revision, including a major taxonomic revision in which the number of recognized gray wolf subspecies in North America was reduced from 24 to 5, with the Mexican wolf, *C. l. baileyi,* being recognized as a subspecies ranging throughout most of Mexico to just north of the Gila River in southern Arizona and New Mexico (Nowak 1995, pp. 375–397).

Three published studies of morphometric variation conclude that the Mexican wolf is a morphologically distinct and valid subspecies. Bogan and Mehlhop (1983) analyzed 253 gray wolf skulls from southwestern North America using principal component analysis and discriminant function analysis. They found that the Mexican wolf was one of the most distinct subspecies of southwestern gray wolf (Bogan and Mehlhop 1983, p. 17). Hoffmeister (1986) conducted principal component analysis of 28 skulls, also recognizing the Mexican wolf as a distinct southwestern subspecies (pp. 466–468). Nowak (1995) analyzed 580 skulls using discriminant function analysis. He concluded that the Mexican wolf was one of only five distinct North American gray wolf subspecies that should continue to be recognized (Nowak 1995, pp. 395–396).

Genetic research provides additional validation of the recognition of the Mexican wolf as a subspecies. Studies have demonstrated that the Mexican wolf has unique genetic markers that distinguish the subspecies from other North American gray wolves. Garcia–Moreno *et al.* (1996, p. 384) utilized microsatellite analysis to determine whether two captive populations of Mexican wolves were pure *C. l. baileyi* and should be interbred with the captive certified lineage population that founded the captive breeding program. They confirmed that the two captive populations were pure Mexican wolves and that they and the certified lineage were closely related. Further, they found that, as a group, the three populations were the most distinct grouping of North American wolves, substantiating the distinction of the Mexican wolf as a subspecies.

Hedrick *et al.* (1997, pp. 64–65) examined data for 20 microsatellite loci from samples of Mexican wolves, northern gray wolves, coyotes, and dogs. They concluded that the Mexican wolf was divergent and distinct from other sampled northern gray wolves, coyotes, and dogs. Leonard *et al.* (2005, p. 10) examined mitochondrial DNA sequence data from 34 wolves collected from 1856 to 1916 from the historical ranges of *Canis lupus baileyi* and *Canis lupus nubilus.* They compared these data with sequence data collected from 96 wolves in North America and 303 wolves from Eurasia. They found that the historical wolves had twice the diversity of modern wolves, and that two-thirds of the haplotypes were unique. They also found that haplotypes associated with the Mexican wolf formed a unique southern clade distinct from that of other North American wolves. A clade is a taxonomic group that includes all individuals that have descended from a common ancestor.

In another study, von Holdt *et al.* (2011, p. 7) analyzed single nucleotide

polymorphisms genotyping arrays and found *Canis lupus baileyi* to be the most genetically distinct group of New World gray wolves. Chambers *et al.* (2012, pp. 34–37) reviewed the scientific literature related to classification of the Mexican wolf as a subspecies and concluded that this subspecies' recognition remains well-supported. Most recently, Cronin *et al.* (2014, p. 9) analyzed single nucleotide polymorphism genotyping arrays and found single nucleotide polymorphisms differentiation of Mexican wolves from other North American wolves. However, Cronin *et al.* (2014, p. 9) challenge the subspecies concept for North American wolves, including the Mexican wolf, based on their interpretation of other authors work (most notably Leonard *et al.* 2005 relative to mtDNA monophyly (see southern clade discussion above)). Maps of the Mexican wolf's historical range are available in the scientific literature (Young and Goldman 1944, p. 414; Hall and Kelson, 1959, p. 849; Hall 1981, p. 932; Bogan and Mehlhop 1983, p. 17; Nowak 1995, p. 395; Parsons 1996, p. 106). The southernmost extent of Mexican wolf's range in Mexico is consistently portrayed as ending near Oaxaca (Hall 1981, p. 932; Nowak 1995, p. 395). Depiction of the northern extent of the Mexican wolf's pre-settlement range among the available descriptions varies depending on the authors' taxonomic treatment of several subspecies that occurred in the Southwest and their related treatment of intergradation zones. Recent research based on historical specimens suggests the Mexican wolf ranged into southern Utah and southern Colorado across zones of intergradation where interbreeding with northern gray wolf subspecies may have occurred (Leonard *et al.* 2005, p. 11 and p. 15, insomuch as haplotype lu47 only had been documented to occur in Mexican wolves and was documented in a specimen in southern Colorado).

Hall's (1981, p. 932, based on Hall and Kelson 1959) map depicted a range for the Mexican wolf that included extreme southern Arizona and New Mexico, with *Canis lupus mogollonensis* occurring throughout most of Arizona, and *C. l. monstrabilis, Canis l. youngi, C. l. nubilus,* and *C. l. mogollonensis* interspersed in New Mexico. Bogan and Mehlhop (1983, p. 17) synonymized two previously recognized subspecies of gray wolf, *C. l. mogollonensis* and *C. l. monstrabilis,* with the Mexican wolf, concluding that the Mexican wolf's range included the Mogollon Plateau, southern New Mexico, Arizona, Texas, and Mexico. This extended the Mexican wolf's range northward to central Arizona and central New Mexico through the area that Goldman (1944) had identified as an intergrade zone with an abrupt transition from the Mexican wolf to *C. l. mogollensis.* Bogan and Mehlop's analysis did not indicate a sharp transition zone between the Mexican wolf and *C. l. mogollensis,* rather the wide overlap between the two subspecies led them to synonymize the Mexican wolf and *C. l. mogollensis.*

Hoffmeister (1986, p. 466) suggested that *Canis lupus mogollonensis* should be referred to as *C. l. youngi,* but maintained the Mexican wolf, *C. l. baileyi,* as a subspecies, stating that wolves north of the Mogollon Rim should be considered *C. l. youngi.* Nowak (1995, pp. 384–385) agreed with Hoffmeister's synonymizing of *C. l. mogollonensis* with *C. l. youngi,* and further lumped these into *C. l. nubilus,* resulting in a purported northern historical range for *Mexican wolf* as just to the north of the Gila River in southern Arizona and New Mexico. Nowak (1995) and Bogan and Mehlhop (1983) differed in their interpretation of which subspecies to assign individuals that were intermediate between recognized taxa, thus leading to different depictions of historical range for the Mexican wolf.

Subsequently, Parsons (1996, p. 104) included consideration of dispersal distance when developing a probable historical range for the purpose of reintroducing Mexican wolves in the wild pursuant to the Act, by adding a 200-mi (322-km) northward extension to the most conservative depiction of the Mexican wolf historical range (*i.e.,* Hall and Kelson 1959). This description of historical range was carried forward in the Final Environmental Impact Statement ''Reintroduction of the Mexican Wolf within its Historic Range in the Southwestern United States'' in the selection of the Blue Range Wolf Recovery Area as a reintroduction location for Mexican wolves (Service 1996).

Recent molecular genetic evidence from limited historical specimens supports morphometric evidence of an intergradation zone between Mexican wolf and northern gray wolves (Leonard *et al.* 2005, pp. 15–16). This research shows that, within the time period that the historical specimens were collected (1856–1916), a northern clade (*i.e.,* group that originated from and includes all descendants from a common ancestor) haplotype was found as far south as Arizona, and individuals with southern clade haplotypes (associated with Mexican wolves) occurred as far north as Utah and Nebraska. Leonard *et al.* (2005, p. 10) interpret this geographic distribution of haplotypes as indicating gene flow was extensive across the subspecies' limits during this historical period, and Chambers *et al.* (2012, p. 37) agree this may be a valid interpretation.

Subspecies Description

The Mexican wolf is the smallest extant gray wolf in North America. Adults weigh 23 to 41 kg (50 to 90 lb) with a length of 1.5 to 1.8 m (5 to 6 ft) and height at shoulder of 63 to 81 cm (25 to 32 in) (Brown 1988, p. 119). Mexican wolves are typically a patchy black, brown to cinnamon, and cream color, with primarily light underparts (Brown 1988, p. 118). Solid black or white coloration, as seen in other North American gray wolves, does not exist in Mexican wolves. Basic life history for Mexican wolves is similar to that of other gray wolves (Mech 1970, entire; Service 1982, p. 11; Service 2010, pp. 32–41).

Historical Distribution and Causes of Decline

Prior to the late 1800s, the Mexican wolf inhabited the southwestern United States and Mexico. In Mexico, Mexican wolves ranged from the northern border of the country southward through the Sierra Madre Oriental and Occidental and the altiplano (high plains) to the Neovolcanic Axis (a volcanic belt that runs east-west across central-southern Mexico) (SEMARNAP 2000, p. 8), although wolf distribution may not have been continuous through this entire region (McBride 1980, pp. 2–7). The Mexican wolf is the only subspecies known to have inhabited Mexico. In the United States, Mexican wolves (and, in some areas, *Canis lupus nubilus* and the previously recognized subspecies *C. l. monstrabilis, C. l. mogollonensis,* and *C. l. youngi*) inhabited montane forests and woodlands in portions of New Mexico, Arizona, and Texas (Young and Goldman 1944, p. 471; Brown 1988, pp. 22–23) (see Taxonomy). In southern Arizona, Mexican wolves inhabited the Santa Rita, Tumacacori, Atascosa–Pajarito, Patagonia, Chiricahua, Huachuca, Pinaleno, and Catalina Mountains, west to the Baboquivaris and east into New Mexico (Brown 1983, pp. 22–23). In central and northern Arizona, the Mexican wolf and other subspecies of gray wolf were interspersed (Brown 1983, pp. 23–24). The Mexican wolf and other subspecies were present throughout New Mexico, with the exception of low desert areas, documented as numerous or persisting in areas including the Mogollon, Elk, Tularosa, Diablo and Pinos Altos

Mountains, the Black Range, Datil, Gallinas, San Mateo, Mount Taylor, Animas, and Sacramento Mountains (Brown 1983, pp. 24–25). Gray wolf distribution (of other subspecies) continued eastward into the Trans-Pecos region of Texas and northward up the Rocky Mountains and to the Grand Canyon (Young and Goldman 1944, pp. 23, 50, 404–405), where intergradation between northern and southern wolf clades occurred (Leonard *et al.* 2005, pp. 11–15).

Population estimates of gray wolves, and specifically Mexican wolves, prior to the late 1800s are not available for the southwestern United States or Mexico. Some trapping records and rough population estimates are available from the early 1900s, but do not provide a rigorous estimate of population size of Mexican wolves in the United States or Mexico. For New Mexico, a statewide carrying capacity (potential habitat) of about 1,500 gray wolves was hypothesized by Bednarz, with an estimate of 480 to 1,030 wolves present in 1915 (ibid, pp. 6, 12). Brown summarized historical distribution records for the wolf from McBride (1980, p. 2) and other sources, showing most records in the southwestern United States as being from the Blue Range and the Animas region of New Mexico (Brown 1983, p. 10). In Mexico, Young and Goldman (1944, p. 28) stated that from 1916 to 1918 the Mexican wolf was fairly numerous in Sonora, Chihuahua, and Coahuila, although McBride comments that Mexican wolves apparently did not inhabit the eastern and northern portions of Coahuila, even in areas with seemingly good habitat (1980, p. 2).

The 1982 Mexican Wolf Recovery Plan cautioned: ''It is important . . . not to accept unquestioningly the accounts of the 1800s and early 1900s that speak of huge numbers of wolves ravaging herds of livestock and game . . . . The total recorded take indicates a much sparser number of wolves in the treated areas than the complaints of damage state or signify, even when one remembers that these figures do not reflect the additional numbers of wolves taken by ranchers, bounty-seekers and other private individuals (Service 1982, p. 4).''

Mexican wolf populations declined rapidly in the early and mid-1900s, due to government and private efforts across the United States to kill wolves and other predators. By 1925, poisoning, hunting, and trapping efforts drastically reduced Mexican wolf populations in all but a few remote areas of the southwestern United States, and control efforts shifted to wolves in the borderlands between the United States and Mexico (Brown 1983, p. 71). Bednarz (1988, p. 12) estimated that breeding populations of Mexican wolves were extirpated from the United States by 1942. The use of increasingly effective poisons and trapping techniques during the 1950s and 1960s eliminated remaining Mexican wolves north of the United States-Mexico border, although occasional reports of wolves crossing into the United States from Mexico persisted into the 1960s. Wolf distribution in northern Mexico contracted to encompass the Sierra Madre Occidental in Chihuahua, Sonora, and Durango, as well as a disjunct population in western Coahuila (from the Sierra del Carmen westward). Leopold (1959, p. 402) found conflicting reports on the status of the Coahuila population and stated that wolves were likely less abundant there than in the Sierra Madre Occidental.

When the Mexican wolf was listed as endangered under the Act in 1976, no wild populations were known to remain in the United States or Mexico. McBride (1980, pp. 2–8) conducted a survey to determine the status and distribution of wolves in Mexico in 1977. He mapped 3 general areas where wolves were recorded as still present in the Sierra Madre Occidental: (1) Northern Chihuahua and Sonora border (at least 8 wolves); (2) western Durango (at least 20 wolves in 2 areas); and (3) a small area in southern Zacatecas. Although occasional anecdotal reports have been made during the last three decades that a few wild wolves still inhabit forested areas in Mexico, no publicly available documented verification exists. Several Mexican wolf individuals captured in the wild in Mexico became the basis for the captive-breeding program that has enabled the reintroduction to the wild (see below, Current Distribution—In Captivity).

Current Distribution in the United States

On January 12, 1998, we published a final rule in the **Federal Register** to establish the Mexican Wolf Experimental Population Area (MWEPA) in central Arizona, New Mexico, and a small portion of northwestern Texas (63 FR 1752). In March of 1998 we released 11 Mexican wolves from the captive-breeding program to the wild. We have conducted additional initial releases or translocations of individuals and family groups into the Blue Range Wolf Recovery Area (BRWRA) within the MWEPA through 2014. At the end of 2013, a single wild population of a minimum of 83 Mexican wolves (December 31, 2013, population count) inhabited the United States in central Arizona and New Mexico. Mexican wolves do not occupy the small portion of northwestern Texas included in the MWEPA. For more information regarding the MWEPA, please see Revision to the Regulations for the Nonessential Experimental Population of the Mexican Wolf, which published elsewhere in this **Federal Register**.

Mexican wolves associated with the MWEPA also currently occupy the Fort Apache Indian Reservation of the White Mountain Apache Tribe, adjacent to the western boundary of the BRWRA. Since 2000, an agreement between the Service and the White Mountain Apache Tribe permits the release, dispersal, and establishment of Mexican wolves onto the reservation, providing an additional 2,500 mi^2 (6,475 km^2) of high-quality forested wolf habitat for the reintroduction (Service 2001, p. 4). The White Mountain Apache Tribe does not make information about the number and location of Mexican wolves on the reservation publicly available.

Detailed information on the status of the experimental population and the reintroduction project can be found in the 2001 to 2013 annual reports, the 2010 Mexican Wolf Conservation Assessment (Service 2010), and our online population statistics, available at *http://www.fws.gov/southwest/es/mexicanwolf/.*

Current Distribution in Mexico

In October 2011, Mexico initiated the reestablishment of Mexican wolves to the wild (see Historical Distribution) with the release of five captive-bred Mexican wolves into the San Luis Mountains just south of the U.S.-Mexico border. Mexico has continued to release animals into the wild during the past few years. Through August 2014, Mexico released a total of 14 adult Mexican wolves, of which 11 died or are believed dead, and 1 was removed for veterinary care. Of the 11 Mexican wolves that died or are believed dead, 6 were due to illegal killings (4 from poisoning and 2 were shot), 1 wolf was presumably killed by a mountain lion, 3 causes of mortality are unknown (presumed illegal killings because collars were found, but not the carcasses), and 1 disappeared (neither collar nor carcass has been found). The remaining two adult Mexican wolves were documented with five pups in 2014, marking the first successful reproductive event in Mexico. We expect the number of Mexican wolves in Mexico to fluctuate from zero to several packs in or around Sonora, Durango, and Chihuahua in the near future.

In Captivity

Due to the extirpation of Mexican wolves in the United States and Mexico, the first step in the recovery of the subspecies was the development of a captive-breeding population to ensure the Mexican wolf did not go extinct. Between 1977 and 1980, a binational captive-breeding program between the United States and Mexico, referred to as the Mexican Wolf Species Survival Plan (SSP), was initiated with the capture of the last known Mexican wolves in the wild in Mexico and subsequent addition of wolves from captivity in Mexico and the United States. The individual unrelated seven wolves used to establish the captive-breeding program are considered the ''founders'' of the breeding population. These pure Mexican wolves represent three distinct lineages (family groups): McBride (also known as the Certified lineage; three individuals), Ghost Ranch (two individuals), and Aragon (two individuals). From the breeding of these 7 Mexican wolves and generations of their offspring, the captive population has expanded to its current size of 248 Mexican wolves in 55 facilities in the United States and Mexico (Siminski and Spevak 2014).

The purpose of the SSP is to reestablish Mexican wolves in the wild through captive breeding, public education, and research. This captive population is the sole source of Mexican wolves available to reestablish the subspecies in the wild and is imperative to the success of the Mexican wolf reintroduction project and any additional efforts to reestablish the subspecies that may be pursued in the future in Mexico by the General del Vida Silvestre or by the Service in the United States.

Captive Mexican wolves are routinely transferred among the zoos and other SSP holding facilities to facilitate genetic exchange (through breeding) and maintain the health and genetic diversity of the captive population. The SSP strives to house a minimum of 240 wolves in captivity at all times to ensure the security of the subspecies in captivity, while still being able to produce surplus animals for reintroduction.

In the United States, Mexican wolves from captive SSP facilities that are identified for potential release are first evaluated for release suitability and undergo an acclimation process. All Mexican wolves selected for release in the United States and Mexico are genetically redundant to the captive population, meaning their genes are already well represented in captivity. This minimizes any adverse effects on the genetic integrity of the remaining captive population in the event that Mexican wolves released to the wild do not survive.

Habitat Description

Historically, Mexican wolves were associated with montane woodlands characterized by sparsely to densely forested mountainous terrain consisting of evergreen oaks (*Quercus* spp.) or pinyon (*Pinus edulus*) and juniper (*Juniperus* spp.) to higher elevation pine (*Pinus* spp.), mixed-conifer forests, and adjacent grasslands at elevations of 4,000 to 5,000 ft (1,219 to 1,524 m) where ungulate prey were numerous. Factors making these vegetation communities attractive to Mexican wolves likely included the abundance of ungulate prey, availability of water, and the presence of hiding cover and suitable den sites. Early investigators reported that Mexican wolves probably avoided desert scrub and semidesert grasslands that provided little cover, food, or water (Brown 1988, pp. 19–22).

Prior to their extirpation in the wild, Mexican wolves were believed to have preyed upon white-tailed deer (*Odocoileus virginianus*), mule deer (*O. hemionus*), elk (*Cervus elaphus*), collared peccaries (javelina) (*Tayassu tajacu*), pronghorn (*Antilocapra americana*), bighorn sheep (*Ovis canadensis*), jackrabbits (*Lepus* spp.), cottontails (*Sylvilagus* spp.), and small rodents (Parsons and Nicholopoulos 1995, pp. 141–142); white-tailed deer and mule deer were believed to be the primary sources of prey (Brown 1988, p. 132; Bednarz 1988, p. 29).

Today, Mexican wolves in Arizona and New Mexico inhabit evergreen pine–oak woodlands (*i.e.,* Madrean woodlands), pinyon–juniper woodlands (*i.e.,* Great Basin conifer forests), and mixed-conifer montane forests (*i.e.,* Rocky Mountain, or petran, forests) that are inhabited by elk, mule deer, and white-tailed deer (Service 1996, pp. 3–5; AMOC and IFT 2005, p. TC–3). Mexican wolves in Arizona and New Mexico show a strong preference for elk compared to other ungulates (AMOC and IFT 2005, p. TC–14, Reed *et al.* 2006, pp. 56, 61; Merkle *et al.* 2009, p. 482). Other documented sources of prey include deer (*O. virginianus* and *O. hemionus*) and occasionally small mammals and birds (Reed *et al.* 2006, p. 55). Mexican wolves are also known to prey and scavenge on livestock (Reed *et al.* 2006, p. 1129).

Summary of Comments and Recommendations

We requested written comments from the public on the proposed rule to remove the gray wolf from the List of Endangered and Threatened Wildlife and maintaining protections for the Mexican wolf by listing it as endangered during a 6-month comment period from June 13, 2013, to December 17, 2013. Between September 30, 2013, and December 3, 2013, the Service held a series of public hearings on the proposed rule: September 30, 2013, in Washington, District of Columbia; November 19, 2013, in Denver, Colorado; November 20, 2013, in Albuquerque, New Mexico; November 22, 2013, in Sacramento, California; and December 3, 2013, in Pinetop, Arizona. We reopened the public comment period on February 10, 2014, in conjunction with announcing the availability of the independent scientific peer review report on the proposal. This comment period closed on March 27, 2014. We also contacted appropriate Federal, Tribal, State, county, and local agencies, scientific organizations, and other interested parties and invited them to comment on the proposed rule during these comment periods.

All substantive information specifically related to our proposal to list the Mexican wolf as an endangered subspecies provided during the comment periods, including the public hearings, has either been incorporated directly into this final determination or addressed below. Comments from peer reviewers and State agencies are grouped separately. In addition to the comments, some commenters submitted additional reports and references for our consideration, which were reviewed and incorporated into this final rule as appropriate.

Peer Reviewer Comments

The National Center for Ecological Analysis and Synthesis (NCEAS) was asked to perform an independent scientific review of the proposed rule to remove the gray wolf from the List of Endangered and Threatened Wildlife and maintain protections for the Mexican wolf by listing it as endangered (78 FR 35664, June 13, 2013). In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), NCEAS solicited expert opinions from seven knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. NCEAS received responses from five of the seven peer

reviewers they contacted during the public comment period.

Based on their panel discussion in January 2014, peer reviewers came to general consensus that the Mexican wolf is the most differentiated gray wolf in North America. Also, peer reviewers discussed and seemed to reach general concurrence that the historical range of the Mexican wolf was likely larger than described by the Service in the proposed rule based on the presence of genetic markers found in historical wolf specimens described by Leonard *et al.* 2005, and they questioned how this information should be incorporated into decisions about its status. They expressed concern over the Service's reliance on the Chambers *et al.* 2012, manuscript within the Service's proposal to delist the gray wolf in the United States, which included the identification of, and discussion of the validity of, other gray wolf subspecies, but their concerns did not lead them to conclude that the Mexican wolf was not a valid entity to list under the Act. Rather, they focused on how the Service should ''draw a line on a map'' to indicate the historical range of the Mexican wolf and the appropriate geographic extent of the listed entity.

We reviewed all comments received from the peer reviewers regarding the proposed listing of the Mexican wolf as an endangered subspecies. As previously noted, the peer reviewers generally concurred with our methods and conclusions that the Mexican wolf is ecologically and morphologically distinct. They also provided additional information, clarifications, and suggestions to improve this final rule. Peer reviewer comments are addressed in the following summary and incorporated into the final rule, as appropriate.

(1) *Comment:* Peer reviewers stated that the Service did not use the best available information related to the exclusive reliance on the concordance method of identifying species/subspecies utilized by Chambers *et al.* 2012. The justification for the exclusive use of this approach is not well defended by the Service.

Our response: As required by section 4(b) of the Act, we used the best scientific and commercial data available in making this final determination for the Mexican wolf. We solicited peer review from knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles to ensure that our listing is based on scientifically sound data, assumptions, and analysis. Additionally, we requested comments or information from other concerned governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties concerning the proposed rule. The commenters' concerns with the Service's reliance on the Chambers *et al.* 2012, manuscript primarily focused on taxonomic issues associated with gray wolf populations other than the Mexican wolf. Taxonomic issues related to other gray wolf populations are not germane to this final rule to list the Mexican wolf as an endangered subspecies. Specific to the Mexican wolf, the peer reviewers concurred that the Mexican wolf is differentiated from other gray wolves by multiple morphological and genetic markers documented in the scientific literature. The Act is explicit that threatened or endangered subspecies are to be protected.

(2) *Comment:* Peer reviewers noted that genetic markers indicate a larger historical range for Mexican wolf than described by the Service and should be taken into consideration when determining its status and the range within which recovery could occur.

Our response: We have not attempted to define historical range for the Mexican wolf, but rather to describe available historical range information contained in the scientific literature, including the research by Leonard *et al.* 2005 referenced by the peer reviewers. Listing the entire Mexican wolf subspecies means that all members of the taxon are afforded the protections of the Act regardless of where they are found; therefore, we do not demarcate a specific geographic area in which conservation and recovery efforts may take place. Rather, guidance about the abundance and distribution of the Mexican wolf necessary for delisting will be provided in a revised recovery plan containing recovery (delisting) criteria. Therefore, we recognize that current research such as Leonard *et al.* 2005 suggests a larger historical geographic range for the Mexican wolf than described by prior accounts (Hall 1981, p. 932; Bogan and Mehlhop 1983, p. 17; Nowak 1995, pp. 384–385). However, this information does not lead us to a different conclusion about the endangered status of the Mexican wolf, nor are any recovery options precluded by our discussion of historical range.

Comments From States

(3) *Comment:* One State agency expressed concern that the Service did not articulate reasons for choosing to list the Mexican wolf as a subspecies rather than a DPS, claiming that the Mexican wolf is legally eligible for a DPS listing under the Service's policy, and, therefore, the choice to list it as a subspecies as opposed to a DPS is a discretionary act subject to review under the Administrative Procedure Act.

Our response: Under section 3(16) of the Act, we may consider for listing any species, including subspecies, of fish, wildlife, or plants, or any DPS of vertebrate fish or wildlife that interbreeds when mature. As noted in our Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Act (61 FR 4722, February 7, 1996), Congress has instructed the Secretary to exercise authority to list DPS's sparingly. Because a DPS is typically a subset of a species or subspecies, we first determine whether any negative impacts appear to be affecting the species or subspecies anywhere in its range, and whether any of these impacts rise to the level of threats such that the species or subspecies is endangered or threatened throughout its range. If we determine that a species or subspecies is endangered or threatened throughout its range, then we are not required to conduct a DPS analysis. In other words, we typically first assess whether or not an entity qualifies for listing as a species or subspecies before assessing whether it qualifies as a DPS. Because the Mexican wolf qualifies for listing as a subspecies throughout its range, we are not analyzing whether or not it warrants listing as a DPS.

(4) *Comment:* Among other alternatives, the Service should also be considering listing two DPS's of gray wolf or Mexican wolf (*i.e.,* one in Arizona and New Mexico and the other in Mexico), the range of which is bisected by the International Border between the United States and Mexico.

Our response: See response immediately above regarding listing a DPS of the Mexican wolf.

(5) *Comment:* One State agency expressed concern that, if listed as a subspecies, the Mexican wolf will never be delisted in the United States. The commenter stated that a species or subspecies may be delisted only when it is no longer in danger of extinction throughout all or a significant portion of its range and that approximately 10 percent of the Mexican wolf's historical range occurs in the United States with the remainder in Mexico. Because the Mexican wolf in the United States will never constitute a significant portion of the subspecies' range, delisting would require substantial wolf recovery in Mexico.

Our response: ''Range'' as referred to in the phrase ''significant portion of its range'' refers to the general geographical area within which the species can be found at the time the Service makes a status determination (79 FR 37578, July 1, 2014). Prior to its extirpation in the 1900's, the Mexican wolf inhabited large portions of Mexico. Our colleagues in Mexico are continuing to investigate whether areas that functioned as wolf habitat historically are suitable for wolf reintroduction and recovery efforts today (Araiza *et al.* 2012, entire). Regardless, the Act does not stipulate that a species must inhabit all of its historical range in order to be recovered. Rather, threats to the species must be alleviated such that it is secure in its range at the time of status determination, such as delisting, listing, or reclassification. Therefore, listing the Mexican wolf as a subspecies does not preclude the ability to achieve recovery and delist the subspecies. A recovery strategy, including delisting criteria, will be developed in a revised recovery plan for the Mexican wolf.

(6) *Comment:* One commenter expressed concern that if we have to wait for recovery to occur in Mexico before we can delist the Mexican wolf, States will be faced with unchecked population growth of Mexican wolves with no effective mechanism for controlling population growth, which will lead to the detriment of livestock and big game wildlife in the United States.

Our response: See response above. The purpose of the Act is to recover species such that they are no longer in danger of extinction now or within the foreseeable future throughout all or a significant portion of their range, at which time they are delisted and management of the species is typically turned over to the State and tribal wildlife agencies. Further, in a separate rule in this **Federal Register**, we have published the Revision to the Nonessential Experimental Population of the Mexican Wolf, which contains take provisions for Mexican wolves by designated agencies and the public, demonstrating that the Service is cognizant of the need to include such (control) measures as a component of wolf reintroduction and recovery efforts.

(7) *Comment:* One State agency noted that the Service's proposed rule to list the Mexican wolf as an endangered subspecies referenced several important documents to which the public has not had access.

Our response: All of the comments, materials, and documentation that we considered in this rulemaking were available by appointment, during normal business hours at: Mexican Wolf Recovery Program, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna Road NE., Albuquerque, NM 87113; by telephone 505–761–4704; or by facsimile 505–346–2542.

(8) *Comment:* One State agency suggested that the Service should recognize Mexican wolf historical range as extending from central Mexico into Arizona and New Mexico south of Interstate Highway 40.

Our response: We have utilized the best available science to describe historical range for the Mexican wolf in the Background section of this final rule. Maps of the Mexican wolf's historical range are available in the scientific literature (Young and Goldman 1944, p. 414; Hall and Kelson, 1959, p. 849; Hall 1981, p. 932; Bogan and Mehlhop 1983, p. 17; Nowak 1995, p. 395; Parsons 1996, p. 106). Depiction of the northern extent of the Mexican wolf's historical range among the available descriptions varies depending on the authors' taxonomic treatment of several subspecies that occurred in the Southwest and their related treatment of intergradation zones. In any case, there is evidence indicating that the Mexican wolf may have ranged north into southern Utah and southern Colorado within zones of intergradation where interbreeding with other gray wolf subspecies may have occurred (Leonard *et al.* 2005, p. 11 and p. 15).

(9) *Comment:* The Service does not provide cooperators and stakeholders with sufficient time to comprehensively analyze the Service's varied proposals on Mexican wolf listing. The Service expects stakeholders and cooperators, in a matter of months, to review and digest hundreds of pages of material, sort out the interconnected points concerning all the facets of the entirety, review the alternatives, formulate comments, and otherwise meaningfully participate in the review process.

Our response: The Service recognizes that public involvement is an essential part of the rulemaking process, helping to inform both the agency and the affected public. That is why we requested written comments from the public on the proposed rule and contacted appropriate Federal, Tribal, State, county, and local agencies, scientific organizations, and other interested parties and invited them to comment on the proposed rule during the open comment period from June 13, 2013, to December 17, 2013, and the reopened comment period from February 10, 2014, to March 27, 2014. We believe that the nearly 8-month open comment period was sufficient time for cooperators and stakeholders to comprehensively analyze the Service's proposed rule and provide comment.

Comments From Tribes

(10) *Comment:* Any listing or delisting of the gray wolf or the Mexican wolf must recognize the Tribe's rights and sovereignty in managing wildlife on Tribal lands. The proposed rule fails in this respect.

Our response: The Service recognizes the Tribe's rights and sovereignty in managing wildlife on Tribal lands (see Government to Government Relationships with Tribes section below). Under their sovereign authority Tribes have the option of allowing Mexican wolves to occupy Tribal trust land or to request their removal. Also, elsewhere in this **Federal Register**, we are finalizing revisions to the nonessential experimental population of the Mexican wolf, which will give Tribes the option to enter into voluntary agreements with the Service for the management of Mexican wolves on Tribal trust land.

Public Comments

(11) *Comment:* We received numerous requests from diverse interest groups and individuals asking that we subdivide our final determination on listing the Mexican wolf as endangered from the final determination on our proposal regarding the current listing for gray wolf in all or portions of 42 States and Mexico.

Our response: We are separating our determination on the listing of the Mexican wolf as endangered from the determination on our proposal regarding removing the current listing for gray wolf from the List of Endangered and Threatened Wildlife. This rule finalizes our determination for the Mexican wolf. A subsequent decision will be made for the rest of the United States.

(12) *Comment:* A problematic aspect of the rule is the fact that the Service does not designate the species as endangered over a specific geographic area, but instead designates the subspecies as endangered where found. Genetic analysis of historic Mexican wolves showed that the range of the Mexican wolf likely extended beyond the historic range initially inferred from limited record data.

Our response: Unless we designate a Distinct Population Segment, which has a geographic component to the designation, a species or subspecies listing means that all members of the taxon are afforded the protections of the Act regardless of where they are found. We have described the historical range

of the Mexican wolf in the Background section of this rule.

(13) *Comment:* Listing the Mexican wolf as endangered would negatively impact the private landowners and ranchers in the State of Arizona by imposing additional restrictions on those private lands, which is an economic and operational burden on the public.

Our response: This final rule to list the Mexican wolf as an endangered subspecies will not change the protected status of the Mexican wolf as, to date, it has been listed as endangered within the broader gray wolf listing; rather, this final rule creates an independent listed entity for the Mexican wolf on the List of Endangered and Threatened Wildlife, separate from the gray wolf entity. As previously noted, we are finalizing revisions to the nonessential experimental population of the Mexican wolf elsewhere in this **Federal Register**, which relaxes some of the Act's prohibitions for take of Mexican wolves in certain circumstances. With this final rule to list the Mexican wolf as an endangered subspecies, there are no additional restrictions to private landowners.

(14) *Comment:* Has the Service examined the biological ramifications of the illegal killings? What analyses were used to estimate the level of impact of a 0 to 15 percent annual mortality attributed to illegal killing of wolves? The proposed listing stated 3 Mexican wolves died from disease, 3 from predation, 14 from vehicular collisions, 4 from other reason, 9 for unknown reasons, and 46 from illegal killing. What was the fate of the 13 wolves unaccounted for in this document that died from 1998 to 2012? The Service should show mortality graphically; what is the ratio of illegal kills to population size?

Our response: We recognize that illegal killing is the number one source of mortality to Mexican wolves in the wild; see Factor C. Disease and Predation, for our discussion and assessment of this mortality factor. Known wolf mortality is documented annually and is available on our Web site at *http://www.fws.gov/southwest/es/mexicanwolf/MWPS.cfm.*

(15) *Comment:* The Mexican wolf experimental population has been unsuccessful due to weak genetics that caused malformed jaws and other deformities, hybridization with dogs after releases into the wild, habituation to humans, dependence on human food including livestock regardless of abundant wild ungulate prey availability, and a variety of other fatal flaws.

Our response: We describe known instances of hybridization in Factor E of this final rule. Based on the low number of occurrences of Mexican wolf-dog hybrids, we do not consider hybridization to be a threat to the Mexican wolf. We also discuss genetic concerns in Factor E, which, although not specific to physical deformities, we do determine inbreeding and loss of heterozygosity to be threats to the Mexican wolf. We have not documented Mexican wolf dependence on human food, including livestock; while Mexican wolves do occasionally prey on livestock, their primary prey in the Mexican Wolf Experimental Population Area is elk (see Background section).

(16) *Comment:* The Service fails to present the expected outcomes of genetic depression (decreased fitness, negatively biased population growth rate, loss of adaptive potential) on the Mexican wolf. How does the Service quantify loss of adaptive potential? What does the Service propose to do to address their concerns over inbreeding? If the nonessential population is genetically depressed, why does the Service continue to release Mexican wolves that are inbred? Over what timeframe does the Service expect to be able to effect a change in the genetic depression of the Mexican gray population?

Our response: Tracking of the genetic status of the captive and wild Mexican wolf populations is conducted by the Species Survival Plan, which tracks the mean kinship of wolves and other relevant metrics of the captive and wild population. We describe our concerns related to the genetic composition of the Mexican wolf population under Factor E. In a separate rule published in this **Federal Register**, Revision to the Nonessential Experimental Population of the Mexican Wolf, and our associated Environmental Impact Statement, we address our need to increase the number of initial releases we conduct in order to improve the genetic composition of the nonessential population. We expect to substantially improve the genetic status of the nonessential population within several Mexican wolf generations, or about 12 to 16 years.

(17) *Comment:* Except in cases of absolute isolation, what we call subspecies are populations with variable rates of gene flow over time and space. It is time for the Service to abandon typological thinking, stop using subspecies for listings, and use the biologically robust concepts of populations with quantifiable rates of gene flow and phylogenetic independence.

Our response: The Act is explicit that threatened or endangered subspecies are to be protected. Our Service regulations require us to rely on standard taxonomic distinctions and the biological expertise of the Department of the Interior and the scientific community concerning the relevant taxonomic group (50 CFR 424.11).

(18) *Comment:* According to the Service, the ''nature of the available data does not permit the application of many traditional subspecies criteria'', and many experts actually reject the notion of wolf subspecies due to the ease with which wolves move and interbreed. The Service further admits that the taxonomy for wolves is complicated and continuously evolving. These statements clearly show the lack of definitive information supporting the identification of gray wolf subspecies.

Our response: We recognize that wolf taxonomy is complicated and continuously evolving. However, the controversy in the scientific community has focused on wolf populations other than the Mexican wolf (but see Cronin *et al.* 2014, p. 9), which are outside the purview of this final rule. The best available scientific literature, and our Service regulations that require us to rely on standard taxonomic distinctions, support the recognition of the Mexican wolf as a subspecies of gray wolf.

(19) *Comment:* Review of the literature shows that the Mexican wolf does not warrant subspecies status. Data for 170,000 single nucleotide polymorphisms (Cronin *et al.* in preparation) and 48,000 single nucleotide polymorphisms (vonHoldt *et al.* 2011) shows that single nucleotide polymorphisms allele frequency differentiation of Mexican wolves and other North American wolves is relatively high. However, Mexican wolves lack mtDNA monophyly and share haplotypes with wolves in other areas (Leonard *et al.* 2005), and mtDNA haplotypes in Mexican wolves have low sequence divergence from other wolf haplotypes. This sequence divergence is particularly low because it is for the hypervariable control region.

Our response: As required by section 4(b) of the Act, we used the best scientific and commercial data available and continue to recognize the Mexican wolf (*Canis lupus baileyi*) as a distinct gray wolf subspecies. Taxonomic issues related to other gray wolf populations are not germane to this final rule to list the Mexican wolf as an endangered subspecies. Specific to the Mexican wolf, the peer reviewers concurred that the Mexican wolf is differentiated from other gray wolves by multiple morphological and genetic markers

documented in the scientific literature. Further, Leonard *et al.* (2005, p. 10) found that haplotypes associated with the Mexican wolf formed a unique southern clade distinct from that of other North American wolves. A clade is a taxonomic group that includes all individuals that have descended from a common ancestor.

(20) *Comment:* A science-based recovery plan has the potential to reduce conflict over the long term by minimizing litigation, minimizing resources needed by the Service for defending its actions, and speeding the eventual delisting of the Mexican wolf. Because lack of an updated recovery plan seriously hampers efforts to recover the subspecies, we encourage the Service to resume the recovery planning process immediately.

Our response: We intend to resume the recovery planning process to develop a revised recovery plan for the Mexican wolf after completion of this final rule.

(21) *Comment:* Several commenters recommended management of the Mexican wolf be returned to the States. Delisting of the wolf would automatically trigger this return of State control.

Our response: In our final rule, published elsewhere in this **Federal Register**, Revision to the Nonessential Experimental Population of the Mexican Wolf, we allow for States (or other agencies) to cooperate in the management of Mexican wolves as designated agencies. Due to our determination of endangered status for the Mexican wolf, we are not delisting the Mexican wolf at this time. When the Mexican wolf has been recovered and delisted, management control will be turned over to State and tribal agencies.

(22) *Comment:* The States of Arizona and New Mexico have sufficient regulations and trained personnel and programs in place to protect Mexican wolves so that a Federal listing is unwarranted under the Act.

Our response: We have no information to suggest that, absent the Act's protections, illegal killing of Mexican wolves in the United States would cease. Rather, illegal killing of Mexican wolves could increase, as State penalties (assuming wolves were granted protected status by the States) would be less severe than current Federal penalties under the Act. Thus, existing State penalties in Arizona and New Mexico would not serve as an adequate deterrent to illegal take. Also, in 2011, the New Mexico Department of Game and Fish withdrew from the Mexican Wolf Recovery Program and has shown no intention of rejoining or further cooperating with the program. We address this issue under Factor D. Adequate Regulatory Mechanisms.

(23) *Comment:* Several commenters stated that local citizens are fearful of Mexican wolves and noted the need to protect themselves when in areas occupied by wolves, psychological impacts on children, pet safety, and related topics. One commenter stated that he would face criminal charges if he defended himself against a wolf. These commenters stated that the Service has not adequately recognized or addressed these issues.

Our response: There are no historical or recent cases of Mexican wolves attacking humans. If a Mexican wolf were to attack someone, the Act allows a person to take (including kill) a Mexican wolf in self-defense or in defense of another person. Elsewhere in this **Federal Register**, we have published a final Revision to the Nonessential Experimental Population of the Mexican Wolf, which provides conditional take provisions (in addition to take for self-defense) of Mexican wolves by the Service, designated agencies, and individuals under certain circumstances.

(24) *Comment:* The Service states that the status of Mexican wolves in Mexico is unknown. Mexican wolves should be managed through a coordinated effort internationally according to sound biological principles and with consideration to all other State, national, and international laws that protect the health, safety, and welfare of humans.

Our response: We are fully aware of the status of Mexican wolves in Mexico, as we are in continual communication with the Federal agencies in Mexico that are responsible for the reintroduction of the Mexican wolf. We have clarified language in this final rule regarding the status of wolves in Mexico; see Current Distribution in Mexico. While we may at times coordinate various Mexican wolf management activities with Federal agencies in Mexico (such as sharing equipment or transferring captive wolves between captive facilities), the reintroduction of Mexican wolves in the United States and Mexico are independent efforts.

(25) *Comment:* The Service should consider the negative impacts to our elk, deer, bighorn sheep, and javelina populations from predation by possible reintroduced Mexican wolves. A decrease in these game animals will create a significant economic and recreational loss to our State.

Our response: While the Act is explicit that our listing determinations must be made solely on the basis of the best scientific and commercial data available, in a separate action published elsewhere in this **Federal Register** we have considered the impacts to ungulate populations from the experimental population of Mexican wolves in our Environmental Impact Statement, Revision to the Nonessential Experimental Population of the Mexican Wolf, available on our Web site at *http://www.fws.gov/southwest/es/mexicanwolf/NEPA_713.cfm.*

Summary of Changes From the Proposed Rule

In this final rule, we make one substantive change from the proposal. We are separating our determination on the listing of the Mexican wolf as endangered from the determination on our proposal regarding the delisting of the gray wolf in the United States and Mexico. This rule finalizes our determination for the Mexican wolf. A subsequent decision will be made for the gray wolf.

Summary of Factors Affecting the Mexican Wolf

Several threats analyses have been conducted for the Mexican wolf. In the initial proposal to list the Mexican wolf as endangered in 1975 and in the subsequent listing of the entire gray wolf species in the contiguous United States and Mexico in 1978, the Service found that threats from habitat loss (factor A), sport hunting (factor B), and inadequate regulatory protection from human targeted elimination (factor D) were responsible for the Mexican wolf's decline and near extinction (40 FR 17590, April 21, 1975; 43 FR 9607, March 9, 1978). In the 2003 reclassification of the gray wolf into three distinct population segments, threats identified for the gray wolf in the Southwestern Distinct Population Segment (which included Mexico, Arizona, New Mexico, and portions of Utah, Colorado, Oklahoma, and Texas) included illegal killing and (negative) public attitudes (68 FR 15804, April 1, 2003). The 2010 Mexican Wolf Conservation Assessment (Conservation Assessment) contains the most recent five-factor analysis for the Mexican wolf (Service 2010, p. 60). The purpose of the Conservation Assessment, which was a non-regulatory document, was to evaluate the status of the Mexican wolf reintroduction project within the broader context of the subspecies' recovery. The Conservation Assessment found that the combined threats of illegal shooting, small population size, inbreeding, and inadequate regulatory protection were hindering the ability of the current population to reach the

population objective of at least 100 wolves in the BRWRA (Service 2010, p. 60).

The threats we address in this five-factor analysis and our conclusions about a given factor may differ from previous listing actions due to new information, or, in the case of the Conservation Assessment, the difference in perspective necessitated by the listing process compared to that of the Conservation Assessment, which was focused on recovery. For example, in this five-factor analysis we analyze currently occupied habitat, whereas the Conservation Assessment included discussion of unoccupied habitat that may be important in the future for recovery. In this five-factor analysis, we are assessing which factors pose a threat to the existing population of wolves in the BRWRA or would pose a threat to these wolves if the protections of the Act were not in place.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

As previously discussed, wolves are considered habitat generalists with fairly broad ecological capabilities and flexibility in using different prey and vegetation communities (Peterson and Ciucci 2003, pp. 104–111). Gray wolves hunt in packs, primarily pursuing medium to large hooved mammals. Wolf density is positively correlated to the amount of ungulate biomass available and the vulnerability of ungulates to predation (Fuller *et al.* 2003, pp. 170–175). These characterizations apply to the Mexican wolf and form our basis for defining suitable habitat.

We consider suitable habitat for the Mexican wolf as forested, montane terrain containing adequate wild ungulate populations (elk, white-tailed deer, and mule deer) to support a wolf population. Suitable habitat has minimal roads and human development, as human access to areas inhabited by wolves can result in wolf mortality. Specifically, roads can serve as a potential source of wolf mortality due to vehicular collision and because they provide humans with access to areas inhabited by wolves, which can facilitate illegal killing of wolves. Although the road itself could be considered a form of habitat modification, the primary threat to wolves related to roads stems from the activities enabled by the presence of roads (*i.e.,* vehicular collision and illegal killing) rather than a direct effect of the road on the wolf such as a boundary to dispersal. We address illegal killing under factor C. Disease or Predation, and vehicular collision under factor E. Other.

For the Mexican wolf, we define habitat destruction, modification, or curtailment as a decrease or modification in the extent or quality of forested, montane terrain in currently occupied habitat, or a decrease in ungulate populations in currently occupied habitat, such that wolves would not persist in that area. In order to assess whether habitat destruction, modification, or curtailment is a threat to Mexican wolves, we consider information related to land status (as a characteristic of quality related to minimal human development) and the effects of catastrophic wildfire on Mexican wolves and ungulates. Our definitions of suitable habitat and of habitat destruction, modification, and curtailment are the same for the United States and Mexico. Implications of climate change are addressed under factor E. Other.

United States—Mexican wolves currently inhabit only the BRWRA as identified in the January 12, 1998, final rule to designate an experimental population (63 FR 1752), as well as the adjacent Fort Apache Indian Reservation as allowed by an agreement between the White Mountain Apache Tribe and the Service. As noted above, we finalize revisions to our regulations for the experimental population of the Mexican wolf, which published elsewhere in this **Federal Register**. With this MWEPA revision, Mexican wolves will be allowed to inhabit the entire MWEPA, with the exception of any tribal areas where their removal is requested. In the revised MWEPA, there are 32,244 mi^2 (83,512 km^2) of suitable Mexican wolf habitat (Service 2014, p. 25). Of this suitable habitat, 63 percent occurs on federally owned land; of that, the U.S. Forest Service accounts for 91 percent, the Bureau of Land Management, 7 percent, and other Federal land ownership comprises the final 2 percent.

We consider Federal land in the revised MWEPA to be an important characteristic of the quality of the reintroduction area. Federal lands such as National Forests are considered to have the most appropriate conditions for Mexican wolf reintroduction and recovery efforts because they typically have significantly lesser degrees of human development and habitat degradation than other land-ownership types (Fritts and Carbyn 1995, p. 26). We do not have any information or foresee any change in the size, status, ownership, or management of the National Forests in the revised MWEPA in the future. If Mexican wolves were not protected by the Act, we cannot foresee any changes to the status of these National Forests such that suitability for Mexican wolves would significantly diminish.

Current and reasonably foreseeable management practices in all of the Apache, Gila, and Sitgreaves National Forests; the Payson, Pleasant Valley, and Tonto Basin Ranger Districts of the Tonto National Forest; and the Magdalena Ranger District of the Cibola National Forest are expected to support ungulate populations at levels that will sustain a growing Mexican wolf population in the revised MWEPA. Prey populations throughout all of Arizona and New Mexico continue to be monitored by the State wildlife agencies within Game Management Units, the boundaries of which are defined in each State's hunting regulations. We do not predict any significant change to ungulate populations that inhabit the National Forests such that habitat suitability for Mexican wolves would diminish.

On the other hand, wildfire is a type of habitat modification that could affect the Mexican wolf population in two primary ways—by killing of wolves directly or by causing changes in the abundance and distribution of ungulates. Two recent large wildfires, the Wallow Fire and the Whitewater-Baldy Complex Fire, have burned within close proximity to denning wolf packs. Due to their very large size and rapid spread, both of these fires are considered catastrophic wildfires.

On May 29, 2011, the Wallow Fire began in Arizona and spread to over 538,000 ac (217,721 ha) in Arizona (Apache, Navajo, Graham, and Greenlee Counties; San Carlos Apache Indian Reservation, Fort Apache Indian Reservation) and New Mexico (Catron County) by the end of June. The Wallow Fire was human-caused and is the largest fire in Arizona's recorded history to date. The Wallow Fire burned through approximately 11 percent of the BRWRA. Three known or presumed wolf pack denning locations (Rim pack, Bluestem pack, Hawks Nest pack) were within the fire's boundaries (Service 2011). Although we had initial concern that denning pups (which are not as mobile as adults or may depend on adults to move them from the den) may not survive the fire due to their proximity to the rapidly spreading fire, we did not document any wolf mortalities as a result of the fire.

Telemetry information indicated all radio-collared animals survived, and pups from two of the packs whose den areas burned survived through the year's end to be included in the end-of-

year population survey. While denning behavior was observed in the third pack, the presence of pups had not been confirmed prior to the fire, and no pups were documented with this pack at the year's end (Service 2011).

In addition to possible direct negative effects of the Wallow Fire (*i.e.,* mortality of wolves, which we did not document), we also considered whether the fire was likely to result in negative short- or long-term effects to ungulate populations. The Wallow Fire Rapid Assessment Team's postfire assessment hypothesized that elk and deer abundance will respond favorably as vegetation recovers, with ungulate abundance exceeding prefire conditions within 5 years due to decreased competition of forage and browse with fire-killed conifers (Dorum 2011, p. 3). Based on this information, we recognize and will continue to monitor the potential for this fire to result in beneficial (increased prey) effects for Mexican wolves over the next few years.

On May 16, 2012, the Whitewater-Baldy Complex Fire was ignited by lightning strikes in New Mexico. It burned at least 297,845 ac (120,534 ha), including an additional (to the Wallow Fire) 7 percent of the BRWRA. The Whitewater-Baldy Complex Fire was contained 2 mi (3 km) from a denning wolf pack to the north (Dark Canyon pack) and 5 mi (8 km) from a denning wolf pack to the east (Middle Fork pack). We have not documented any adverse effects, including mortality, from the fire to these packs. We similarly hypothesize, as with the Wallow Fire, that elk and deer abundance will respond favorably as vegetation recovers in the burned area, with ungulate abundance exceeding pre-fire conditions within several years.

Given that we have not observed any wolf mortality associated with the Wallow and Whitewater-Baldy Complex fires, these specific fires have not significantly affected the Mexican wolf population. Moreover, although these fires demonstrate the possibility that a catastrophic wildfire within the reintroduction area could result in mortality of less mobile, denning pups, we recognize that adult wolves are highly mobile animals and can move out of even a catastrophic fire's path. While mortality of pups would slow the growth of the population over a year or two, the adult, breeding animals drive the ability of the population to persist. We do not consider even these catastrophic fires to be a significant mortality risk to adult wolves given their mobility and, therefore, do not consider wildfire to be a significant threat to the Mexican wolf. Further, we predict that these fires will result in changes in vegetation communities and prey densities that will be favorable to wolves within a few years. We have no information to indicate there would be changes to the effects of fire on Mexican wolves if they were not protected by the Act.

Mexico—The Mexican wolf appears to have been extirpated from the wild in Mexico for more than 30 years. Recently, researchers and officials in Mexico identified priority sites for reintroduction of Mexican wolves in the States of Sonora, Durango, Zacatecas, Chihuahua, Coahuila, Nuevo Leon, and Tamaulipas based on vegetation type, records of historical wolf occurrence, and risk factors affecting wolf mortality associated with proximity to human development and roads (Araiza *et al.* 2012, pp. 630–637). In October 2011, Mexico initiated a reintroduction program with the release of five captive-bred Mexican wolves into the San Luis Mountains just south of the United States-Mexico border. Through August 2014, Mexico released a total of 14 adult Mexican wolves, of which 11 died or are believed dead, and 1 was removed for veterinary care. The remaining two adult Mexican wolves were documented with five pups in 2014, marking the first successful reproductive event in Mexico. We expect the number of Mexican wolves in Mexico to fluctuate from zero to several wolves or packs of wolves during 2015 and into the future in or around Sonora and Chihuahua or other Mexican States as wolves are released to the wild from captivity by Mexico and subsequently may survive, breed, die of natural causes, or be illegally killed.

We recognize that Mexican wolves are being reintroduced in Mexico to areas identified as priority sites based on recent research (Araiza *et al.* 2012). However, we also note that Araiza *et al.*'s habitat assessment does not include assessment of prey availability within the six identified areas, which is a critical indicator of habitat suitability. Some information on prey availability is currently being collected and synthesized by Mexico for specific locations, but is not publicly available at this time. We also note that, due to the majority of land in Mexico being held in private ownership, large patches of secure public land are unavailable in Mexico to support reintroduction, which has been an important characteristic of reintroduction sites in the United States. We will continue to observe the status of the wolf reintroduction effort in Mexico. At this time, because our focus in this analysis is on currently occupied range, the absence of a Mexican wolf population in Mexico precludes analysis of habitat threats there.

Summary of Factor A

We have no information indicating that present or threatened habitat destruction, modification, or curtailment is significantly affecting the Mexican wolf or is likely to do so in the future. Zones 1 and 2 of the revised MWEPA provide an adequately sized area containing high-quality forested montane terrain with adequate ungulate populations (deer and elk) to support Mexican wolves in the experimental population. We do not foresee any changes in the status of the area (primarily U.S. Forest Service land). Further, we do not consider wildfire to be resulting in habitat destruction, modification, or curtailment that is threatening the Mexican wolf, although we recognize that future catastrophic wildfires have the potential to slow the growth of the population if pup mortality occurs in several packs.

We have not conducted an analysis of threats under factor A in Mexico due to the lack of a Mexican wolf population there for more than 30 years. Based on the mortality of reintroduced Mexican wolves in Mexico from 2011 to 2013, we do not expect a population to be established there for at least several years.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Since the inception of the Mexican wolf reintroduction project in 1998, we have not authorized legal killing or removal of wolves from the wild for commercial, recreational (*i.e.,* hunting), scientific, or educational purposes. We are not aware of any instances of illegal killing of Mexican wolves for their pelts in the Southwest, or of illegal trafficking in Mexican wolf pelts or parts. Mexican wolf pelts and parts from wolves that die in captivity or in the wild may be used for educational or scientific purposes, such as taxidermy mounts for display, when permission is granted from the Service; most wolf parts are sent to a curatorial facility at the University of New Mexico to be preserved, catalogued, and stored. A recreational season for wolf hunting is not currently authorized in the Southwest.

We have authorized, through a section 10(a)(1)(A) research-and-recovery permit under 50 CFR 17.32, as well as in accordance with the Mexican wolf experimental population rule and section 10(j) management rule under 50 CFR 17.84(k), agency personnel to take

any Mexican wolf in the experimental population, as well as to conduct activities related directly to the recovery of reintroduced experimental populations of Mexican wolf within Arizona and New Mexico. While removal of individual Mexican wolves (including lethal take) has occurred by the Service as a result of these measures, these actions are conducted within the purpose of our recovery program to contribute to the conservation of the Mexican gray wolf.

Several Mexican wolf research projects occur in the BRWRA or adjacent tribal lands by independent researchers or project personnel, but these studies have utilized radio-telemetry, scat analysis, and other noninvasive methods that do not entail direct handling of, or impact to, wolves (*e.g.,* Cariappa *et al.* 2008, Breck *et al.* 2011, Rinkevich 2012). Nonlethal research for the purpose of conservation is also conducted on Mexican wolves in the SSP captive-breeding program; projects include research on reproduction, artificial insemination, and gamete collection and preservation (see Service Mexican Wolf Recovery Program annual reports online at *www.fws.gov/southwest/es/mexicanwolf/* for descriptions of past and current research projects). Research on disease and conditioned taste aversion is also being conducted in the SSP captive-breeding program. In all cases, any take authorized by the Service for scientific, educational, and conservation purposes must benefit the Mexican wolf and promote its recovery.

Since reintroductions began in 1998 and have continued through December 31, 2013, we are aware of 25 incidents in which Mexican wolves were captured in nongovernmental (private) traps, at least 7 have been severely injured, and at least 3 have died as a result of injuries or activities associated with being captured in a leg-hold trap. While these seven injuries may have a significant effect on the individual Mexican wolf and may affect that particular animal's pack, they are relatively rare occurrences. We conclude that the 3 mortalities through 2013 have not affected the Mexican wolf's population growth because this accounts for only 3 mortalities in 15 years, and at the end of 2013, the minimum population size was 83 Mexican wolves.

Absent the protection of the Act, Mexican wolves could be protected from overutilization in the United States by State regulations and programs in Arizona and New Mexico and Federal law in Mexico. The Arizona Revised Statutes Title 17 gives the Arizona Game and Fish Commission (Commission) the authority to regulate take of wildlife in the State of Arizona. ''Take'' (to pursue, shoot, hunt, trap, kill, capture, snare, or net) of wildlife in Arizona on lands under the authority of the Arizona Game and Fish Commission is prohibited, unless a provision (*e.g.,* Commission Order, special rule, permit) is made to allow take. Arizona Game and Fish Commission Rules, Article 4, outlines additional restrictions that would provide further protections from overutilization including regulating and outlining prohibitions on possession and transport of illegally taken wildlife, and regulating and placing restrictions on scientific collection/handling of wildlife. Because Commission Order 14 (Other Birds and Mammals) does not open a hunting season on wolves, all take of Mexican wolf in Arizona is prohibited (except via special permit, as for science and management purposes; permits that in-turn require the permittee to secure all required Federal permits). A hunting season could be opened if the agency documented a harvestable surplus or identified a need for population reduction in a specific area. The Arizona Game and Fish Department, the administrative, management, and enforcement arm of the Commission, is charged with carrying out the Commission's programs and enforcing its regulations.

Pursuant to the Wildlife Conservation Act of New Mexico, it is unlawful to take, possess, transport, export, process, sell, or offer for sale or ship any State or Federal endangered species or subspecies (17–2–41 New Mexico Statutes Annotated [NMSA]), thus, as a State-listed endangered subspecies, the Mexican wolf would be protected from take related to overutilization.

Similarly, in Mexico, the General Wildlife Law (''Ley General de Vida Silvestre'', 2000, as amended) provides regulation against take of species or subspecies identified by the Norma Oficial Mexicana NOM–059–SEMARNAT–2010, ''Protección ambiental–Especies nativas de México de flora y fauna silvestres.'' These regulatory provisions are further discussed under factor D. The Inadequacy of Existing Regulatory Mechanisms.

Summary of Factor B

Based on available information, overutilization for commercial, recreational, scientific, or educational purposes does not occur or is exceedingly rare in the United States. In addition, we have no examples of these forms of take occurring in Mexico since the Mexican reintroduction program began in 2011. Arizona, New Mexico, and Mexico have regulatory provisions under which Mexican wolves could be protected against overutilization if the subspecies were not protected by the Act. Due to the nonexistent or very low level of overutilization occurring, and the ability of the States and Mexico to regulate overutilization, we do not consider overutilization to be affecting the Mexican wolf now or in the future.

Factor C. Disease or Predation

A number of viral, fungal, and bacterial diseases and endo- and ectoparasites have been documented in gray wolf populations (Kreeger 2003, pp. 202–214). However, little research has been done specific to disease in Mexican wolves, and little documentation exists of disease prevalence in wild wolves in the BRWRA population. We obtain the majority of our information on documented mortalities (from all sources, including disease) in the BRWRA from animals wearing radio collars. We may, therefore, underestimate the number of mortalities resulting from disease (*e.g.,* due to the number of uncollared wolves).

Typically, infectious diseases (such as viruses and bacteria) are transmitted through direct contact (*e.g.,* feces, urine, or saliva) with an infected animal, by aerosol routes, or by physical contact with inanimate objects (fomites). Parasites are infective through water, food sources, or direct contact. Wolves are able to tolerate a number of parasites, such as tapeworms or ticks, although occasionally such organisms can cause significant disease, or even be lethal (Kreeger 2003, p. 202).

Mexican wolves are routinely vaccinated for rabies virus, distemper virus, parvovirus, parainfluenza virus, and adenovirus before release to the wild from captive facilities. In addition, common dewormers and external parasite treatments are administered. Wolves captured in the wild are vaccinated for the same diseases and administered dewormers and external parasite treatments. Kreeger (2003, pp. 208–211) describes the transmission route and effect of these diseases on gray wolves and can be referenced for general information. Recent rules for the Western Great Lakes and Northern Rocky Mountain gray wolf populations contain information from studies of disease occurrences in those geographic regions, and can also serve as a reference for a more comprehensive discussion of these (and other) diseases than that provided below (72 FR 6051, February 8, 2007; 73 FR 10513, February 27, 2008).

Rabies, caused by a rhabdovirus, is an infectious disease of the central nervous system typically transmitted by the bite of an infected animal. Rabies can spread between infected wolves in a population (*e.g.,* among and between packs), or between populations, resulting in severe population declines. Rabies is untreatable and leads to death. A rabies outbreak in and near the BRWRA began in 2006 in eastern Arizona and continued through 2009, with positive rabies diagnoses (fox variant) in both foxes and bobcats. No Mexican wolves in the BRWRA were diagnosed with rabies during this outbreak (Arizona Department of Health Services 2012; New Mexico Department of Health 2011) or throughout the history of the reintroduction.

Canine distemper, caused by a paramyxovirus, is an infectious disease typically transmitted by aerosol routes or direct contact with urine, feces, and nasal exudates. Death from distemper is usually caused by neurological complications (*e.g.,* paralysis, seizures), or pneumonia. Distemper can cause high fatality rates, though survivors are occasionally documented in canine populations. Distemper virus may have been a contributing factor to high levels of pup mortality in Yellowstone National Park during several summers (Smith and Almberg 2007, p. 18). Although wolf populations are known to be exposed to the virus in the wild, mortality from distemper in wild Mexican wolves is uncommon. However, we expect Mexican wolf pups, in general, would be most susceptible to death from distemper virus at a time period prior to when they are captured, collared, and vaccinated. Therefore, our collared sample of pups may not be accurately documenting this source of mortality.

Distemper has been documented in one wild litter of Mexican wolves in the BRWRA. Two sibling Mexican wolf pups brought to a captive-wolf-management facility in 2000 from the wild were diagnosed with distemper (indicating they were exposed to the disease in the wild) and died in captivity (AMOC and IFT 2005, p. TC–12). (Note: these captive deaths are not included in the BRWRA mortality statistics.) These are the only known mortalities due to distemper documented in relation to the current experimental population (AMOC and IFT 2005, p. TC–12).

Canine parvovirus is an infectious disease caused by a parvoviridae virus that results in severe gastrointestinal and myocardial (heart disease) symptoms. Parvovirus is persistent in the environment and can be spread by direct contact or viral particles in the environment. Symptoms of an infected adult animal may include severe vomiting and diarrhea, resulting in death due to dehydration or electrolyte imbalance. Pups may die from myocardial (heart) disease if infected with canine parvovirus while in utero or soon after birth from cardiac arrhythmias. Although canine parvovirus has been documented in wild wolf populations, documented mortalities due to parvovirus are few; researchers hypothesize that parvovirus is a survivable disease, although less so in pups. Parvovirus is thought to have slowed various stages of colonization and dispersal of wolves in the greater Minnesota population (Mech *et al.* 2008, pp. 832–834).

Parvovirus has been documented in one wild litter of wolves in the BRWRA. Three sibling Mexican wolf pups were documented having, and then dying from, parvovirus in 1999: One pup died in an acclimation release pen in the BRWRA, indicating it had been exposed to the disease in the wild (AMOC and IFT 2005, p. TC–12). The other two pups, which also may have been exposed to the disease in the wild, were transferred to, and died at, a prerelease captive facility and are considered captive mortalities. Mortality from canine parvovirus has otherwise not been documented in the BRWRA population. However, we expect pups, in general, to be most susceptible to death from parvovirus prior to when they are captured, collared, and vaccinated. Therefore, our collared sample of pups may not be accurately documenting this source of mortality.

Three of 100 total documented Mexican wolf deaths in the BRWRA population between 1998 and 2013 have been attributed to disease: 1 to canine parvovirus, 1 to chronic bacterial pleuritis (bacterial infection around the lungs), and 1 to bacterial pneumonia. The pleuritis and pneumonia cases, though bacterial diseases, are likely both secondary to other unknown natural factors, rather than contagious, infectious diseases. Potential pup mortality caused by infectious disease may be poorly documented in the free-ranging population because these pups are too young to radio collar and thus difficult to detect or monitor. In addition, collared animals are vaccinated, which reduces the potential for mortality to occur among collared wolves.

We do not have evidence that disease was a significant factor in the decline of Mexican wolves prior to its protection by the Act in the 1970's. However, we recognize that, in a general sense, disease has the potential to affect the size and growth rate of a wolf population and could have a negative impact on the experimental population if the active vaccination program were not in place. We also recognize that some diseases are more likely to spread as wolf-to-wolf contact increases (Kreeger 2003, pp. 202–214), thus the potential for disease outbreaks to occur may increase as the current population expands in numbers or density, although the effect on the population may be lower because a larger wolf population would be more likely to sustain the epidemic. Absent the protection of the Act, the potential for disease to affect the Mexican wolf population would primarily depend on whether State wildlife agencies or other parties provided a similar level of vaccination to the population as that which we currently provide.

In addition to disease, we must also assess whether predation is affecting the Mexican wolf now or in the future under factor C. In our assessment of predation, we focus on wild predators as well as illegal killing of Mexican wolves.

Wild predators do not regularly prey on wolves (Ballard *et al.* 2003, pp. 259–271). Although large prey may occasionally kill wolves during self-defense (Mech and Peterson 2003, p. 134), this occurrence is rare and not considered predation on the wolf. Between 1998 and December 31, 2013, three documented Mexican wolf mortalities are attributed to predators (wolf, mountain lion, and unknown) (Service 2013, Mexican Wolf Blue Range Reintroduction Population Statistics). This may be an underestimate (*e.g.,* due to the number of uncollared wolves), but we still consider the overall incidence to be low based on the occurrences we have documented. Monitoring of Northern Rocky Mountain wolf populations demonstrates that wolf-to-wolf conflicts may be the biggest source of predation among gray wolves, but this typically occurs from territorial conflicts and has not occurred at a level sufficient to affect the viability of these populations (73 FR 10513; February 27, 2008). As the Mexican wolf population begins to saturate available habitat, wolf mortalities resulting from territorial conflicts may become more prevalent but this type of mortality is not currently a concern. We do not foresee any change in the occurrence of wild predation on Mexican wolves if the subspecies was not protected by the Act and, therefore, do not consider predation from wild predators to be affecting the Mexican wolf.

Illegal mortalities have been the biggest source of Mexican wolf mortalities since the reintroduction began in 1998 (Service 2013: Mexican Wolf Blue Range Reintroduction Project Statistics). Out of 100 wild wolf mortalities documented between 1998 and 2013, 55 deaths are attributed to illegal killing (55 percent of total mortalities). Documented illegal shootings have ranged from zero to seven per year between 1998 and December 2013, with one or more occurring every year with the exception of 1999. Illegal shooting has varied from no impact to the population (*e.g.,* in 1999 when no illegal shootings were documented) to resulting in the known mortality of about 15 percent of the population in a given year (*e.g.,* in 2001). Documented causes of illegal shooting in other gray wolf populations have included intentional killing and mistaken identity as a coyote or dog (Fuller *et al.* 2003, p. 181). We do not know the reason for each instance of illegal shooting of a Mexican wolf.

We recognize that some wolf populations can maintain themselves despite sustained human-caused mortality rates of 17 to 48 percent (Fuller *et al.* 2003 [+/− 8 percent], pp. 184–185; Adams *et al.* 2008 [29 percent], p. 22; Creel and Rotella 2010 [22 percent], p. 5; Sparkman *et al.* 2011 [25 percent], p. 5; Gude *et al.* 2011 [48 percent], pp. 113–116; Vucetich and Carroll In Review [17 percent]) and that human-caused mortality sometimes replaces much of the wolf mortality in a population that would have occurred naturally (*e.g.,* due to intraspecific strife from territorial conflicts occurring in populations that have saturated available habitat) (Fuller *et al.* 2003, p. 186). Regardless, for the Mexican wolf experimental population, we think it is likely that the majority of illegal shootings function as additive mortality (that is, these mortalities are in addition to other mortalities that occur, rather than compensatory mortality where the deaths from illegal shooting would substitute for deaths that would occur naturally) (Murray *et al.* 2010, pp. 2515, 2522). Illegal mortalities have a negative effect on the size and growth rate of the experimental population at its current small size, but the effect of these mortalities on the population has likely been masked to some degree by the number of captive Mexican wolves released into the wild over the course of the reintroduction effort. Additionally, we are unable to document all Mexican wolf mortalities (*i.e.,* uncollared wolves) and, therefore, may be underestimating the number of mortalities caused by illegal shooting.

We expect that, absent the protection of the Act, killing of Mexican wolves would continue at current levels or, more likely, increase significantly because Federal penalties would not be in place to serve as a deterrent. Mexican wolves could be protected from take by State regulations in Arizona and New Mexico and Federal regulations in Mexico, but State penalties are less severe than Federal penalties (see a description and discussion of this under factor D), and Federal protection in Mexico does not infer protection for Mexican wolves in the United States. Based on the continuous occurrence of illegal shooting taking place while the Mexican wolf is protected by the Act and the likelihood of increased occurrences of wolf shooting absent the protection of the Act, we consider illegal killing of Mexican wolves to be significant to the population. We further consider the threat of illegal shooting to Mexican wolves in ''Combination of Factors/Focus on Cumulative Effects,'' which discusses this and other threats within the context of the small, geographically restricted and isolated experimental population.

In Mexico, illegal killing of Mexican wolves released to the wild in between 2011 and 2013 has already been documented. Through August 2014, Mexico released a total of 14 adult Mexican wolves, of which 11 died or are believed dead, and 1 was removed for veterinary care. Of the 11 Mexican wolves that died or are believed dead, 6 were due to illegal killings (4 from poisoning and 2 were shot), 1 wolf was presumably killed by a mountain lion, 3 causes of mortality are unknown (presumed illegal killings because collars were found, but not the carcasses), and 1 disappeared (neither collar nor carcass has been found). The illegal killing of at least six Mexican wolves has significantly hindered Mexico's initial efforts to establish a population; continued monitoring of the wolves Mexico releases in the future will be necessary to document whether these initial events were by chance or are indicative of a significant, ongoing threat to Mexican wolves in Mexico.

Summary of Factor C

Based on the low incidence of disease and mortality from wild predators, we do not consider these factors to be significantly affecting the Mexican wolf nor do we expect them to in the future. Illegal shooting has been a continuous source of mortality to the experimental population in the United States since its inception, and we expect that if Mexican wolves were not protected by the Act the number of shootings would increase substantially in the United States. Therefore, we consider illegal shooting to be significantly affecting Mexican wolves in the United States. In Mexico, four wolves released in 2011 were illegally poisoned within months of their release to the wild, significantly hindering their reintroduction efforts. Illegal poisoning may affect the future Mexican wolf population in Mexico significantly if such events continue.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

The Act requires us to examine the adequacy of existing regulatory mechanisms with respect to those existing and foreseeable threats, discussed under the other factors that may affect the Mexican wolf. In this five-factor analysis, we consider illegal shooting (factor C), inbreeding (factor E), and small population size (factor E) to be significantly affecting Mexican wolves. We address regulatory mechanisms related to illegal shooting, as no regulatory mechanisms are available to address inbreeding or small population size beyond the overarching protection of the Act.

As discussed in factor C, illegal killing (or ''take,'' as it is referred to in the Act) of Mexican wolves currently occurs at significant levels in both the United States and Mexico. In the United States, illegal shooting of Mexican wolves has been a continuous source of mortality over the course of the reintroduction project. In Mexico, illegal killing has resulted in a setback to the reestablishment of a population of Mexican wolves in the State of Sonora and the Western Sierra Madre; we are unsure of whether this threat will continue.

The Act provides broad protection of listed subspecies to prohibit and penalize illegal take but has not been sufficient to deter all illegal killing of Mexican wolves in the United States. Section 9 of the Act (Prohibited acts) prohibits the take of any federally-listed species, subspecies, or DPS. Section 11 (Penalties and enforcement) provides civil penalties up to $25,000, and criminal penalties up to $50,000 and/or not more than 1 year in jail for knowing violations of section 9. Experimental populations are treated as if they are listed as threatened, which limits criminal penalties to up to $25,000 and imprisonment for not more than 6 months.

All cases of suspected illegal take of Mexican wolves in the United States are investigated by the Service's Office of Law Enforcement Special Agents. On-

the-ground personnel involved in preventing illegal take of a Mexican wolf and apprehending those who commit illegal take include Service Special Agents, Arizona Game and Fish Department (AGFD) Game Wardens, New Mexico Department of Fish and Game Conservation Officers, U.S. Forest Service special agents and Law Enforcement Officers (LEOs), San Carlos Apache Tribe LEOs, and White Mountain Apache Tribe LEOs. Specific actions to reduce illegal take include targeted patrols during high-traffic periods (hunting seasons and holidays); the ability to restrict human activities within a 1-mi (1.6-km) radius of release pens, active dens, and rendezvous sites; proactive removal of road kills to reduce the potential of wolves scavenging, which may result in vehicular collision or illegal take of a Mexican wolf; and monetary rewards for information that leads to a conviction for unlawful take of the subspecies. Of the 55 wolf mortalities classified as illegal mortalities between 1998 and 2013, only 4 individuals have been convicted and 1 individual has paid a civil penalty.

If Mexican wolves were not protected by the Act, they would be protected by State regulations in Arizona and New Mexico, and by Federal law in Mexico. In Arizona, the Mexican wolf is managed as Wildlife of Special Concern (Arizona Game and Fish Commission Rules, Article 4, R12–4–401) and is identified as a Species of Greatest Conservation Need (Tier 1a, endangered) (Species of Greatest Conservation Need 2006, pending). Species with these designations are managed under the AGFD's Nongame and Endangered Wildlife Management program, which seeks to protect, restore, preserve, and maintain such species. These provisions, *i.e.,* the Species of Greatest Conservation Need list and the Wildlife of Special Concern list, are nonregulatory. However, Arizona Revised Statute Title 17 establishes AGFD with authority to regulate take of wildlife in the State of Arizona. ''Take'' (to pursue, shoot, hunt, trap, kill, capture, snare, or net) of wildlife in Arizona on lands under the authority of the Arizona Game and Fish Commission is prohibited, unless a provision (*e.g.,* Commission Order, special rule, permit) is made to allow take. Penalties for illegal take or possession of wildlife can include revocation of hunting license or civil penalties up to $8,000 depending on its classification as established through annual regulations.

In New Mexico, the Mexican wolf is listed as endangered (Wildlife Conservation Act, pp. 17–2–37 through 17–2–46 NMSA 1978). Pursuant to the Wildlife Conservation Act, it is unlawful to take, possess, transport, export, process, sell or offer for sale, or ship any State or Federal endangered species or subspecies (17–2–41 NMSA). Penalties for violating the provisions of 17–2–41 may include fines of up to $1,000 or imprisonment.

In Mexico, several legal provisions provide regulatory protection for the Mexican wolf. The Mexican wolf is classified as ''E'' (''probably extinct in the wild'') by the Norma Oficial Mexicana NOM–059–SEMARNAT–2010, ''Protección ambiental–Especies nativas de México de flora y fauna silvestres–Categorías de riesgo y especificaciones para su inclusión, exclusión o cambio–Lista de especies en riesgo'' (NOM–059–SEMARNAT–2010), which is a list of species and subspecies at risk. This regulation does not directly provide protection of the listed species or subspecies; rather it includes the criteria for downlisting, delisting, or including a species, subspecies, or population on the list. The General Wildlife Law (''Ley General de Vida Silvestre,'' 2000, as amended), however, has varying restrictions depending on risk status that apply only to species or subspecies that are listed in the NOM–059–SEMARNAT–2010.

Mexico's Federal Penal Law (''Código Penal Federal'' published originally in 1931) Article 420 assigns a fine of 300 to 3,000 days of current wage and up to 9 years prison to those who threaten the viability of a species, subspecies, or population, transport a species at risk, or damage a specimen of a species at risk. Administrative fines are imposed by an administrative authority (PROFEPA, ''Procuraduria Federal de Proteccion al Ambiente,'' or the Attorney General for Environmental Protection) and are calculated on the basis of minimum wage in Mexico City ($62.33 daily Mexican pesos). The fines established in the General Wildlife Law range from 1,246.60 to 311,650 Mexican pesos (approximately U.S. $98 to U.S. $24,400) for the four minor infractions, to a range of 3,116 to 3,116,500 Mexican pesos (approximately U.S. $244 to U.S. $244,400) for the other offenses, including the killing of a wolf. Penal fines are imposed by a judge and are calculated on the basis of the current daily wage of the offender including all their income.

We have no information to suggest that, absent the Act's protections, shooting of Mexican wolves in the United States would cease. Rather, we believe that shooting of Mexican wolves could increase, as State penalties (assuming wolves were granted protected status by the States) would be less severe than current Federal penalties under the Act. Thus, existing State penalties in Arizona and New Mexico would not serve as an adequate deterrent to illegal take. The illegal killing of at least four wolves in Mexico (see factor C) between 2011 and 2014 suggests that Federal penalties in Mexico may not be an adequate deterrent to illegal take there, although Federal fines in Mexico are potentially higher than those available under the Act in the United States. The adequacy of these penalties to address overutilization (factor B) is not an issue, as instances of overutilization do not occur or are exceedingly rare and, therefore, do not significantly affect the Mexican wolf.

Summary of Factor D

Regulatory mechanisms to prohibit and penalize illegal killing exist under the Act, but illegal shooting of wild Mexican wolves in the United States persists. We conclude that, absent the protection of the Act, killing of wolves in the United States would increase, potentially drastically, because State penalties are less severe than current Federal penalties. In regards to regulatory protection for the Mexican wolf in Mexico, the recent poisoning of several reintroduced wolves suggests that illegal killing may be a challenge for that country's reintroduction efforts as well. Thus, in the absence of the Act, existing regulatory mechanisms will not act as an effective deterrent to the illegal killing of Mexican wolves in the United States, and this inadequacy will significantly affect the Mexican wolf.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

We document sources of mortality in six categories as part of our ongoing monitoring of Mexican wolves in the experimental population: Illegal Killing, Vehicle Collision, Natural, Other, Unknown, and Awaiting Necropsy. In factor C, we assessed illegal shooting in the United States, disease, and predation (our mortality category ''Natural'' includes disease and predation). In factor E, we assess the impacts to the Mexican wolf from the remaining sources of mortality—Vehicle Collision, Natural, Other, and Unknown. As stated in our discussions of disease, predation, and illegal shooting, we may not be documenting all mortalities to the population because mortality of uncollared wolves is not typically detected; similarly, we may underestimate the number of mortalities attributed to any one cause discussed below. We also assess intolerance of

wolves by humans, land-use conflicts, hybridization, inbreeding, climate change, and small population size.

Our category of ''Natural'' causes of mortality includes a number of mortality sources, such as predation, starvation, interspecific strife, lightning strikes, and disease. Because we have documented three or fewer natural mortalities per year since 1998, we do not consider natural mortalities to be occurring at a level, individually or collectively, that significantly affects the Mexican wolf (and see factor C for additional discussion of disease and predation) (Service 2013: Mexican Wolf Blue Range Reintroduction Project Statistics). Therefore, we do not further discuss these ''Natural'' causes of mortality. Similarly, mortalities caused by ''Other'' sources of mortality, which also includes several sources of mortality (capture-related mortalities, public-trap mortality, legal public shooting, etc.) and ''Unknown'' causes are occurring at very low levels (5 of 100 mortalities, and 8 of 100 mortalities, respectively) and are not occurring at a level that significantly affects the Mexican wolf.

Vehicular collision has accounted for 14 percent of Mexican wolf mortalities from 1998 to December 31, 2013 (14 out of 100 total documented Mexican wolf deaths) (Service 2013: Mexican Wolf Blue Range Reintroduction Project Statistics). Thirteen out of 14 Mexican wolf mortalities attributed to vehicular collision throughout the course of the reintroduction (through December 31, 2013) occurred along paved U.S. or State highways; one wolf died on a Forest Service dirt road as a result of vehicle collision. The number of vehicular-related mortalities, which has ranged from zero to two per year, with the exception of a high of four vehicular-related wolf deaths in 2003, has not shown a trend (increasing or decreasing) over time. Given the occurrence of these mortalities on highways, it is likely that these collisions were accidental events that occurred from vehicles traveling at relatively high speeds. We are cognizant that different types of roads present different levels of threats to Mexican wolves—paved roads with higher speed limits present more risk of wolf mortality due to vehicular collision than unpaved roads with lower speed limit.

Roads, both paved and unpaved, in currently occupied Mexican wolf range in the Gila and Apache National Forests primarily exist to support forest management, livestock grazing, recreational access, resource protection, and transport of forest products on the National Forests (Service 1996, pp. 3–13). National Forests contain various road types (paved, unpaved, opened, closed, etc.) and trails (motorized, nonmotorized), but are generally considered to be driven at relatively low speeds and have relatively low traffic volume. Non-Forest Service roads (*e.g.,* highways and other paved roads) are limited in currently occupied range, and include portions of U.S Highways 191 and 180, and State Highways 260, 152, 90, 78, 32, and 12. U.S. highway 60 runs immediately to the north of this area.

It has been recommended that areas targeted for wolf recovery have low road density of not more than 1 linear mile of road per square mile of area (1.6 linear km of road per 2.56 square kilometers; Thiel 1985, pp. 406–407), particularly during colonization of an area (Fritts *et al.* 2003, p. 301). Road density in the BRWRA was estimated at 0.8 mi road per mi^2 (1.28 km road per km^2) prior to the reintroduction (Johnson *et al.* 1992, p. 48). The U.S. Forest Service Southwest Region recently calculated road densities for the Gila and Apache-Sitgreaves National Forests during analysis of alternatives to designate a system of roads, trails, and areas designated for motor vehicle use in compliance with the Travel Management Rule. They did not assess road use in terms of a baseline of traffic volume or projections of traffic volume for the future. Both the Gila and Apache-Sitgreaves National Forests continue to have an appropriately low density of roads for the Mexican wolf reintroduction effort, with no plans to increase road density in either Forest—road density in the Apache portion of the Apache-Sitgreaves National Forest is estimated at 0.94 mi road per mi^2 for all roads (1.5 km road per km^2) (open, closed, decommissioned) and motorized trails, or 0.43 mi road per mi^2 (0.69 km road per km^2) for open roads and motorized trails (USDA 2010a, p. 102); road density in the Gila National Forest is estimated at 1.02 mi per mi^2 (1.64 km per km^2) for open and closed (but not decommissioned) roads and motorized trails (an overall average of 0.99 mi per mi^2 (1.59 km per km^2) (USDA 2010b, p. 149). Therefore, these Forests provided Mexican wolf habitat with appropriately low road density for establishment (colonization) of the experimental population.

The revised MWEPA includes the addition of the Sitgreaves National Forest, Magdalena Ranger District of the Cibola National Forest, and Tonto, Payson, and Pleasant Valley Ranger Districts of the Tonto National Forest to the Gila and Apache National Forests as Zone 1, the area in which we will primarily conduct initial releases; these Forests have appropriately low road densities compared with non-Forest Service land to support these management activities (Service 2014, Ch 3, p. 2). In Zone 2, which comprises a wider matrix of habitat quality than Zone 1, including areas of substantially higher road density of paved, high-speed roads, we recognize that wolf morality due to vehicular collision may increase. However, we do not have any data to determine the degree to which this may occur or whether it will significantly affect the Mexican wolf.

In summary, Mexican wolf mortalities from vehicular collision show a strong pattern of occurrence on high-speed paved State or U.S. Highways rather than on Forest Service roads, and are currently occurring at relatively low levels (two or fewer mortalities per year, with the exception of 1 year in which four mortalities were attributed to vehicular collision). We consider it possible that wolf mortalities due to vehicular collision may increase in the future as Mexican wolves will be allowed to disperse beyond the Gila and Apache National Forests into areas with higher road density within the MWEPA. We will continue to document wolf mortality due to vehicular collision to determine whether this becomes significant. In absence of Federal protection, we would not expect that incidence rate of wolf-vehicular collision to change, due to the accidental nature of these incidents. Therefore, with or without the protections of the Act, we conclude that vehicular collisions, considered in isolation of other sources of mortality, are not significantly affecting the Mexican wolf. We further consider the significance of these mortalities in Combination of Factors/Focus on Cumulative Effects.

Intolerance by Humans—Human attitudes have long been recognized as a significant factor in the success of gray wolf recovery efforts to the degree that it has been suggested that recovery may depend more on human tolerance than habitat restoration (see Boitani 2003, p. 339, Fritts *et al.* 2003; Mech 1995). In the Southwest, extremes of public opinion vary between those who strongly support or oppose the recovery effort. Support may stem from such feelings as an appreciation of the Mexican wolf as an important part of nature and an interest in endangered species restoration, while opposition may stem from negative social or economic consequences of wolf reintroduction, general fear and dislike of wolves, or Federal land-use conflicts.

Public polling data in Arizona and New Mexico shows that most

respondents have positive feelings about wolves and support the reintroduction of the Mexican wolf to public land (Research and Polling 2008a, p. 6, Research and Polling 2008b, p. 6). These polls targeted people statewide in locations outside of the reintroduction area, and thus provide an indication of regional support.

In any case, there is no direct evidence to indicate that intolerance by humans of Mexican wolves will result in increased illegal killings. Without additional information, we are unable to confirm whether, or the degree to which, disregard for or opposition to the reintroduction project is a causative factor in illegal killings. Similarly, in Mexico, we do not know whether the illegal poisoning of four reintroduced Mexican wolves was purposeful and stemmed from opposition to the reintroduction or rather was targeted more generally at (other) predators. We recognize that humans can be very effective at extirpating wolf populations if human-caused mortality rates continue at high levels over time, as demonstrated by the complete elimination of Mexican wolves across the Southwest and Mexico prior to the protection of the Act. At this time, however, we do not have enough information to determine whether, or the degree to which, intolerance by humans may pose a threat to the Mexican wolf.

Land-Use Conflicts—Historically, land-use conflict between Mexican wolves and livestock producers was a primary cause of the wolf's endangerment due to human killing of wolves that depredated livestock. At the outset of the reintroduction effort, the amount of permitted grazing in the recovery area was identified as a possible source of public conflict for the project due to the potential for wolves to depredate on livestock (Service 1996, p. 4–4). Since the reintroduction project began in 1998, 73 Mexican wolves have been removed from the wild due to livestock depredation, reaching a high of 16 and 19 removals in 2006 and 2007, respectively (Service 2013 Mexican Wolf Blue Range Project Statistics).

Since 2007, the Service, other State, Federal, and tribal agencies, private parties, and livestock producers have increased proactive efforts (*e.g.,* hazing, fencing, range riders) to minimize depredations, resulting in fewer removals from 2008 to 2013 than in the first 10 years of the program. Since 2007, we removed one Mexican wolf in 2012 and two Mexican wolves in 2013 from the experimental population due to confirmed livestock depredation (Service 2013 Mexican Wolf Blue Range Project Statistics). While recognizing that management removals must be part of an overall management scheme that promotes the growth of the experimental population, the Service is committed to actively managing depredating Mexican wolves to improve human tolerance.

Furthermore, the Service, in cooperation with the National Fish and Wildlife Foundation, established the Mexican Wolf/Livestock Interdiction Trust Fund (Trust Fund), which was founded on September 23, 2009. The objective of the Trust Fund is to generate long-term funding for prolonged financial support to livestock operators with the framework of cooperative conservation and recovery of Mexican wolf populations in the Southwest. Funding is provided for initiatives that address management, monitoring, and proactive conservation needs for Mexican wolves related to livestock protection, measures to avoid and minimize depredation, habitat protection, species protection, scientific research, conflict resolution, compensation for damage, education, and outreach activities. The Trust Fund is overseen by the Mexican Wolf/Livestock Coexistence Council, an 11-member group of ranchers, Tribes, county coalitions, and environmental groups that may identify, recommend, and approve conservation activities, identify recipients, and approve the amount of the direct disbursement of Trust Funds to qualified recipients. It is the current policy of the Coexistence Council to pay 100 percent of the market value of confirmed depredated livestock and 50 percent market value for probable kills.

Based on these efforts, we conclude that land-use conflicts are not significantly affecting the Mexican wolf. As noted above, since 2007 we removed three Mexican wolves from the experimental population due to confirmed livestock depredation (Service 2013 Mexican Wolf Blue Range Project Statistics). Also, when we remove Mexican wolves due to confirmed livestock depredation, many of the wolves are released back into a different part of the experimental population area where they are less likely to cause livestock depredations. We are able to manage problem Mexican wolves in a manner that does not significantly affect the experimental population. In the absence of protection by the Act, land-use conflicts would still occur in areas where Mexican wolves and livestock coexist. However, because the Mexican wolf is protected by State law in Arizona and New Mexico, we expect that livestock producers and State agencies would continue to employ effective practices of hazing or other active management measures to reduce the likelihood of occurrence of depredation incidents. Therefore, we conclude that land-use conflicts are unlikely to significantly affect the Mexican wolf if it was not protected by the Act.

Hybridization—Hybridization between wolves and other canids can pose a significant challenge to recovery programs (*e.g.,* the red wolf recovery program) (Service 2007, pp. 10–11) because species in the *Canis* genus can interbreed and produce viable offspring. In the Mexican wolf experimental population, hybridization is a rare event. Three confirmed hybridization events between Mexican wolves and dogs have been documented since the reintroduction project began in 1998. In the first two cases, hybrid litters were humanely euthanized (Service 2002, p. 17, Service 2005:16.). In the third case, four of five pups were humanely euthanized; the fifth pup, previously observed by project personnel but not captured, has not been located and its status is unknown (BRWRA Monthly Project Updates, June 24, 2011, *http://www.fws.gov/southwest/es/mexicanwolf/CEBRWRA.cfm*). No hybridization between Mexican wolves and coyotes has been confirmed through our genetic monitoring of coyotes, wolves, and dogs that are captured in the wild as part of regular management activities of canids in the wild.

Our response to hybridization events has negated potential impacts to the BRWRA population from these events (*e.g.,* effects to the genetic integrity of the population). Moreover, the likelihood of hybrid animals surviving, or having detectable impacts on wolf population genetics or viability, is low due to aspects of wolf sociality and fertility cycles (Mengel 1971, p. 334; Vila and Wayne 1999, pp. 195–199).

We do not foresee any change in the likelihood of hybridization events occurring, or the potential effect of hybridization events, if the Mexican wolf was not protected by the Act; that is, hybridization events and effects would continue to be rare. Therefore, we conclude that hybridization is not significantly affecting the Mexican wolf population now nor is it likely to do so in the future.

Inbreeding, Loss of Heterozygosity, and Loss of Adaptive Potential—Mexican wolves have pronounced genetic challenges resulting from an ongoing and severe genetic bottleneck (that is, a reduction in a population's size to a small number for at least one generation) caused by its near

extirpation in the wild and the small number of founders upon which the captive population was established. These challenges include inbreeding (mating of close relatives), loss of heterozygosity (a decrease in the proportion of individuals in a population that have two different alleles for a specific gene), and loss of adaptive potential, three distinct but interrelated phenomena.

When a population enters a genetic bottleneck, the strength of genetic drift (random changes in gene frequencies in a population) is increased and the effectiveness of natural selection is decreased. As a result, formerly uncommon alleles may drift to higher frequencies and become fixed (the only variant that exists), even if they have deleterious (negative) effects on the individuals that carry them. Conversely, beneficial alleles may become less common and even be lost entirely from the population. In general, rare alleles are lost quickly from populations experiencing bottlenecks. Heterozygosity is lost much more slowly, but the losses may continue until long after the population has grown to large size (Nei *et al.* 1975, entire). The extent of allele and heterozygosity loss is determined by the depth (the degree of population contraction) and duration of a bottleneck. Heterozygosity is important because it provides adaptive potential and can mask (prevent the negative effects of) deleterious alleles.

Inbreeding can occur in any population, but is most likely to occur in small populations due to limited choice of mates. The potential for inbreeding to negatively affect the captive and reintroduced Mexican wolf populations has been a topic of concern for over a decade (Parsons 1996, pp. 113–114; Hedrick *et al.* 1997, pp. 65–68). Inbreeding affects traits that reduce population viability, such as reproduction (Kalinowski *et al.* 1999, pp. 1371–1377; Asa *et al.* 2007, pp. 326–333; Fredrickson *et al.* 2007, pp. 2365–2371), survival (Allendorf and Ryman 2002, pp. 50–85), and disease resistance (Hedrick *et al.* 2003, pp. 909–913). Inbreeding is significant because it reduces heterozygosity and increases homozygosity (having two of the same alleles) throughout the genome.

Inbreeding depression is thought to be primarily a result of the full expression of deleterious alleles that have become homozygous as a result of inbreeding (Charlesworth and Willis 2009, entire). In other words, rare deleterious alleles, or gene variants that have deleterious effects such as deformities, are more likely to be inherited and expressed in an offspring of two related individuals than of unrelated individuals (that is, the offspring may be homozygous). Theory suggests that, although lethal alleles (those that result in the death of individuals with two copies) may be purged or reduced in frequency in small populations (Hedrick 1994, pp. 363–372), many other mildly and moderately deleterious alleles are likely to become fixed in the population (homozygous in all individuals) with little or no reduction in the overall genetic load (amount of lethal alleles) (Whitlock *et al.* 2000, pp. 452–457). In addition, there is little empirical evidence in the scientific literature that purging reduces the genetic load in small populations.

As previously described, Mexican wolves experienced a rapid population decline during the 1900s, as predator eradication programs sought to eliminate wolves from the landscape. Subsequently, a captive-breeding program was initiated. The McBride lineage was founded with three wolves in 1980. The Ghost Ranch and Aragon lineages were each founded by single pairs in 1961 and around 1976, respectively. These lineages were managed separately until the mid-1990s, by which time all three lineages had become strongly inbred. Inbreeding coefficients (*f*) (a measure of how closely related two individuals are) for McBride pups born in the mid-1990s averaged about 0.23—similar to inbreeding levels for offspring from outbred full sibling or parent–offspring pairs ($f = 0.25$). Inbreeding coefficients for Aragon and Ghost Ranch lineage pups born in the mid-1990s were higher, averaging 0.33 for Aragon pups and 0.64 for Ghost Ranch pups (Hedrick *et al.* 1997, pp. 47–69).

Of the three lineages, only the McBride lineage was originally managed as a captive-breeding program to aid in the conservation of Mexican wolves. However, out of concern for the low number of founders and rapid inbreeding accumulation in the McBride lineage, the decision was made to merge the Aragon and Ghost Ranch lineages into the McBride lineage after genetic testing confirmed that this approach could improve the gene diversity of the captive population (Garcia-Moreno *et al.* 1996, pp. 376–389). Consequently, pairings (for mating) between McBride wolves and Aragon wolves and between McBride and Ghost Ranch wolves began in 1995 with the first generation (F1) of these pups born in 1997. Although the parents of these first generation wolves were strongly inbred, the offspring were expected to be free of inbreeding and free of the inbreeding depression. Forty-seven F1 wolves were produced from 1997 to 2002. Upon reaching maturity, the F1 wolves were paired among themselves, backcrossed with pure McBride wolves, and paired with the descendants of F1 wolves called ''cross-lineage'' wolves to maintain gene diversity and reduce inbreeding in the captive population.

Although there was slight statistical evidence of inbreeding depression among captive wolves of the McBride and Ghost Ranch lineages, the outbred F1 wolves proved to have far greater reproductive fitness than contemporary McBride and Ghost Ranch wolves (which were strongly inbred) as well as minimally inbred wolves from early in the McBride and Ghost Ranch pedigrees. Pairings between F1 wolves were 89 percent more likely to produce at least one live pup, and mean litter sizes for F1 × F1 pairs were more than twice as large as contemporary McBride pairings (7.5 vs 3.6 pups per litter; Fredrickson *et al.* 2007, pp. 2365–2371). The large increases in reproductive fitness among F1 wolves suggested that the McBride and Ghost Ranch lineages were suffering from a large fixed genetic load of deleterious alleles. In other words, McBride and Ghost Ranch wolves had accumulated identical copies of gene variants that had negative effects on their health or reproductive success at many locations (loci) throughout their genome. In addition, pups born to cross-lineage dams (mother wolves) had up to 21 percent higher survival rates to 180 days than contemporary McBride lineage pups (Fredrickson *et al.* 2007, pp. 2365–2371).

Although the F1 wolves had high reproductive fitness, strong inbreeding depression among cross-lineage wolves in captivity has been documented. Inbreeding levels of both dams and sires (mother and father wolves, respectively) were found to negatively affect the probability that a pair would produce at least one live pup. For example, the estimated probabilities of a pair producing at least one live pup dropped from 0.96 for F1 × F1 pairs (with no inbreeding in the dam and sire) to 0.40 for pairs with a mean inbreeding coefficient of 0.15 (Fredrickson *et al.* 2007, pp. 2365–2371). Consistent with the finding that inbreeding levels of sires affected the probability of producing at least one live pup, Asa *et al.* (2007, pp. 326–333) found that two measures of semen quality, sperm cell morphology and motility of sperm cells, declined significantly as inbreeding levels increased. Among pairs that produced at least one live pup, increases of 0.1 in the inbreeding coefficients of both the dam and pups

was estimated to reduce litter size by 2.8 pups. Inbreeding levels of the pups were found to have about twice the detrimental effect as inbreeding in the dam, suggesting that inbreeding accumulation in pups was causing pups to die prior to being born (Fredrickson *et al.* 2007, pp. 2365–2371).

As of July 2014, the captive population of Mexican wolves consisted of 258 wolves, of which 33 are reproductively compromised or have very high inbreeding coefficients, leaving 225 wolves as the managed population (Siminski and Spevak 2014). The age structure of the population, however, is heavily skewed, with wolves 7 years old and older comprising about 62 percent of the population—meaning that most of the population is composed of old wolves who will die within a few years. This age structure, which has resulted from the high reproductive output of the F1 wolves and their descendants in captivity, the combination of few releases of captive-born wolves to the wild in recent years, removal of wolves from the wild population to captivity, and limited pen space for pairings, means that additional gene diversity will be lost as the captive population continues to age (R. Fredrickson, pers. comm., 2014).

The SSP strives to minimize and slow the loss of gene diversity of the captive population but (due to the limited number of founders) cannot increase it. As of 2014, the gene diversity of the captive program was 83.36 percent of the founding population, which falls below the average mammal SSP (93 percent) and below the recognized SSP standard to maintain 90 percent of the founding population diversity. Below 90 percent, the SSP states that reproduction may be compromised by low birth weight, smaller litter sizes, and related issues.

Representation of the Aragon and Ghost Range lineages in 2014 was 17.94 percent and 20.07 percent, respectively (Siminski and Spevak 2014, p. 8). More specifically, the representation of the seven founders is very unequal in the captive population, ranging from about 30 percent for the McBride founding female to 4 percent for the Ghost Ranch founding male. Unequal founder contributions lead to faster inbreeding accumulation and loss of founder alleles. The captive population is estimated to retain only 3.00 founder genome equivalents, suggesting that more than half of the alleles (gene variants) from the seven founders have been lost from the population.

With the current gene diversity of 83.36 percent and current space limitations of 300 captive Mexican wolves, retaining 75 percent gene diversity for only 41 years from present is possible with the current generation length of 5.8 years in the captive population, population growth rate of $\lambda = 1.065$, effective population size (*Ne*) of 26.96, and a ratio of effective to census size (*Ne / N;* that is, the number of breeding animals as a percentage of the overall population size) of 0.1266 (Siminski and Spevak 2014, p. 7). The genetically effective population size is defined as the size of an ideal population that would result in the rate of inbreeding accumulation or heterozygosity loss as the population being considered. The effective sizes of populations are almost always smaller than census sizes of populations. A rule of thumb for conservation of small populations holds Ne should be maintained above 50 to prevent substantial inbreeding accumulation, and that small populations should be grown quickly to much larger sizes ($Ne \geq 500$) to maintain evolutionary potential (Franklin 1980, entire). The low ratio of effective to census population sizes in the captive population reflects the limitations on breeding (due to a lack of cage space) over the last several years, while the low effective population size is another indicator of the potential for inbreeding and loss of heterozygosity.

The gene diversity of the experimental population of Mexican wolves can only be as good as the diversity of the captive population from which it is established. Based on information available in July 11, 2014, the genetic diversity of the wild population was 74.52 percent of the founding population (Siminski and Spevak 2014, pp. 9), with 5.36 percent and 14.56 percent representation of Aragon and Ghost Range lineages, respectively. At the end of 2013, the minimum population in the Mexican wolf experimental population was 83 Mexican wolves, but the experimental population is a poor representative of the genetic variation remaining in the captive population. Founder representation in the experimental population is more strongly skewed than in the captive population. Mean inbreeding levels are 65 percent greater, and founder genome equivalents are 35 percent lower than in the captive population. In addition, the estimated relatedness of the Mexican wolf experimental population is on average 65 percent greater than that in the captive population (population mean kinship: 0.2548 versus 0.1664; Siminski & Spevak 2014, p. 9). Without substantial management action to improve the genetic composition of the population, inbreeding will accumulate and heterozygosity and alleles will be lost much faster than in the captive population.

There is evidence of strong inbreeding depression in the Mexican wolf experimental population. Fredrickson *et al.* (2007, pp. 2365–2371) estimated that the mean observed litter size (4.8 pups for pairs producing pups with no inbreeding) was reduced on average by 0.8 pups for each 0.1 increase in the inbreeding coefficient of the pups. For pairs producing pups with inbreeding coefficients of 0.20, the mean litter size was estimated to be 3.2 pups. Computer simulations of the experimental population incorporating the Mexican wolf pedigree suggest that this level of inbreeding depression may substantially reduce the viability of the experimental population (Carroll *et al.* 2014, p. 82).

The recent history of Mexican wolves can be characterized as a severe genetic bottleneck that began no later than the founding of the Ghost Ranch lineage in 1960. The founding of the three lineages along with their initial isolation likely resulted in the loss of most rare alleles and perhaps even some moderately common alleles. Heterozygosity loss was accelerated as a result of rapid inbreeding accumulation. The merging of the captive lineages likely slowed the loss of alleles and heterozygosity, but did not end it. The consequences to Mexican wolves of the current genetic bottleneck will be future populations that have reduced fitness (for example, smaller litter sizes, lower pup survival) due to inbreeding accumulation and the full expression of deleterious alleles. The loss of alleles will limit the ability of future Mexican wolf populations to adapt to environmental challenges.

Based on data from the SSP documenting loss of genetic variation, research documenting viability-related inbreeding effects in Mexican wolves, and our awareness that the wild population is at risk of inbreeding due to its small size, we conclude that inbreeding, and loss of heterozygosity, and loss of adaptive potential are significantly affecting Mexican wolves and are likely to continue to do so in the future. If the Mexican wolf was not protected by the Act, these risks would remain, and may increase if States or other parties did not actively promote genetic diversity in the experimental population by releasing wolves with appropriate genetic ancestry to the population.

Small Population Size—Rarity may affect the viability (likelihood of extinction or persistence over a given time period) of a subspecies depending

on the subspecies' biological characteristics and threats acting upon it. We consider several types of information to determine whether small population size is affecting the Mexican wolf, including historical conditions, consideration of stochastic (or, chance) events, theoretical recommendations of population viability, and applied population-viability models specific to Mexican wolves. We discuss three types of stochastic events—demographic, environmental, and catastrophic—as the fourth type of stochastic event—genetic—is addressed under the subheading of Inbreeding. We further discuss the significance of small population size in Combination of Factors/Focus on Cumulative Effects, below.

Historical abundance and distribution serve as a qualitative reference point against which to assess the size of the current population. Prior to European colonization of North America, Mexican wolves were geographically widespread throughout numerous populations across the southwestern United States and Mexico. Although we do not have definitive estimates of historical abundance, we can deduce from gray wolf population estimates (Leonard *et al.* 2005, p. 15), trapping records, and anecdotal information that Mexican wolves numbered in the thousands across its range in the United States and Mexico. We, therefore, recognize that the current size and geographic distribution of the Mexican wolf represents a substantial contraction from its historical (pre-1900s) abundance and distribution.

Scientific theory and practice generally agree that a subspecies represented by a small population faces a higher risk of extinction (or a lower probability of population persistence) than a subspecies that is widely and abundantly distributed (Goodman 1987, pp. 11–31; Pimm *et al.* 1988, p. 757). One of the primary causes of this susceptibility to extinction is the sensitivity of small populations to random demographic events (Shaffer 1987, pp. 69–86, Caughley 1994, p. 217). In small populations, even those that are growing, random changes in average birth or survival rates could cause a population decline that would result in extinction. This phenomenon is referred to as demographic stochasticity. As a population grows larger and individual events tend to average out, the population becomes less susceptible to extinction from demographic stochasticity and is more likely to persist.

Two Mexican wolf population-viability analyses were initiated subsequent to the development of the 1982 Mexican Wolf Recovery Plan but prior to the reintroduction of Mexican wolves into the experimental population in 1998 (Seal 1990 entire, IUCN 1996 entire, Service 2010, p. 66), although neither was completed. Population-viability modeling will be conducted as part of the development of draft recovery criteria; these results will be available to the public when the draft recovery plan is published. In the meantime, Carroll *et al.* (2014, p. 81) conducted a population viability model for Mexican wolves and found that the risk of extinction varied by both population size and the number of effective migrants per generation. The risk of extinction for population sizes below 200 was affected by the number of migrants, such that populations of 100 had a greater than 5 percent extinction risk, even with 3 effective migrants per generation, while populations of 125 were more secure with 2.5 to 3.0 effective migrants per generation, and populations of 150 were secure with greater than 0.5 effective migrants per generation (Carroll *et al.* 2014, p. 81). Given our understanding of the high extinction risk of the current size of the experimental population and our awareness that this rarity is not the typical abundance and distribution pattern for Mexican wolves, we consider the small population size of the Mexican wolf.

At the end of 2013, the minimum population size was 83 Mexican wolves, meaning the experimental population is, by demographic measures, considered small and has a low probability of persistence (Shaffer 1987, p. 73; Boyce 1992, p. 487; Mills 2007, p. 101; Service 2010, pp. 63–68). Absent the protection of the Act, the extinction risks associated with small population size would remain, and may increase if Arizona or New Mexico does not actively support the experimental population through appropriate management measures. The vulnerability of a small population to extinction can also be driven by the population's vulnerability to decline or extinction due to stochastic environmental or catastrophic events (Goodman 1987, pp. 11–31; Pimm *et al.* 1988, p. 757). While we consider these types of events to be critically important considerations in our recovery efforts for the subspecies, we have not identified any single environmental event (*i.e.,* disease, climate change (below)) or catastrophic event (wildfire) to be significantly affecting Mexican wolf based on our current information and management practices (*e.g.,* vaccinations, monitoring). However, we reconsider the concept of vulnerability to these events below, in Combination of Factors/Focus on Cumulative Effects.

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). ''Climate'' refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2013, p. 1450). 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 2013, p. 1450). Various types of changes in climate can have direct or indirect effects on the Mexican wolf. These effects may be positive, neutral, or negative, and they may change over time, such as the effects of interactions of climate with other variables (*e.g.,* habitat fragmentation). In our analysis, we use our expert judgment to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change. Research to investigate the possible impacts of climate change specifically on the Mexican wolf has not been conducted. Therefore, we base our analysis on pertinent information from the scientific literature related to Mexican wolf habitat and prey.

Throughout their circumpolar distribution, gray wolves persist in a variety of ecosystems with temperatures ranging from −70 to 120 degrees Fahrenheit (−56 to 48 degrees Celsius) with wide-ranging prey type and availability (Mech and Boitani 2003, p. xv). Mexican wolves historically inhabited, and still inhabit, a range of southwestern ecotypes subsisting on large ungulate prey as well as small mammals Mexican wolves did not historically, (nor currently), inhabit extreme desert areas or semi-desert grasslands except potentially during dispersal movements (Service 2010, p. 39). Due to their plasticity and lack of reliance on microhabitat, we generally do not consider Mexican wolves to be highly vulnerable or sensitive to climate change (Dawson *et al.* 2011, p. 53). However, we recognize that climate change is already having detectable impacts on the ecosystems of the Southwest, and future changes could affect Mexican wolves or their prey. For

example, warmer temperatures, more frequent and severe drought, and reductions in snowpack, streamflows and water availability are projected across the southwestern US (Garfin *et al.* 2014, pp. 464–466). To the degree that warmer temperatures and increased aridity or decreased water availability (Dai 2011, p. 58) or any of these other conditions, limit prey abundance, we would also expect decreased Mexican wolf densities. Information suggests that ungulate prey populations in more xeric ecoregions in the Southwest may be impacted more negatively than those in wetter areas due to decreased forage quality and availability (deVoss and McKinney 2012, p. 19). However, Mexican wolves are associated with mid-to high-elevation montane forests and adjacent grasslands rather than areas with more xeric conditions. Reduced water in the system, due to reduced summer base flow in streams, and the earlier onset of summer low-flow conditions, may reduce or localize big game populations in the summer months; such changes have the potential to adversely affect the wolf within the next 50 to 100 years through reductions or distributional shifts in wild ungulate populations. Information also suggests that mule deer may be more susceptible to climate change impacts that alter vegetation patterns than elk (deVoss and McKinney 2012, pp. 16–19), but elk are currently a much more important source of prey for Mexican wolves than mule deer.

Both Mexican wolves and their primary prey (elk) may exhibit reasonable adaptive capacity (Dawson *et al.* 2011, p. 53), such that they could shift habitats in response to changing climatic conditions or potentially persist in place. Elk, which make up approximately 77 to 80 percent of the Mexican wolf's diet in the experimental population, are known to be habitat generalists due to their association with wide variation in environmental conditions (Kuck 1999, p. 1). Both positive and negative impacts to elk from climate change have been hypothesized in the literature, although no specific regional research has been conducted (deVoss and McKinney 2012, p. 18). For example, if climate change results in decreased winter snow pack in the Colorado Plateau Region (which includes central Arizona and New Mexico), elk populations could expand in number due to milder winters and increased forage availability (National Wildlife Federation 2013, p. 14). Conversely, if migratory elk herds stop migrating in response to milder winters, increased elk densities in some areas could lead to higher levels of disease transmission between elk, which may increase mortality (ibid). With these types of positive and negative considerations in mind, several sources tentatively suggest that overall elk may respond favorably in range and population size to climate change (National Wildlife Federation 2013, p. 14, deVoss and McKinney 2012, p. 19).

In Mexico, elk are not present as a source of prey for Mexican wolves. Therefore, the effects of climate change on deer populations could be important for the establishment and maintenance of a wolf population there. Seasonal decreases in precipitation and resulting changes in vegetation quality and availability could lead to the same type of impacts to ungulates as hypothesized in the United States, such as range contraction or decreasing populations. However, as with Factors A–D and because our focus in this analysis is on currently occupied range, the absence of a Mexican wolf population in Mexico precludes analysis of climate change there.

Therefore, based on the relatively low vulnerability and sensitivity of the Mexican wolf to changes in climate, and the potential for elk to respond favorably to climate change in this region, we conclude that climate change is not substantially affecting the Mexican wolf at the current time nor do we expect it to do so in the future.

Summary of Factor E

Inbreeding, loss of adaptive potential, loss of heterozygosity, and small population size are significantly affecting the Mexican wolf. Inbreeding and loss of heterozygosity have the potential to affect viability-related fitness traits in Mexican wolves and, therefore, to affect the persistence of the subspecies in the wild in the near term; loss of genetic variation (adaptive potential) significantly affects the likelihood of persistence of the Mexican wolf over longer timeframes. Absent the protection of the Act, inbreeding, loss of heterozygosity, and loss of adaptive potential would persist and possibly increase depending on whether the States or other parties undertook active promotion of the maintenance of gene diversity.

The small size of the Mexican wolf experimental population results in a high risk of extinction due to the susceptibility of the population to stochastic demographic events. The minimum estimated population of 83 Mexican wolves at the end of 2013 is not a sufficient size to ensure persistence into the future. Absent the protection of the Act, small population size would continue to significantly affect the Mexican wolf, or may increase if States or other parties did not actively support the experimental population through appropriate management measures. Intolerance by humans, land-use conflicts, hybridization, and climate change are not significantly affecting the Mexican wolf, nor are they expected to do so in the future. Vehicular collision is not significantly affecting the Mexican wolf; however, we expect that this source of mortality may increase in the future due to wolf dispersal and occupancy in areas of higher road density than currently occupied habitat. We do not have data to estimate how significant this may become.

Combination of Factors/Focus on Cumulative Effects

In the preceding review of the five factors, we found that the Mexican wolf is most significantly affected by illegal killing, inbreeding, loss of heterozygosity, loss of adaptive potential, and small population size. In absence of the Act's protections, these issues would continue to affect the Mexican wolf, and would likely increase in frequency or severity. We also identify several potential sources of mortality or risk (disease, vehicular collision, wildfire, hybridization, etc.) that we do not currently consider to be significantly affecting the Mexican wolf due to their low occurrence, minimal impact on the population, or lack of information. However, we recognize that multiple sources of mortality or risk acting in combination have greater potential to affect the Mexican wolf than each factor alone. Thus, we consider how factors that, by themselves may not have a significant effect on the Mexican wolf, may affect the subspecies when considered in combination.

The small population size of the Mexican wolf exacerbates the potential for all other factors to disproportionately affect the Mexican wolf. The combined effects of demographic, genetic, environmental, and catastrophic events to a small population can create an extinction vortex—an unrecoverable population decline—that results in extinction. Small population size directly and significantly increases the likelihood of inbreeding depression, which has been documented to decrease individual fitness, hinder population growth, and decrease the population's probability of persistence. Small population size also increases the likelihood that concurrent mortalities from multiple causes that individually may not be resulting in a population decline (*e.g.,* vehicular collisions, natural sources of mortality)

could collectively do so, depending on the population's productivity, especially when additive to an already significant source of mortality, such as illegal shooting. Effects from disease, catastrophe, environmental conditions, or loss of heterozygosity that normally could be sustained by a larger, more resilient population have the potential to rapidly affect the size, growth rate, and genetic integrity of the small experimental population when they act in combination. Therefore we consider the combination of factors C, D, and E to be significantly affecting the Mexican wolf.

Summary of Five-Factor Analysis

We do not find habitat destruction, curtailment, or modification to be significantly affecting the Mexican wolf now, nor do we find that these factors are likely to do so in the future regardless of whether the subspecies is protected by the Act. The size and federally protected status of the National Forests in Arizona and New Mexico are adequate and appropriate for the reintroduction project. These National Forests provide secure habitat with an adequate prey base and habitat characteristics to support the current wolf population. The Wallow Fire and the Whitewater-Baldy Complex Fire, while catastrophic, were not sources of habitat modification, destruction, or curtailment that affected the Mexican wolf because there were no documented wolf mortalities during the fires, and prey populations are expected to increase in response to post-fire positive effects on vegetation.

We do not find overutilization for commercial, recreational, scientific, or educational purposes to be significantly affecting the Mexican wolf because we have no evidence to indicate that legal killing or removal of wolves from the wild for commercial, recreational (*i.e.,* hunting), scientific, or educational purposes is occurring. The killing of wolves for their pelts is not known to occur, and Mexican wolf research-related mortalities are minimal or nonexistent. Incidents of injuries and mortalities from trapping (for other animals) have been low. In absence of Federal protection, State regulations in Arizona and New Mexico, and Federal regulations in Mexico, could provide regulations to protect Mexican wolves from overutilization. Overutilization of Mexican wolves would not likely increase if they were not listed under the Act due to the protected status they would be afforded by the States and Mexico.

Based on known disease occurrences in the current population and the active vaccination program, we do not consider disease to be significantly affecting the Mexican wolf. Absent the protection of the Act, a similar vaccination program would need to be implemented by the States or other parties, or the potential for disease to significantly affect the Mexican wolf could increase.

Predation (by nonhuman predators) is not significantly affecting the Mexican wolf. No wild predator regularly preys on wolves, and only a small number of predator-related wolf mortalities have been documented in the current Mexican wolf experimental population. We do not consider predation likely to significantly affect the Mexican wolf in the future or if the subspecies was not protected by the Act.

Illegal shooting is identified as significantly affecting the Mexican wolf and is a significant threat. Adequate regulatory protections are not available to protect Mexican wolves from illegal shooting without the protection of the Act. We would expect shooting of Mexican wolves to increase if they were not federally protected, as State penalties (assuming Mexican wolves were maintained as State-protected) are less than Federal penalties.

Inbreeding, loss of heterozygosity, loss of adaptive potential, and small population size are significantly affecting the Mexican wolf. We recognize the importance of the captive management program and the active reintroduction project and recovery program in addressing these issues. Absent the protection of the Act, their effects on Mexican wolf would continue, or possibly increase depending on the degree of active management provided by the States or other parties.

Vehicular collisions, intolerance by humans, land-use conflicts, hybridization, and climate change are not significantly affecting the Mexican wolf, nor are they expected to do so in the near future or if the Mexican wolf was not protected by the Act.

Climate change is not significantly affecting the Mexican wolf nor would it do so in the absence of the Act's protections. The effects of climate change may become more pronounced in the future, but as is the case with all stressors that we assess, even if we conclude that a species or subspecies 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 these effects are significant to the species or subspecies. The habitat generalist characteristics of the wolf and their primary prey, elk, lead us to conclude that climate change will not significantly affect the Mexican wolf in the future.

The cumulative effects of factors that increase mortality and decrease genetic diversity are significantly affecting the Mexican wolf, particularly within the context of its small population size (a characteristic that significantly decreases the probability of a population's persistence). The cumulative effects of these threats are significantly affecting the Mexican wolf at the current time and likely will continue to do so in the future. Absent the protection of the Act, the cumulative effects of these threats may increase due to the potential for more killing of Mexican wolves, increased risk of inbreeding, and other sources of mortality, all exacerbated by the Mexican wolf's small population size.

Determination

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, subspecies, or DPS 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 data available regarding the past, present, and future threats to the Mexican wolf and have determined that the subspecies warrants listing as endangered throughout its range. As required by the Act, we considered the five potential threat factors to assess whether the Mexican wolf is endangered or threatened throughout its range. Based on our analysis, we find that the Mexican wolf is in danger of extinction throughout all of its range due to small population size, illegal killing, inbreeding, loss of heterozygosity and adaptive potential, and the cumulative effect of all threats. Also, existing regulatory mechanisms are not adequate to ensure the survival of the Mexican wolf.

Our finding that the Mexican wolf is in danger of extinction throughout all of its range is consistent with our administrative approach to determining which subspecies are on the brink of extinction and, therefore, warrant listing

as endangered. Prior to the early 1900s, the Mexican wolf was distributed over a large geographic area that included portions of the Southwest and much of Mexico. The Mexican wolf was nearly eliminated in the wild by the mid-1900's due to predator eradication efforts, which led to its listing as an endangered subspecies in 1976 and again as part of the species-level gray wolf listing in 1978. Therefore, the Mexican wolf is a subspecies that was formerly widespread but was reduced to such critically low numbers and restricted range (*i.e.,* eliminated in the wild) that it is at high risk of extinction due to threats that would not otherwise imperil it.

At the time of its initial listing, no robust populations of Mexican wolves remained in the wild. The establishment and success of the captive-breeding program temporarily prevented immediate absolute extinction of the Mexican wolf and, by producing surplus animals, has enabled us to undertake the reestablishment of Mexican wolves in the wild by releasing captive animals into the experimental population. In the context of our current proposal to list the Mexican wolf as an endangered subspecies, we recognize that, even with these significant improvements in the Mexican wolf's status, its current geographic distribution is a very small portion of its former range. Moreover, within this reduced and restricted range, the Mexican wolf faces significant threats that are intensified by its small population size. The Mexican wolf is highly susceptible to inbreeding, loss of heterozygosity, and loss of adaptive potential due to the bottleneck created during its extreme population decline prior to protection by the Act, the limited number of and relatedness of the founders of the captive population, and the loss of some genetic material from the founders. The effects of inbreeding have been documented in Mexican wolves and require active, ongoing management to minimize.

Mexican wolf mortality from illegal killing, as well as all other sources of mortality or removal from the wild experimental population, is occurring within the context of a small population. Smaller populations have low probabilities of persistence compared to larger, more geographically widespread populations. Absent the protection of the Act, illegal killing would likely increase dramatically, further reducing the population's size and increasing its vulnerability to genetic and demographic factors, putting the Mexican wolf at imminent risk of extinction. These factors are occurring throughout the Mexican wolf's range in the wild, resulting in our determination that the subspecies warrants listing as endangered throughout its range.

After a thorough review of all available information and an evaluation of the five factors specified in section 4(a)(1) of the Act, as well as consideration of the definitions of ''threatened species'' and ''endangered species'' contained in the Act and the reasons for delisting as specified in 50 CFR 424.11(d), we revise the List of Endangered and Threatened Wildlife (50 CFR 17.11) by listing the Mexican wolf subspecies (*Canis lupus baileyi*) as endangered. The Mexican wolf is in danger of extinction throughout all of its range and thus warrants the protections of the Act. Listing the entire Mexican wolf subspecies means that all members of the taxon are afforded the protections of the Act regardless of where they are found.

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 Mexican wolf is in danger of extinction throughout all of its range due to illegal killing, inbreeding, loss of heterozygosity, loss of adaptive potential, small population size, and the cumulative effects of factors C, D, and E. Historically, the Mexican wolf was distributed across portions of the southwestern United States and northern and central Mexico. The subspecies may have also ranged north into southern Utah and southern Colorado within zones of intergradation where interbreeding with other gray wolf subspecies may have occurred (Leonard *et al.* 2005, pp. 15–16). The Mexican wolf was near extinction prior to protection by the Act in the 1970's, such that the captive-breeding program was founded with only seven wolves. Although our recovery efforts for the Mexican wolf, which are still under way, have led to the reestablishment of a wild population in the United States, the single, small population of Mexican wolves would face an imminent risk of extinction from the cumulative effects of small population size, inbreeding, and illegal shooting, without the protection of the Act. Absent protection by the Act, regulatory protection, especially against illegal killing, would not be adequate to ensure the survival of the Mexican wolf. Therefore, on the basis of the best available scientific and commercial information, we list the Mexican wolf as endangered in accordance with sections 3(6) and 4(a)(1) of the Act. We find that a threatened subspecies status is not appropriate for the Mexican wolf because of the contracted range, because the threats are occurring rangewide and are not localized, and because the threats are ongoing and expected to continue into the future.

Under the Act and our implementing regulations, a subspecies 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 Mexican wolf occur throughout its range and are not restricted to any particular significant portion of that range. Accordingly, our assessment and proposed determination applies to the Mexican wolf throughout its entire range.

Effects of the Rule

This final rule lists the Mexican wolf as an endangered subspecies. As a matter of procedure, in a separate but concurrent rulemaking published in this **Federal Register**, we also finalize the revision to the regulations for the nonessential experimental population of the Mexican wolf to ensure appropriate association of the experimental population with this Mexican wolf subspecies listing.

Required Determinations

National Environmental Policy Act

We determined that an environmental assessment or an environmental impact statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act of 1995

Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), require that Federal agencies obtain approval from OMB before collecting information from the public. This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on state or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have coordinated with affected Tribes through correspondence and meetings in order to both (1) provide them with an understanding of the changes, and (2) to understand their concerns with those changes. We fully considered all of the comments on the proposed rule that were submitted by Tribes and Tribal members during the public comment period, and we addressed those concerns, new data, and new information where appropriate.

References Cited

A complete list of all references cited in this document is posted on *http://www.regulations.gov* at Docket No. FWS–HQ–ES–2013–0073 and available upon request from the New Mexico Ecological Services Field Office, Albuquerque, NM (see **FOR FURTHER INFORMATION CONTACT**).

Data Quality Act

In developing this rule we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554).

Authors

The primary authors of this rule are the staff members of the Mexican Wolf Recovery Program (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

For the reasons set forth in the preamble, the Service amends 50 CFR part 17 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; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11(h) in the List of Endangered and Threatened Wildlife under Mammals by:

■ a. Revising the entry for ''Wolf, gray (*Canis lupus*)''; and

■ b. Adding two entries for ''Wolf, Mexican (*Canis lupus baileyi*)'' in alphabetic order.

The revision and additions 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							
*	*	*	*	*	*	*	
Wolf, gray	*Canis lupus*	Holartic	U.S.A.: All of AL, AR, CA, CO, CT, DE, FL, GA, KS, KY, LA, MA, MD, ME, MO, MS, NC, NE, NH, NJ, NV, NY, OK, PA, RI, SC, TN, TX, VA, VT and WV; and portions of AZ, IA, IN, IL, ND, NM, OH, OR, SD, UT, and WA as follows: (1) Northern AZ (that portion north of the centerline of Interstate Highway 40); (2) Southern IA, (that portion south of the centerline of Highway 80); (3) Most of IN (that portion south of the centerline of Highway 80); (4) Most of IL (that portion south of the centerline of Highway 80); (5) Western ND (that portion south and west of the Missouri River upstream to Lake Sakakawea and west of the centerline of Highway 83 from Lake Sakakawea to the Canadian border); (6) Northern NM (that portion north of the centerline of Interstate Highway 40); (7) Most of OH (that portion south of the centerline of Highway 80 and east of the Maumee River at Toledo); (8) Western OR (that portion of OR west of the centerline of Highway 395 and Highway 78 north of Burns Junction and that portion of OR west of the centerline of Highway 95 south of Burns Junction); (9) Western SD (that portion south and west of the Missouri River); (10) Most of Utah (that portion of UT south and west of the centerline of	E	1, 6, 13, 15, 35	NA	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
			Highway 84 and that portion of UT south of Highway 80 from Echo to the UT/WY Stateline); and (11) Western WA (that portion of WA west of the centerline of Highway 97 and Highway 17 north of Mesa and that portion of WA west of the centerline of Highway 395 south of Mesa). Mexico				
*	*	*	*	*	*	*	
Wolf, Mexican	*Canis lupus baileyi*	Southwestern United States and Mexico.	Entire, except where included in an experimental population as set forth in 17.84(k).	E	.....	NA	NA
Wolf, Mexican	*Canis lupus baileyi*	Southwestern United States and Mexico.	U.S.A. (portions of AZ and NM)—see 17.84(k).	XN	.....	NA	17.84(k)
*	*	*	*	*	*	*	

* * * * *

Dated: January 7, 2015.

Stephen Guertin,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2015–00441 Filed 1–15–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2013–0056; FXES11130900000–156–FF09E42000]

RIN 1018–AY46

Endangered and Threatened Wildlife and Plants; Revision to the Regulations for the Nonessential Experimental Population of the Mexican Wolf

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), revise the regulations for the nonessential experimental population of the Mexican wolf (*Canis lupus baileyi*) under section 10(j) of the Endangered Species Act of 1973, as amended. This action is being taken in coordination with our final rule in this **Federal Register** to list the Mexican wolf as an endangered subspecies. The regulatory revisions in this rule will improve the project to reintroduce a nonessential experimental population, thereby increasing potential for recovery of this species.

DATES: This rule becomes effective February 17, 2015.

ADDRESSES: This final rule, along with the public comments, environmental impact statement (EIS), and record of decision, are available on the Internet at *http://www.regulations.gov,* Docket No. FWS–R2–ES–2013–0056 or from the office listed in **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Sherry Barrett, Mexican Wolf Recovery Coordinator, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna Road NE., Albuquerque, NM 87113; by telephone 505–761–4704; or by facsimile 505–346–2542. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339. Further contact information can be found on the Mexican Wolf Recovery Program's Web site at *http://www.fws.gov/southwest/es/mexicanwolf/.*

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. We are revising the regulations under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) (Act or ESA) that established the experimental population of the Mexican wolf (*Canis lupus baileyi*) to further its conservation by improving the effectiveness of the reintroduction project in managing the experimental population. We intend to do this by: (1) Modifying the geographic boundaries in which Mexican wolves are managed south of Interstate-40 in Arizona and New Mexico under section 10(j) of the Act; (2) modifying the management regulations that govern the initial release, translocation, removal and take of Mexican wolves; and (3) issuing a permit under section 10(a)(1)(A) of the Act for management of Mexican wolves both inside and outside of the Mexican Wolf Experimental Population Area (MWEPA). Revisions to the regulations, which were promulgated in 1998, and the section 10(a)(1)(A) permit are needed because: (1) Under the current regulations we will not be able to achieve the necessary population growth, distribution, and recruitment that would contribute to the persistence of, and improve the genetic variation within, the experimental population; (2) there is a potential for Mexican wolves to disperse into southern Arizona and New Mexico from reintroduction areas in the States of Sonora and Chihuahua in northern Mexico; and (3) certain provisions lack clarity, are inadequate, or limit the efficacy and flexibility of our management of the experimental population of Mexican wolves.

Also, this final rule is necessitated by a related action we are taking to classify the Mexican wolf as an endangered subspecies. The Mexican wolf has been listed under the Act in the Code of Federal Regulations (CFR) at 50 CFR 17.11(h) as part of the gray wolf (*Canis lupus*) listing since 1978. Therefore, when we designated the Mexican wolf experimental population in 1998 (1998 Final Rule; 63 FR 1752, January 12, 1998), it corresponded to the gray wolf listing in even though it was specific to our Mexican wolf recovery effort. With this publication of the final rule to list the Mexican wolf as an endangered subspecies, we need to revise 50 CFR 17.11(h) such that the experimental population will be associated with the Mexican wolf subspecies listing rather than with the gray wolf species.

The basis for our action. The 1982 amendments to the Act included the addition of section 10(j), which allows for reintroduced populations of listed species to be designated as ''experimental populations.'' Under section 10(j) of the Act and our regulations at 50 CFR 17.81, the Service may designate as an experimental population a population of endangered or threatened species that has been or will be released into suitable natural habitat outside the species' current natural range (but within its probable historical range, absent a finding by the Director of the Service in the extreme case that the primary habitat of the species has been unsuitably and irreversibly altered or destroyed). With the experimental population designation, the relevant population is treated as threatened for purposes of section 9 of the Act, regardless of the species' designation elsewhere in its range. Treating the experimental population as threatened allows us the discretion to devise management programs and special regulations for such a population. Section 4(d) of the Act allows us to adopt any regulations that are necessary and advisable to provide for the conservation of a threatened species. When designating an experimental population, the general regulations that extend most section 9 prohibitions to threatened species do not apply to that species, and the section 10(j) rule contains the prohibitions and exemptions necessary and advisable to conserve that species.

We prepared an EIS. We prepared a final Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) to ensure that we considered the environmental impacts of the designation of the proposed nonessential experimental population of Mexican wolves. From October through December 2007, we conducted a public scoping process under NEPA based on our intent to modify the 1998 Final Rule. We developed a scoping report in April 2008, but we did not propose or finalize any modifications to the 1998 Final Rule at that time. We again initiated scoping on August 5, 2013 (78 FR 47268). We utilized all information collected since the 2007 scoping process began in the development of the draft EIS published in the **Federal Register** on July 25, 2014 (79 FR 43358). We used information from the analyses in the final EIS published in the **Federal Register** on November 25, 2014 (79 FR 70154), to inform our final decision on the revision to the regulations for the experimental population of the Mexican wolf.

We conducted peer review. In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we conducted peer review on our June 13, 2013 (78 FR 35719), and our July 25, 2014 (79 FR 43358), proposed rules. The purpose of such review is to ensure that our final rule for this species is based on scientifically sound data, assumptions, and analyses. We invited six peer reviewers to comment, during the open public comment period, on our use and interpretation of the science used in developing our proposed rule. We considered all comments and information we received during the comment periods on the proposed rules during preparation of this final rulemaking.

Previous Federal Actions

The Mexican wolf was listed under the Act as an endangered subspecies in 1976 (41 FR 17736, April 28, 1976). In 1978, the Service listed the entire gray wolf species in North America south of Canada as endangered, except in Minnesota where it was listed as threatened (43 FR 9607, March 9, 1978). This 1978 listing at the species level subsumed the previous Mexican wolf subspecies listing. However, the 1978 listing rule (43 FR 9607, March 9, 1978) stated that we would continue to recognize the Mexican wolf as a valid biological subspecies for purposes of research and conservation.

After the 1978 listing, the Service initiated recovery programs for the gray wolf in three broad geographical regions of the country: The Northern Rocky Mountains, the Western Great Lakes, and the Southwest. In the Southwest, a recovery plan was developed specifically for the Mexican wolf, acknowledging and implementing the regional gray wolf recovery focus on the conservation of the Mexican wolf as a subspecies (Service 1982). The 1982 Mexican Wolf Recovery Plan did not provide recovery criteria, but recommended an initial two-pronged approach to recovery to establish a captive-breeding program and reintroduce captive Mexican wolves to the wild (Service 1982, p. 28).

In 1996, we completed a final Environmental Impact Statement (EIS), ''Reintroduction of the Mexican Wolf Within Its Historic Range in the Southwestern United States,'' after assessing potential locations for reintroduction of the Mexican wolf (Service 1996). On April 3, 1997, the Department of the Interior issued its Record of Decision on the final EIS (62 FR 15915), and on January 12, 1998, we published a final rule in the **Federal Register** to establish the Mexican Wolf Experimental Population Area (MWEPA) in central Arizona and New Mexico (63 FR 1752; hereafter referred to as the 1998 Final Rule).

On August 4, 2010, the Service published a 90-day finding in the **Federal Register** on two petitions to list the Mexican wolf as an endangered subspecies with critical habitat (75 FR 46894). In the 90-day finding, we determined that the petitions presented substantial scientific information that the Mexican wolf may warrant reclassification as a subspecies or distinct population segment (DPS). As a result of this finding, we initiated a status review. On October 9, 2012, we published our 12-month finding (77 FR 61375) stating that the listing of the Mexican wolf as a subspecies or DPS was not warranted at that time because Mexican wolves already receive the protections of the Act under the species-level gray wolf listing of 1978.

On February 29, 2012, we completed a 5-year review of the gray wolf listed entity, recommending that the entity currently described on the List of Endangered and Threatened Wildlife should be revised to reflect the distribution and status of gray wolf populations in the lower 48 States and Mexico by removing all areas currently included in its range, as described in the CFR, except where there is a valid species, subspecies, or DPS that is threatened or endangered (Service 2012).

On June 13, 2013 (78 FR 35664), we concurrently proposed a rule in the **Federal Register** to delist the gray wolf and list the Mexican wolf subspecies as endangered. The proposal to list the Mexican wolf as an endangered subspecies necessitated that we propose a revision to the regulations for the experimental population of the Mexican wolf in Arizona and New Mexico in order to correctly document this population as an experimental population of the Mexican wolf subspecies rather than the gray wolf species found in the current CFR. We also proposed several changes to the

section 10(j) rule and management regulations of Mexican wolves to improve the effectiveness of the reintroduction project in managing the experimental population. Therefore, on June 13, 2013 (78 FR 35719), we published a proposed rule to revise the regulations for the experimental population designation of the Mexican wolf. That proposal had a 90-day comment period ending September 11, 2013.

On August 5, 2013 (78 FR 47268), we published a notice of intent to prepare an EIS in conjunction with the proposed rule to revise the regulations for the experimental population designation of the Mexican wolf. That notice of intent to prepare an EIS had a 45-day comment period ending September 19, 2013. On September 5, 2013 (78 FR 54613), we extended the public comment period on the proposed rule to revise the regulations for the experimental population designation of the Mexican wolf to end on October 28, 2013, and announced public hearings. On October 28, 2013 (78 FR 64192), we once again extended the public comment period on the proposed rule to revise the regulations for the experimental population designation of the Mexican wolf to end on December 17, 2013, and announced public hearings.

On July 25, 2014 (79 FR 43358), we proposed a new revision to the regulations for the experimental population of the Mexican wolf, and announced the availability of a draft EIS on the proposal. That proposal had a 60-day comment period ending September 23, 2014.

In a July 29, 2013, stipulated settlement agreement between the Service and the Center for Biological Diversity, the Service agreed to submit to the **Federal Register** for publication, on or before January 12, 2015, a final determination concerning the proposed section 10(j) rule modification. This final rule revising the regulations for the existing experimental population of the Mexican wolf meets that agreement.

Background

Species Information

The Mexican wolf is the smallest extant gray wolf subspecies in North America. Adults weigh 50 to 90 pounds (lb) (23 to 41 kilograms (kg)) with a length of 5 to 6 ft (1.5 to 1.8 m) and height at shoulder of 25 to 32 in (63 to 81 cm) (Brown 1988, p. 119). Mexican wolves are typically a patchy black, brown to cinnamon, and cream color, with primarily light underparts (Brown 1988, p. 118). Solid black or white coloration, as seen in other North American gray wolves, does not exist in Mexican wolves. The basic life history for the Mexican wolf is similar to that of other gray wolves (Mech 1970, entire; Service 1982, p. 11; Service 2010, pp. 32–41).

Historically, Mexican wolves were distributed across portions of the southwestern United States and northern and central Mexico. In the United States, this range included eastern, central, and southern Arizona; southern New Mexico; and western Texas (Brown 1983, pp. 10–11; Parsons 1996, pp. 102–104). Maps of Mexican wolf historical range are available in the scientific literature (Young and Goldman 1944, p. 414; Hall and Kelson, 1959, p. 849; Hall 1981, p. 932; Bogan and Mehlhop 1983, p. 17; Nowak 1995, p. 395; Parsons 1996, p. 106). The southernmost extent of the Mexican wolf's range in Mexico is consistently portrayed as ending near Oaxaca (Hall 1981, p. 932; Nowak 1995, p. 395). Depiction of the northern extent of the Mexican wolf's pre-settlement range among the available descriptions varies depending on the authors' taxonomic treatment of several subspecies and their interpretation of where reproductive interaction between neighboring wolf populations occurred (see this **Federal Register** publication of the final rule determining endangered status for the Mexican wolf (*Canis lupus baileyi*)).

Mexican wolves were associated with montane woodlands characterized by sparsely to densely forested mountainous terrain consisting of evergreen oaks (*Quercus* spp.) or pinyon (*Pinus edulus*) and juniper (*Juniperus* spp.) to higher elevation pine (*Pinus* spp.), mixed-conifer forests, and adjacent grasslands at elevations of 4,000 to 5,000 ft (1,219 to 1,524 m) where ungulate prey were abundant. Mexican wolves were believed to have preyed upon white-tailed deer (*Odocoileus virginianus*), mule deer (*O. hemionus*), elk (*Cervus elaphus*), collared peccaries (javelina) (*Tayassu tajacu*), pronghorn (*Antilocapra americana*), bighorn sheep (*Ovis canadensis*), jackrabbits (*Lepus* spp.), cottontails (*Sylvilagus* spp.), and small rodents (Parsons and Nicholopoulos 1995, pp. 141–142); white-tailed deer and mule deer were believed to be the primary sources of prey (Brown 1988, p. 132; Bednarz 1988, p. 29).

Today, Mexican wolves in Arizona and New Mexico inhabit evergreen pine-oak woodlands (*i.e.,* Madrean woodlands), pinyon-juniper woodlands (*i.e.,* Great Basin conifer forests), and mixed-conifer montane forests (*i.e.,* Rocky Mountain, or petran, forests) that are inhabited by elk, mule deer, and white-tailed deer (Service 1996, pp. 3–5; AMOC and IFT 2005, p. TC–3). Mexican wolves in the Blue Range Wolf Recovery Area (BRWRA) show a strong preference for elk compared to other ungulates (Adaptive Management Oversight Committee (AMOC) and Interagency Field Team (IFT) 2005, p. TC–14, Reed *et al.* 2006, pp. 56, 61; Merkle *et al.* 2009, p. 482). Other documented sources of prey include deer and occasionally small mammals and birds (Reed *et al.* 2006, p. 55). Mexican wolves are also known to prey and scavenge on livestock (Merkle *et al.* 2009, p. 482; Breck *et al.* 2011, entire; Reed *et al.* 2006, p. 1129; AMOC and IFT 2005, p. TC–15)).

Recovery Efforts

By the early 1970s, the Mexican wolf was extirpated in the United States, and by the 1980s, it was also considered extirpated in Mexico. The United States and Mexico signed the Mexican Wolf Recovery Plan in 1982 (Service 1982). The recovery plan did not contain objective and measurable recovery criteria for delisting as required by section 4(f)(1) of the Act because the status of the Mexican wolf was so dire that the recovery team could not foresee full recovery and eventual delisting (Service 1982, p. 23). Instead, the recovery plan contained a ''prime objective'' to ensure the immediate survival of the Mexican wolf. The prime objective of the 1982 recovery plan was: ''To conserve and ensure the survival of *Canis lupus baileyi* by maintaining a captive breeding program and reestablishing a viable, self-sustaining population of at least 100 Mexican wolves in the middle to high elevations of a 5,000-square-mi area (12,950-square-km) within the Mexican wolf's historic range'' (Service 1982, p. 23).

In the June 2013 proposed revision (78 FR 35719), we stated that the purpose of the experimental population is to accomplish the prime objective of the 1982 Mexican Wolf Recovery Plan to establish a viable, self-sustaining population of at least 100 Mexican wolves in the wild. That number was derived solely to prevent the Mexican wolf from going extinct, not to recover the species. We acknowledge that a scientifically based population goal is needed as part of the measurable recovery criteria in order to determine when removing the Mexican wolf from the endangered species list is appropriate. We intend to establish a population goal as part of the recovery criteria for delisting in a future revision to the Mexican Wolf Recovery Plan as soon as feasible. The population

objective of 300 to 325 Mexican wolves in the MWEPA established in this final rule would provide for the persistence of this population and enable it to contribute to the next phase of working toward full recovery of the Mexican wolf and its removal from the endangered species list. In other words, the Mexican wolves in the MWEPA population will contribute to the delisting criteria, in addition to other populations, as necessary.

A binational captive-breeding program between the United States and Mexico, referred to as the Mexican Wolf Species Survival Plan (SSP), was initiated in 1977 to 1980 with the capture of the last remaining Mexican wolves in the wild in Mexico and subsequent addition of wolves from captivity in Mexico and the United States. Through the breeding of the 7 founding Mexican wolves and generations of their offspring, the captive population has expanded to approximately 248 wolves in 55 facilities, including 37 facilities in the United States and 18 facilities in Mexico (Siminski and Spevak 2014, p. 2).

The primary purpose of the SSP is to maintain a healthy captive population of Mexican wolves for the Service and the Dirección General del Vida Silvestre (in Mexico) for reintroduction into the wild. This program is an essential component of Mexican wolf recovery. Specifically, the purpose of the SSP is to reestablish the Mexican wolf in the wild through captive breeding, public education, and research. This captive population is the sole source of Mexican wolves available to reestablish the species in the wild and is imperative to the success of reintroduction efforts in the United States and Mexico.

Reintroduction efforts to reestablish the Mexican wolf in the wild have taken place in both the United States and Mexico. Mexico initiated a reintroduction program with the release of five captive-bred Mexican wolves into the San Luis Mountains just south of the United States-Mexico border in October 2011. Through August 2014, Mexico released a total of 14 adult Mexican wolves, of which 11 died or are believed dead, and 1 was removed for veterinary care. The remaining two adult Mexican wolves were documented with five pups in 2014, marking the first successful reproductive event in Mexico since their extirpation in the 1980s. We expect the number of Mexican wolves in Mexico to fluctuate from zero to several wolves or packs of wolves during 2015 and into the future in or around Sonora and Chihuahua or other Mexican States.

In the United States, we have focused our recovery efforts on the reestablishment of Mexican wolves as an experimental population under section 10(j) of the Act in Arizona and New Mexico. We established the experimental population of Mexican wolves in 1998 to pursue the prime objective of the 1982 Mexican Wolf Recovery Plan.

(Figure 1). The reintroduction project is a collaborative effort conducted by the Service, Forest Service, Arizona Game and Fish Department, White Mountain Apache Tribe, and U.S. Department of Agriculture's Animal and Plant Health Inspection Service.

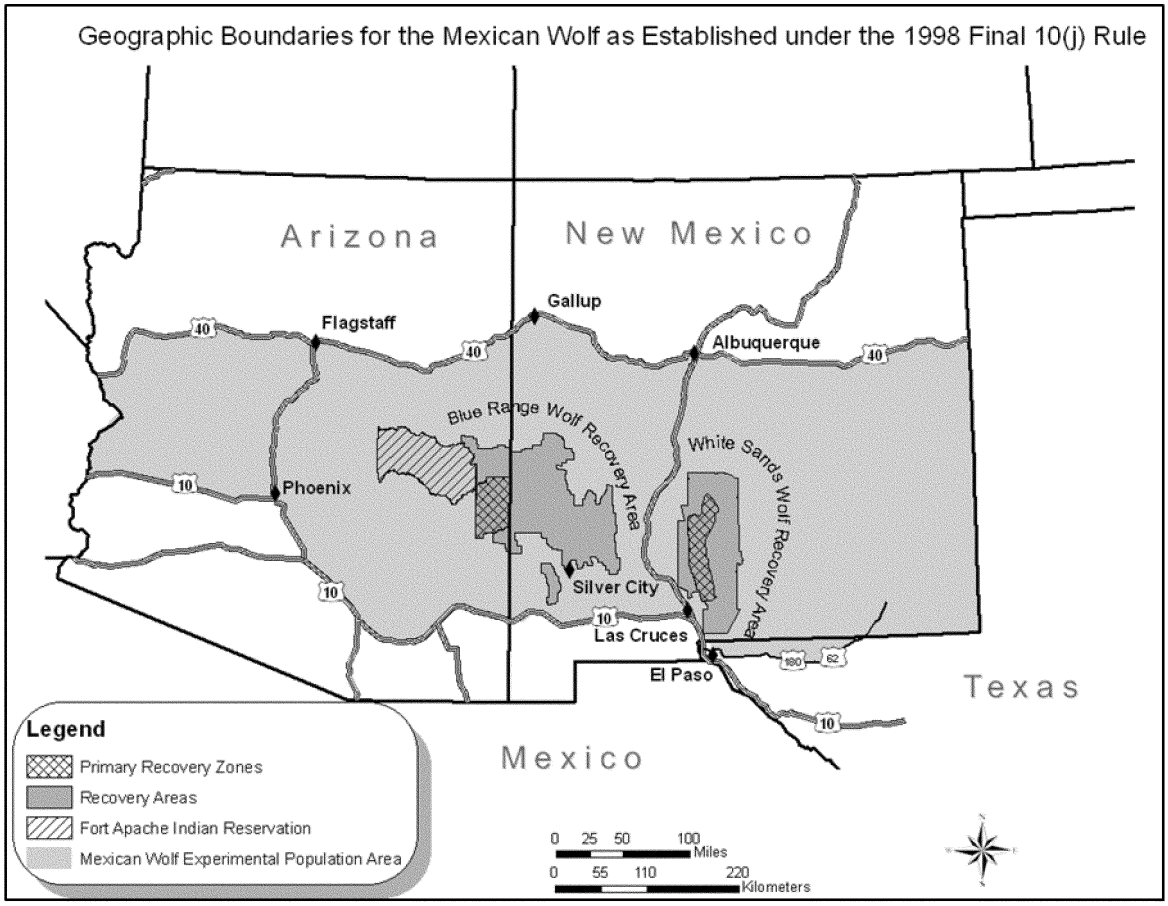


Figure 1—Geographic boundaries for the Mexican Wolf under the 1998 Final Rule under section 10(j) of the Endangered Species Act.

In the years 1998 through 2002, we conducted a high number of initial releases and translocations (n = 110) and a moderate number of removals (n = 58), which contributed to a net gain of 38 wolves in the overall population and the highest average population growth rate (1.003) (*e.g.,* the average population growth was approximately 100 percent per year: Calculated as the population count at year two minus the population count at year one divided by the population at year one) experienced by the population. From 2003 through 2007, we conducted a moderate number of initial releases and translocations (n = 68) and a high number of removals (n = 84), resulting in a net gain of 10 wolves in the overall population and an average population growth rate that was relatively flat (0.069). Between 2008 and 2013, which was characterized by a low number of releases and translocations (n = 19), but also a low number of removals (n = 17), we observed a net gain of 31 wolves and a higher average population growth rate (0.095) than the previous phase (Service 2014, Appendix D, p. 1).

We expect to pursue additional recovery efforts for the Mexican wolf outside of the MWEPA in the future. In the meantime, we expect that managing this experimental population in accordance with this revised rule will contribute to future recovery. We initiated the revision of the 1982 Mexican Wolf Recovery Plan in 2010. The revised plan will provide information about suitable habitat and population sizes for Mexican wolf recovery in the United States and Mexico. A draft plan will be provided for public and peer review before being finalized.

More information about the life history, decline, and current status of the Mexican wolf in the southwestern United States can be found in the final rule determining endangered status for the Mexican wolf (*Canis lupus baileyi*) (published elsewhere in this **Federal Register**), the 1982 Mexican Wolf Recovery Plan (Service 1982, pp. 5–8, 11–12), the 1996 final EIS (Service 1996, pp. 1–7), the 1998 Final Rule (63 FR 1752, January 12, 1998), the Mexican Gray Wolf Blue Range Reintroduction Project 5-Year Review (Mexican Wolf Blue Range Adaptive Management Oversight Committee and Interagency Field Team 2005, pp. TC–1 to TC–2), the Mexican Wolf Conservation Assessment (Service 2010, pp. 7–15, 20–42), the Mexican Wolf Recovery Program Progress reports from 2001 to 2013, and the 2014 final EIS (Service 2014). These documents are available on-line at *http://www.fws.gov/southwest/es/mexicanwolf/.*

Population Objective for Mexican Wolves in the MWEPA

As noted above, this experimental population represents just one component of Mexican wolf recovery based on our understanding that multiple Mexican wolf populations may be necessary for recovery. However, for purposes of this final rule, we are

establishing a population objective for the experimental population throughout the MWEPA in both Arizona and New Mexico based on the best available information until future recovery planning efforts are able to determine a population goal for range-wide recovery. We intend for the experimental population objective for this population to contribute to the future population goal established for the range-wide recovery of the Mexican wolf.

Several studies in the scientific literature helped inform our establishment of a population objective for the MWEPA. For instance, Wayne and Hedrick (2010, p. 3) recommend Mexican wolf recovery criteria to include 3 connecting populations of at least 250 Mexican wolves in each population. Their recommendation was based on the genetic aspects (effective population size) of the Mexican wolf relative to that of the gray wolf in the Northern Rocky Mountains and the recovery goals established for the Northern Rocky Mountains population. They suggest that the recovery goals of the Northern Rocky Mountains population (300 wolves, 30 breeding pairs, in 3 populations, with some level of connectivity) should serve as a starting point for Mexican wolf recovery goals because of the degree of inbreeding, higher level of human-caused mortality, and lower likelihood of persistence of Mexican wolves compared with wolves in the Northern Rocky Mountains. They conclude that 3 connected populations of 250 wolves in each population would likely be necessary to achieve recovery rangewide, suggesting that if natural gene flow does not occur between these populations then artificial movement may be necessary (Wayne and Hedrick 2010, p. 3).

Carroll *et al.* (2014) performed more sophisticated analyses of potential recovery scenarios for the Mexican wolf using a population viability model, pedigree analyses of Mexican wolves currently in the BRWRA or captivity, and habitat models related to connectivity. Carroll *et al.* (2014, entire) analyzed the variation of mortality and dispersal metrics relative to probabilities for extinction and quasi-extinction (*i.e.,* the probability of being relisted to threatened) in a metapopulation structure consisting of three populations that were connected via dispersal. Because two of these populations were assumed to have been founded using a more genetically diverse group of animals than is currently present in the experimental population in the BRWRA, the average viability of the populations was significantly higher than predicted for the experimental population.

The population extinction threshold was established as a 5 percent population extinction risk, as is commonly used in recovery plans (Carroll *et al.* 2014, p. 81). The risk of extinction varied by both population size and the number of effective migrants per generation (an effective migrant is an animal that comes from outside a population and successfully reproduces within the population). The risk of extinction for population sizes below 200 was affected by the number of migrants exchanging genetic information with the population. When located within a metapopulation of three equally sized populations, populations of 100 had a greater than 5 percent extinction risk, even with 3 effective migrants per generation per population. Populations of 125 were more resilient with 2.5 to 3.0 effective migrants per generation. Populations of 150 with greater than 0.5 effective migrants per generation showed extinction risk below the 5% threshold (Carroll *et al.* 2014, p. 81). This effect occurred in part because the migrants provided genetic exchange between the populations, which reduced the relatedness within each population and, therefore, increased persistence for each population.

Carroll *et al.* (2014, entire) also examined a quasi-extinction threshold. Quasi-extinction represents the likelihood that a population, once it exceeds a certain population size, will again drop below that size in the future (*e.g.,* due to the effects of accumulation of genetic inbreeding). In this analysis, they demonstrated that certain population sizes with higher levels of effective migration reduced the probability of quasi-extinction (Carroll *et al.* 2014, p. 82). A population comprising between 175 and 200 wolves had a less than 50 percent probability of quasi-extinction depending on whether the population had 0.5 to 1.0 effective migrants per generation. Population sizes of 300 to 325 achieved closer to a 10 percent probability of quasi-extinction regardless of whether the population had 0.5 or 1.0 effective migrants per generation, suggesting that at larger population sizes (above 300) increasing migration beyond 0.5 effective migrants per generation is a less important factor, when each population is present within a larger metapopulation (Carroll *et al.* 2014, p. 82).

Based on Carroll *et al.* (2014 entire), a population objective of at least 300 Mexican wolves with some number of effective migrants would be appropriate for a single population objective, recognizing that the number of effective migrants per generation greatly affects population persistence at various population sizes. We recommend a population objective of 300 to 325 Mexican wolves within the MWEPA throughout both Arizona and New Mexico with a minimum of 1 to 2 effective migrants per generation entering the population, depending on its size, over the long term. Further information on the minimum number of effective migrants per generation needed per population size is discussed in Section 1.2.2 of the final EIS (Service 2014). In the more immediate future, we may conduct additional releases in excess of 1–2 effective migrants per generation to address the high degree of relatedness of wolves in the current BRWRA. We will continue to refine this information through a revised recovery plan. It will be important to ensure that a specific number of effective migrants are incorporated into the population, in this case from captivity, until such time as other wild populations are established within the context of a metapopulation as defined in a Service-approved recovery plan (Carroll *et al.* 2014, entire). Prior to the establishment of other wild Mexican wolf populations outside of the MWEPA and documentation of effective migrants between wild populations, we will need to use the captive population as a source of migrants for the experimental population.

Why We Need To Revise the 1998 Final Rule

We are revising the regulations to the experimental population to further the conservation of the Mexican wolf by improving the effectiveness of the reintroduction project in managing the experimental population. We intend to do this by: (1) Modifying the geographic boundaries in which Mexican wolves are managed south of Interstate-40 in Arizona and New Mexico under section 10(j) of the Act; (2) modifying the management regulations that govern the initial release, translocation, removal, and take of Mexican wolves; and (3) issuing a section 10(a)(1)(A) permit for management of Mexican wolves both inside and outside of the MWEPA. Revisions to the 1998 Final Rule and the section 10(a)(1)(A) permit are needed because: (1) Under the current regulations we will not be able to achieve the necessary population growth, distribution, and recruitment that would contribute to the persistence of, and improve the genetic variation within, the experimental population; (2) there is a potential for Mexican wolves

to disperse into southern Arizona and New Mexico from reintroduction areas in the States of Sonora and Chihuahua in northern Mexico; and (3) certain provisions lack clarity, are inadequate, or limit the efficacy and flexibility of our management of the experimental population of Mexican wolves.

Over time and through project reviews, annual reports, monitoring, and communication with our partners and the public, we recognize that elements of the 1998 Final Rule designation need to be revised to help us enhance the growth, stability, and success of the experimental population. Specifically, the 1998 Final Rule currently restricts initial releases of Mexican wolves to the Primary Recovery Zone, which constitutes only 16 percent of the BRWRA. This provision has constrained the number and location of Mexican wolves that can be released from captivity into the wild, which limits our ability to improve the genetic status of the population. Also, the 1998 Final Rule has a requirement that Mexican wolves stay within the BRWRA, which does not allow for natural dispersal movements from the BRWRA or occupation of the MWEPA. This requirement constrains the growth of the wild population. Under the 1998 Final Rule, we are required to implement management actions that disrupt social structure or lead to removal of wolves from the wild when a Mexican wolf naturally disperses from the BRWRA into the MWEPA. Therefore, we are revising a number of provisions that were established in the 1998 Final Rule to further the conservation of the Mexican wolf by improving the effectiveness of the reintroduction project in managing the experimental population.

Statutory and Regulatory Framework

The Act provides that species listed as endangered are afforded protection primarily through the prohibitions of section 9 and the requirements of section 7. Section 9 of the Act, among other things, prohibits the take of endangered wildlife. ''Take'' is defined by the Act as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. Section 7 of the Act outlines the procedures for Federal interagency cooperation to conserve federally listed species and protect designated critical habitat. It mandates that all Federal agencies use their existing authorities to further the purposes of the Act by carrying out programs for the conservation of listed species. It also states that Federal agencies must, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the Act does not affect activities undertaken on private land unless they are authorized, funded, or carried out by a Federal agency.

The 1982 amendments to the Act included the addition of section 10(j), which allows for the designation of reintroduced populations of listed species as ''experimental populations.'' Under section 10(j) of the Act and our regulations at 50 CFR 17.81, the Service may designate as an experimental population a population of endangered or threatened species that has been or will be released into suitable natural habitat outside the species' current natural range, but within its probable historical range. With the experimental population designation, the relevant population is treated as threatened, regardless of the species' designation elsewhere in its range. Threatened status allows us discretion in devising management programs and special regulations for such a population through the use of section 4(d) of the Act. Section 4(d) allows us to adopt any regulations that are necessary and advisable to provide for the conservation of a threatened species. In these situations, the general regulations that extend most section 9 prohibitions to threatened species do not apply to that species, and the rule issued under section 10(j) of the Act (hereafter referred to as a 10(j) rule) contains the prohibitions and exemptions necessary and appropriate to conserve that species.

Before authorizing the release as an experimental population of any population (including eggs, propagules, or individuals) of an endangered or threatened species, and before authorizing any necessary transportation to conduct the release, the Service must find, by regulation, that such release will further the conservation of the species. In making such a finding, the Service uses the best scientific and commercial data available to consider: (1) Any possible adverse effects on extant populations of a species as a result of removal of individuals, eggs, or propagules for introduction elsewhere; (2) the likelihood that any such experimental population will become established and survive in the foreseeable future; (3) the relative effects that establishment of an experimental population will have on the recovery of the species; and (4) the extent to which the introduced population may be affected by existing or anticipated Federal or State actions or private activities within or adjacent to the experimental population area.

Furthermore, as set forth in 50 CFR 17.81(c), all regulations designating experimental populations under section 10(j) must provide: (1) Appropriate means to identify the experimental population, including, but not limited to, its actual or proposed location, actual or anticipated migration, number of specimens released or to be released, and other criteria appropriate to identify the experimental population(s); (2) a finding, based solely on the best scientific and commercial data available, and the supporting factual basis, on whether the experimental population is, or is not, essential to the continued existence of the species in the wild; (3) management restrictions, protective measures, or other special management concerns of that population, which may include but are not limited to, measures to isolate and contain the experimental population designated in the regulation from natural populations; and (4) a process for periodic review and evaluation of the success or failure of the release and the effect of the release on the conservation and recovery of the species.

Under 50 CFR 17.81(d), the Service must consult with appropriate State game and fish agencies, local governmental entities, affected Federal agencies, and affected private landowners in developing and implementing experimental population rules. To the maximum extent practicable, section 10(j) rules represent an agreement between the Service, the affected State and Federal agencies, and persons holding any interest in land that may be affected by the establishment of an experimental population.

Based on the best scientific and commercial data available, we must determine whether the experimental population is essential or nonessential to the continued existence of the species. The regulations (50 CFR 17.80(b)) state that an experimental population is considered essential if its loss would be likely to appreciably reduce the likelihood of survival of that species in the wild. All other populations are considered nonessential.

For the purposes of section 7 of the Act, we treat a nonessential experimental population as a threatened species when it is located within a National Wildlife Refuge or unit of the National Park Service, and Federal agency conservation requirements under section 7(a)(1) and the Federal agency

consultation requirements of section 7(a)(2) of the Act apply. Section 7(a)(1) requires all Federal agencies to use their authorities to carry out programs for the conservation of listed species. Section 7(a)(2) requires that Federal agencies, in consultation with the Service, ensure that any action authorized, funded, or carried out is not likely to jeopardize the continued existence of a listed species or adversely modify its critical habitat. When a nonessential experimental population is located outside a National Wildlife Refuge or National Park Service unit, then, for the purposes of section 7, we treat the population as proposed for listing and only section 7(a)(1) and section 7(a)(4) apply.

In these instances, a nonessential experimental population provides additional flexibility because Federal agencies are not required to consult with us under section 7(a)(2). Section 7(a)(4) requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a species proposed to be listed. The results of a conference are in the form of conservation recommendations that are optional as the agencies carry out, fund, or authorize activities. Because the nonessential experimental population is, by definition, not essential to the continued existence of the species, the effects of proposed actions affecting the nonessential experimental population will generally not rise to the level of jeopardizing the continued existence of the species. As a result, a formal conference will likely never be required for Mexican wolves established within the experimental population area. Nonetheless, some agencies voluntarily confer with the Service on actions that may affect a proposed species. Activities that are not carried out, funded, or authorized by Federal agencies are not subject to provisions or requirements in section 7.

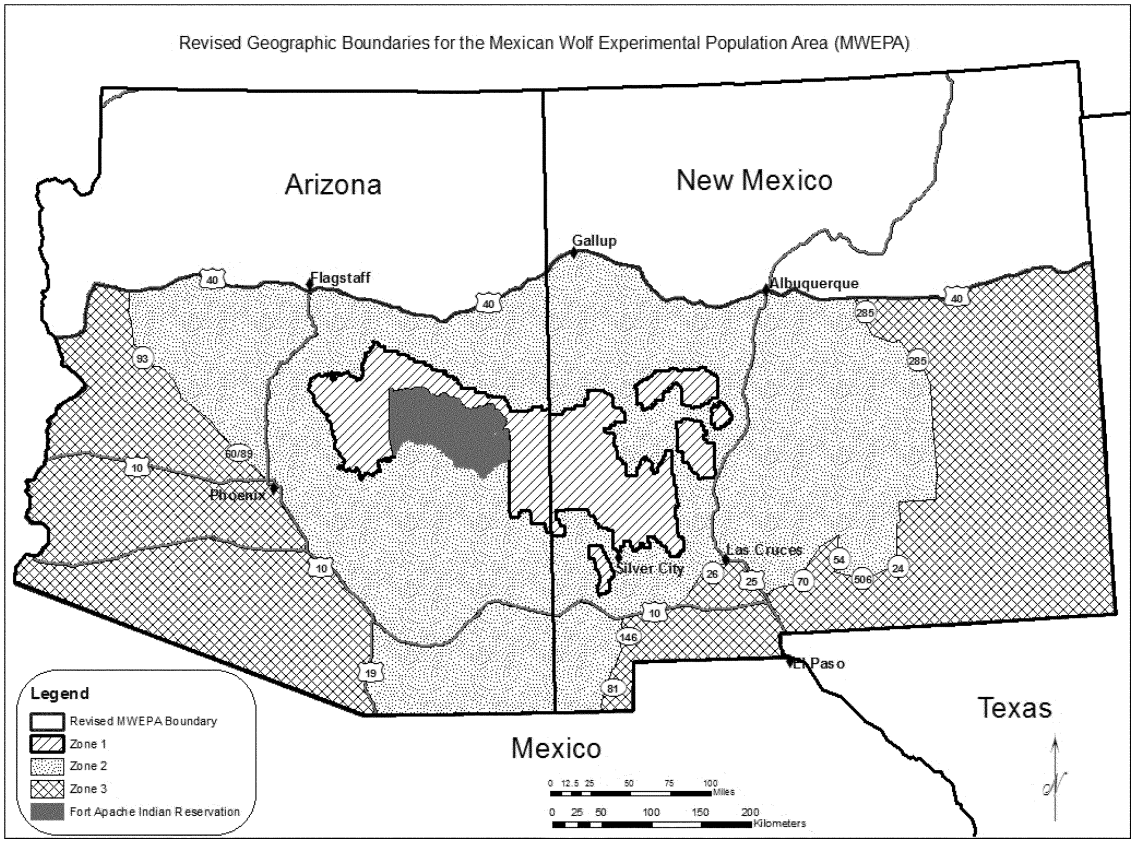
Section 10(j)(2)(C)(ii) of the Act states that critical habitat shall not be designated for any experimental population that is determined to be nonessential. Accordingly, we cannot designate critical habitat in areas where we establish a nonessential experimental population.

Revisions to the Geographic Area of the Mexican Wolf Experimental Population

We are expanding the MWEPA by moving the southern boundary from Interstate Highway 10 to the United States–Mexico international border across Arizona and New Mexico (Figure 2). Expanding the MWEPA was a recommendation in the Mexican Wolf Blue Range Reintroduction Project 5-Year Review (AMOC and IFT 2005, p. ARC–3). We are making this modification because the reintroduction effort for Mexican wolves now being undertaken by the Mexican Government has established a need to manage Mexican wolves that may disperse into southern Arizona and New Mexico from reestablished Mexican wolf populations in Mexico. An expansion of the MWEPA south to the international border with Mexico would allow us to manage all Mexican wolves in this area, regardless of origin, under the experimental population 10(j) rule. The regulatory flexibility provided by our revisions to the 1998 Final Rule would allow us to take management actions within the MWEPA that further the conservation of the Mexican wolf while being responsive to needs of the local community in cases of problem wolf behavior.

Figure 2—Revised geographic boundaries for the Mexican wolf experimental population area (MWEPA).

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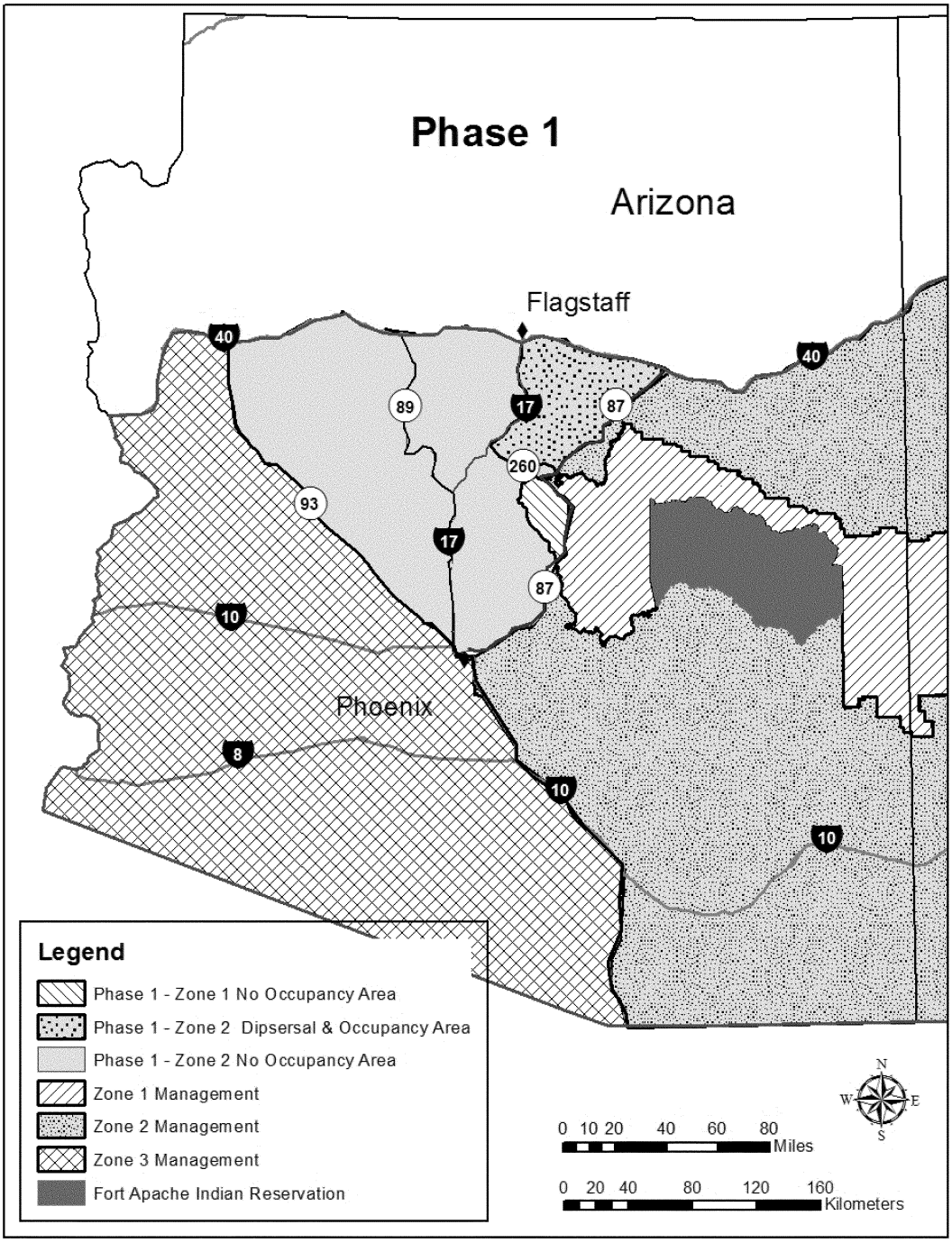


Also, we are identifying Zones 1, 2, and 3 as different management areas within the MWEPA and discontinuing the use of the term BRWRA. Zone 1 is where Mexican wolves may be initially released or translocated, and includes all of the Apache, Gila, and Sitgreaves National Forests; the Payson, Pleasant Valley, and Tonto Basin Ranger Districts of the Tonto National Forest; and the Magdalena Ranger District of the Cibola National Forest. Zone 2 is where Mexican wolves will be allowed to naturally disperse into and occupy, and where Mexican wolves may be translocated. On Federal land in Zone 2, initial releases of Mexican wolves are limited to pups less than 5 months old, which allows for the cross-fostering of pups from the captive population into the wild, and it enables translocation-eligible adults to be re-released with pups born in captivity. On private and tribal land in Zone 2, Mexican wolves of any age, including adults, can also be initially released under a Service- and State-approved management agreement with private landowners or a Service-approved management agreement with tribal agencies. Translocations in Zone 2 will be focused on suitable Mexican wolf habitat that is contiguous to occupied Mexican wolf range. Zone 3 is where neither initial releases nor translocations will occur, but Mexican wolves will be allowed to disperse into and occupy. Zone 3 is an area of less suitable Mexican wolf habitat where Mexican wolves will be more actively managed under the authorities of this rule to reduce conflict with the potentially affected public.

Further, we have included a phased approach to translocations, initial releases, and occupancy of Mexican wolves west of Highway 87. In consultations with officials of the Arizona Game and Fish Department, they expressed concern that elk populations west of Highway 87 are generally smaller in number and isolated from each other compared to elk populations east of Highway 87. Also, areas west of Highway 87 tend to be drier, and, therefore, elk herds have greater fluctuations in population size than herds in more mesic areas to the east. As such, Arizona's most dense and productive elk populations are found in the eastern part of the State, generally east of Highway 87. Therefore, we have included a phased approach to translocations, initial releases, and occupancy of Mexican wolves west of Highway 87.

As part of the phased-approach, Phase 1 will be implemented for the first 5 years following the effective date of this rule (see DATES). During this phase, initial releases and translocation of Mexican wolves can occur throughout Zone 1 with the exception of the area west of State Highway 87 in Arizona (Figure 3). No translocations can be conducted west of State Highway 87 in Arizona in Zone 2. Mexican wolves can disperse naturally from Zones 1 and 2 into, and occupy, the MWEPA (Zones 1, 2, and 3). However, during Phase 1, dispersal and occupancy in Zone 2 west of State Highway 87 will be limited to the area north of State Highway 260 and west to Interstate 17.

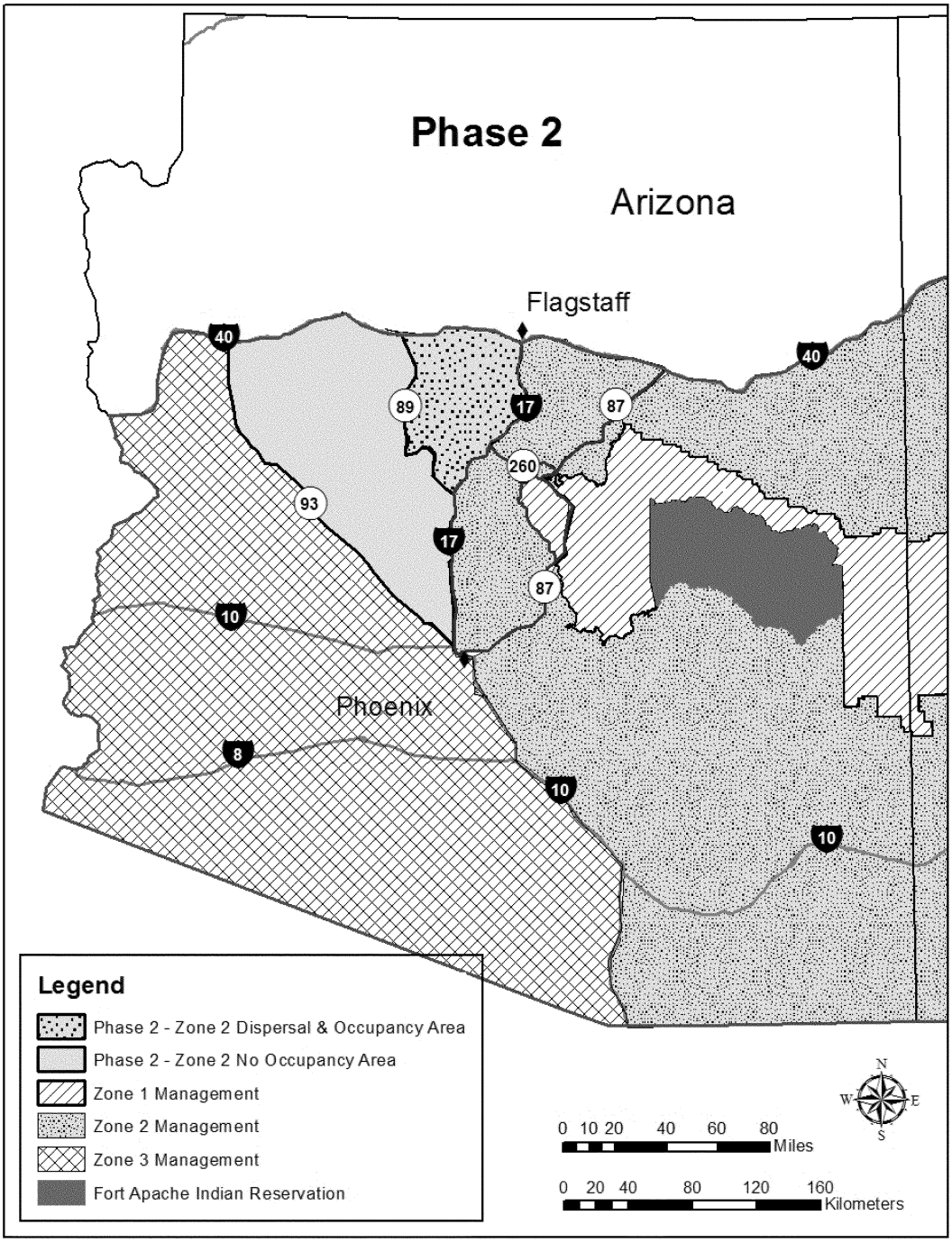
Figure 3—Phase 1 management boundaries for the Mexican wolf experimental population in Arizona.



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If determined to be necessary by the 5-year evaluation, we will initiate Phase 2 (Figure 4). In Phase 2, initial releases and translocation of Mexican wolves can occur throughout Zone 1 including the area west of State Highway 87 in Arizona. No translocations can be conducted west of Interstate Highway 17 in Arizona. Mexican wolves can disperse naturally from Zones 1 and 2 into, and occupy, the MWEPA (Zones 1, 2, and 3) with the exception of those areas west of State Highway 89 in Arizona.

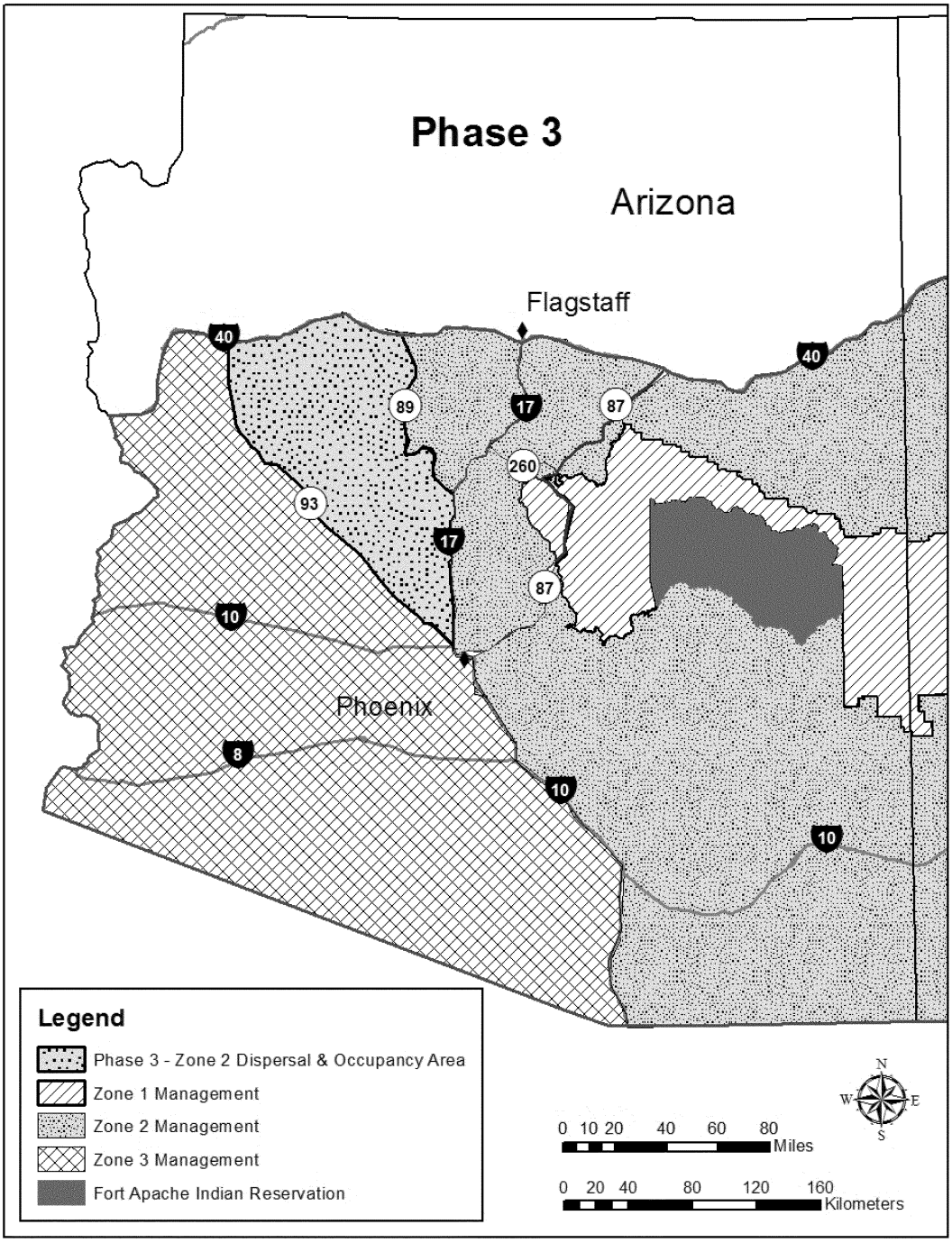
Figure 4—Phase 2 management boundaries for the Mexican wolf experimental population in Arizona.



If determined to be necessary by the 8-year evaluation and Phase 2 has already been implemented, Phase 3 will be initiated (Figure 5). In Phase 3, initial release and translocation of Mexican wolves can occur throughout Zone 1; Mexican wolves can disperse naturally from Zones 1 and 2 into, and occupy, the MWEPA (Zones 1, 2, and 3). However, no translocations can be conducted west of State Highway 89 in Arizona.

The phasing may be expedited with the concurrence of participating State game and fish agencies. Regardless of the phase implemented, by the beginning of year 12 from the effective date of this rule (see DATES), we will move to full implementation of this rule throughout the MWEPA, and the phased management approach will no longer apply (Figure 2). Full implementation means that initial release and translocation of Mexican wolves can occur throughout entire Zone 1; Mexican wolves can disperse naturally from Zone 1 into and within the MWEPA (Zones 2 and 3) and occupy the MWEPA (Zones 1, 2 and 3); and translocations can be conducted at selected translocation sites on Federal land within Zones 1 and 2 of the MWEPA.

Figure 5—Phase 3 management boundaries for the Mexican wolf experimental population in Arizona.



Additionally, we are eliminating the BRWRA designation along with the primary and secondary recovery zones provided for in the 1998 Final Rule in accordance with recommendations in the Mexican Wolf Blue Range Reintroduction Project 5-Year Review (AMOC and IFT 2005, p. ARC–4). We are designating Zone 1 as the area where initial releases can occur, which includes the entire Apache and Sitgreaves National Forests and the Payson, Pleasant Valley, and Tonto Basin Ranger Districts of the Tonto National Forest in Arizona; and the Gila National Forest and the Magdalena Ranger District of the Cibola National Forest in New Mexico (Figure 2). This revision will provide additional area and locations for initial releases of Mexican wolves to the wild from captivity beyond that currently allowed by the 1998 Final Rule.

With this final rule, we have removed the small portion of the MWEPA in Texas. This area is not likely to contribute substantially to our population objective and is not suitable for the conservation of Mexican wolves because of the lack of a sufficient amount of suitable habitat for the Mexican wolf. We do not expect Mexican wolves to occupy the small portion of Texas that was previously in the MWEPA because ungulate populations are inadequate to support Mexican wolves there.

Lastly, we are removing the White Sands Wolf Recovery Area as a possible reintroduction site for Mexican wolves (Figure 2), although Mexican wolves will still be able to disperse to and occupy this area. Under the 1998 Final Rule, initial releases and reintroduction

of Mexican wolves into the White Sands Wolf Recovery Area was authorized if the Service found it necessary and feasible in order to achieve the recovery goal of at least 100 Mexican wolves occupying 5,000 square mi (12,950 square km) (Service 1998). While this recovery area lies within the probable historical range of the Mexican wolf, and could be an important reestablishment site if prey densities increased substantially, it is now considered a marginally suitable area for Mexican wolf release and reestablishment primarily due to the low density of prey. For this reason the Mexican Wolf Blue Range Reintroduction Project 5-Year Review recommended that an amended or new experimental population rule not include White Sands Missile Range as a Mexican Wolf Recovery Area or as a reintroduction zone (AMOC and IFT 2005, p. ARC–3).

Reintroduction Procedures

In our 1998 Final Rule, we stated that we would release 14 family groups of Mexican wolves into the BRWRA over a period of 5 years to achieve our objective of establishing a population of at least 100 wild Mexican wolves. Selection criteria for Mexican wolves that are released include genetics, reproductive performance, behavioral compatibility, response to the adaptive process, and other factors (63 FR 1754, January 12, 1998). Since the end of that initial 5-year period in 2003, we have continued to conduct initial releases of Mexican wolves from captivity into the BRWRA and to translocate wolves with previous wild experience back into the BRWRA.

We have considerable experience conducting initial releases and resulting data upon which to guide our actions. We consider a successful initial release to be any Mexican wolf that ultimately breeds and produces pups in the wild. Between 1998 and 2013, our initial release success rate has been about 21 percent (Service 2014, Appendix D, p. 4). In other words, for every 100 wolves we release, only 21 of them survive, breed, and produce pups, therefore becoming effective migrants. Based on this success rate, and during the first 20 years of management under this final rule, we expect that each time we initially release wolves we will need to release 10 wolves to achieve 2 effective migrants, one component of our population objective for the MWEPA. Migrants are important to the conservation of the species to help alleviate genetic threats to the population including reducing kinship (the relatedness of animals to one another) and reducing loss of genetic variation. Based on assessment of the initial release success of various historical release strategies (single wolves, pairs, packs, etc.), we would expect to achieve this target by releasing 2 packs, each with an adult pair and several pups, during years 1 to 4 and 4 to 8, and 1 or 2 packs during the next three successive generations until year 20, or for 5 generations. We may conduct several additional releases in the immediate future in excess of 2 effective migrants per generation to specifically address the high degree of relatedness of wolves in the current BRWRA. The number of effective migrants needed to alleviate genetic threats to the population could decrease in the third and subsequent generations, assuming the population is above 250, as a population of that size is more robust. We may also conduct infrequent initial releases over time for other management purposes such as replacing wolves that have been removed from the wild. This number of effective migrants (7 to 10 wolves over 5 generations) is negligible from a population size standpoint, but should be significant from a genetic standpoint assuming animals selected for initial release are genetically desirable contributions to the population (Carroll *et al.* 2014, p. 81).

We expect to have adequate availability of initial release sites for the initial releases during future generations. That is, we would need 7 to 10 sites available (unoccupied by established wolf packs) for the release of packs. Zone 1 of the MWEPA provides for at least 7 release sites (see Figure D–2, Service 2014, Appendix D, p. 9). However, the ability to conduct initial releases of packs in these areas will also depend on the natural recolonization of the area. Coordination with State and Federal agencies, counties, Tribes, and the public would be needed prior to identifying specific release sites in Zone 1.

Management of the Experimental Population of Mexican Wolves

The prime objective of the 1982 recovery plan was to conserve and ensure the survival of the Mexican wolf by maintaining a captive-breeding program and reestablishing a viable, self-sustaining population of at least 100 Mexican wolves in the wild (Service 1982, p. 23). Based on the 1982 recovery plan, we established a captive-breeding population, starting with 7 founding wolves, of 240 to 300 Mexican wolves in 55 breeding facilities in the United States and Mexico. The 1998 Final Rule enabled us to release Mexican wolves from this captive population into the wild to determine if it was possible to establish a wild population following the extirpation of the species in the early 1970s. Since 1998, we have demonstrated success in establishing a wild population (*e.g.,* a minimum of 83 Mexican wolves in the wild, all of which are wildborn as of December 2013). However, we are now revising the 1998 Final Rule so that we can improve the effectiveness of the reintroduction project to achieve the necessary population growth, distribution, and recruitment, as well as genetic variation within the Mexican wolf experimental population so that it can contribute to recovery in the future. Following this phase of improving the existing experimental population regulation, we intend to revise the Mexican wolf recovery plan so that it provides a recovery goal and objective and measurable recovery criteria, which may require further revision to this regulation for the experimental population in the future including any necessary analysis pursuant to NEPA.

We are implementing this rule to further the conservation of the Mexican wolf by improving the effectiveness of the reintroduction project in managing the experimental population. The experimental designation enables the Service to develop measures for management of the population that are less restrictive than the mandatory prohibitions that protect species with endangered status. This includes allowing limited take of individual Mexican wolves under narrowly defined circumstances (50 CFR 17.84(k)(6)). Management flexibility is needed to make reintroduction compatible with current and planned human activities, such as livestock grazing and hunting. It is also critical to obtaining needed State, tribal, local, and private landowner cooperation. The Service believes this flexibility has and will continue to improve the likelihood of success of this reestablishment effort. Management of the experimental population may include any of the provisions herein or provided for in Service-approved management plans, protocols, and permits.

Upon the effective date of this rule and as described under paragraph (k)(9)(iv) in the regulations at the end of this document and in accordance with management phasing in Arizona, we are allowing initial release of Mexican wolves throughout the entire Zone 1; allowing Mexican wolves to disperse naturally from Zones 1 and 2 into, and occupy, the MWEPA (Zones 1, 2, and 3). We are allowing translocation of Mexican wolves at selected

translocation sites on Federal land within Zones 1 and 2 of the MWEPA, and we can develop management agreements with private landowners, with the concurrence of State game and fish agencies, and with tribal governments, for management of Mexican wolves in Zone 2. Under this rule, we are allowing Mexican wolves to occupy Federal and non-Federal land in the MWEPA, except in the case of depredation, other nuisance behavior, or an unacceptable impact to a wild ungulate herd that cannot be effectively managed through non-removal techniques. In addition, Mexican wolves will be captured and removed from tribal trust land if requested by the tribal government.

In order to maximize our management flexibility, we have revised the regulations for the take of Mexican wolves on Federal and non-Federal land within the entire MWEPA (Zones 1, 2, and 3) by:

(1) Modifying the conditions that determine when we would issue a permit to allow livestock owners or their agents to take (including intentional harassment or kill), in conjunction with a control action, any Mexican wolf that is in the act of biting, wounding, or killing livestock on Federal land, where specified in the permit; allowing domestic animal owners or their agents to take (including kill or injure) any Mexican wolf that is in the act of biting, wounding or killing domestic animals on non-Federal land anywhere within the MWEPA;

(2) Providing that the Service or a designated agency may, in conjunction with a removal action authorized by the Service, issue permits to allow domestic animal owners or their agents (*e.g.,* employees, land manager, local officials) to take (including intentional harassment or kill) any Mexican wolf that is present on non-Federal land where specified in the permit; and

(3) Revising the conditions under which take will be authorized in response to an unacceptable impact of Mexican wolf predation on a wild ungulate herd.

Additionally, subject to Service and State approved management agreements, the Service or a designated agency may develop and implement management actions on private land in management Zones 1 and 2 within the MWEPA in voluntary cooperation with private landowners, including but not limited to initial release and translocation of wolves onto such lands if requested by the landowner.

Subject to agreements with tribal governments, the Service may develop and implement management actions on tribal trust land in management Zones 1, 2, and 3 within the MWEPA in voluntary cooperation with tribal governments including but not limited to initial release and translocation. No agreement with a Tribe is necessary for the capture and removal of Mexican wolves from tribal trust land if requested by the tribal government.

Further, we have included a phased approach to translocations, initial releases, and occupancy of Mexican wolves west of Highway 87. As part of the phased-approach, Phase 1 will be implemented for the first 5 years following the effective date of this rule (see **DATES**). During this phase, we will conduct initial releases of Mexican wolves throughout Zone 1 with the exception of the area west of State Highway 87 in Arizona (Figure 3). No translocations can be conducted west of State Highway 87 in Arizona in Zone 2. Mexican wolves can disperse naturally from Zones 1 and 2 into and occupy the MWEPA (Zones 1, 2 and 3). However, during Phase 1, dispersal and occupancy in Zone 2 west of State Highway 87 will be limited to the area north of State Highway 260 and west to Interstate 17.

If determined to be necessary by the 5-year evaluation, we will initiate Phase 2 (Figure 4). In Phase 2 initial releases of Mexican wolves can occur throughout Zone 1 including the area west of State Highway 87 in Arizona. No translocations can be conducted west of Interstate Highway 17 in Arizona. Mexican wolves can disperse naturally from Zones 1 and 2 into, and occupy, the MWEPA (Zones 1, 2, and 3) with the exception of those areas west of State Highway 89 in Arizona.

If determined to be necessary by the 8-year evaluation and Phase 2 has already been implemented, Phase 3 will be initiated (Figure 5). In Phase 3, initial release of Mexican wolves can occur throughout Zone 1. No translocations can be conducted west of State Highway 89 in Arizona. Mexican wolves can disperse naturally from Zones 1 and 2 into and occupy the MWEPA (Zones 1, 2, and 3).

While implementing this phased approach, two evaluations will be conducted: (1) Covering the first 5 years and (2) covering the first 8 years after the effective date of this rule in order to determine if we will move forward with the next phase. Each phase evaluation will consider adverse human interactions with Mexican wolves, impacts to wild ungulate herds, and whether or not the Mexican wolf population in the MWEPA is achieving a population number consistent with a 10 percent annual growth rate based on end-of-year counts, such that 5 years after the effective date of this rule the population of Mexican wolves in the wild is at least 150, and 8 years after the effective date of this rule the population of Mexican wolves in the wild is at least 200. If we have not achieved this population growth, we will move forward to the next phase. Regardless of the outcome of the two evaluations, by the beginning of year 12 from the effective date of this rule, we will move to full implementation of this rule throughout the MWEPA, and the phased management approach will no longer apply. The phasing may be expedited with the concurrence of participating State game and fish agencies.

Also, we are revising and reissuing the Mexican Wolf Recovery Program's section 10(a)(1)(A) research and recovery permit (TE–091551–8 dated 04/04/2013) so that it applies to management of Mexican wolves both within and outside of the MWEPA. Under this permit we will authorize removal of Mexican wolves that can be identified as coming from the experimental population that disperse and establish territories in areas outside of the MWEPA. We will make a determination, based in part on their genetic value relative to the Mexican wolf population, to maintain these wolves in captivity, translocate them to areas of suitable habitat within the MWEPA, or transfer them to Mexico.

Identification and Monitoring

Prior to release from captivity into the wild, Mexican wolves will receive permanent identification marks and radio collars, as appropriate. While not all Mexican wolves are radio-collared, we attempt to maintain at least two radio collars per pack in the wild. Radio collars allow the Service to monitor reproduction, dispersal, survival, pack formation, depredations, predation, and a variety of other important biological metrics. We do not foresee a scenario where we would not continue an active monitoring strategy for Mexican wolves while they are listed under the Act. However, we also recognize that a majority of wild Mexican wolves may not have radio collars as the population grows.

The Service will measure the success or failure of releases, translocations, and other management actions by monitoring, researching, and evaluating the status of Mexican wolves and their offspring. Using adaptive management principles, the Service will continue to modify subsequent management actions depending on what is learned. We will prepare periodic progress reports, annual reports, and publications, as

appropriate, to evaluate release strategies and other management actions.

The 1998 Final Rule contained requirements to conduct full evaluations of the status of the experimental population after 3 and 5 years. As part of the evaluations, a recommendation was made for continuation, modification, or termination of the reintroduction project. Both evaluations were conducted and recommendations were made to continue the experimental population with modifications. These reviews were intensive efforts that included Service staff, other Federal, State, and tribal agencies, independent experts, and public involvement. We will conduct a one-time full evaluation of this final rule 5 years after it becomes effective; the evaluation will focus on modifications needed to improve the efficacy of reestablishing Mexican wolves in the wild and the contribution the experimental population is making toward the recovery of the Mexican wolf. We do not consider a 3-year review to be necessary, as we included this provision in the 1998 Final Rule to address the substantial uncertainties we had with reestablishing captive Mexican wolves to the wild. Therefore, a one-time program review conducted 5 years after our final determination will provide an appropriate interval to assess the effectiveness of the project. This one-time program review is separate from the status review of the listed species that we will conduct once every 5 years as required by section 4(c)(2) of the Act.

Summary of Comments and Recommendations

From October through December 2007, we conducted a public scoping process under NEPA based on our intent to modify the 1998 Final Rule. We developed a scoping report in April 2008, but we did not propose or finalize any modifications to the 1998 Final Rule at that time. We again initiated scoping on August 5, 2013 (78 FR 47268), when we published a notice of intent to prepare an EIS in conjunction with the proposed rule to revise the regulations for the experimental population designation of the Mexican wolf. That notice of intent to prepare an EIS had a 45-day comment period ending September 19, 2013. We requested written comments from the public on the proposed revision to the regulations for the experimental population of the Mexican wolf during two comment periods: June 13, 2013, to December 17, 2013, and July 25, 2014, to September 23, 2014. Additionally four public hearings were held: November 20, 2013, in Albuquerque, New Mexico; December 3, 2013, in Pinetop, Arizona; August 11, 2014, in Pinetop, Arizona; and August 13, 2014, in Truth or Consequences, New Mexico. We also contacted appropriate Federal, tribal, State, county, and local agencies, scientific organizations, and other interested parties and invited them to comment on the proposed rule during these comment periods.

Over the course of the two comment periods, we received approximately 48,131 comment submissions. All substantive information provided during these comment periods, including the public hearings, has either been incorporated directly into this final determination or addressed below. Comments from peer reviewers and State game and fish agencies are grouped separately. In addition to the comments, some commenters submitted for our consideration additional reports and references, which were reviewed and incorporated into this final rule as appropriate.

Peer Reviewer Comments

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from six knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. We received responses from four of the six peer reviewers we contacted during the first comment period. During the second comment period, we received responses from one of the six peer reviewers.

We reviewed all comments received from the peer reviewers regarding the proposed revision to the regulations for the experimental population designation of the Mexican wolf. The peer reviewers generally concurred with our methods and conclusions, and provided additional information, clarifications, and suggestions to improve this final rule. Peer reviewer comments are addressed in the following summary and incorporated into the final rule, as appropriate.

(1) *Comment:* The wording ''based on established ungulate management goals'' and ''unacceptable impact'' in the take provision for unacceptable impacts to wild ungulates is problematic in being so loosely worded and unqualified as to allow a wide variety of interpretations.

Our response: Based on information that we received from the Arizona Game and Fish Department and agreed upon by the New Mexico Department of Game and Fish, an unacceptable impact to a wild ungulate herd will be determined by a State game and fish agency based upon ungulate management goals, or a 15 percent decline in an ungulate herd as documented by a State game and fish agency, using their preferred methodology, based on the preponderance of evidence from bull to cow ratios, cow to calf ratios, hunter days, and/or elk population estimates. The rule also includes the process that the State game and fish agencies must follow to demonstrate that the decline in the ungulate population was influenced by Mexican wolves.

(2) *Comment:* There needs to be some justification presented why 100 Mexican wolves was once determined to be biologically warranted or why that number rather than 50 or 200 is not the goal for Mexican wolf restoration in its historical range of the purported subspecies in Arizona and New Mexico. There needs to be some link to how 100 Mexican wolves will help achieve recovery for the subspecies as defined under the Act.

Our response: As of the early 1970s, the Mexican wolf was extirpated in the United States. The prime objective of the 1982 recovery plan was to conserve and ensure the survival of the Mexican wolf by maintaining a captive-breeding program and reestablishing a viable, self-sustaining population of at least 100 Mexican wolves in the wild (Service 1982, p. 23). This number was not intended to be a recovery goal. It was a starting point to determine whether or not we could successfully establish a population of Mexican wolves in the wild that would conserve the species and lead to its recovery. Based on the 1982 recovery plan, we have now established a captive-breeding program and a wild population; however, we recognize the need to revise the 1998 Final Rule so that we can improve the effectiveness of the reintroduction project to achieve the necessary population growth, distribution, and recruitment, as well as genetic variation within the Mexican wolf experimental population so that it can contribute to recovery in the future. We acknowledge that a scientifically based population goal, as a component of future objective and measurable recovery criteria, is needed in order to help determine when removing the Mexican wolf from the endangered species list is appropriate. Following this phase of improving the existing experimental population regulation, we intend to revise the Mexican wolf recovery plan so that it provides a recovery goal and objective and measurable recovery criteria, which may require further revision to this regulation for the experimental

population in the future including any necessary analysis pursuant to NEPA.

In the meantime, this experimental population represents just one phase of Mexican wolf recovery. Based on Carroll *et al.* (Carroll *et al.* 2014, pp. 81–82)), a population objective of at least 300 Mexican wolves with some number of effective migrants would be appropriate for a single population objective, recognizing that the number of effective migrants per generation greatly affects population persistence at various population sizes. We have established a population objective of 300–325 wolves for the MWEPA.

(3) *Comment:* The June 2013 proposed rule suggests that any landowner can request translocation and the Service will attempt to do that. I believe this concept would be a huge mistake and will lead to the very problems that have occurred, to the detriment of Mexican wolf recovery, with the agency removal of non-problem Mexican wolves outside the primary recovery area. If Mexican wolves cause a problem, then deal with them. If not, leave them alone and let them assist with achieving population objectives. That type of provision invites conflict, public demands that cannot be satisfied, bad public relations, and waste of agency resources. The rule should be crystal clear for the public to understand.

Our response: We clarified many of the provisions in our revised proposed rule that published in the **Federal Register** on July 25, 2014. We will not remove a Mexican wolf if a landowner (other than tribes on tribal trust lands) requests removal and the wolf is not engaging in activities that fit the definition of a ''problem wolf.'' We have clarified the language to allow the initial release and translocation of Mexican wolves onto private lands if there is an agreement with the landowner and concurrence with the State game and fish agency.

(4) *Comment:* Take of a Mexican wolf by a pet owner is not an issue and should be allowed. It is not going to be a significant issue either way, as very few Mexican wolves will ever be taken, but might give pet owners some recourse and peace of mind.

Our response: We have included a provision in this final rule to allow for take of Mexican wolves by owners of domestic animals, which include pet dogs and dogs working livestock or being lawfully used to trail or locate wildlife on non-Federal lands. Domestic animal means livestock as defined in the regulations at the end of this final rule and non-feral dogs. On non-Federal lands, domestic animal owners or their agents may take (including kill or injure) any Mexican wolf that is in the act of biting, killing, or wounding a domestic animal, as defined in the regulations, provided that evidence of freshly wounded or killed domestic animals by Mexican wolves is present. In addition, anyone may use opportunistic harassment of any Mexican wolf at any time provided that Mexican wolves are not purposefully attracted, tracked, searched out, or chased and then harassed.

Comments From Other Federal Agencies

(5) *Comment:* The potential expansion of the BRWRA to include the Lakeside and Black Mesa Districts of the Sitgreaves National Forest and the Payson, Pleasant Valley, and Tonto Basin Ranger Districts of the Tonto National Forest will bring additional issues that must be considered and addressed by the Service. Of particular concern is the heavy interspersion of inholdings of private lands, towns and numerous unincorporated areas, and the adjacency of the Black Mesa, Tonto, Payson, and Pleasant Valley Ranger Districts to the Phoenix metropolitan area. These Districts also have extensive open road and motorized trail networks with extremely high recreational use.

Our response: We acknowledge that there are areas within the MWEPA that are of less suitable Mexican wolf habitat and where Mexican wolves will be more actively managed under the authorities of this rule to reduce human conflict. Initial releases of Mexican wolves will be well away from towns and dwellings. We expect Mexican wolves to occupy areas of suitable habitat where ungulate populations are adequate to support them and conflict with humans and their livestock would be low. If Mexican wolves move outside areas of suitable habitat, such as the areas described by the commenter, they will be more actively managed.

(6) *Comment:* One Federal agency suggested that expanding the MWEPA boundary to include areas south of Interstate 10 to the United States-Mexico international border is problematic because there are few deer or elk in this area and this expansion would likely lead to increased livestock predation. Because the area contains more people than remote forested areas of Arizona and New Mexico, there would likely be more interaction and conflict with both people and pets.

Our response: The area of Arizona and New Mexico south of Interstate 10 may provide stepping stone habitat and dispersal corridors for wolves dispersing north from Mexico and south from the experimental population. Management of all Mexican wolves in this area under this final rule will improve the effectiveness of the reintroduction project in minimizing and mitigating wolf-human conflict by providing more management flexibility. Without the experimental population designation, wolves that disperse north from Mexico would currently be considered fully endangered, which allows for only limited management and runs counter to the management allowed by the nonessential experimental population designation.

(7) *Comment:* One Federal agency recommended clarifying whether the revised 10(j) rule constituted a change in the way depredation losses have been counted in the past. It was recommended that the Service gather information on the total number of livestock killed by wolves, not just the number of incidents, because the actual number of livestock involved is still important and needs to be accounted for and reported.

Our response: In this final rule, we do not change the way depredation losses have been counted in the past. We do not use the term depredation incident and only use the term depredation in our definition of problem wolves. We define depredation as the confirmed killing or wounding of lawfully present domestic animals by one or more Mexican wolves. Also, we define problem wolves as Mexican wolves that are individuals or members of a group or pack (including adults, yearlings, and pups greater than 4 months of age) that were involved in a depredation on lawfully present domestic animals; or habituated to humans, human residences, or other facilities regularly occupied by humans.

(8) *Comment:* The proposed rule provides for unintentional take coverage for Federal, State, or tribal agency employees or their contractors while engaging in the course of their official duties, such as military training and testing. Some military bases support a robust recreation program as part of its mission in accordance with the Sikes Act. Unintentional take should cover users of Federal lands that are not agency employees or their contractors, such as recreational users and hunters.

Our response: The provision for unintentional take allows for the take of a Mexican wolf by any person if the take is unintentional and occurs while engaging in an otherwise lawful activity. Such take must be reported as specified in accordance with paragraph (k)(6) of the regulations. Hunters and other shooters have the responsibility to identify their quarry or target before shooting, thus shooting a wolf as a result of mistaking it for another species

will not be considered unintentional take. Take by poisoning will not be considered unintentional take.

(9) *Comment:* The Marine Corps conducts military and associated activities adjacent to and within restricted airspace overlying the Cabeza Prieta National Wildlife Refuge. As such activities may affect Mexican wolves that may be present on the refuge, the Federal agency recommended that the rule clarify how exclusions, specifically use of lands within the National Wildlife Refuge System as safety buffer zones for military activities, apply to military activities adjacent to and over the refuge.

Our response: The Cabeza Prieta National Wildlife Refuge occurs within Zone 3 of the MWEPA, which is an area of less suitable Mexican wolf habitat. We expect very few Mexican wolves to occupy these areas of less suitable habitat because ungulate populations are inadequate to support them. In any case, Federal, State, or tribal agency employees or their contractors may take a Mexican wolf or wolf-like animal if the take is unintentional and occurs while engaging in the course of their official duties. This includes, but is not limited to, military training and testing and Department of Homeland Security border security activities. Further, the use of lands within the National Park or National Wildlife Refuge Systems as safety buffer zones for military activities and Department of Homeland Security border security activities are specifically excluded from the definition of ''disturbance-causing land-use activity.''

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.'' Comments received from the States regarding the proposal to revise the regulations to the experimental population of the Mexican wolf are addressed below.

(10) *Comment:* The June 2013 proposed revision classifies State Game Commission-owned lands as public without any discussions with the States. Because the proposed classification would limit Mexican wolf management flexibility on Commission-owned properties, the Service should exclude State Game Commission-owned lands.

Our response: In this final rule, we have separate provisions for take of Mexican wolves based on whether they occur on Federal or non-Federal lands. Non-Federal land means any private, State-owned, or tribal trust land. In this final rule, State Game Commission-owned lands are considered non-Federal lands.

(11) *Comment:* One State agency requested that the Service explain how increased impacts to ranchers, rural families, property owners, recreational users, and local communities will be mitigated under the proposed rule change to allow direct release throughout the BRWRA.

Our response: We have included several provisions in the final rule that will mitigate the potential impacts of Mexican wolves on landowners, recreational users, and local communities. Under the final rule, on non-Federal lands, domestic animal owners or their agents may take (including kill or injure) any Mexican wolf that is in the act of biting, killing, or wounding a domestic animal, as defined in the regulations, provided that evidence of freshly wounded or killed domestic animals by Mexican wolves is present; on Federal land, livestock owners may be permitted to take a wolf that is in the act of biting, killing, or wounding livestock. We have also included a provision for issuance of take permits on non-Federal land for domestic animal owners to assist the Service or its designated agency in completing wolf control actions. In addition, after the Service or its designated agency has confirmed Mexican wolf presence on any land within the MWEPA, the Service or its designated agency may issue permits valid for not longer than 1 year, with appropriate stipulations or conditions, to allow intentional harassment of Mexican wolves.

(12) *Comment:* Clarify how depredation compensation, incentive, and mitigation programs will be funded and administered.

Our response: This rule does not fund or administer depredation compensation and mitigation programs. However, the Service, in cooperation with the National Fish and Wildlife Foundation, established the Mexican Wolf/Livestock Interdiction Trust Fund (Trust Fund), in 2009. The objective of the Trust Fund is to generate long-term funding for prolonged financial support to livestock operators within the framework of cooperative conservation and recovery of Mexican wolf populations in the Southwest. The Trust Fund is overseen by the Mexican Wolf/Livestock Coexistence Council, an 11-member group of ranchers, Tribes, county coalitions, and environmental groups that may identify, recommend, and approve conservation activities, identify recipients, and approve the amount of the direct disbursement of Trust Funds to qualified recipients. The Coexistence Council completed the Mexican Wolf/Livestock Coexistence Plan in March 2014. It is the current policy of the Coexistence Council to pay 100 percent of the market value of confirmed depredated cattle and 50 percent market value for probable kills. In addition, the Coexistence Council distributed $85,500 for a pay-for-presence program to ranchers in the BRWRA in 2014. The Payment for Presence program mitigated other uncompensated costs (*i.e.,* unconfirmed wolf kills that are never found) that ranchers experience with the presence of wolves. The Payment for Presence program uses a formula, based on wolf utilization of allotments, the number of pups that are alive at the end of the year from a wolf pack utilizing an allotment, the ranchers' implementation of conflict avoidance methods, and the number of livestock exposed to wolves, to equitably distribute available funds among ranchers applying to the program. Continued funding under the Coexistence Plan will depend on obtaining funding from private and public sources.

(13) *Comment:* The Mexican Wolf/Livestock Coexistence Council is underfunded and significantly challenged to fund losses and conflict-avoidance measures by currently participating livestock producers within the BRWRA and MWEPA. Under its current financial limitations, it has no ability to provide significant (if any) financial support for broad-scale conservation actions rather than compensation for local losses. Neither the proposed rule nor the draft EIS shed adequate light on anticipated costs of interdiction, incentives, etc.

Our response: Start-up funding for the Coexistence Council has been provided by the Fish and Wildlife Service and Non-Governmental Organizations. It is our understanding that the Coexistence Council will continue to seek private and public funding into the future.

(14) *Comment:* The Service must identify and analyze methods and means of avoiding, reducing, or mitigating Mexican wolf depredation on livestock and pets, including identification of realistic methods by which to fund and implement such programs over the long term, preferably over a 20-year planning horizon.

Our response: As the total number of Mexican wolves in the experimental population increases, the Service will increasingly manage problem wolves by means authorized in this final rule in a way that furthers the conservation of the Mexican wolf while being responsive to the needs of the local community in cases of depredation or nuisance

behavior by wolves. This final rule includes several provisions by which depredation on livestock and pets can be avoided and reduced. For instance, anyone may conduct opportunistic harassment of any Mexican wolf at any time provided that Mexican wolves are not purposefully attracted, tracked, searched out, or chased and then harassed. Also, after the Service or its designated agency has confirmed Mexican wolf presence on any land within the MWEPA, the Service or its designated agency may issue permits valid for not longer than 1 year, with appropriate stipulations or conditions, to allow intentional harassment of Mexican wolves.

(15) *Comment:* The proposed amendments to the experimental population rules are unnecessary to achieve the population objective for the Mexican wolf. The purpose and need for the original 1998 Mexican wolf section 10(j) rule was to establish a population of at least 100 Mexican wolves in the BRWRA. Currently, 75 wolves occupy this area, and the 100 individual population objective will be met in the near future. Based on population growth over the past several years, the proposed amendments are not necessary for the population objective to be achieved.

Our response: Section 2 of the Act requires the Service to conserve endangered and threatened species and utilize its authorities in furtherance of the purposes of the Act. According to Section 3 of the Act, conserve means to use and the use of all methods and procedures which are necessary to bring any endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. The 1982 Mexican Wolf Recovery Plan contained a ''prime objective'' to ensure the immediate survival of the Mexican wolf—that ''prime objective'' to ensure immediate survival was 100 wolves. That number, 100 wolves, was not enough, and still is not enough, to delist the Mexican wolf. The purpose of our action is to improve the effectiveness of the reintroduction project in managing the experimental population in order to ensure conservation of the Mexican wolf. Conservation of this species certainly requires more than 100 wolves in the wild. It is our expectation that the new population objective for the MWEPA will help to ensure a stable population of Mexican wolves in the MWEPA in the future. This stable population will then contribute to the range-wide recovery of the species, the goal of which will be determined in a future revision to the Mexican wolf recovery plan.

(16) *Comment:* One State agency requested that the Service add language to the rule that explicitly requires State review and approval prior to any release on private lands or non-trust tribally owned lands under the jurisdiction of the State. Further, they requested that we establish a minimum set of factors that must be considered in this review. These factors include:

- The presence of sufficient native prey within a 10- to 15-mile (16- to 24-kilometer) radius of proposed release site (as determined by the State);
- the State's evaluation of probable impacts to State trust species both on the private property where the release is being proposed as well as adjoining lands;
- zones of potential dispersal;
- both spatial and temporal density and distribution of livestock in the adjoining area;
- livestock depredation removal thresholds; and
- pre-release confirmation from the Service of the timely availability of sufficiently trained and competent Service personnel and the associated fiscal resources and equipment needed to effectively monitor, manage, and remove released Mexican wolves should the removal threshold be met.

Our response: In this final rule, we have included provisions for management on private land within Zones 1 and 2 of the MWEPA, so that the Service or designated agency may develop and implement management actions to benefit Mexican wolf recovery in cooperation with willing private landowners, and with the concurrence of the State game and fish agency. These actions include: Occupancy by natural dispersal; initial release; and translocation of Mexican wolves onto private lands in Zones 1 or 2 if requested by the landowner and with the concurrence of the State game and fish agency. We have also included provisions for management on tribal trust land within Zones 1 and 2 in the MWEPA, where the Service or a designated agency may develop and implement management actions in cooperation with willing tribal governments, including: Occupancy by natural dispersal; initial release; translocation onto tribal trust land; and capture and removal of Mexican wolves from tribal trust land if requested by the tribal government.

(17) *Comment:* The specifications for releases of Mexican wolves on private land should be included in the proposed rule. Releases on private lands require Federal action and will have direct impacts on other surrounding private landowners, wildlife, livestock, and Federal and State public land. Also, surrounding landowners should be consulted prior to any such release being made. Livestock producers adjacent to private land release sites must be made aware of these releases in order to implement measures to avoid depredation. The Service should develop a set of specific criteria for private land releases prior to any revision to the final 10(j) rule or EIS.

Our response: On private land within Zones 1 and 2 of the MWEPA, the Service or designated agency may develop and implement management actions to benefit Mexican wolf recovery in cooperation with willing private landowners, including: Occupancy by natural dispersal; initial release; and translocation of Mexican wolves onto such lands in Zones 1 or 2 if requested by the landowner and with the concurrence of the State game and fish agency. Specifications for releases may be different for different landowners, so these specifications will be developed as part of the management actions rather than in the final rule, and with the concurrence of State game and fish agencies.

(18) *Comment:* As they relate to allowable take, the differences between what is allowed on public land and what is allowed on private land have been a continuing source of confusion under the 1998 Final Rule and will continue to be a source of confusion under the proposed rule. The problem is best remedied by making take provisions for individuals the same on public land as on private land. It was suggested that the language in the proposed rule be modified to allow for owners of livestock on public lands allotted for livestock grazing the same ability that livestock owners or their agents have on private or tribal lands to take any Mexican wolf in the act of killing, wounding, or biting livestock, regardless of the number of breeding pairs or the most recent population count.

Our response: This final rule has been modified to clarify take provisions on Federal and non-Federal land. It is our intent that the regulatory burden of Mexican wolf recovery rest on Federal land; therefore, we have provided additional take provisions on non-Federal land to allow for more flexibility in the management of problem wolves. The differences in allowable take on Federal and non-Federal land will help us effectively manage Mexican wolves within the MWEPA in a manner that furthers its conservation while being responsive to the needs of the local community in cases of depredation or nuisance

behavior by wolves on non-Federal lands. We expect that modifying the provisions governing the take of Mexican wolves to provide clarity and consistency will contribute to our efforts to find the appropriate balance between enabling wolf population growth and minimizing nuisance and depredation impacts on local stakeholders.

(19) *Comment:* It was suggested that the Service develop and publish for review a set of criteria for removal of Mexican wolves based on certain situational elements such as the number of livestock killed or injured, the frequency of wolf depredation, and the individual economic impacts to the livestock producer.

Our response: We did not include a set of specific criteria for removal of problem wolves in this final rule in order to maximize our flexibility in effectively managing Mexican wolves in a manner that furthers the conservation of the Mexican wolf while being responsive to the needs of local communities. These criteria will be developed in a management plan, which will provide for adaptive management as we gain more information on Mexican wolf management and techniques to minimize conflicts between Mexican wolves and livestock.

(20) *Comment:* Several State agencies suggested that allowable take by authorized personnel would be subject to Service approval, presumably on a case-by-case basis, which has often been highly problematic when cooperating agencies have tried to take aggressive, timely action to address problem wolf incidents. In addition, the Service has not been willing, since 2007, to use lethal take as a tool in managing problem wolves. The Service must enable agencies and stakeholders to directly and effectively address problem-wolf issues while they are occurring. Maintaining effective Mexican wolf management tools is critical to building agency and stakeholder confidence in the process of reintroducing Mexican wolves to historical range. Limitations that prevent timely deployment of available tools undermine State agency and stakeholder confidence in the reintroduction project.

Our response: The final rule authorizes the Service or designated agency to carry out intentional or opportunistic harassment, nonlethal control measures, translocation, placement in captivity, or lethal control of problem wolves. The Service or a designated agency may take any Mexican wolf in the experimental population in a manner consistent with a Service-approved management plan, special management measure, biological opinion pursuant to section 7(a)(2) of the Act, conference opinion pursuant to section 7(a)(4) of the Act, section 6 of the Act as described in 50 CFR 17.31 for State game and fish agencies with authority to manage Mexican wolves, or a valid permit issued by the Service through 50 CFR 17.32.

(21) *Comment:* The revised 10(j) rule and associated EIS should analyze an alternative that allows issuing permits on a case-by-case basis, to enable consideration of geographic variation in depredation activity or breeding status of Mexican wolves. Situation-specific approaches to managing chronic depredation behavior by specific Mexican wolves that generate adverse economic and social impacts should not be superseded by general thresholds working independently of the undesirable Mexican wolf behaviors that cause such conflict.

Our response: The final rule authorizes the issuance of permits to domestic animal owners or their agents on non-Federal lands to assist the Service or designated agency in completing a control action. The final rule also authorizes the issuance of permits to livestock owners or their agents to take any Mexican wolf that is in the act of biting, killing, or wounding livestock on Federal land where specified in the permit, to assist the Service or designated agency in completing control actions. Issuance of these permits will be at the Service's discretion and thus analyzed on a case-by-case basis. Also, we realize that geographic variation throughout the MWEPA requires different management approaches. That is why we have identified Zones 1, 2, and 3 as different management areas within the MWEPA. We identified these Zones in order to improve the effectiveness of our reintroduction project while minimizing and mitigating Mexican wolf-human conflict.

(22) *Comment:* One State agency suggested modifying the language to set the minimum population size to at least 100 Mexican wolves within the MWEPA as documented by the most recent end-of-year count, and strike any reference to other established populations. The new provision would require that the minimum population level of 100 wolves within the BRWRA must be met before the Service would issue take permits to producers on public lands to address wolves that are in the act of killing their livestock.

Our response: The suggested modification will not allow us to improve the effectiveness of the reintroduction project to achieve the necessary population growth, distribution, and recruitment, as well as genetic variation within the Mexican wolf experimental population so that it can contribute to recovery in the future. In recognition that the MWEPA will include a variety of land ownership types, our provision to issue a permit for take of a Mexican wolf in the act of wounding, biting, or killing livestock on Federal land will allow us to better consider the site specific circumstances associated with the event compared to establishing a minimum population level of 100 wolves prior to being able to issue such permits; this flexibility will also contribute to our ability to conserve the Mexican wolf by allowing us to integrate information about the current population, including genetic issues, into our permit decisions.

(23) *Comment:* Several State agencies suggested that the language in the rule be modified to allow pet owners, regardless of where they are, to take Mexican wolves that are in the act of attacking or killing pets. Pets, like livestock, are considered by most owners to be private property, and restricting a person's ability to protect their private property, regardless of where, may be contrary to their constitutional rights.

Our response: We have included a provision in this final rule to allow for take of Mexican wolves by domestic animal owners, which includes pet dog owners, on non-Federal lands. Specifically, on non-Federal lands, domestic animal owners or their agents may take (including kill or injure) any Mexican wolf that is in the act of biting, killing, or wounding a domestic animal, as defined in the regulations, provided that evidence of freshly wounded or killed domestic animals by Mexican wolves is present. Domestic animal means livestock as defined in the regulations and non-feral dogs. In addition, anyone may conduct opportunistic harassment of any Mexican wolf at any time provided that Mexican wolves are not purposefully attracted, tracked, searched out, or chased and then harassed. Pet owners on Federal lands can protect their pets via opportunistic harassment.

(24) *Comment:* One State agency suggested clarifying whether working dogs and tracking hounds, etc., are considered pets or protected in some similar manner. The rule revision should appropriately address protecting working and tracking dogs on public as well as private land.

Our response: Take of Mexican wolves by livestock guarding dogs, when used in the traditional manner to protect livestock on Federal and non-

Federal lands, is allowed. Dogs that are working livestock or being lawfully used to trail or locate wildlife are excluded from the definition of feral dogs, and are thus included as domestic animals. See comment above where we discuss allowable forms of take for domestic animal owners on non-Federal lands.

(25) *Comment:* One State agency requested that they not be required to develop a Service-approved Mexican Wolf Management Plan or become party to any wolf-related memorandum of agreement or understanding to lawfully take Mexican wolves by any means the State agency deems necessary when it has been determined by the State that Mexican wolf impacts on State trust species are unsustainable and jeopardizing an ungulate population, or when a Mexican wolf has dispersed outside of the MWEPA and the Service is unable to capture the disperser in a timely manner.

Our response: Participation in the conservation of Mexican wolves by States is voluntary. Pursuant to this final rule, no State will be required to develop a Service-approved Mexican Wolf Management Plan or become party to any wolf-related memorandum of agreement or understanding. In this final rule, we have provided a definition of unacceptable impact to a wild ungulate herd and process for State game and fish agencies to follow to demonstrate that any decline in an ungulate herd was influenced by Mexican wolf predation. The final rule provides that the Service or a designated agency may take any Mexican wolf in the experimental population in a manner consistent with a Service-approved management plan, special management measure, biological opinion pursuant to section 7(a)(2) of the Act, conference opinion pursuant to section 7(a)(4) of the Act, as described in 50 CFR 17.31 for State game and fish agencies with authority to manage Mexican wolves, or a valid permit issued by the Service through 50 CFR 17.32 If a Mexican wolf or wolves disperse outside the MWEPA, the Act (16 U.S.C. 1531 *et seq.*) prohibits activities with endangered and threatened species unless a Federal permit allows such activities. As part of this rulemaking process, we have issued a section 10(a)(1)(A) permit to allow for certain activities with Mexican wolves that occur outside the MWEPA. Under this permit we will authorize removal of Mexican wolves that can be identified as coming from the experimental population that disperse and establish territories in areas outside of the MWEPA. Also, in compliance with NEPA (42 U.S.C. 4321 *et seq.*), we have included analysis of the environmental effects of the permit as part of our EIS.

(26) *Comment:* One State agency requested that we clarify, by an affirmative statement, that State regulators and other officials cannot be held liable for causing a take of a Mexican wolf simply by their regulation of trapping, or lack thereof.

Our response: Whether or not any person or entity will be held liable for the take of Mexican wolves in the future will be made on a case-by-case basis. Therefore, the Service cannot give the commenter the clarification requested. However, the final rule provides for unintentional take within the MWEPA. Unintentional take means take that occurs despite the use of due care, is coincidental to an otherwise lawful activity, and is not done on purpose. Take of a Mexican wolf by any person is allowed if the take is unintentional and occurs while engaging in an otherwise lawful activity. In addition, taking a Mexican wolf with a trap, snare, or other type of capture device within occupied Mexican wolf range is prohibited and will not be considered unintentional take, unless due care was exercised to avoid injury or death to a wolf. With regard to trapping activities, due care is further defined in the final rule.

(27) *Comment:* The Service should allow State game and fish agencies to issue ''Incidental Take Permits'' (section 10(a)(1)(B) of the Act) to individuals involved in lawful activities where Mexican wolves might be adversely affected by those activities.

Our response: The Act prohibits the ''take'' of listed species through direct harm or habitat destruction. In the 1982 amendments to the Act, Congress authorized the Service, not State wildlife agencies, to issue permits for the ''incidental take'' of endangered and threatened wildlife species in section 10(a)(1)(B) of the Act. Thus, permit holders can proceed with an activity that is legal in all other respects, but results in the ''incidental'' taking of a listed species. These incidental take permits could be issued to address the incidental take of Mexican wolves associated with otherwise legal activities. However, the Service has not been granted legal authority to allow State game and fish agencies to issue Federal permits in accordance with the Act. States have the ability to apply for section 10(a)(1)(B) incidental take permits and issue certificates of inclusion to individuals who comply with the provisions of the State's conservation plan and permit.

(28) *Comment:* One State agency requested that the rule be modified to indicate that Mexican wolves will be allowed to disperse outside Zone 1, but will only be allowed to remain and occupy those areas within Zone 2 that provide sufficient and sustainable prey populations as determined by the State. The same rationale used by the Service in justifying the proposal to remove a small portion of Texas from the MWEPA can also be applied to areas in New Mexico within the MWEPA that also support marginal habitat for Mexican wolves and native prey.

Our response: Criteria for initial releases of Mexican wolves will include adequate prey abundance (*e.g.,* elk, deer, and other native ungulates), based on the best available information from the State or tribal game and fish agency. Dispersal of Mexican wolves is likely to include areas within the MWEPA that have less suitable habitat, such as in Zone 3. However, Mexican wolves will be more actively managed under the authorities of this rule to reduce human conflicts in these areas. Furthermore, in this final rule, we have defined unacceptable impact to a wild ungulate herd and provide the States with the ability to manage Mexican wolves if they demonstrate predation by Mexican wolves is influencing a decline in the wild ungulate herd.

(29) *Comment:* The proposed revision to allow Mexican wolves to disperse outside the BRWRA and occupy new areas within the MWEPA is improper at this time because a primary consideration regarding suitable wolf habitat is presence of adequate prey densities. The proposed change would allow Mexican wolves to travel to and use areas within the extended MWEPA that might not support adequate levels of native ungulate populations. Primary examples would include State trust lands north of the Apache Sitgreaves National Forests and other portions of National Forests supporting low-productivity elk and deer populations. If Mexican wolves were allowed to occupy these areas, native ungulate populations would be at risk of significant reduction, causing wolves to prey more predominantly on livestock and creating other adverse economic impacts.

Our response: The Service has analyzed the habitat within the MWEPA, and although there are patches of poor-quality habitat, we expect Mexican wolves to occupy areas of suitable habitat where ungulate populations are adequate to support them and conflict with humans and livestock will be low. The final rule provides States the authority to take Mexican wolves in response to

unacceptable impacts to wild ungulate herds, as we recognize that localized reduction in ungulate herds due to wolf predation could occur.

(30) *Comment:* Many areas within the MWEPA are not appropriate for Mexican wolf colonization or occupancy, due to high levels of human occupancy, high road densities, high levels of public activity (including recreation), high potential for interaction with domestic dogs (*i.e.,* depredation and hybridization), and increased potential for human-caused mortality. The EIS and rule revision should use these types of predictable conflicts to identify areas within the MWEPA and recognized subunits in which Mexican wolf dispersal and reestablishment are not appropriate or necessary for sustaining a Mexican wolf population and outline practical mechanisms for managing wolves that disperse to these conflict zones.

Our response: We recognize that there are areas within the MWEPA where there is limited suitable habitat for Mexican wolves and increased potential for human-related conflict. Thus, we identified Zones 1, 2, and 3 as different management areas within the MWEPA in order to improve the effectiveness of our reintroduction project while minimizing and mitigating Mexican wolf-human conflict. We have included a phased approach to Mexican wolf management in western Arizona, where elk populations west of Highway 87 are generally smaller in number and isolated from each other compared to elk populations east of Highway 87. Also, we have increased take provisions on non-Federal lands to allow domestic animal owners or their agents to take any Mexican wolf that is in the act of biting, killing, or wounding a domestic animal, as defined in the rule.

(31) *Comment:* The proposed revision to remove Texas from the MWEPA is biologically appropriate based on Service review of existing habitat, prey base, historical range and metapopulation connectivity within Arizona and New Mexico. However, the same rationale used by the Service to justify that proposal could also be applied in Arizona, west of the Mohave and La Paz Counties from Interstate 40 south to Interstate 10; and in New Mexico, east of Interstate 25 and Interstate 10 from Interstate 40 south to the United States-Mexico international border. Our point in noting this disparity is not to advocate such changes at this time but to emphasize that the Service proposals are not logically consistent.

Our response: Texas was removed from the MWEPA because this area is not likely to contribute substantially to our purpose and need, and it is very unlikely that Mexican wolves will disperse into Texas because of the lack of suitable habitat. However, we have identified portions of western Arizona and eastern New Mexico that do not have substantial amounts of suitable habitat as Zone 3 of the MWEPA so that we can actively manage Mexican wolves that disperse there to reduce human conflict under the authorities of this rule. In any case, we do not expect Mexican wolves to occupy these areas of less-suitable habitat because ungulate populations are inadequate to support them.

(32) *Comment:* The Service must include a provision that Mexican wolves that disperse outside the MWEPA will be captured. The proposed rule affirms that commitment in prefatory text, but does not include it in the proposed regulations.

Our response: We can only include language in the regulations for management of Mexican wolves within the MWEPA. However, we intend to capture Mexican wolves that establish territories outside the MWEPA under a section 10(a)(1)(A) permit. We are issuing a section 10(a)(1)(A) permit to allow for certain Mexican wolf management activities that occur outside the MWEPA. Under this permit we have the ability to authorize removal of Mexican wolves that can be identified as coming from the experimental population that disperse and establish territories in areas outside of the MWEPA. Also, in compliance with NEPA (42 U.S.C. 4321 *et seq.*), we have included analysis of the environmental effects of the permit as part of our EIS.

(33) *Comment:* The Service needs to consider delegating management authority of Mexican wolves within the MWEPA through this revised rule or a State and/or Tribal Cooperative Agreement with the Service and/or Memorandum of Agreement (MOA) with the Secretary of the Interior. The revised rule needs to enable willing State game and fish agencies and Tribes to assume lead roles in wolf management within their respective areas of lawful jurisdiction.

Our response: Neither the Act nor its implementing regulations allow the Service to delegate its management authority over Mexican wolves to a State. However, in accordance with this final rule, a State game and fish agency can become a designated agency, which is a Federal, State, or tribal agency designated by the Service to assist in implementing this rule, all or in part, consistent with a Service-approved management plan, special management measure, conference opinion pursuant to section 7(a)(4) of the Act, section 6 of the Act, as described in 50 CFR 17.31 for State game and fish agencies with authority to manage Mexican wolves, or a valid permit issued by the Service through 50 CFR 17.32.

(34) *Comment:* The Service needs to consider delegating management authority to Wildlife Services (a division of the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (USDA–APHIS)) for such things as investigating reported depredations on livestock or other domestic animals and reports of nuisance or problem wolves; determining whether and which wolf or wolves depredated on livestock or other domestic animals; and capturing, translocating, and removing Mexican wolves.

Our response: Neither the Act nor its implementing regulations allow the Service to delegate its management authority over Mexican wolves to a State or another Federal agency, in this case, USDA–APHIS. In this final rule, Wildlife Services is one of the lead agencies that will confirm cases of wolf depredation on lawfully present domestic animals. Also, Wildlife Services can become a designated agency to assist in implementing this rule (see response to comment above).

(35) *Comment:* The Service needs to clarify who verifies legal presence of grazing livestock and how they verify it (relative to confirming depredation). Also, the Service needs to clarify which agency or agencies would conduct investigations to confirm or refute claims of livestock depredation.

Our response: It is the responsibility of the land management agency to verify the legal presence of grazing livestock on their land. In regard to investigating livestock depredation, the Service, Wildlife Services, or other Service-designated agencies will confirm cases of wolf depredation on lawfully present livestock or domestic animals.

(36) *Comment:* Define thresholds and methods for temporary and permanent removal of depredating and nuisance Mexican wolves; clearly describe how Mexican wolf mortalities and livestock or domestic animal depredation will be investigated and documented while ensuring that State, Federal, and tribal law enforcement interests are not compromised by non-commissioned employees of the Service and its designated agents; and clearly delineate the laws and regulations pertaining to ownership and removal or destruction of livestock carcasses on public, State, tribal, and private lands.

Our response: Immediately following publication of this final rule, the Service will begin working with partner agencies on an interagency management plan that will include standard operating procedures for management of Mexican wolves, discuss flexible thresholds for removal of problem Mexican wolves, and describe how Mexican wolf mortalities and livestock depredations will be investigated. This process of following a Mexican wolf 10(j) rule with an interagency management plan that includes standard operating procedures was done with the 1998 rule and the 1998 Interagency Management Plan. The laws and regulations pertaining to ownership and removal or destruction of livestock carcasses on public, State, tribal, and private lands are outside the purview of the Mexican wolf management plan.

(37) *Comment:* The Service must propose a modification to give the States and Tribes authority to control Mexican wolves when the population reaches a predetermined objective, before Mexican wolves have an unacceptable impact on wild ungulate populations.

Our response: Neither the Act nor its implementing regulations allow the Service to delegate its management authority over Mexican wolves to a State or Tribe. In this final rule, we have included a population objective of 300 to 325 Mexican wolves. We have also included provisions for take in response to unacceptable impacts to wild ungulates. The final rule allows Tribes to request the removal of Mexican wolves from their tribal trust lands.

(38) *Comment:* One State agency requested that the definition of occupied Mexican wolf range be changed to tie occupied range to the presence of breeding populations of Mexican wolves only.

Our response: We have changed the definition of occupied Mexican wolf range to mean an area of confirmed presence of Mexican wolves based on the most recent map of occupied range posted on the Service's Mexican Wolf Recovery Program Web site at *http://www.fws.gov/southwest/es/mexicanwolf/.* Specific to the prohibitions in paragraph (k)(5)(iii) of this rule, Zone 3 and tribal trust lands are not considered occupied range.

(39) *Comment:* Mexican wolves are highly mobile (especially young males) and will move great distances crossing unsuitable habitat in order to expand their range. The presence of a single Mexican wolf over the period of 1 month does not denote occupied range. Implicit in the term ''occupied'' is to possess or hold a place or to take up residence. A single Mexican wolf by nature is transient. Mexican wolves are pack animals. In order to occupy or take up residence in a home range, a family group must be established through breeding and successful production of offspring. The definition of occupied Mexican gray wolf range should be changed to tie occupied range to the presence of breeding populations of Mexican wolves only.

Our response: See response to comment above.

(40) *Comment:* One State agency recommended that Mexican wolves involved in depredations on private land be classified as problem wolves. Failure of the Service to include private lands in this definition demonstrates the lack of consideration given to private landowners and livestock producers.

Our response: In this final rule, problem wolves are defined as Mexican wolves that, for purposes of management and control by the Service or its designated agent(s), are individuals or members of a group or pack (including adults, yearlings, and pups greater than 4 months of age) that were involved in a depredation on lawfully present domestic animals; or habituated to humans, human residences, or other facilities regularly occupied by humans. This definition of problem wolf applies to both Federal and non-Federal land within the MWEPA.

(41) *Comment:* The entire purpose for the revision has changed ''to the conservation of the Mexican wolf by improving the effectiveness of the Reintroduction Project in managing the experimental population.'' Utah was not consulted about this change in emphasis and purpose, nor was it consulted about any of the newest provisions contained within the experimental population rule revision and associated draft EIS.

Our response: In accordance with 50 CFR 17.81(d), to the maximum extent practicable, this rule represents an agreement between the Service, the affected State and Federal agencies, and persons holding any interest in land that may be affected by the establishment of this experimental population. The Service is limiting the revised MWEPA to areas south of Interstate 40 in Arizona and New Mexico. Also, we intend to capture and return any Mexican wolves that disperse outside the MWEPA. Because Utah is not a State affected by this rule, we did not consult separately with that State. We are willing to meet with Utah or any other State at any time.

(42) *Comment:* One State agency suggested the Service include prescriptions for when and how a Mexican wolf that exhibits unacceptable behaviors, such as persistent depredation or signs of habituation would be removed from the wild.

Our response: Mexican wolves described by the requestor may meet the definition of ''problem wolves.'' The rule explains how problem wolves will be managed in general. Immediately following publication of this final rule, the Service will begin working with partner agencies on an interagency management plan that will include standard operating procedures, discuss flexible thresholds for removal of problem Mexican wolves, and describe how Mexican wolf mortalities and livestock depredations will be investigated. The interagency management plan and its standard operating procedures will fully comply with this rule.

(43) *Comment:* The Service should include a mechanism for active inclusion of and support for reintroductions in Mexico.

Our response: We can only include language in the regulations for management of Mexican wolves within the MWEPA. Furthermore, the Service only has regulatory authority within the United States. However, we continue to support Mexico's reintroduction program.

(44) *Comment:* The Service should include a dispute resolution in the event of a non-economic impasse that cannot be resolved at any level between the State wildlife management agency and the Service.

Our response: Immediately following publication of this final rule, the Service will begin working with partner agencies on a revised interagency management plan that will include an addendum for a dispute resolution process. The revised interagency management plan and its standard operating procedures will fully comply with this rule.

(45) *Comment:* The revised rule should identify how and when wolf releases will be made and that there must be concurrence between the State wildlife agencies and the Service.

Our response: Information on how and when Mexican wolf releases will be made will be included in an interagency management plan, which the Service will begin working with partner agencies on immediately following publication of this final rule. The interagency management plan and its standard operating procedures will fully comply with this rule.

(46) *Comment:* The Service proposal asserts that under no circumstances would shooting a Mexican wolf be considered incidental take. This approach predetermines the outcomes of investigations that in many cases to

date, in Arizona, New Mexico, and elsewhere in gray wolf range, have resulted in findings that private citizens and wildlife agency officials have on occasion incidentally (inadvertently) taken a wolf by shooting. The Service fails to analyze adequately the impacts of this strategy on agency wolf management efforts and on private citizens who might kill a wolf when protecting their livestock against coyote depredation.

Our response: The Service does not make this assertion. Under certain circumstances incidental take of a Mexican wolf by shooting might be allowable (*i.e.,* take in defense of human life). Each incident of take will be investigated and determinations regarding those investigations will be made on a case-by-case basis. Nothing in this rule predetermines the outcome of an investigation into the take of a Mexican wolf.

(47) *Comment:* The proposed rule fails to include any portion of the cooperating agencies' alternative (proposal) in violation of 50 CFR 17.81(d), which requires that any regulation promulgated pursuant to section 10(j) of the ESA shall, to the maximum extent practicable, represent an agreement between the Service, an affected State, Federal agencies, and affected landowners. The omission of any significant element of the Cooperating Agencies' proposal in the proposed rule is clear evidence the Service has failed to provide meaningful cooperation or make a good faith effort to reach an agreement with the cooperating agencies.

Our response: In accordance with 50 CFR 17.81(d), to the maximum extent practicable, this rule represents an agreement between the Service, the affected State, and Federal agencies, and persons holding any interest in land that may be affected by the establishment of this experimental population. We invited 84 Federal and State agencies, local governments, and tribes to participate as cooperating agencies in the development of the EIS, 27 of which signed memoranda of agreements. We have maintained a list of individual stakeholders, as well as a Web site, since the initiation of the EIS development to ensure that interested and potentially affected parties received information on the EIS and notices of opportunities for public involvement. We met with the Arizona Game and Fish Department and the New Mexico Department of Game and Fish to collect data and develop the analyses of effects to native species, particularly ungulates and economic impacts associated with hunting in Arizona and New Mexico. We also met with the two State game and fish agencies to discuss issues and recommendations they may have with the proposed rules. To the maximum extent practicable, the Service has provided meaningful cooperation and made a good faith effort to reach an agreement with cooperating agencies. Parts of this final rule that the States requested, and that the Service has agreed to, include: a population objective of 300–325 wolves in the MWEPA, a phased management approach in western Arizona, clarifications to various definitions, and the definition and take provision related to unacceptable impacts to native ungulates. The final EIS (Service 2014) addressed other portions of the Arizona Cooperating Agency's alternative in Chapter 2 that did not meet our purpose and need.

(48) *Comment:* The proposed rule unlawfully shifts the burden to the States to monitor Mexican wolf predation and the impacts to prey populations. The Tenth Amendment to the Constitution prohibits a Federal agency from compelling a State to administer a Federal regulatory program. Requiring the States to document impacts to the ungulate population forces the States to undertake expensive scientific studies to determine what impact wolf predation has on prey populations. Monitoring impacts to ungulate populations will help understand the relationship between wolf predation and ungulate management goals, and it will also provide valuable information on the relationship between prey populations and wolf conservation.

Our response: This rule does not require the States to do anything that they have not asked to do. Nothing in this rule compels a State to administer this program because the Act does not allow the Service to delegate its authority in such a manner. We met with the Arizona Game and Fish Department and the New Mexico Department of Game and Fish, and, pursuant to their request, we defined unacceptable impact to a wild ungulate herd. According to the definition that the States created, an unacceptable impact to a wild ungulate herd will be determined by a State game and fish agency based upon ungulate management goals, or a 15 percent decline in an ungulate herd as documented by a State game and fish agency, using their preferred methodology, based on the preponderance of evidence from bull to cow ratios, cow to calf ratios, hunter days, and/or elk population estimates. Because the State game and fish agencies conduct annual monitoring of their wild ungulate herds regardless of this final rule, we do not believe this final rule unlawfully shifts the burden to the States to monitor Mexican wolf predation and the impacts to prey populations.

(49) *Comment:* The Service must provide a definition for the term ''domestic animals'' to clarify the reference and distinguish it from ''livestock.'' The definition for ''Problem wolves'' includes a reference to impacts on ''domestic animals,'' but it is not clear what animals are included under this reference for purposes of affecting associated management responses to problem wolves.

Our response: Paragraph (k)(3) of the *Definitions* section of the regulations includes definitions for both domestic animals and livestock. *Domestic animal* means livestock as defined in paragraph (k)(3) and non-feral dogs. *Livestock* means domestic alpacas, bison, burros (donkeys), cattle, goats, horses, llamas, mules, and sheep, or other domestic animals defined as livestock in Service-approved State and tribal Mexican wolf management plans. Poultry is not considered livestock under this rule.

(50) *Comment:* The Service must clarify that the reintroduction project is a collaborative project among multiple jurisdictions that is guided by an overarching MOU, and that accompanying management has been implemented through an Interagency Field Team staffed and supported by resource management agencies that are signatories to the MOU.

Our response: The clarification requested in this comment is not required by the Act or its implementing regulations. Immediately following publication of this final rule, the Service will begin working with partner agencies on an interagency management plan that will include standard operating procedures.

(51) *Comment:* One State agency suggested removing proposed paragraphs (k)(5)(iii)(B) through (E) because the State laws and guidelines encompass standards for minimizing any harm or fatalities that might occur once a Mexican wolf becomes incidentally trapped.

Our response: With regard to due care and trapping activities, we have left paragraphs (k)(5)(iii)(B) through (E) in the final rule because these due care provisions allow for trapping to occur in a way that reduces harm to Mexican wolves.

(52) *Comment:* As a result of our perspective that the Service has demonstrated a lack of commitment to various aspects of the Mexican wolf

program, we suggest that the new final rule include a provision that rescinds the new experimental population rule and immediately reinstates the 1998 Final Rule. This change would include using all means necessary to return the population to the 1998 objective of at least 100 wolves but no more than the number of wolves that are present within the current BRWRA if the Service initiates any Federal process to change the experimental population status of Mexican wolves or designate critical habitat for the experimental population.

Our response: The provision requested in the comment is not legally required by the Act or its implementing regulations. Therefore, we will not insert such a provision into this rule. Any change to the status of the Mexican wolf will require further public review and comment.

(53) *Comment:* The definition of depredation should exclude the words ''confirmed'' and ''lawfully present.'' Depredation occurs anytime a Mexican wolf attacks domestic animals. Inclusion of these qualifiers would result in reported depredations lower than what actually occurs.

Our response: In this final rule, we have defined as *Depredation* the confirmed killing or wounding of lawfully present domestic animals by one or more Mexican wolves. The Service, USDA–APHIS (Wildlife Services), or other Service-designated agencies will confirm cases of wolf depredation on lawfully present domestic animals. The ''confirmed'' killing or wounding of lawfully present domestic animals by a Mexican wolf is needed to ensure that the depredation was caused by a Mexican wolf and not some other predator. The words ''lawfully present'' are part of the depredation definition because we do not want to influence Mexican wolf management for a depredation where the domestic animal was trespassing. For example, cattle trespassing on Federal lands are not considered lawfully present domestic animals.

(54) *Comment:* The proposed definition for livestock represents an inconsistency with the New Mexico Livestock Code at 77–2–1.1 NMSA 1978. Any kind or class of livestock represents a significant investment by owners and should be included in the rule's definition.

Our response: We recognize that there are various definitions for ''livestock'' in the multiple jurisdictions across the States of Arizona and New Mexico. We have defined livestock for purposes of this final rule, which may not be consistent with the purposes of the various jurisdictions.

(55) *Comment:* Paragraph (k)(7)(viii)(C) of the proposed rule provides that, ''Take of Mexican wolves by Wildlife Services employees while conducting official duties associated with predator damage management activities for species other than Mexican wolves may be considered unintentional if it is coincidental to a legal activity and the Wildlife Services employees have adhered to all applicable Wildlife Services' policies, Mexican wolf standard operating procedures, and reasonable and prudent measures or recommendations contained in Wildlife Service's biological and conference opinions.'' These exemptions and exclusions from the take provisions need to be extended to local government agents and licensed livestock producers that use M–44 devices for predator damage management.

Our response: We have included a provision in this final rule prohibiting Wildlife Services from using M–44's and choking-type snares in occupied Mexican wolf range and that Wildlife Services may restrict or modify other predator control activities pursuant to a Service-approved management agreement or a conference opinion between Wildlife Services and the Service. The provision for unintentional take allows for the take of a Mexican wolf by any person if the take is unintentional and occurs while the person is engaging in an otherwise lawful activity. Such take must be reported as specified in accordance with paragraph (k)(6) of the regulations. Hunters and other shooters have the responsibility to identify their quarry or target before shooting, thus shooting a wolf as a result of mistaking it for another species will not be considered unintentional take. Take by poisoning will not be considered unintentional take.

(56) *Comment:* Another problem with take by poisoning not being included as unintentional take exists with the use of livestock protection collars (LPCs) that use Compound 1080 or some other poisoning agent. LPCs are licensed and approved for use in New Mexico as a predator damage management tool. Livestock producers and government employees can be licensed to use these devices. The poisoning agent in LPCs is released when a predator physically bites the collar. Thus, for these devices to take a Mexican wolf, the wolf would have to be engaged in the act of biting the animal wearing the LPC. The Service should include provisions for the use of LPCs in the experimental population rule.

Our response: Take by poisoning will not be considered unintentional take. Poisoning is nondiscriminatory, and if allowed, LPCs on livestock that died for reasons other than Mexican wolf predation could result in Mexican wolf mortalities for those that were scavenging on dead carcasses.

Comments From Tribes

(57) *Comment:* Any changes to the rule must include assurances that funding from the Service will continue, which will allow Tribes to effectively manage Mexican wolves that enter tribal trust lands. If changes result in a significant increase in Mexican wolves on tribal trust lands, funding from the Service should increase correspondingly. The Service needs to provide assurances to the tribes that any Mexican wolves moving onto tribal trust lands will be managed according to tribal authorities and increased funding for the Tribe to manage these additional wolves.

Our response: The Service's funding is allocated annually by Congress; therefore, we are not able to provide assurances in a final rule regarding funding to Tribes for management of Mexican wolves. However, it is our intent to continue to provide funding to Tribes as it is available for the management of Mexican wolves on their tribal lands.

(58) *Comment:* Further information was requested on the total number of reintroduced Mexican wolves that will be needed to achieve a viable and self-sustaining population goal. Further, the projected timeframe was requested for when the Service has considered achieving an adequate population in which the Mexican wolf will no longer be considered endangered and require special designation.

Our response: The Service has not yet completed a revised recovery plan that would describe the total number of Mexican wolves, and the timeframe, needed to achieve a viable and self-sustaining population such that the protections of the Act would no longer be needed. However, we have provided for a population objective of 300–325 Mexican wolves within the MWEPA in this final rule.

(59) *Comment:* Clarify which Mexican wolves on which lands will contribute toward reintroduction and recovery objectives. The 1998 Final Rule speaks to a population objective of at least 100 wolves within the MWEPA. The MWEPA defined by the current proposed rule revision does not include tribal lands, thus the significant contribution of the White Mountain Apache Tribe to Mexican wolf

conservation is masked on the front end, even as the total number of wild Mexican wolves counted each year includes those on tribal lands and thus masks how short the Service is falling in achieving its objective of establishing a population of at least 100 wolves on non-tribal lands.

Our response: The 1998 Final Rule included tribal lands within the MWEPA, although they were not included in the BRWRA. At the request of the White Mountain Apache Tribe, we do not identify the number of Mexican wolves or packs on the Fort Apache Indian Reservation; however, those numbers are included in the overall Arizona population count, as they are important contributions to the experimental population. We will develop recovery criteria in a revised Mexican Wolf Recovery Plan, which will include a determination of how many Mexican wolves are needed for recovery as well as other measures of threat alleviation; we intend for the experimental population in the MWEPA (including wolves on participating tribal lands) to function as a population contributing to the delisting criteria. However, as provided in this final rule, the Service or a designated agency may develop and implement management actions in cooperation with willing tribal governments on tribal trust land within Zones 1 and 2 of the MWEPA, including: Occupancy by natural dispersal; initial release; translocation of Mexican wolves onto such lands; and capture and removal of Mexican wolves from tribal trust land if requested by the tribal government. Thus, we recognize that even a participating tribe may request the removal of Mexican wolves from their tribal trust lands at any time.

(60) *Comment:* The Service has not provided a revised draft copy of the 1982 Mexican Wolf Recovery Plan, which will impact the proposed revision to the regulations for the experimental population of the Mexican wolf. The proposed revisions would have more validity and it would be easier to understand the impacts if there was a clear recovery goal.

Our response: We have not yet completed a revised recovery plan that would articulate objective and measurable recovery criteria for the species. We intend to revise the recovery plan as soon as feasible.

(61) *Comment:* Make it explicit that tribal-acquired lands that have not been reserved by Congress cannot be included in the ''tribal lands'' for which the Service intends to allow tribal development of management plans and/or execution of other wolf management activities. Clearly, tribal trust lands (which include, but may not be limited to, designated Reservation lands) are different than fee-simple lands acquired by Tribes. State wildlife management authorities do not extend to Reservations, but they do extend to private lands that Tribes acquire through purchase or lease, and which are not held in trust by the Federal Government.

Our response: In this final rule, we have defined tribal trust land to mean any lands title to which is either: (1) Held in trust by the United States for the benefit of any Indian tribe or individual; or (2) held by any Indian tribe or individual subject to restrictions by the United States against alienation. For purposes of this rule, tribal trust land does not include land purchased in fee title by a Tribe. We consider fee simple lands purchased by Tribes to be private land for purposes of development and implementing management actions to benefit Mexican wolf recovery, under paragraph (k)(9)(ii) of the regulations.

(62) *Comment:* The Service needs to evaluate impacts to the Tribe's trophy elk program and subsequent loss of revenue if Mexican wolves from the Tonto National Forest move onto Reservation lands. The proposed revisions' failure to separately identify big game depredation is a major flaw. The San Carlos Apache Tribe's elk hunts are recognized worldwide as exceptional big game hunting experiences. The Tribe and its member outfitters benefit economically from elk and deer hunts on the Reservation. The proposed revision, by concentrating on livestock depredation, fails to recognize the importance of big game hunting to the Tribe and the importance of harvest of game by hunters on the Reservation.

Our response: The Service has done this evaluation. As part of the economic analysis associated with the EIS, we utilized available information in our impact analysis for biological resources and the hunting economic sector in the project area. We found that trends in hunter visitation and success rates since 1998 in the areas occupied by Mexican wolves are stable or increasing based on the number of licensed hunters and hunter success rates. Further, Tribes that do not want Mexican wolves on their tribal trust land can request removal of wolves, and our final rule allows for the take of Mexican wolves due to unacceptable impacts to wild ungulate herds as defined by State management objectives, which will serve as mitigation for any herds that may suffer heavier predation impacts. Therefore, we do not foresee a significant economic impact to a substantial number of small entities associated with hunting activities.

(63) *Comment:* Provisions for take of Mexican wolves on the Reservation should exist and should not be equated with private land take. Tribes are sovereign and should not be viewed as the equivalent to private or public land.

Our response: The Service recognizes the unique government-to-government relationship between Indian Tribes and the United States. Furthermore, the Service recognizes that Indian lands are not Federal public lands or part of the public domain, and are not subject to Federal public land laws. They were retained by Tribes or were set aside for tribal use pursuant to treaties, statutes, judicial decisions, executive orders, or agreements. These lands are managed by Indian Tribes in accordance with tribal goals and objectives, within the framework of applicable laws. Mexican wolves on all land, including tribal reservations, within the MWEPA will be managed under the proposed 10(j) rule. Under their sovereign authority Tribes have the option of allowing Mexican wolves to occupy tribal trust land or to request their removal. Tribes will also have the option to enter into voluntary agreements with the Service for the management of Mexican wolves on tribal trust land. No agreement is necessary for the capture and removal of Mexican wolves from tribal trust land if requested by the tribal government. In this final rule, tribal members can harass a wolf (considered nonlethal take) exhibiting nuisance behavior or habituation; take (including kill or injure) any Mexican wolf in the act of killing, wounding, or biting domestic animals (specifically livestock and pet dogs) on tribal land, and take (which includes killing as well as nonlethal actions such as harassing, harming, and wounding) a Mexican wolf in self-defense or defense of the lives of others. Also, in conjunction with a removal action authorized by the Service, the Service or a designated agency may, under certain circumstances, issue permits to allow domestic animal owners or their agents to take (including kill or injure) any Mexican wolf that is present on non-Federal land anywhere within the MWEPA.

(64) *Comment:* The proposed revision fails to address the Tribe's concerns and objections pertaining to livestock and game depredation by the Mexican wolf on Tribal trust land. Any attempts to compare the effects of depredations on the Reservation with the effects of depredations that have occurred in the MWEPA are unavailing to the Tribe's view, because of the disproportionate economic impact upon the Tribe and its

members. The Service's lack of Federal funding to compensate State and Tribal livestock operators for depredation issues is a concern for Tribal livestock operators.

Our response: The Service evaluated the impacts of livestock and game depredation by Mexican wolves within the economic analyses associated with the EIS pursuant to the NEPA process, including an environmental justice analysis to consider impacts to Native American tribes. In addition, a document was developed by a Tribal subgroup of the Mexican Wolf Recovery Team, titled, ''Tribal Perspectives on Mexican Wolf Recovery.'' This document presents the various perspectives that Tribes may have regarding the Mexican Wolf Recovery Program. Perspectives include cultural, traditional, economic, legal, and social considerations that are important for the Service and other agencies to understand when implementing Mexican wolf recovery on or near Tribal lands. As sovereign nations, Tribes have authority over their lands and, thus, have a unique relationship with federal agencies. Regarding compensation for livestock depredations, both the San Carlos Apache Tribe and the White Mountain Apache Tribe have participated on the Mexican Wolf/Livestock Coexistence Council to develop compensation guidelines and a long-term coexistence plan. The Coexistence Council is now in the process of seeking funding from private and public sources.

(65) *Comment:* No additional reintroductions of Mexican wolves should take place in Arizona or New Mexico until reintroduction in prime areas in Mexico is ongoing and Mexico is fully committed to the program; the Arizona Game and Fish Department has primary control of the program in Arizona; the Service provides Tribes with adequate funds; and section 10(j) of the Act has been utilized to allow take of Mexican wolves killing, wounding, biting, chasing, threatening, or harassing humans, pets, or livestock on private land, subject to reasonable notice and reporting requirements.

Our response: Currently, Mexico is reintroducing Mexican wolves from the captive population into their historical range in Mexico, in accordance with their laws and their recovery plan for the Mexican wolf. The Service only has regulatory authority within the United States, and it is our mission to work with others to conserve, protect, and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people. In this final rule, we allow for: (1) Designated agencies, including the Arizona Game and Fish Department and tribes, to assist in implementing this rule, (2) *Take in defense of human life* (Under section 11(a)(3) of the Act and 50 CFR 17.21(c)(2), any person may take (which includes killing as well as nonlethal actions such as harassing or harming) a Mexican wolf in self-defense or defense of the lives of others.); and (3) on non-Federal lands anywhere within the MWEPA, domestic animal owners or their agents may take (including kill or injure) any Mexican wolf that is in the act of biting, killing, or wounding a domestic animal, as defined in paragraph (k)(3) of this section.

(66) *Comment:* Describe how Mexican wolf management on Tribal and non-Tribal lands in both Arizona and New Mexico will be coordinated to ensure that neither positive nor negative impacts of Mexican wolf reintroduction will fall disproportionately on Tribes or on non-Tribal interests.

Our response: Because the regulatory burden of Mexican wolf recovery rests on Federal land, this final rule has been modified to allow for separate take provisions on Federal and non-Federal land (which includes tribal land) to allow for more flexibility in management of problem wolves on non-Federal land. The Service will continue to communicate with local communities and Tribes regarding the management of wolves on tribal and non-tribal lands in both Arizona and New Mexico through our Web site, conference calls, webinars, and face-to-face meetings. The Service is committed to ensuring that negative impacts of Mexican wolf reintroduction will not fall disproportionately on tribes. To this end, we have included a provision for the development of management agreements with any tribe that wishes to participate in the reintroduction and host Mexican wolves on their land. Tribes that do not want Mexican wolves on their tribal trust land can request removal of wolves. We have excluded tribal land in our definition of occupied Mexican wolf range related to due care for trapping activities.

(67) *Comment:* Some tribes acknowledged that the Mexican wolf plays an integral predatory role in the ecosystem and was once a traditional species. It was the Tribe's opinion that the current experimental population of the Mexican wolf should remain at the current designation.

Our response: With this final rule, we revise the 1998 Final Rule to improve the effectiveness of our reintroduction project. Over time and through input from our partners, we recognized the need to revise the 1998 Final Rule to help us enhance the growth, stability, and success of the experimental population. The revisions include allowing Mexican wolves to be released in a larger area as well as allowing them to disperse throughout and occupy the MWEPA.

(68) *Comment:* One Tribe stated that the proposed revision to the regulations for the experimental population of the Mexican wolf expansion and reintroduction efforts of the Service on tribal trust lands is against traditional beliefs and further consultation on Traditional Ecological Knowledge regarding wolves with the Tribes is warranted.

Our response: The Service would appreciate invitations from Tribes for consultation on Traditional Ecological Knowledge regarding wolves. The reintroduction program would benefit from incorporating Traditional Ecological Knowledge of Mexican wolves that historically occurred in Arizona and New Mexico into our knowledge base. For example, a study on the cultural aspects of Mexican wolves was recently completed in 2009 with White Mountain and San Carlos Apache Tribes. As noted in responses to comments above, tribes have the ability under this final rule to request the removal of Mexican wolves from their tribal trust lands.

(69) *Comment:* The Service has not disclosed the number of Mexican wolves proposed to be released and the location of release sites within the State of Arizona.

Our response: Chapter 1 and Appendix D of the EIS describe the number of initial releases we expect to conduct in order to improve the genetic composition of the experimental population (one to two packs of Mexican wolves every 4 years). We will work with Tribes and partner agencies to identify appropriate release sites based on criteria that address adequate prey and avoidance of human conflicts; Appendix D of the EIS provides more information on current initial release sites and our process for selecting sites in the future in the discussion of Alternative One.

(70) *Comment:* One Tribe expressed concerns regarding the Service's justification of further introduction of the Mexican wolf in Arizona. They stated that according to the Service's current data, the State of Arizona accounts for only 15 to 18 percent of suitable habitat for the Mexican wolf in its entire historical range. The Tribe recommended that reintroduction efforts be concentrated and focused on historical home range in Mexico. It is the Tribe's opinion that the Mexican

wolf should be reintroduced in Mexico and allowed to naturally disperse from its historical habitat and range.

Our response: Maps of the Mexican wolf's historical range are available in the scientific literature (Young and Goldman 1944, p. 414; Hall and Kelson, 1959, p. 849; Hall 1981, p. 932; Bogan and Mehlhop 1983, p. 17; Nowak 1995, p. 395; Parsons 1996, p. 106). Depiction of the northern extent of the Mexican wolf's historical range among the available descriptions varies depending on the authors' taxonomic treatment of several subspecies that occurred in the Southwest and their related treatment of intergradation zones. There is evidence indicating that the Mexican wolf may have ranged north into southern Utah and southern Colorado within zones of intergradation where interbreeding with other gray wolf subspecies may have occurred (Leonard *et al.* 2005, pp. 11 and 15). In any case, the Service is currently working with the Mexican Government on Mexican wolf conservation and reintroduction in northern Mexico. However, the southwestern United States is also an important area for the recovery of the Mexican wolves, and, thus, we will continue with the reintroduction and management of Mexican wolves in the MWEPA.

(71) *Comment:* The Service has indicated there is no Federal funding for future Mexican wolf recovery efforts and Tribes can develop their own Mexican Wolf Management Plans, with Federal approval, including take measures with certain restrictions. Based on tribal sovereignty and the tribes' rights to manage their natural resources, it was the opinion of one tribe that they have the right to develop their own wolf management plan, including take measures that are in the best interest of the Tribe. If Federal funding is available to tribes, the tribe will comply with Federal requirements and comply with Federal approval of tribe's proposed wolf management plans.

Our response: The Service will explore Statements of Relationship with individual Tribes as well as assist with the development of Tribal Wolf Management Plans. Such plans, once approved by the Service, would provide the Tribe with authorization for implementation of take measures, as provided for in this final rule.

(72) *Comment:* Expand the MWEPA from the United States-Mexico border to the border of Utah and Colorado, throughout the entire States of Arizona and New Mexico. This would eliminate the need for a special management plan in areas outside the MWEPA in Arizona and New Mexico.

Our response: The 1998 Final Rule enabled us to release Mexican wolves from the captive population into the wild to determine if it was possible to establish a wild population following the extirpation of the species in the early 1970s. Since 1998, we have demonstrated success in establishing a wild population (*e.g.,* a minimum of 83 Mexican wolves in the wild, all of which are wild born as of December 2013). However, we are now expanding the MWEPA and revising the regulations to the 1998 Final Rule so that we can improve the effectiveness of the reintroduction project to achieve the necessary population growth, distribution, and recruitment, as well as genetic variation within the Mexican wolf experimental population so that it can contribute to recovery in the future. Following this phase of improving the existing experimental population, we intend to revise the Mexican wolf recovery plan so that it provides a recovery goal and objective recovery criteria. Implementation of the revised recovery plan may necessitate revision to this regulation for the experimental population in the MWEPA or the development of regulations associated with the establishment of one or more populations in other areas in the future, which will include any necessary analysis pursuant to NEPA. If these actions took place north of I–40, coordination with the States of Colorado and Utah, in addition to Arizona and New Mexico, would be required. Because we do not have a revised recovery plan at this time to guide us on where Mexican wolves are needed to reach full recovery (*i.e.,* delisting), we are limiting the revised MWEPA to areas south of Interstate 40 in Arizona and New Mexico.

(73) *Comment:* Identify the region north of Interstate 40 as a ''no go'' or ''relocate'' zone, and relocate Mexican wolves that enter this area back to the MWEPA, retaining the 10(j) flexibility to harass, and otherwise manage wolves moving north. This would help all entities manage Mexican wolves moving north; would help maintain the separation between the northern gray wolf populations and the reintroduced Mexican wolf; expand the flexibility of the Service in working with Pueblos, Tribes, private landowners and States; and avoid the abrupt shift in management between areas.

Our response: We discuss our rationale for not including the region north of Interstate 40 as part of the MWEPA in our discussion of Alternatives Eliminated from Further Consideration in Chapter 2 of the EIS (Service 2014, Chapter 2, p. 5–7). While we recognize the importance of natural dispersal and colonization/recolonization of unoccupied habitat, which expands the species' range, our purpose in proposing changes to the 1998 Final Rule is to improve the effectiveness of the reintroduction project to achieve the necessary population growth, distribution, and recruitment, as well as genetic variation within the Mexican wolf experimental population so that it can contribute to recovery in the future. Following this phase of improving the existing experimental population, we intend to revise the Mexican wolf recovery plan so that it provides a recovery goal and objective recovery criteria, which may require further revision to this regulation for the experimental population in the future including any necessary analysis pursuant to NEPA. Future revisions may include an expansion of the MWEPA north of I–40, and such a revision would require coordination with the States of Colorado and Utah. Because we do not have a revised recovery plan at this time to guide us on where Mexican wolves are needed to reach full recovery (*i.e.,* delisting), we are limiting the revised MWEPA to areas south of Interstate 40 in Arizona and New Mexico.

(74) *Comment:* Establish clear relocation guidelines.

Our response: We currently have criteria for initial releases and translocations of Mexican wolves for the BRWRA, which include distance from towns and dwellings that are occupied year-round and adequate prey abundance. We will continue to use these criteria pending completion of a new management plan, which will include similar provisions.

(75) *Comment:* On maps of potential habitat or of expanded areas, include tribal lands and possibly indicate those with resolutions that permit Mexican wolves or demand removal as separate categories. For example, Fort Apache Indian Reservation is often indicated, and permits Mexican wolves, whereas San Carlos Indian Reservation demands removal, but is not indicated separately from other 10(j) populations.

Our response: The Fort Apache Indian Reservation is included in the map of our revised 10(j) rule because they have been an important partner in Mexican wolf reintroductions and we wanted to show the public where this Reservation is located in relation to the rest of our initial release areas (Zone 1). We include a map (Figure 3–5 in the final EIS) of tribal land and suitable habitat

in the project area (Service 2014, Chapter 3 p. 33).

Comments From the Public

Comments on Legal Compliance With Laws, Regulations, and Policies

(76) *Comment:* Several commenters stated that Mexican wolves should be considered essential rather than nonessential under the revised 10(j) designation. When the current rule declared Mexican wolves in the wild ''nonessential,'' there were only 11 wolves, recently released from a captive-breeding program, and they made up only 7 percent of all Mexican wolves in the world. Now the 75 wolves in the wild have up to four generations of experience in establishing packs and raising pups and make up more than 22 percent of all of the Mexican wolves in the world. After four generations of captive breeding with few releases, scientists warn that there may be serious genetic problems making captive wolves less able to thrive in the wild. The fourth generation of wild lobos is not expendable and is essential to recovering this unique subspecies of wolf. Mexican wolves should have full protection under the Endangered Species Act.

Our response: This experimental population was originally designated in 1998, including the determination that it was nonessential. Nothing in this rule changes the scope of that designation. The Mexican wolf population that is in the wild in Arizona and New Mexico today is the experimental population that was designated in the 1998 Final Rule. This rule revises only the management regulations that apply to the population. Therefore, reconsideration of whether the population is essential or nonessential is outside the scope of this rulemaking. See also, *Designation of Experimental Population as Essential or Nonessential,* below.

(77) *Comment:* Some commenters suggested that designation of the Mexican wolf as nonessential means that it is not endangered, and, therefore, there is no reason to reintroduce it.

Our response: The Mexican wolf remains an endangered species under the Act. The nonessential experimental population designation is a classification for a geographic area designed to make the reintroduction and management of endangered species more flexible and responsive to public concerns to improve the likelihood of successfully recovering the Mexican wolf.

(78) *Comment:* Many commenters were concerned that the Service did not use the best available science.

Our response: As required by section 4(b) of the Act, we used the best scientific and commercial data available in making this final determination. We solicited peer review on the proposed revision to the regulations for the experimental population of the Mexican wolf from knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles to ensure that our final 10(j) rule is based on scientifically sound data, assumptions, and analysis. Additionally, we requested comments or information from other concerned governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties concerning the proposed rule. Comments and information we received helped inform this final rule. We used multiple sources of information including: Results of numerous surveys, peer-reviewed literature, unpublished reports by scientists and biological consultants, geospatial analysis, monitoring data from the BRWRA, and expert opinion from biologists with extensive experience studying wolves and their habitat.

In addition, we have complied with our policy on information standards under the 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, which provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. Information sources may include the recovery plan for the species, 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. Although some of these documents were not published in peer-reviewed journals, they still contain credible scientific information and represent the best scientific and commercial data available.

(79) *Comment:* The proposed rule does not address the social and economic impacts with the proposal to introduce, reintroduce, or translocate wolves.

Our response: We have addressed the various benefits and costs associated with this rulemaking as required by the Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, and NEPA in the Required Determinations section. Our EIS assesses economic impacts associated with this rule on livestock production, hunting, and tourism.

(80) *Comment:* Eliminate the requirement for a 5-year review and replace it with a provision requiring annual monitoring and evaluation presented in annual reports released within 3 months of the annual population count conducted in January of each year. This is the current practice of the Interagency Field Team.

Our response: We put the reporting requirement in the regulations of this revised 10(j) designation because it is a requirement under 50 CFR 17.81(c)(4), which says that any regulation promulgated under paragraph (a) of the section shall provide a process for periodic review and evaluation of the success or failure of the release and the effect of the release on the conservation and recovery of the species. We are not replacing the 5-year review provision with one requiring annual monitoring and evaluation presented in annual reports because the annual reports do not evaluate the success or failure of the 10(j) designation in relation to the conservation and recovery of the Mexican wolf as required by 50 CFR 17.81(c)(4).

Comments on Geographic Boundaries of the Revised Mexican Wolf Experimental Population Area

(81) *Comment:* The Interstate 40 boundary of the MWEPA is arbitrary and inconsistent with best science. Mexican wolves should be able to disperse freely outside of the MWEPA, consistent with other 10(j) populations (including wolves in the Northern Rocky Mountains experimental population). Where Mexican wolf conservation is in desperate need of additional areas to establish territories, there is no rationale for such removals here.

Our response: While we recognize that Mexican wolf conservation is in need of additional areas to establish territories, we have expanded the MWEPA to allow natural dispersal and colonization/recolonization of unoccupied habitat, which expands the species' range. Our purpose in proposing changes to the 1998 Final Rule is to improve the effectiveness of the reintroduction project to achieve the necessary population growth, distribution, and recruitment, as well as

genetic variation within the Mexican wolf experimental population so that it can contribute to recovery in the future. Following this phase of improving the existing experimental population, we intend to revise the Mexican wolf recovery plan so that it provides a recovery goal and objective recovery criteria, which may require further revision to this regulation for the experimental population in the future including any necessary analysis pursuant to NEPA. Because we do not have a revised recovery plan at this time to guide us on where Mexican wolves are needed to reach full recovery (*i.e.,* delisting), we are limiting the revised MWEPA to areas south of Interstate 40 in Arizona and New Mexico. Whether areas north of Interstate 40 are important for the conservation and recovery of the Mexican wolf will be addressed in a future revised recovery plan. This issue is further discussed in Chapter 2, Alternatives Eliminated from Further Consideration, of the final EIS (Service 2014, Chapter 2, p. 5–7).

(82) *Comment:* The proposed MWEPA is not enough for recovery and much of the range that is proposed will not ever actually be suitable for reintroduction. Therefore, more range needs to be included as there is more suitable habitat that is available within public lands that was part of the Mexican wolf historical range. This includes public lands north of Interstate 40, within the area of the Grand Canyon in Arizona, and the mountains in northern New Mexico, such as the Jemez and Sangre de Cristo Mountains and southern Colorado. Provisions in the proposed rule effectively prevent Mexican wolves from returning to the Grand Canyon region, including northern Arizona and southern Utah, or to northern New Mexico and southern Colorado. The Service should eliminate these arbitrary boundaries to the wolves' movement in order to facilitate their recovery. These areas are essential for Mexican wolf recovery.

Our response: This MWEPA represents just one phase of Mexican wolf recovery. We acknowledge that additional recovery areas are likely to be needed in the future to recover the Mexican wolf and remove it from the List of Endangered and Threatened Species. These areas will be identified in future recovery planning efforts.

(83) *Comment:* Do not remove the portion of west Texas from the MWEPA.

Our response: Texas was removed from the MWEPA because this area is not likely to contribute substantially to our purpose and need, and it is very unlikely that Mexican wolves will disperse into Texas because of the lack of suitable habitat. We do not expect Mexican wolves to occupy the small portion of Texas that was previously in the MWEPA because ungulate populations are inadequate to support Mexican wolves there.

(84) *Comment:* Mexican wolves should not be allowed to occupy the entire MWEPA. The BRWRA and the Fort Apache Indian Reservation contain over 9,000 square miles (23,310 square kilometers), which is adequate to support at least 100 Mexican wolves in the middle to high elevations of a 5,000-square-mile (12,950-square-kilometer) area within the Mexican wolf's historic range.

Our response: We have expanded the MWEPA with this final rule in order to further the conservation of the Mexican wolf. We do not expect Mexican wolves to occupy the entire MWEPA, but we do expect them to occupy areas of suitable habitat where ungulate populations are adequate to support them and conflict with humans and their livestock would be low. A larger population of Mexican wolves distributed over a larger area has a higher probability of persistence than a small population in a small area (Service 2014, Chapter 1, pp. 31–32).

(85) *Comment:* It is inappropriate for the 10(j) rule to prescribe the management of Mexican wolves outside the 10(j) designated area (*i.e.,* to bring back wolves that disperse beyond the MWEPA). Prior to approving a take permit for wolves outside the MWEPA, the Service will have to evaluate the potential for any such take to be a major Federal action significantly impacting the environment pursuant to NEPA. At a minimum, the Service must complete an environmental assessment (relevant law suit citation provided).

Our response: Although we mentioned in the preamble our intent to manage Mexican wolves that disperse outside the MWEPA, we do not have any language in the regulations that prescribes management of Mexican wolves outside the 10(j) designated area. However, we are going to issue a section 10(a)(1)(A) permit to allow for certain activities with Mexican wolves that occur outside the MWEPA. Under this permit we will authorize removal of Mexican wolves that can be identified as coming from the experimental population that disperse and establish territories in areas outside of the MWEPA. Also, in compliance with NEPA (42 U.S.C. 4321 *et seq.*), we have included an analysis of the environmental effects of the permit as part of our EIS.

(86) *Comment:* The rule proposes to capture Mexican wolves dispersing beyond the boundaries of the current MWEPA. The Service's own Mexican Wolf Recovery Team scientists (Science and Planning Committee) have written that establishment of additional populations will be required to achieve recovery, and that the most suitable habitat to support these populations lies to the north of Interstate 40. This position is also articulated in a recent peer-reviewed journal article (Carroll *et al.* 2014). A commitment to capture Mexican wolves leaving the MWEPA is inconsistent with best available scientific information. At the very least, the MWEPA should be expanded to extend northward to Interstate 70.

Our response: This final rule to revise the regulations for the experimental population of the Mexican wolf that was established in the 1998 Final Rule represents one phase in our approach to recovery and delisting. The 1998 Final Rule enabled us to release Mexican wolves from the captive population into the wild to determine if it was possible to establish a wild population following the extirpation of the species in the early 1970s. Since 1998, we have demonstrated success in establishing a wild population (*e.g.,* a minimum of 83 Mexican wolves in the wild, all of which are wild born as of December 2013). However, we are now expanding the MWEPA and revising the regulations to the 1998 Final Rule so that we can improve the effectiveness of the reintroduction project to achieve the necessary population growth, distribution, and recruitment, as well as genetic variation within the Mexican wolf experimental population so that it can contribute to recovery in the future. Following this phase of improving the existing experimental population, we intend to revise the Mexican wolf recovery plan so that it provides a recovery goal and objective recovery criteria, which may require further revision to this regulation for the experimental population in the future including any necessary analysis pursuant to NEPA. Because we do not have a revised recovery plan at this time to guide us on where Mexican wolves are needed to reach full recovery (*i.e.,* delisting), we are limiting the revised MWEPA to areas south of Interstate 40 in Arizona and New Mexico.

(87) *Comment:* According to the 1998 Final Rule, the White Sands Wolf Recovery Area was specifically intended to serve as a reintroduction area in the event that the initial goal of 100 wolves was not reached within the BRWRA, which is exactly what has occurred. In removing that obligation, fluctuating prey numbers in this recovery area should not serve as a rationale to continue to neglect it as an important

tool in ameliorating inbreeding and in conserving the Mexican wolf.

Our response: While the White Sands Wolf Recovery Area, as designated in the 1998 Final Rule, lies within the probable historical range of the Mexican wolf, and could be an important reestablishment site if prey densities increased substantially, it is now considered a marginally suitable area for Mexican wolf release and reestablishment primarily due to the low density of prey. For these reasons the Mexican Wolf Blue Range Reintroduction Project 5-Year Review recommended that any amended or new Mexican wolf experimental population rule not include the White Sands Missile Range as a Mexican Wolf Recovery Area or as a reintroduction zone (AMOC and IFT 2005, p. ARC–3); our current habitat analysis supports that recommendation (Service 2014, Section 1.2.14.1 and Figure 1–21).

Comments on Definitions

(88) *Comment:* The definition of ''occupied range'' is problematic and inappropriate, because radio-collared locations are not instantly known to Wildlife Services personnel but are reported in a delayed manner on Service's Web site. This only informs Wildlife Services where the wolves were the last time the radio-collared locations were determined. They are not real time, but are at least a month old. Also, Mexican wolves move around much more than 5 miles a day.

Our response: We have changed the definition of ''occupied Mexican wolf range'' to mean an area of confirmed presence of Mexican wolves based on the most recent map of occupied range posted on the Service's Mexican Wolf Recovery Program Web site at *http://www.fws.gov/southwest/es/mexicanwolf/*. The Service will continue to coordinate with Wildlife Services on an informal basis. Wildlife Services personnel are on the Interagency Field Team and have access to weekly flight locations, thus Wildlife Services is informed when Mexican wolves are located in unexpected areas.

(89) *Comment:* We believe ''problem wolves'' should be amended as follows: (1) Are members of a group or pack (including adults and yearlings) that were directly involved in livestock depredation on lawfully present livestock two times in an area within 1 year, or (2) have depredated domestic animals other than livestock on private or tribal lands, two times in an area within 1 year; or (3) are habituated to humans, human residence, or other facilities regularly occupied by humans.

Our response: We have defined ''problem wolves'' as Mexican wolves that, for purposes of management and control by the Service or its designated agent(s), are:

(i) Individuals or members of a group or pack (including adults, yearlings, and pups greater than 4 months of age) that were directly involved in a depredation on lawfully present domestic animals;

(ii) Habituated to humans, human residences, or other facilities regularly occupied by humans; or

(iii) Aggressive when unprovoked toward humans.

The 1982 Amendments to the Act, which created section 10(j), were designed to provide the Service with administrative flexibility to manage experimental populations of listed species. This definition provides the Service with flexibility regarding how to manage problem wolves, whereas the suggestion in the comment does not.

(90) *Comment:* In the definitions of ''Predation'' and ''Problem wolves'', ''lawfully present livestock'' should be revised to include ''. . . or on legal allotments (not trespassing and observing all requirements of the allotment operating instructions) on Federal lands.'' The definition of ''lawfully present livestock'' needs to be clarified to include the permittee's obligation to follow U.S. Forest Service (USFS) operating instructions as a condition of the privilege of grazing on public lands.

Our response: A permittee's obligation to follow USFS operating instructions is beyond the purview of these revised regulations to the experimental population. It is the responsibility of the USFS, Bureau of Land Management, State Land Commissions, and private landowners who lease grazing allotments to make sure that their permittees are complying with the terms and agreements of the leased allotments. Lawfully present livestock does not include livestock that is considered to be trespassing on Federal or other lands.

General Comments

(91) *Comment:* The proposed rule must not include expanded provisions for take of these critically endangered wolves. Science-based program reviews have shown that the killing and permanent removal of Mexican wolves by agency managers to resolve conflicts has been a major cause of failing to meet the reintroduction objective. The proposed rule changes offer additional excuses for removing wolves. The Service needs to tighten restrictions for take of Mexican wolves, not loosen them.

Our response: Nothing in this rule requires an increase in the killing or permanent removal of Mexican wolves. The purpose of this final 10(j) revision is to further the conservation of the Mexican wolf by improving the effectiveness of the reintroduction project in managing the experimental population. We have included modifications to the management regulations that govern take of Mexican wolves in this final rule to mitigate impacts caused by Mexican wolves and to increase our management flexibility in recognition that our action area includes a wider matrix of land ownership type and habitat quality than the previous BRWRA. The experimental population has grown each year since 2009, when the minimum Mexican wolf population count was 42. The Mexican wolf minimum population count was 83 in 2013. We expect that modifying the provisions governing the take of Mexican wolves will contribute to our efforts to find the appropriate balance between enabling wolf population growth and minimizing nuisance and depredation impacts on local stakeholders.

(92) *Comment:* Traps, including both leg-hold traps and snares, should not be allowed where Mexican wolves are at risk. There is no way to exclude a Mexican wolf from a coyote trap. The injuries that Mexican wolves can sustain in traps can be severe and life-threatening. It is an avoidable source of harm.

Our response: Incidents of Mexican wolf injuries and mortalities from trapping targeted at other animals have been low. Since reintroductions began in 1998 and have continued through December 31, 2013, we are aware of 25 incidents in which Mexican wolves were captured in nongovernmental (private) traps; at least 7 have been severely injured, and at least 3 have died as a result of injuries or activities associated with being captured in a leg-hold trap. More information about trapping and threats can be found in the final rule determining endangered status for the Mexican wolf, which published elsewhere in this **Federal Register**. The Service and designated agencies will continue to use leg-hold traps as an effective method to manage Mexican wolves in the wild. For non-project trappers, we have specified due care criteria, which include: Following the regulations, proclamations, recommendations, guidelines, and/or laws within the State or Tribe where the trapping takes place; modifying or utilizing appropriate size traps, chains, drags, and stakes to reasonably expect to prevent a wolf from either breaking the

chain, or escaping with the trap on the wolf, or utilizing sufficiently small traps (less than Victor 2) to reasonably expect the wolf to either immediately pull free from the trap, or span the jaw spread when stepping on the trap; reporting the capture of a Mexican wolf (even if the wolf has pulled free) within 24 hours to the Service; not taking a Mexican wolf via neck snares; and if a Mexican wolf is captured, trappers can call the Interagency Field Team (1–888–459–WOLF [9653]) as soon as possible to arrange for radio-collaring and releasing of the wolf. Per State regulations for releasing nontarget animals, trappers may also choose to release the animal alive and subsequently contact the Service or Interagency Field Team.

(93) *Comment:* In regard to trapping, add a provision that trappers have to check their traps frequently enough to minimize death or amputation of a Mexican wolf. Trapping within the MWEPA should require that traps be checked no less than every 24 hours when the lowest ambient temperature is above freezing and no less than every 12 hours when the temperature is below freezing. Until the Mexican wolf is past the insufficient population of 100, the Service should not abdicate its recovery responsibility to States' varying trapping regulations, which are not crafted to promote recovery. The Service should incorporate the best practices from the experience of its Inter-agency Field Team (IFT). In particular there must be adequate warning to people approaching traps and the trappers must check the trap as soon as it is sprung, as well as at least every 24 hours in case the activation signal is defective.

Our response: See our response immediately above.

(94) *Comment:* The revised 10(j) rule should state affirmatively that trapping is allowed within the MWEPA.

Our response: The Service is not authorized to regulate trapping in the MWEPA. Although we do not state affirmatively in the regulations that trapping is allowed within the MWEPA, we provide for unintentional take that occurs despite the use of due care, is coincidental to an otherwise lawful activity, and is not done on purpose. Taking a Mexican wolf with a trap, snare, or other type of capture device within occupied Mexican wolf range is prohibited (except as authorized in paragraph (k)(7)(viii)(A) of the regulations) and will not be considered unintentional take, unless due care was exercised to avoid injury or death to a Mexican wolf as specified in the final rule.

(95) *Comment:* We need more habitat and more Mexican wolves in the wild to keep them from inbreeding. Time is of the essence as inbreeding is already occurring in the captive wolf population.

Our response: This final rule will promote population growth, genetic diversity, and management flexibility by providing additional area and locations for initial release of captive Mexican wolves to the wild. Increased initial releases can improve the genetic composition of the experimental population because the captive population contains Mexican wolves with genetic material that is currently unrepresented (or underrepresented) in the experimental population; therefore, initial release of the appropriate animals can improve the genetic composition of the experimental population and minimize the likelihood of inbreeding. Genetic variation is managed in the captive wolf population because the Mexican Wolf Species Survival Plan has detailed lineage information on each captive Mexican wolf and establishes annual breeding objectives to maintain the genetic diversity of the captive population (Siminski and Spevak 2014, p. 2).

(96) *Comment:* Many public comments objected to the killing or lethal take of Mexican wolves. Commenters noted that there are many nonlethal methods to keep depredation levels low and that the Service should require ranchers in the Mexican wolf reintroduction areas to proactively pursue nonlethal deterrents.

Our response: We and our partners in the reintroduction project continue to investigate reported depredations and implement a variety of nonlethal methods to minimize Mexican wolf–livestock conflicts. A number of provisions in this final rule allow for nonlethal take of Mexican wolves. However, while preventative and nonlethal control methods can be useful in some situations, they are not consistently reliable, so lethal control remains a tool for managing Mexican wolves. Lethal take of Mexican wolves is most often the management tool of last resort.

(97) *Comment:* Wild Mexican wolves should not be captured and relocated. This activity is a danger to the wild wolves.

Our response: Translocation of Mexican wolves continues to be an important management tool. In some cases, translocating a wild Mexican wolf to a new location will disrupt depredation or nuisance behavior and thus contribute to our efforts to find the appropriate balance between enabling wolf population growth and minimizing nuisance and depredation impacts on local communities. As of December 31, 2013, we have captured 348 individual Mexican wolves, and of these, only 3 have resulted in capture-related mortalities (see Mexican Wolf Recovery Program Progress reports from 2001 to 2013 on our Web site at *http://www.fws.gov/southwest/es/mexicanwolf/*). This level of mortality is comparable to anesthesia-caused deaths during veterinary procedures and demonstrates a track record of safely handling Mexican wolves by the Program.

(98) *Comment:* Any additional Mexican wolf population introductions will cause serious harm to deer and elk populations. Please do not introduce any more Mexican wolves in Arizona or New Mexico.

Our response: In this final rule, we have included provisions allowing for take of Mexican wolves in response to impacts to wild ungulates in accordance with certain stipulations. If the States of Arizona or New Mexico determine that Mexican wolf predation is having an unacceptable impact to a wild ungulate herd (pronghorn, bighorn sheep, deer, elk, or bison), the respective State may request approval from the Service that Mexican wolves be removed from the area of the impacted ungulate herd. Upon written approval from the Service following a peer and public review of the data and information supporting the State's request, the State (Arizona or New Mexico) or any designated agency may be authorized to remove (capture and translocate in the MWEPA, move to captivity, transfer to Mexico, or lethally take) Mexican wolves. Because Tribes are able to request the capture and removal of Mexican wolves from their tribal trust lands at any time, take in response to wild ungulate impacts is not applicable on tribal trust lands. Based on a review of available survey data between 1998 and 2012, the Arizona Game and Fish Department determined that while Mexican wolves do target elk as their primary prey source, including elk calves during the spring and summer season, there was no discernible impact on the number of elk calves that survive through early fall periods. A similar finding was made for mule deer (Service 2104, Chapter 4 p. 12–17).

(99) *Comment:* The Service should develop a comprehensive and scientifically valid recovery plan that allows for at least three core populations. The current population in the greater Gila National Forest would then be one of the three core populations. The current recovery plan, more than 25 years old, is functionally irrelevant and virtually useless. The

2012 draft recovery plan, irrationally scuttled by the Service, should move forward.

Our response: We acknowledge that a scientifically based population goal is needed in order to determine when we have achieved recovery. That population goal will need to be determined in a future revision to the Mexican Wolf Recovery Plan. We will revise the recovery plan as soon as feasible. This MWEPA represents just one phase of Mexican wolf recovery.

(100) *Comment:* Trapping and the use of M–44's should be banned in the entire MWEPA. Trapping has already caused significant harm to individual Mexican wolves. Given the small size of the Mexican wolf population and the genetic risks associated with the loss of even a single wolf, the biologically sound, compassionate and precautionary approach dictates that every protection should be afforded to the species.

Our response: We have included a provision in this final rule prohibiting Wildlife Services from using M–44's and choking-type snares in occupied Mexican wolf range. Taking a Mexican wolf with a trap, snare, or other type of capture device within occupied Mexican wolf range is prohibited (except as authorized in paragraph (k)(7)(vii)(A)) and will not be considered unintentional take, unless due care was exercised to avoid injury or death to a Mexican wolf.

(101) *Comment:* The revised 10(j) rule does not allow the killing of a Mexican wolf to protect dogs that defend our livelihood.

Our response: This final rule includes several provisions by which non-feral dogs may be protected. For instance, anyone may conduct opportunistic harassment of any Mexican wolf at any time provided that Mexican wolves are not purposefully attracted, tracked, searched out, or chased and then harassed. Also, after the Service or its designated agency has confirmed Mexican wolf presence on any land within the MWEPA, the Service or its designated agency may issue permits valid for not longer than 1 year, with appropriate stipulations or conditions, to allow intentional harassment of Mexican wolves. In addition, we have provisions on Federal and non-Federal lands to allow for take of Mexican wolves by livestock guarding dogs, when used in the traditional manner to protect livestock. Further, on non-Federal lands anywhere within the MWEPA, domestic animal (includes non-feral dogs) owners or their agents may take (including kill or injure) any Mexican wolf that is in the act of biting, killing, or wounding a domestic animal, as defined in paragraph (k)(3) of the regulations, provided that evidence of freshly wounded or killed domestic animals by Mexican wolves is present. Lastly, based on the Service's or a designated agency's discretion and in conjunction with a removal action authorized by the Service, the Service or designated agency may issue permits to domestic animal owners or their agents (*e.g.,* employees, land manager, local officials) to take (including intentional harassment or killing) any Mexican wolf that is present on non-Federal land where specified in the permit.

(102) *Comment:* Livestock owners should never be allowed to kill Mexican wolves on public land to protect livestock, nor should they be allowed to kill them on private land for no reason.

Our response: In order to reduce human-related conflict, we have included provisions that the Service or designated agency may issue permits to livestock owners or their agents (*e.g.,* employees, land manager, local officials) to take (including intentional harassment or killing) any Mexican wolf that is in the act of biting, killing, or wounding livestock on Federal land where specified in the permit. These permits will be based on the Service's or a designated agency's discretion in conjunction with a removal action authorized by the Service. Take by permittees under this provision will assist the Service or designated agency in completing control actions. Also, there are no provisions in this final rule that allow for the killing of Mexican wolves on private land for no reason.

(103) *Comment:* Some commenters believed we are violating the Service's mission to conserve Mexican wolves by allowing for lethal and nonlethal take.

Our response: Prior to the 1982 Amendments to the Act, the Service was authorized to translocate listed species into unoccupied portions of their historical range in order to aid in the recovery of the species. Significant local opposition to translocation efforts often occurred, however, due to concerns over the rigid protection and prohibitions surrounding listed species under the Act. Section 10(j) of the 1982 Amendments was designed to resolve this dilemma by providing new administrative flexibility for selectively applying the prohibitions of the Act to experimental populations of listed species. The Service's mission is working with others to conserve, protect, and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people. Nothing in this rule reduces the ability of the Service to achieve its mission or its responsibility under the Act to conserve Mexican wolves. Rather, this rule builds on the establishment of the experimental population and the partnerships already established with non-Federal entities, States, and Tribes to manage the Mexican wolf, while recognizing the need to balance recovery of the Mexican wolf with other human uses in the MWEPA.

(104) *Comment:* The Service should revise its documents to include complete genetic analysis from the initial capture of the ancestors of today's Mexican wolves, including the genetic makeup of the original animals from which the current population of Mexican wolves is descended; the numbers of animals analyzed and their identities; the results of analysis; the cause of dog characteristics in wolf skulls; and records of any animals in the wild that DNA testing showed were hybrids and proof they were subsequently eliminated from the population.

Our response: Including this level of genetic detail is beyond the purview of this revised 10(j) rule. We have noted in the preamble that the Mexican wolves selected for release into the wild are wolves that have genes that are well-represented in the captive population, thus minimizing any adverse effects on the genetic integrity of the remaining captive population. The Mexican Wolf SSP has detailed lineage information on each captive Mexican wolf and establishes annual breeding objectives to maintain the genetic diversity of the captive population (Siminski and Spevak 2014, p. 2). The genetic purity of the Mexican wolves used in the captive program has been confirmed in published scientific studies.

(105) *Comment:* Clarify whether livestock operators are required to implement depredation-avoidance measures before incentives or compensation funding can be provided, or whether such actions are voluntary and independent of incentive and compensation programs.

Our response: Although proactive measures are not required to receive compensation funding, the Coexistence Council may provide payments based on a formula that includes the presence of Mexican wolves, number of livestock exposed to wolves, and the rancher's participation in proactive conflict avoidance measures.

(106) *Comment:* The proposed rule includes no plan for how the Service will mitigate damages or reduce the impact of Mexican wolves on individuals or communities that are harmed by their presence. Instead, it proposes to further reduce and limit the

conditions under which Mexican wolves will be removed or when landowners will be allowed to take action against a problem wolf. Specific information on how livestock producers will be compensated for their losses due to Mexican wolves needs to be in the revised rule.

Our response: Regarding compensation for livestock depredations, the Mexican Wolf/Livestock Coexistence Council has developed compensation guidelines and a long-term Coexistence Plan. The Coexistence Council is now in the process of seeking funding from private and public sources. Further, we have included several provisions in the final rule that will mitigate the potential impacts of Mexican wolves on landowners, recreational users, and local communities. Under the final rule, on non-Federal lands, domestic animal owners or their agents may take (including kill or injure) any Mexican wolf that is in the act of biting, killing, or wounding a domestic animal, as defined in the regulations, provided that evidence of freshly wounded or killed domestic animals by Mexican wolves is present; on Federal land, livestock owners may be permitted to take a wolf that is in the act of biting, killing, or wounding livestock. We have also included a provision for conditional take permits on non-Federal land for domestic animal owners to assist the Service or its designated agency in completing wolf control actions. In addition, after the Service or its designated agency has confirmed Mexican wolf presence on any land within the MWEPA, the Service or its designated agency may issue permits valid for not longer than 1 year, with appropriate stipulations or conditions, to allow intentional harassment of Mexican wolves.

(107) *Comment:* Some commenters suggested that the Mexican wolf is not a valid subspecies and, thus, should not be subject of an experimental population rule.

Our response: Based on the best available scientific information, we continue to recognize the Mexican wolf (*Canis lupus baileyi*) as a subspecies of the gray wolf. More information about the taxonomy of the Mexican wolf can be found in the final rule determining endangered status for the Mexican wolf, which published elsewhere in this **Federal Register**.

(108) *Comment:* The final revised 10(j) rule should acknowledge the full name of the subspecies as Mexican gray wolf (*Canis lupus baileyi*) rather than Mexican wolf. While this abbreviated nomenclature is acceptable after the first written usage and in colloquial writing and speech, taxonomic and genetic studies have documented that the Mexican gray wolf is a subspecies of gray wolf and regulatory documents should reflect this.

Our response: As previously noted, we recognize the Mexican gray wolf or Mexican wolf (*Canis lupus baileyi*) as a distinct gray wolf subspecies. For this final rule and to be consistent with other Service documents, we have chosen to use the common name Mexican wolf rather than Mexican gray wolf.

(109) *Comment:* The Service has the legal responsibility to recover the Mexican wolf and should maintain and consolidate that authority rather than delegate it again. The Service should issue a final revision to the 1998 Final Rule that makes clear that it has the sole authority over Mexican wolves.

Our response: Nothing in this rule delegates the Service's authority to manage Mexican wolves. Although the Service has the primary responsibility for the conservation of federally listed species under the Act, we are committed to working with our partners from other agencies, Tribes, State and local governments, and private entities to implement actions to further the conservation and recovery of the Mexican wolf. Work done by partners from other agencies will be approved by the Service.

(110) *Comment:* It is not acceptable to allow permits for the taking of Mexican wolves, especially without requiring that property owners and ranchers make significant effort to use nonlethal methods to control and protect their property.

Our response: We and our partners in Mexican wolf recovery continue to investigate and implement a variety of nonlethal methods of wolf management. While preventative and nonlethal control methods can be useful in some situations, they are not consistently reliable, so lethal control remains a tool for managing Mexican wolves.

(111) *Comment:* Provisions should be included to allow and require the Service to immediately reduce authorized take for all subsequent years following years when this conservation goal has not been met.

Our response: Even though we do not have a provision in this final rule that requires the Service to immediately reduce authorized take for all subsequent years following years when the conservation goal is not met, we have the flexibility and discretion to consider the status of the population when issuing take permits to manage Mexican wolves in the MWEPA. Some form of Mexican wolf management is usually necessary when wolves prey on livestock or engage in nuisance behavior. Accordingly, we recognize the importance of obtaining an appropriate balance between enabling Mexican wolf population growth and minimizing nuisance and depredation impacts on local communities, and we understand that removal of wolves to address conflicts with livestock (depredation) or humans (nuisance) is an essential component of reintroduction efforts.

(112) *Comment:* The revised 10(j) rule should include specifications for issuance of take permits to livestock producers (on private or public land). Any specifications should be based on the particular set of circumstances surrounding an ongoing depredation situation. The issuance of the permit should not depend upon the number of Mexican wolves in the MWEPA. The Service should develop and publish for review a set of take permit criteria based on certain situational elements, such as the number of livestock killed or injured, the frequency of wolf depredation, and the individual economic impacts to the livestock producer, landowner, and pet owner.

Our response: In this final rule, the issuance of a take permit to a livestock producer is based on the Service's or a designated agency's discretion and in conjunction with a removal action authorized by the Service. We are not including permit criteria in this rule in order to remain flexible while responding to specific depredation situations. Because of the different dynamic issues associated with managing the Mexican wolf experimental population, we are trying to remain flexible so that permits fit the permittee's individual situations.

(113) *Comment:* Rather than addressing illegal shootings, a primary and immediate threat to the Mexican wolf survival and recovery, the Service is proposing to expand the circumstances in which Federal agencies and authorized personnel may take wolves. This would legalize mistaken Mexican wolf shootings, requiring anti-wolf advocates to simply claim that they thought the animal was a coyote. Indeed, the final revisions must include a directive that personnel working on Mexican wolf recovery shall not engage in other predator control activities while assigned to the wolf project.

Our response: We have revised the take provisions set forth in the 1998 Final Rule in order to effectively manage Mexican wolves within the expanded MWEPA in a manner that furthers the conservation of the Mexican

wolf while being responsive to the needs of the local community in cases of depredation or nuisance behavior by wolves. However, we are not able to include a directive in this final rule that personnel working on Mexican wolf recovery shall not engage in other predator control activities because the Service is not authorized to direct the employees of other Federal and non-Federal agencies. But we have included a provision that Wildlife Services will discontinue use of M–44's and choking-type snares in occupied Mexican wolf range and that Wildlife Services may restrict or modify other predator control activities pursuant to a Service-approved management agreement or a conference opinion between Wildlife Services and the Service.

(114) *Comment:* Provisions must be added that allow a rancher lethal take options if he or she experiences multiple depredations regardless of location of those depredations. Private property protection is a civil and constitutional right and the Service must support that right. Permit requirements should not be necessary, but if a permit is required, it should be structured as a cooperative measure rather than an agency requirement and the issuance of such a permit should be made retroactive, as ranchers may have to act before making a request.

Our response: We have modified the provisions governing take of a Mexican wolf to contribute to our efforts to find the appropriate balance between enabling wolf population growth and minimizing nuisance and depredation impacts on local stakeholders. There are several provisions in this final rule by which a domestic animal or livestock owner can take (including kill or injure) a Mexican wolf in response to depredations. However, we are not authorized to structure a cooperative measure that allows the issuance of permits to be made retroactive.

(115) *Comment:* The revised 10(j) rule should not allow for pet owners to kill Mexican wolves attacking pets anywhere in the MWEPA. It is a blank check for wolf opponents to pick up strays and pound puppies, stake them out, and bait Mexican wolves. Authorizing people to kill Mexican wolves in defense of pets may open up new opportunities for fraudulent take.

Our response: We have included various provisions in this final rule to allow for take of Mexican wolves by domestic animal owners, which includes pet dog owners. However, for domestic animal owners, more take provisions are allowed on non-Federal land than on Federal land. Unless otherwise specified in this final rule or in a permit, any take of a Mexican wolf must be reported to the Service or a designated agency within 24 hours. The Service or designated agent will then investigate the incident, and if there are cases of fraudulent take, the person or persons may face Federal prosecution.

(116) *Comment:* We received many comments with an overall general opposition to allowing any take by pet owners. Several commenters stated that take of Mexican wolves by pet owners should not be allowed, especially when previous levels of take were too high to protect Mexican wolves at a level that furthered the conservation of the species.

Our response: In this final rule, we have included a provision that allows for the take of Mexican wolves by domestic animal owners or their agents if wolves are in the act of biting, killing, or wounding a domestic animal on non-Federal lands. In addition, there is a provision that would provide for the conditional issuance of permits to allow domestic animal owners or their agents to take (including intentional harassment, injure, or kill) any Mexican wolf that is present on non-Federal land owned by the domestic animal owner. We estimate that actual take of a Mexican wolf would occur only in about 25 percent of the instances in which take would be authorized, or the take of one to two wolves every other year (Service 2014, Appendix D, p. 6). This level of take should not significantly impact the conservation of the species, but see Appendix D of the final EIS for a full analysis of the predicted impact of additional take provisions on Mexican wolf conservation, based on incidences to date in the Mexican Wolf Recovery Program.

(117) *Comment:* The revised 10(j) rule should give State game and fish agencies broad authority to manage experimental populations. The experimental population provisions of the Act (16 U.S.C. 1539(j)) give the Service the authority to manage experimental populations in ways different than allowed for other endangered or even threatened species. These experimental population provisions do not prohibit the Service from transferring management authority to the State game and fish agencies, for the purposes of determining if and when take of Mexican wolves may be allowed. These State game and fish agencies must deal with the presence of Mexican wolves on a day-to-day basis, as well as the impact of these wolves on wild ungulates, livestock, and on revenues generated by the State through hunting licenses, concessions and other related sources. For that reason, these State game and fish agencies should have the authority to determine if and when the lethal removal of Mexican wolves may be carried out. Instead of withholding that authority from the agencies, or doling it out on a very limited basis, the Service should recognize and authorize the State game and fish agencies as the primary authorities for Mexican wolf management.

Our response: Federal law does not allow the Service to delegate its authority under the Act to a State. Although the Service has the primary responsibility for the conservation of federally listed species under the Act, we are committed to working with our partners at other Federal and State agencies, tribal and local governments, and private entities to implement actions that help prevent the extinction of species. With this final rule, we have modified the provisions of the 1998 Final Rule to allow designated agencies, such as a Federal, State, or tribal agency, to assist in implementing this rule, all or in part, consistent with a Service-approved management plan, special management measure, conference opinion pursuant to section 7(a)(4) of the Act, section 6 of the Act as described in 50 CFR 17.31 for State game and fish agencies with authority to manage Mexican wolves, or a valid permit issued by the Service through 50 CFR 17.32. However, if a Federal, State, or tribal agency becomes a designated agency, the Service will help coordinate their activities while retaining authority for program direction, oversight, guidance, and authorization of Mexican wolf removals.

(118) *Comment:* In both Arizona and New Mexico, describe how Mexican wolf management on tribal and non-tribal lands will be coordinated to ensure that neither positive nor negative impacts of Mexican wolf reintroduction will fall disproportionately on Tribes or on non-tribal interests.

Our response: In this final rule, we have established additional take provisions for non-Federal land, which is any private, State-owned, or tribal trust land, because we expect the burden of Mexican wolf recovery to be on Federal land. In addition, Tribes have the ability to request the removal of Mexican wolves from their tribal trust lands. During the preparation of this rule, the Service met with affected Tribes on numerous occasions. We believe this rule reflects the input and requirements of the Tribes.

(119) *Comment:* The rule should contain an escape clause, so that if excessive take results or limits on

dispersal constrain population growth, the provisions can be quickly cancelled.

Our response: The Service has the flexibility and discretion to consider the status of the population when issuing take permits to manage Mexican wolves in the MWEPA. Some form of Mexican wolf management is usually necessary when wolves prey on livestock or engage in nuisance behavior. Accordingly, we recognize the importance of obtaining an appropriate balance between enabling Mexican wolf population growth and minimizing nuisance and depredation impacts on local communities, and we understand that removal of wolves to address conflicts with livestock (depredation) or humans (nuisance) is an essential component of reintroduction efforts.

(120) *Comment:* One commenter stated that the Service should demonstrate its commitment to recovering the Mexican wolf by including a provision that the annual Mexican wolf population growth is at least 10 percent before any lethal take or removal of Mexican wolves from the wild is authorized. And this provision should remain in effect until the Mexican wolf population reaches at least 350, or until an approved Mexican Wolf Recovery Plan establishes some other numerical population objective for the expanded experimental population.

Our response: The Service has the flexibility and discretion to consider the status of the population when issuing take permits to manage Mexican wolves in the MWEPA. Some form of Mexican wolf management is usually necessary when wolves prey on livestock or engage in nuisance behavior. Accordingly, we recognize the importance of obtaining an appropriate balance between enabling Mexican wolf population growth and minimizing nuisance and depredation impacts on local communities, and we understand that removal of wolves to address conflicts with livestock (depredation) or humans (nuisance) is an essential component of reintroduction efforts.

(121) *Comment:* A streamlined process needs to be identified to address responses to predation by Mexican wolves on Sonoran pronghorn. Such streamlining may include establishing metrics in advance that identify unacceptable impact to Sonoran pronghorn and the outlining of rapid response protocols and procedures.

Our response: Sonoran pronghorn occur within Zone 3 of the MWEPA, which is an area of less suitable Mexican wolf habitat. We do not expect Mexican wolves to occupy these areas of less suitable habitat because ungulate populations are inadequate to support them. Even so, we have included provisions allowing for take of Mexican wolves in response to impacts to wild ungulates in accordance with certain stipulations. If the States of Arizona or New Mexico determine that Mexican wolf predation is having an unacceptable impact to a wild ungulate herd (pronghorn, bighorn sheep, deer, elk, or bison), the respective State may request approval from the Service that Mexican wolves be removed from the area of the impacted ungulate herd. Upon written approval from the Service following a peer and public review of the data and information supporting the State's request, the State (Arizona or New Mexico) or any designated agency may be authorized to remove (capture and translocate in the MWEPA, move to captivity, transfer to Mexico, or lethally take) Mexican wolves. Because Tribes are able to request the capture and removal of Mexican wolves from their tribal trust land at any time, take in response to wild ungulate impacts is not applicable on tribal trust lands.

(122) *Comment:* The provision should be removed that exonerates Wildlife Services agents who may take a Mexican gray wolf during control measures for other predators. The apparent misidentification and shooting of a Mexican wolf by a Wildlife Services agent has already occurred. A blanket dismissal of culpability in all future such cases is not a reasonable response.

Our response: Take of Mexican wolves by Wildlife Services employees while conducting official duties associated with predator damage management activities for species other than Mexican wolves may be considered unintentional if it is coincidental to a legal activity and the Wildlife Services employees have adhered to all applicable Wildlife Services' policies, Mexican wolf standard operating procedures, and reasonable and prudent measures or recommendations contained in Wildlife Service's biological and conference opinions. Take of Mexican wolves by Wildlife Services employees will be investigated by the Service and USDA–APHIS.

(123) *Comment:* The Service continues to assume a direct relationship between authorized taking of Mexican wolves and increased public tolerance of wolves. There is no science-based evidence that new, more permissive take provisions will achieve the conservation mandate of section 10(j) of the Act. Scientific proof of such a relationship does not exist and the papers cited in support of this claim present only unfounded opinions.

Our response: Our intention in revising the regulations to the experimental population is to effectively manage Mexican wolves in a manner that furthers the conservation of the Mexican wolf while being responsive to the needs of the local communities and minimizing wolf-human conflict. By providing more management flexibility, we believe that management of Mexican wolves under this final rule will improve the effectiveness of the reintroduction project in minimizing and mitigating wolf-human conflict while increasing public tolerance (Service 2014, Appendix E p.2).

(124) *Comment:* If the Service insists on maintaining take provisions in the final rule to allow domestic animal owners or their agents to take any Mexican wolf that is present on non-federal land, at a minimum the Service should include a verification process, ensure transparency in permitting decisions, and put a cap on the number of discretionary permits of this type that may be granted on the landscape. The Service sets forth no criteria to delimit when such permits may be granted, or to specify how many wolves may be killed or harmed in each permit.

Our response: This final rule authorizes the issuance of permits to domestic animal owners or their agents on non-Federal lands to assist the Service or designated agency in completing a control action. The issuance of permits will be at the Service's or designated agency's discretion, and thus, analyzed on a case-by-case basis. Also, we have established additional take provisions for non-Federal land, which is any private, State-owned, or tribal trust land, because we expect the burden of Mexican wolf recovery to be on Federal land.

Comments on National Environmental Policy Act

We received several comments that we did not adequately address the social, economic, or environmental impacts in accordance with NEPA. However, we have carefully reviewed the requirements of NEPA and its regulations (Council on Environmental Quality 40 CFR 1502.9), and this final rule, as well as the process by which it was developed and finalized, complies with all provisions of the Act, NEPA, and application regulations. Please see the final EIS for a detailed description of public comments related to NEPA and our responses.

Comments Not Germane to This Rulemaking

Some of the comments went beyond the scope of this rulemaking, or beyond the authority of the Service or the Act.

Because these issues do not relate to the action we proposed, they are not addressed here. These comments include support of or opposition to this rulemaking. For example, some comments indicated that Mexican wolf reintroduction usurped States' rights or that the current propagated population of Mexican wolves are not genetically pure wolves. We also received comments expressing support for, and opposition to, Mexican wolf recovery without further explanation.

Summary of Changes from the June 13, 2013, Proposed Revision to the Regulations for the Nonessential Experimental Population of the Mexican Wolf

On June 13, 2013 (78 FR 35719), we published a proposed rule to revise the regulations for the experimental population designation of the Mexican wolf. That proposal had a 90-day comment period ending September 11, 2013. Based on information received during that first 90-day public comment period ending on September 11, 2013, we proposed new revisions to the regulations for the experimental population of the Mexican wolf, and announced the availability of a draft EIS on the proposed revisions on July 25, 2014 (79 FR 43358). The changes from the June 13, 2013 (78 FR 35719), proposed rule that were part of the July 25, 2014 (79 FR 43358), revised proposed rule are described below.

Revisions and Considerations from the June 13, 2013, Proposal That Will Not be Carried Forward into the Final Rule

In the June 13, 2013 (78 FR 35719), proposed rule to revise the regulations for the experimental population designation of the Mexican wolf, we proposed that Mexican wolves on State-owned lands within the boundaries of the MWEPA be regulated in the same manner as on lands owned and managed by other public land management agencies. In this final rule, we remove any reference that the Service will consider State-owned lands within the boundaries of the MWEPA in the same manner as we consider lands owned and managed by other public land management agencies. In the 1998 Final Rule that established the Mexican wolf experimental population (63 FR 1752, January 12, 1998) (1998 Final Rule), management of Mexican wolves on all State-owned lands within the boundary of the MWEPA, but outside of designated wolf recovery areas, were subject to the provisions of private lands. Henceforth, the Service will consider the management of Mexican wolves on State-owned lands within the boundaries of the MWEPA in the same manner and subject to the same provisions of this rule as on non-Federal lands, which is consistent with the 1998 Final Rule.

Additionally in the June 13, 2013 (78 FR 35719), proposed rule, we proposed to modify the allowable take by livestock owners or their agents under paragraph (k)(6)(iii) from ''six breeding pairs'' to a requirement that at least 100 Mexican wolves must be present in the MWEPA before a permit to take Mexican wolves can be issued to livestock owners or agents on public land grazing allotments. The 1998 Final Rule included a definition of breeding pair as one of the conditions for take of Mexican wolves by livestock owners or agents on public land grazing allotments (*i.e.,* that there must be six breeding pairs present in order for a permit to take wolves to be issued by the Service). In the June 13, 2013 (78 FR 35719), proposed rule we considered overall population size to be a better metric for evaluating the appropriateness of providing such permits because it provided a more consistent measure of the overall population's status. However, based on information that was submitted during public comment, we are no longer using 6 breeding pairs or at least 100 Mexican wolves as conditions for issuing a permit to livestock owners or their agents on Federal lands. The information presented suggested that using 6 breeding pairs or at least 100 Mexican wolves were arbitrary conditions for issuing permits. Therefore, in this final rule, we allow livestock owners or their agents to take (including intentional harassment or killing) any Mexican wolf that is in the act of biting, killing, or wounding livestock on Federal land based on the Service's or a designated agency's discretion and in conjunction with a removal action that has been authorized by the Service.

Also in the June 13, 2013 (78 FR 35719), preamble to our proposed rule we considered several additional revisions. One of the considerations was to change the term ''depredation'' to ''depredation incident'' and revise the definition to mean, ''The aggregate number of livestock killed or mortally wounded by an individual Mexican wolf or single pack of Mexican wolves at a single location within one 24-hour period, beginning with the first confirmed kill or injury.'' We considered this change in order to provide consistency with terms used in our management documents (standard operating protocol, management plans, etc.), in which we consider all of the depredations that occur within one 24-hour period as one incident in our determination of what management actions to apply to a given situation. However, we received public comment that this term does not appropriately communicate individual depredations (*e.g.,* a wolf may have depredated three times in one 24-hour period). In addition, we are using the term ''depredation'' only in our definition of problem wolves. Therefore, we are no longer considering changing the term ''depredation'' to ''depredation incident'' and in this final rule will use the term ''depredation'' only as defined in the rule portion of this document.

Below, we discuss the additional modifications to our proposed revision to the regulations for the experimental population of the Mexican wolf.

Additional or Revised Definitions from the Proposal to Revise the Regulations for the Experimental Population of the Mexican Wolf

We add or revise several definitions to provide additional clarification; definitions for these terms are laid out in the rule portion of this document:

Active den
Cross-foster
Designated agency
Disturbance-causing land-use activity
Domestic animal
Federal land
Feral dog
In the act of biting, killing, or wounding
Initial release
Intentional harassment
Non-Federal land
Service-approved management plan
Translocate
Tribal trust land
Wild ungulate herd
Wounded
Zone 1
Zone 2
Zone 3

Revisions to the Geographic Area of the Mexican Wolf Experimental Population

We expand the MWEPA by moving the southern boundary from Interstate Highway 10 to the United States-Mexico international border across Arizona and New Mexico (Figure 2). Expanding the MWEPA was a recommendation in the Mexican Wolf Blue Range Reintroduction Project 5-Year Review (AMOC and IFT 2005, p. ARC–3). We make this modification because the reintroduction effort for Mexican wolves now being undertaken by the Mexican Government has established a need to manage Mexican wolves that may disperse into southern Arizona and New Mexico from reestablished Mexican wolf populations in Mexico. An expansion of the MWEPA south to the international border with Mexico allows

us to manage all Mexican wolves in this area, regardless of origin, under the experimental population 10(j) rule. The regulatory flexibility provided by our revisions to the 1998 Final Rule allows us to take management actions within the MWEPA that further the conservation of the Mexican wolf while being responsive to needs of the local community in cases of problem wolf behavior.

Also, we identify Zones 1, 2, and 3 as different management areas within the MWEPA and discontinue the use of the term BRWRA. These different zones are based on areas of habitat suitability and dispersal corridors. Areas of less suitable Mexican wolf habitat will be where Mexican wolves are more actively managed under the authorities of this rule to reduce conflict with the potentially affected public.

Zone 1 is where Mexican wolves may be initially released or translocated, and where they can occupy and disperse, and includes all of the Apache, Gila, and Sitgreaves National Forests; the Payson, Pleasant Valley, and Tonto Basin Ranger Districts of the Tonto National Forest; and the Magdalena Ranger District of the Cibola National Forest. Zone 2 is where Mexican wolves will be allowed to naturally disperse into and occupy, and where Mexican wolves may be translocated. On Federal land in Zone 2, initial releases of Mexican wolves are limited to pups less than 5 months old, which allows for the cross-fostering of pups from the captive population into the wild, as well as enables translocation-eligible adults to be re-released with pups born in captivity. On private and tribal land in Zone 2, Mexican wolves of any age, including adults, can also be initially released under a Service- and State-approved management agreement with private landowners or a Service-approved management agreement with tribal agencies. Translocations in Zone 2 will be focused on suitable Mexican wolf habitat that is contiguous to occupied Mexican wolf range. Zone 3 is where neither initial releases nor translocations will occur, but Mexican wolves will be allowed to disperse into and occupy. Zone 3 is an area of less suitable Mexican wolf habitat where Mexican wolves will be more actively managed under the authorities of this rule to reduce conflict.

Elimination of the BRWRA and the primary and secondary recovery zones within it, and our expansion of Zone 1 to include the entire Sitgreaves and three Ranger Districts of the Tonto National Forests in Arizona and one Ranger District of the Cibola National Forest in New Mexico is consistent with recommendations in the Mexican Wolf Blue Range Reintroduction Project 5-Year Review (AMOC and IFT 2005, p. ARC–4). These revisions provide additional area and locations for initial release of Mexican wolves to the wild from captivity beyond that currently allowed by the 1998 Final Rule, which will enable us to improve the genetic variation of the experimental population.

Clarification of Take Provisions From the 1998 Final Rule for the Mexican Wolf Experimental Population

In the rule portion of this document, we clarify take provisions provided in the 1998 Final Rule for intentional harassment, opportunistic harassment, take for research purposes, take by Service personnel or designated agency, and unintentional take. We also revise the due care criteria in regard to trapping activities. And we provide language to clarify that personnel of the USDA–APHIS Wildlife Services will not be in violation of the Act or this rule for take of a Mexican wolf that occurs while conducting official duties associated with predator damage management activities for species other than Mexican wolves. These changes do not directly authorize an increase in the amount of take. However, an increase in the Mexican wolf population in the MWEPA could result in an increase in the amount of take authorized over time because more situations could result in take.

Furthermore, we revise provisions in the 1998 Final Rule to allow for removal of Mexican wolves in response to impacts to wild ungulates. Under this provision, if Arizona or New Mexico game and fish agencies determine that Mexican wolf predation is having an unacceptable impact to a wild ungulate herd (pronghorn, bighorn sheep, deer, elk, or bison), the respective State may request approval from the Service that Mexican wolves be removed from the area of the impacted ungulate herd. Upon written approval from the Service, the State (Arizona or New Mexico) or any designated agency may be authorized to remove (capture and translocate in the MWEPA, move to captivity, transfer to Mexico, or lethally take) Mexican wolves.

Additional Take Provisions to the Mexican Wolf Experimental Population

One of the additional provisions we are now allowing is take of a Mexican wolf on non-Federal lands anywhere within the MWEPA by domestic animal owners or their agents when any Mexican wolf is in the act of biting, killing, or wounding a domestic animal provided that evidence of a freshly wounded or killed domestic animal by Mexican wolves is present. We define a domestic animal as livestock as defined in paragraph (k)(3) of this final rule and non-feral dogs. We are making this change to mitigate the potential impacts of Mexican wolves on landowners, recreational users, and local communities. These management actions must occur in accordance with 50 CFR 17.84(k)(7)(iv)(A).

We are also finalizing provisions for the issuance of permits, based on the Service's or a designated agency's discretion and in conjunction with a removal action authorized by the Service, on non-Federal land anywhere within the MWEPA, and under particular circumstances, to allow domestic animal owners or their agents to take (including intentional harassment or kill) any Mexican wolf that is present on non-Federal land where specified in the permit. Permits issued under this provision specify the number of days for which the permit is valid and the maximum number of Mexican wolves for which take is allowed. Take by permittees under this provision will assist the Service or designated agency in completing control actions. Domestic animal owners or their agents must report this take to the Service's Mexican Wolf Recovery Coordinator or a designated agency of the Service within 24 hours.

Lastly, we are adding reporting requirements which clarify that, unless otherwise specified in this rule or in a permit, any take of a Mexican wolf must be reported to the Service or our designated agency within 24 hours.

Summary of Changes From the July 25, 2014, Proposed Revisions to the Regulations for the Nonessential Experimental Population of the Mexican Wolf

In this final rule, based on information received during the July 25, 2014, to September 23, 2014, public comment period, we make several modifications from our July 25, 2014, proposal to revise the regulations for the experimental population of the Mexican wolf. These modifications represent an agreement with Arizona and New Mexico's State game and fish agencies in accordance with 50 CFR 17.81(d). As explained further below, we find that these recommended modifications are commensurate with the conservation of the Mexican wolf. First, we added a definition for *Unacceptable impact to a wild ungulate herd.* Second, we established a population objective of 300 to 325 Mexican wolves throughout the MWEPA, in both Arizona and New

Mexico. Last, we have provided for a phased approach to Mexican wolf management within the MWEPA in western Arizona.

In our revised proposed rule, our language under paragraph (k)(7)(vi) stated that ''If Arizona or New Mexico determines, based on ungulate management goals, that Mexican wolf predation is having an unacceptable impact to a wild ungulate herd (pronghorn, bighorn sheep, deer, elk, or bison), the respective State may request approval from the Service that Mexican wolves be removed from the area of the impacted ungulate herd.'' Based on information that we received from the State game and fish agencies, an unacceptable impact to a wild ungulate herd will be determined by a State game and fish agency based upon ungulate management goals, or a 15 percent decline in an ungulate herd as documented by a State game and fish agency, using their preferred methodology, based on a preponderance of evidence of bull:cow ratios, cow:calf ratios, hunter days, and/or elk population estimates. The process outlined in paragraph (k)(7)(vi) for Service approval remains the same.

We received comments from numerous agencies, organizations, and individuals requesting that we include a population objective for the MWEPA. In accordance with best available information, we included a population objective of 300 to 325 Mexican wolves throughout the MWEPA in both Arizona and New Mexico (see *Population Objective for Wolves in the MWEPA*). This range will be based on end-of-year counts. So as not to exceed this population objective, we will exercise all management options with preference for translocation to other Mexican wolf populations to further the conservation of the subspecies. The Service may change this population objective as necessary to accommodate a new recovery plan.

In regard to the phased approach to Mexican wolf management in western Arizona, in consultations with the Arizona Game and Fish Department, they expressed concern that elk populations, west of Highway 87 are generally smaller in number and isolated from each other compared to elk populations east of Highway 87. Also, areas west of Highway 87 tend to be drier, and, therefore, elk herds have greater fluctuations in population size than herds in more mesic areas to the east. As such, Arizona's most dense and productive elk populations are found in the eastern part of the State, generally east of Highway 87. Therefore, we have included a phased approach to translocations, initial releases, and occupancy of Mexican wolves west of Highway 87.

As part of the phased-approach, Phase 1 will be implemented for the first 5 years following the effective date of this rule (see **DATES**), and under this phase, initial release and translocation of Mexican wolves can occur throughout Zone 1 with the exception of the area west of State Highway 87 in Arizona (Figure 3). No translocations can be conducted west of State Highway 87 in Arizona in Zone 2. Mexican wolves can disperse naturally from Zones 1 and 2 into, and occupy, the MWEPA (Zones 1, 2, and 3). However, during Phase 1 dispersal and occupancy in Zone 2 west of State Highway 87 will be limited to the area north of State Highway 260 and west to Interstate 17.

In Phase 2, initial releases and translocation of Mexican wolves can occur throughout Zone 1 including the area west of State Highway 87 in Arizona. No translocations can be conducted west of Interstate Highway 17 in Arizona. Mexican wolves can disperse naturally from Zones 1 and 2 into, and occupy, the MWEPA (Zones 1, 2, and 3) with the exception of those areas west of State Highway 89 in Arizona (Figure 4).

If determined to be necessary by the 8-year evaluation and Phase 2 has already been implemented, Phase 3 will be initiated (Figure 5). In Phase 3, initial release and translocation of Mexican wolves can occur throughout Zone 1, including the area west of State Highway 87 in Arizona. No translocations can be conducted west of State Highway 89 in Arizona. Mexican wolves can disperse naturally from Zones 1 and 2 into, and occupy, the MWEPA (Zones 1, 2, and 3).

While implementing this phased approach, two evaluations will be conducted: (1) Covering the first 5 years and (2) covering the first 8 years after the effective date of this rule in order to determine if we will move forward with the next phase. Each phase evaluation will consider adverse human interactions with Mexican wolves, impacts to wild ungulates, and whether or not the Mexican wolf population in the MWEPA is achieving a population number consistent with a 10 percent annual growth rate based on end-of-year counts, such that 5 years after the effective date of this rule the population is at least 150 Mexican wolves, and 8 years after the effective date of this rule the population is at least 200 Mexican wolves. The phasing may be expedited with the concurrence of participating State game and fish agencies. Regardless of the outcome of the two evaluations, by the beginning of year 12 from the effective date of this rule, we will move to full implementation of this rule throughout the MWEPA, and the phased management approach will no longer apply. The phasing may be expedited with the concurrence of participating State game and fish agencies.

Findings

As discussed in the *Statutory and Regulatory Framework* section, several findings are required before establishing an experimental population. Below are our findings.

Is the experimental population wholly separate geographically from nonexperimental populations of the same species?

Prior to the first release of Mexican wolves in 1998, the Service ensured that no population of naturally occurring wild wolves existed within the recovery areas under consideration (in the United States) or in Mexico. Currently, no populations or individuals of the Mexican wolf subspecies are known to exist in the United States outside of the MWEPA. Due to the active reestablishment effort Mexico initiated in 2011, as of October 2014, seven confirmed Mexican wolves were known to exist in the wild approximately 130 mi (209 km) south of the United States–Mexico international border. The seven wolves consist of two adults and their five pups, and are approximately 100 mi (161 km) straight-line distance south from the United States–Mexico international border. Thus, the two areas are neither adjacent to nor overlapping each other.

The Mexican wolves in Mexico do not meet the definition of a population that we have consistently used in our gray wolf experimental population rules, which is at least two breeding pairs of gray wolves that each successfully raised at least two young annually for two consecutive years (59 FR 60252, November 22, 1994). This definition represents what we have determined to be the minimum standards for a gray wolf population (Service 1994). The courts have supported this definition and thus upheld our interpretation that pairs must breed to have a ''population'' (*Wyoming Farm Bureau Federation* v. *Babbitt,* 199 F.3d 1224, 1234 (10th Cir. 2000); *U.S.* v. *McKittrick,* 142 F. 3d 1170, 1175 (9th Cir. 1998), cert. denied, 525 U.S. 1072 (1999)). Based on the results of Mexico's efforts from 2011 through 2013, we can only speculate that the number of Mexican wolves in Mexico will fluctuate over the next few years from zero to several wolves or packs of wolves depending on

mortalities, future releases, and successful breeding (in the wild) of released wolves. Therefore, we consider it unlikely for a population that meets our definition to be established in northern Mexico any time soon and certainly no such population exists currently.

Based on the fact that there are currently no populations of Mexican wolves in the United States or Mexico other than the existing experimental population in the United States, we find that the experimental population is wholly geographically separate. If a population is successfully established in the future due to Mexico's efforts, it is possible that an occasional Mexican wolf from Mexico may disperse into the United States. Interconnectivity between Mexican wolves in Mexico and in the MWEPA in the future could benefit recovery of the Mexican wolf by providing genetic interchange between populations.

Is the experimental population area in suitable natural habitat outside the species' current range, but within its probable historical range?

The experimental population area is within suitable natural habitat in its probable historical range. Because Mexican wolves were extirpated from the wild prior to protection by the Act, there is no current range in the United States except that which is occupied by this experimental population. The MWEPA is considered to be within the probable historical range (Parsons 1996, p. 106; Bogan and Mehlhop 1983, p. 17).

Designation of Experimental Population as Essential or Nonessential

Our finding of whether a population is essential or nonessential is made with our understanding that Congress enacted the provisions of section 10(j) of the Act to address fears that reestablishing populations of threatened or endangered species into the wild could negatively impact landowners and other private parties. Congress also recognized that flexible rules could encourage recovery partners to actively assist in the reestablishment and hosting of such populations on their lands (H.R. rep. No. 97–567, at 8 (1982)). Although Congress allowed experimental populations to be identified as either essential or nonessential, they noted that most experimental populations would be nonessential (H.R. Conference Report No. 835, supra at 34; Service 1984)).

We make all determinations on essentiality as part of the rulemaking to reestablish a population of endangered or threatened species under section 10(j). It is instructive that Congress did not put requirements in section 10(j) to reevaluate the determination of essentiality after a species has been reestablished in the wild. While our regulations require a ''periodic review and evaluation of the success or failure of the release and the effect of the release on the conservation and recovery of the species (50 CFR 17.81(c)(4))'', this does not require reevaluation and reconsideration of a population's nonessential experimental status (Service 1991, 1994, 1996b).

In 1998, we designated the Mexican wolf experimental population. At that time, we determined that the experimental population was not essential to the survival of the species in the wild. In this final rule, we are not revisiting the issue of whether or not the experimental population is essential to survival of the species in the wild, and nothing in the rule changes the designation of the population. The 1998 Rule is being changed only to improve the effectiveness of the reintroduction project in managing the experimental population in particular ways that have been previously described. Making these management changes does not require the Service to revisit the 1998 designation's determination regarding whether the population is essential or not.

Reestablishing a species is by its very nature an experiment for which the outcomes are uncertain. However, it is always our goal to successfully reestablish a species in the wild so that it can be recovered and removed from the endangered species list. This is consistent with the Act's requirements for section 10(j) experimental populations. Specifically, the Act requires experimental populations to further the conservation of the species. Conservation is defined by the Act as the use of all methods and procedures which are necessary to bring any endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. In short, experimental populations must further a species' recovery.

The importance of an experimental population to a species' recovery does not mean the population is ''essential'' under section 10(j) of the Act. All efforts to reestablish a species are undertaken to move that species toward recovery. If importance to recovery was equated with essentiality, no reestablished populations of a species would qualify for nonessential status. This interpretation would conflict with Congress' expectation that ''in most cases, experimental populations will not be essential'' (H.R. Conference Report No. 835, supra at 34; Service 1984) and our 1984 implementing regulations, which indicated an essential population will be a special case and not the general rule (Service 1984).

In addressing essentiality, the Act instructs us to determine whether a population is essential to the continued existence of an endangered or threatened species in the wild. Our regulations define essential experimental populations as those ''whose loss would be likely to appreciably reduce the likelihood of the survival of the species in the wild (50 CFR 17.80(b)).'' The Service defines ''survival'' as the condition in which a species continues to exist in the future while retaining the potential for recovery (Service and National Marine Fisheries Service 1998). Inherent in our regulatory definition of essential is the impact the potential loss of the experimental population would have on the species as a whole (Service 1984). All experimental populations not meeting this bar are considered nonessential (50 CFR 17.80(b)).

The Service has previously determined that this experimental population of Mexican wolves was nonessential in the 1998 Final Rule. The Mexican wolf population that is in the wild in Arizona and New Mexico today is the experimental population that was designated in the 1998 Final Rule. The 1998 Final Rule stated that ''The Service finds that even if the entire experimental population died, this would not appreciably reduce the prospects for future survival of the subspecies in the wild. That is, the captive population could produce more surplus wolves and future reintroductions still would be feasible if the reasons for the initial failure were understood (63 FR 1754).''

Does the establishment of the experimental population and release of Mexican wolves further the conservation of the species?

(1) Are there any possible adverse effects on extant populations of the Mexican wolf as a result of removal of individuals for introduction elsewhere?

The Mexican wolves in the captive-breeding program and the seven wolves in the wild in Mexico (which do not constitute a population) are the only extant Mexican wolves other than those in the existing experimental population. The primary purpose of the captive-breeding program is to supply wolves for reestablishing Mexican wolves into the wild. Mexican wolves selected for release from the captive-breeding program are genetically well-

represented in the captive population, thus minimizing any adverse effects on the genetic integrity of the remaining captive population. The Mexican Wolf SSP has detailed lineage information on each captive Mexican wolf and establishes annual breeding objectives to maintain the genetic diversity of the captive population (Siminski and Spevak 2014, p. 2). This rule allows for more captive Mexican wolves to be released to the wild, which can be accommodated by the captive-breeding program. We find that the continuation of the experimental population and specifically the expansion of the area into which initial releases can be conducted will not have adverse effects on the captive-breeding program. Such releases benefit the captive-breeding program by freeing up space for additional breeding of Mexican wolves, which helps slow the loss of genetic diversity. Mexican wolf dispersal throughout the MWEPA will further the conservation of the species by allowing wolves access to additional habitat for reestablishment.

(2) What is the likelihood that any such experimental population will become established and survive in the foreseeable future?

In our 1998 Final Rule we stated, ''The Service finds that, under the Preferred Alternative, the reintroduced experimental population is likely to become established and survive in the wild within the Mexican wolf's probable historic range (63 FR 1754, January 12, 1998).'' We have been reestablishing Mexican wolves into the BRWRA since 1998, and the population has consistently demonstrated signs of establishment, such as wolves establishing home ranges and reproducing. The progress in meeting the population objective of at least 100 wild Mexican wolves has been slower than projected, but we anticipate that the revisions in this rule will support progress toward our objective. At the end of 2013, all of the Mexican wolves in the wild in Arizona and New Mexico were born in the wild. This marked the twelfth consecutive year in which wild-born Mexican wolves bred and raised pups in the wild. We have also modified our management procedures related to depredation response and other recommendations from the Mexican Wolf Blue Range Reintroduction Project 5-Year Review to ensure the success of the experimental population (Service 2010, p. 29). To promote survival of the wild population we have used an adaptive management framework to modify our approach to depredation management by removing fewer Mexican wolves, focusing on proactive measures, and tasking the Mexican Wolf/Livestock Coexistence Council to develop a comprehensive program to fund proactive conflict avoidance measures, depredation compensation and payments for presence of Mexican wolves.

(3) What are the relative effects that establishment of an experimental population will have on the recovery of the Mexican wolf?

The recovery and long-term conservation of the Mexican wolf in the southwestern United States and northern Mexico is likely to depend on establishment of a metapopulation or several semi-disjunct populations spanning a significant portion of its historic range in the region (Carroll *et al.* 2014, entire). Continuing the effort to reestablish the experimental population, and making modifications to improve it, will substantially contribute to the recovery of the species, as it is currently extirpated in the wild except for the existing experimental population in the United States and a fledgling reestablishment effort in Mexico. We recognize that the reestablishment of a single experimental population of Mexican wolves is inadequate for recovery, and we are fully cognizant that a small isolated Mexican wolf population, such as the existing experimental population, can neither be considered viable nor self-sustaining (USFWS 2010 entire, Carroll *et al.* 2014 entire). The continued successful reestablishment of an experimental population of Mexican wolves in the MWEPA is envisaged as the first step toward, and will contribute to, recovery.

(4) What is the extent to which the introduced population may be affected by existing or anticipated Federal or State actions or private activities within or adjacent to the experimental population area?

Now, as in the 1998 Final Rule (63 FR 1752, January 12, 1998), we do not foresee that the introduced population would be affected by existing or anticipated Federal or State actions or private activities. Wolves are considered habitat generalists that can occupy areas where prey populations and human tolerance support their existence (Mech 1970, p. 334; Mech 1995, entire; Fritts *et al.* 2003, pp. 300–301; Fuller *et al.* 2003, pp. 170–171; Oakleaf *et al.* 2006, p. 560). We expect Mexican wolves in the MWEPA to primarily occupy forested areas on Federal lands due to the availability of prey in these areas and supportive management regimes, although we recognize that wolves may disperse through or occasionally occupy less-suitable habitat. We also recognize that Mexican wolves may seek to inhabit tribal or private lands with suitable habitat.

Zone 1, the area where Mexican wolves may be initially released from captivity or translocated as established in this final rule, comprises the Apache, Gila, and Sitgreaves National Forests; the Payson, Pleasant Valley, and Tonto Basin Ranger Districts of the Tonto National Forest; and the Magdalena Ranger District of the Cibola National Forest that are administered by the Forest Service. The Forest Service manages these areas to sustain the health, diversity, and productivity of the Nation's forests and grasslands to meet the needs of present and future generations. The National Forests are responsible for developing and operating under a Land and Resource Management Plan, which outlines how each of the multiple uses on the forest will be managed. The Forest Service is a partner in the management and recovery of the Mexican wolf.

The MWEPA covered by this final rule contains a mixture of many land ownerships, including Federal (*e.g.,* Forest Service, Bureau of Land Management, Department of Defense), State, private, and tribal lands. A variety of actions and activities may occur throughout the MWEPA, such as recreation, agriculture and ranching, development, and military operations. Although we expect the majority of the Mexican wolf population to occur on Federal lands within Zones 1 and 2 of the MWEPA due to habitat suitability, we also anticipate that the experimental population may be affected by actions and activities occurring on private or tribal land, such as ranching operations, because wolves that depredate livestock or display nuisance behavior may be hazed or removed. We will establish management actions in cooperation with private landowners and tribal governments to support the recovery of the Mexican wolf on private and tribal lands and will continue our efforts to support the Mexican Wolf/Livestock Coexistence Council and proactive management activities aimed at reducing wolf-livestock conflicts.

Road and human densities have been identified as potential limiting factors for colonizing wolves in the Midwest and Northern Rocky Mountains due to the mortality associated with these landscape characteristics (Mladenoff *et al.* 1995, entire; Oakleaf *et al.* 2006, pp. 558–561). Vehicular collision, in particular, is not identified as having a significant impact on the Mexican wolf population, although it may contribute to the overall vulnerability of the population due to its small population size and the cumulative effects of

multiple factors, including inbreeding and illegal shooting of wolves. We recognize that human and road densities in the MWEPA are within recommended levels for Mexican wolf colonization, and are expected to remain so in the future; therefore, we see the impact to the population from actions related to human development as minimal within the areas we expect Mexican wolves primarily to inhabit. More information about vehicular collisions and other threats can be found in the final rule determining endangered status for the Mexican wolf, which published elsewhere in this **Federal Register**.

Both Arizona and New Mexico protect the Mexican wolf under State law. In Arizona, Mexican wolves are managed as Wildlife of Special Concern (Arizona Game and Fish Commission Rules, Article 4, R12–4–401) and are identified as a Species of Greatest Conservation Need (Tier 1a, endangered) (Species of Greatest Conservation Need 2006, pending). In New Mexico, Mexican wolves are listed as endangered under the State's Wildlife Conservation Act (NMSA 1978, pp. 17–2–37 through 17–2–46). Based on these protective designations and regulations, we do not foresee that actions on State land will significantly negatively affect the experimental population.

We will continue to work with other agencies, tribes, and landowners to ensure that their activities will not adversely affect the experimental population of Mexican wolves. Based on our intent to capture and return to the MWEPA Mexican wolves that disperse outside of the MWEPA, we do not expect actions and activities adjacent to the MWEPA to have a significant impact on the experimental population.

Consultation With State Game and Fish Agencies, Local Governments, Federal Agencies, and Private Landowners in Developing and Implementing This Rule

In accordance with 50 CFR 17.81(d), to the maximum extent practicable, this rule represents an agreement between the Service, the affected State and Federal agencies, and persons holding any interest in land that may be affected by the establishment of this experimental population. We invited 84 Federal and State agencies, local governments, and tribes to participate as cooperating agencies in the development of the EIS, 27 of which signed a Memorandum of Understanding (MOU). The purpose of this MOU was for the signatory entities to contribute to the preparation of the EIS that analyzes the proposed revisions to the regulations for the Mexican Wolf Experimental Population. We have maintained a list of individual stakeholders, as well as a Web site, since the initiation of the EIS development to ensure that interested and potentially affected parties received information on the EIS and notices of opportunities for public involvement. As previously mentioned, numerous parts of this rule directly reflect the input and desires of State game and fish agencies, local governmental entities, affected Federal agencies, and affected private landowners.

In June 2013, we notified the tribal governments of all the Native American tribes in Arizona and New Mexico of our intent to prepare an EIS. We held Tribal Working Group meetings to provide opportunity for input, discuss the current status of the EIS development, and address issues raised by the Tribes. We met with affected Federal agencies; several State, county, and tribal governments; as well as Forest Service livestock permittees, several Natural Resource Conservation Districts, and organizations representing interested parties to discuss the proposed rule and draft EIS. We met with the Arizona Game and Fish Department and New Mexico Department of Game and Fish to collect data and develop the analyses of effects to native species, particularly ungulates and economic impacts associated with hunting in Arizona and New Mexico. We also met with the two State game and fish agencies to discuss issues and recommendations they may have with the proposed rules. The New Mexico State Game Commission suspended the involvement of the New Mexico Department of Game and Fish in the Mexican Wolf Recovery Program on June 9, 2011, but they have participated as a Cooperating Agency for the development of the EIS. Throughout the course of drafting this rule, the Arizona Game and Fish Department has made numerous comments on the rule. Some of those comments have been incorporated into this rule as explained earlier. Numerous other entities and individuals have provided suggestions on the draft rule that have not always reflected the best available scientific and commercial information available or met our purpose and need for revising this rule and therefore do not contribute to the conservation of the species. Therefore, it is not practicable for this final rule to represent an agreement between the Service and all agencies and persons holding any interest in land that may be affected by the establishment of this experimental population. We held four public hearings and three public information sessions in Arizona and New Mexico prior to developing this final rule and EIS. We reviewed and considered approximately 48,131 public comments submitted on the June 13, 2013, and July 25, 2014, proposed rules prior to finalizing this rule and the EIS.

Management of Wolves Inside and Outside the Mexican Wolf Experimental Population Area

For Mexican wolves that occur outside the MWEPA, the Act (16 U.S.C. 1531 *et seq.*) prohibits activities that ''take'' endangered and threatened species unless a Federal permit allows such ''take.'' Along with our implementing regulations at 50 CFR part 17, the Act provides for permits and requires that we invite public comment before issuing these permits. A permit issued by us under section 10(a)(1)(A) of the Act authorizes activities otherwise prohibited by section 9 for scientific purposes or to enhance the propagation or survival of the affected species, including acts necessary for the establishment and maintenance of experimental populations. Our regulations regarding implementation of section 10(a)(1)(A) permits are found at 50 CFR 17.22 for endangered wildlife species.

We have developed a section 10(a)(1)(A) permit to allow for certain activities with Mexican wolves that occur both inside and outside the MWEPA. Please note that if Mexican wolves travel outside the MWEPA, we intend to capture and return them to the MWEPA or put them in captivity. In compliance with NEPA (42 U.S.C. 4321 *et seq.*), we have included analysis of the environmental effects of the permit as part of our EIS. In accordance with both the Act and NEPA, we invited local, State, tribal, and Federal agencies and the public to comment on the draft section 10(a)(1)(A) permit during the July 25, 2014, to September 23, 2014, open comment period (79 FR 43358; July 25, 2014).

Required Determinations

Regulatory Planning and Review—Executive Order 12866

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote

predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. This final rule promotes predictability and reduces uncertainty because it clearly tells the affected public what is necessary to promote the conservation of Mexican wolves in the MWEPA. It is the most innovative approach because it improves upon the 1998 Final Rule. Section 10(j) of the Act provides a less burdensome tool for reintroducing threatened and endangered species into the wild.

Executive Order 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. This new rule provides added flexibility regarding how the public may deal with Mexican wolves. This flexibility is found in this rule's new ''take'' provisions. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. As explained earlier in this rule, the Service has consistently involved the public in this decisionmaking process through public meetings and public comment periods. We believe we have used the best scientific information available in drafting this rule. For these reasons, we have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C 801 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include such businesses as manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and forestry and logging operations with fewer than 500 employees and annual business less than $7 million. To determine whether small entities may be affected, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

Importantly, the impacts of a rule must be both significant and substantial to prevent certification of the rule under the RFA and to require the preparation of a regulatory flexibility analysis. If a substantial number of small entities are affected by the proposed rule, but the per-entity economic impact is not significant, the Service may certify a rule. Likewise, if the per-entity economic impact is likely to be significant, but the number of affected entities is not substantial, the Service may also certify.

In the 1998 Final Rule, we found that the experimental population would not have significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. The 1998 Final Rule set forth management directions and provided for limited allowable legal take of Mexican wolves within the MWEPA. We concluded that the rule would not significantly change costs to industry or governments. Furthermore, the rule produced no adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. enterprises to compete with foreign-based enterprises in domestic or export markets. We further concluded that no significant direct costs, information collection, or recordkeeping requirements were imposed on small entities by the action and that the rule was not a major rule as defined by 5 U.S.C. 804(2) (63 FR 1752, January 12, 1998).

In this final rule revising the regulations for the experimental population of the Mexican wolf, the area affected by this rule includes the portion of the States of Arizona and New Mexico from Interstate Highway 40 south to the United States-Mexico international border. This rule expands many of those activities that were already taking place within the BRWRA to larger portions of the MWEPA in both States.

Because of the regulatory flexibility for Federal agency actions provided by the 10(j) designation and the exemption for incidental take in the special rule, we do not expect this rule to have significant effects on any activities within Federal, State, or private lands within the experimental population. In regard to section 7(a)(2) of the Act, except on National Park Service and National Wildlife Refuge system lands, the population is treated as proposed for listing, and Federal action agencies are not required to consult on their activities. Section 7(a)(4) of the Act requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a species. However, because a nonessential experimental population is, by definition, not essential to the survival of the species, conferencing will unlikely be required within the MWEPA. Furthermore, the results of a conference are strictly advisory in nature and do not restrict agencies from carrying out, funding, or authorizing activities. In addition, section 7(a)(1) of the Act requires Federal agencies to use their authorities to carry out programs to further the conservation of listed species, which would apply on any lands within the experimental population area. As a result, and in accordance with these regulations, some modifications to the Federal actions within the experimental population area may occur to benefit the Mexican wolf, but we do not expect projects on Federal lands to be halted or substantially modified as a result of these regulations.

However, this revision to the regulations for the experimental population will allow Mexican wolves to occupy the MWEPA, which has the potential to affect small entities involved in ranching and livestock production, particularly beef cattle ranching (business activity code North American Industry Classification System (NAICS) 112111), sheep farming (business activity code NAICS 112410), and outfitters and guides (business activity code NAICS 114210). Small

entities in these sectors may be affected by Mexican wolves depredating on, or causing weight loss of, domestic animals (particularly beef cattle), or preying on wild native ungulates, respectively. We have further assessed these impacts to small entities in the EIS. We also consider impacts to the tourism industry.

Small businesses involved in ranching and livestock production may be affected by Mexican wolves depredating on domestic animals, particularly beef cattle. Direct effects to small businesses could include foregone calf or cow sales at auctions due to depredations. Indirect effects could include impacts such as increased ranch operation costs for surveillance and oversight of the herd, and weight loss of livestock when wolves are present. Ranchers have also expressed concern that a persistent presence of wolves may negatively impact their property and business values. We do not foresee a significant economic impact to a substantial number of small entities in the ranching and livestock production sector based on the following information:

The small size standard for beef cattle ranching entities and sheep farms as defined by the Small Business Administration are those entities with less than $750,000 in average annual receipts (*http://www.sba.gov/content/summary-size-standards-industry-sector*). We consider close to 100 percent of the cattle ranches and sheep farms in Arizona and New Mexico to be small entities. The 2012 Census of Agriculture reports that there were 6,029 cattle and calf operations and 7,447 sheep farms in Arizona and 12,796 cattle and calf operations and 3,385 sheep farms in New Mexico.

Of the approximately 18,825 cattle ranches in Arizona and New Mexico, 12,275 occur in counties in the MWEPA (2012 Census of Agriculture data by county). This estimate was derived by subtracting the number of milk cow farms and inventory and feeder farms and inventory from the total cattle and calf farms and inventory for the project area counties. The actual number of ranches within the project area is less than this estimate because several counties extend beyond the borders of the project area. The Agricultural Census does not report sub-county farms or inventory, so relying on the county numbers is the best available data for estimating the number of potentially affected small ranching operations.

Cattle ranches vary significantly in herd size, with classifications ranging from a herd of 1–9 animals, to those with more than 2,500 animals (2012 Census of Agriculture). For the purposes of this analysis, we consider all of the ranches to be small entities. More than 80 percent of the ranches in Arizona and New Mexico have fewer than 50 head of cattle (in Arizona, 5,367 out of 6,029 ranches, and in New Mexico, 11,165 out of 12,796). Nearly 50 percent of Arizona operations and 40 percent of New Mexico operations had a herd size of less than 10. While these ranches represent the majority of the number of ranches in the two States, they account for only about 10 percent of the States' total cattle and calf inventory (in Arizona, 76,712 out of 911,334 cattle and in New Mexico, 268,438 out of 1,354,240 cattle) (2012 Census of Agriculture). The largest operations, those with an inventory greater than 500 cattle, account for more than 80 percent of the total cattle inventory in Arizona and 66 percent of the total inventory in New Mexico.

The Department of Agriculture reported a national estimate of 90.0 million cattle and calves in 2013, which implies that together, Arizona and New Mexico contribute approximately 2.5 percent to the overall national supply (National Agriculture Statistics Service's Web site at *http://quickstats.nass.usda.gov*).

We assessed whether a substantial number of entities would be impacted by this rule by estimating the annual number of depredations we expect to occur within the project area when the Mexican wolf population will be at its largest. Between 1998 and 2013, on average there were 62 total depredations (confirmed and unconfirmed) by Mexican wolves in any given year, which equates to 1.3 cow/calves killed for every Mexican wolf. Based on this, we estimate the average number of cattle killed (both confirmed and unconfirmed) in any given year will be 130.8 per 100 Mexican wolves). We expect the experimental population to grow from its current minimum population estimate of 83 wolves to a maximum population of not more than 300 to 325 wolves under the proposed action within 13 years; accordingly, we expect the annual number of depredations (both confirmed and unconfirmed) to increase from 119 to approximately 412 cows/calves. Assuming that one cow is depredated per ranch, 412 of 12,275 ranches would experience depredation events annually, or 3.4 percent of the cattle ranches.

To the extent that some cattle ranches will most likely not be impacted by wolf recovery because they are not located in suitable habitat but are included in the total estimate of potentially affected ranches because the Agricultural Census does not provide data at a sub-county level, this estimate could understate the percentage of ranches potentially affected. However, for other reasons, this estimate could very well overstate the percentage of cattle ranches affected as we recognize that annual depredation events have not been, and may not be, uniformly distributed across the ranches operating in occupied wolf range. Rather, wolves seem to concentrate in particular areas, and to the extent that livestock are targeted by the pack for depredations, some ranch operations will be disproportionately affected. Therefore, it is more likely that fewer than 412 ranches may experience more than one depredation, rather than each of 412 ranches experiencing one depredation.

Compared to the 2012 total inventory of estimated ranch cattle (97,686) for the five-county area of the BRWRA (Graham, Greenlee, and Apache Counties in Arizona; and Catron and Grant Counties in New Mexico), both confirmed and unconfirmed depredations per 100 Mexican wolves account for less than 0.4 percent of the herd size. The economic cost of Mexican wolf depredations in this time period has been a small percentage of the total value of the livestock operations. With a population objective of 300 to 325 Mexican wolves in the MWEPA, the expected value of 412 cattle (130.8 cattle killed per 100 Mexican wolves on average for any year) at auction using 2013 prices (National Agriculture Statistics Service's Web site at *http://quickstats.nass.usda.gov;* the most current data available at the time of the analysis) would be about $430,553.

Small businesses involved in ranching and livestock production could also be indirectly affected by weight loss of livestock due to the presence of Mexican wolves. For example, livestock may lose weight because wolves force them off suitable grazing habitat or away from water sources. Livestock may try to protect themselves by staying close together in protected areas where they are more easily able to see approaching wolves and defend themselves and their calves. A consequence of such a behavioral change would likely be weight loss, especially if the wolves are allowed to persist in the area for a significant amount of time because the cattle would be afraid to spread out to find more lucrative forage areas. Weight loss could also occur if the presence of wolves causes the herd to move around more rapidly as they try to keep away from wolves. Based on Ramler *et al.* 2014,

weight loss of cattle is associated with the ranches that have suffered depredations. Therefore, we would expect the same ranches—that is, 412 ranches or fewer—that were impacted by depredations to potentially be impacted by weight loss of their cattle. Because wolves' tendency to prey on cattle is localized, we would not expect all 412 ranches and their associated herds to be impacted.

Using a mid-point estimate of 6 percent weight loss for calves at the time of auction (Service 2014, Chapter 4, p. 43–44), we calculated the impact on 2012 model ranches assuming that wolf presence pressures were allowed to persist throughout the foraging year. Based on 2013 market prices, a 6 percent weight loss for the herd at the time of sale could result in a profit loss of $2,393 to $12,226 depending on the size of the ranch (Service 2014, Chapter 4, p. 44, Table 4–10). This is likely an overestimate of impacts that would occur, as once wolves are detected in an area, a variety of proactive and reactive management tools are available to the landowner or the Service and our designated agencies such that wolf presence would not persist throughout a foraging year.

This final rule is based on Alternative One in our environmental impact statement. This alternative minimizes the potential impact to small ranching entities in several ways relative to the other action alternatives and the no action alternative. First, the rule offers several forms of harassment and take of Mexican wolves on Federal and non-Federal land that are not offered in Alternatives Three or Four. Second, Alternative One maximizes our ability to conduct initial releases in areas of high-quality habitat (relative to Alternatives Two and Four) in order to minimize nuisance events associated with initial releases. In addition to the minimization measures provided by the rule, one or more sources of compensation may be available to ranchers to further mitigate impacts. If the Mexican Wolf/Livestock Trust Fund continues to be funded, we would expect the Mexican Wolf/Livestock Coexistence Council (Coexistence Council) to compensate 100 percent of the market value of confirmed depredated cattle and 50 percent of market value for probable kills with payments to affected ranchers (Mexican Wolf/Livestock Coexistence Plan 2014). We would also expect the Coexistence Council to continue to provide funding for proactive conservation measures to decrease the likelihood of depredation and Payments for Presence of Mexican wolves to offset indirect costs. Another possible source of mitigation funding is the USDA Livestock Indemnity Program, part of the 2014 Farm Bill, which provides (among other benefits) benefits to livestock producers for livestock lost due to attacks by animals introduced into the wild by the Federal Government or protected by Federal law, including wolves. This program may pay a livestock owner 75 percent of the market value of the applicable livestock (*http://www.fsa.usda.gov/Internet/FSA_File/lip_long_fact_sht_2014.pdf*).

Based on the preceding information, we find that the impact of direct and indirect effects of Mexican wolf depredations on livestock is not both significant and substantial. That is, if impacts are evenly spread, less than 3.4 percent of small ranches in Arizona and New Mexico will be impacted, which we do not consider to be a substantial number. If impacts are disproportionately felt (several ranchers bear the burden of the depredations), the number of affected ranches will be even less (not substantial), but the impact to those affected may be significant depending on the number of cattle on the ranch and other characteristics.

Small businesses ($5.5 million or less in operating income) associated with hunting in Arizona and New Mexico could also be affected by implementation of our action. Direct effects to small businesses in this section could occur from impacts to big game populations due to Mexican wolf predation (primarily on elk), loss of hunter visitation to the region, or a decline in hunter success, leading to lost income or increased costs to guides and outfitters. However, we do not have information suggesting that these impacts will occur. Based on a review of available survey data between 1998 and 2012, the Arizona Game and Fish Department determined the impact that Mexican wolves have had on deer and elk populations in the BRWRA. The Arizona Game and Fish Department found that, while Mexican wolves do target elk as their primary prey source, including elk calves during the spring and summer season, there was no discernible impact on the number of elk calves that survive through early fall periods. A similar finding was made for mule deer. The Arizona Game and Fish Department also reported that, while the number of elk permits authorized has varied since Mexican wolves were reintroduced into Arizona, the variation is attributable to a variety of management-related objectives unrelated to elk availability for hunters.

At a population of 300 to 325, we expect the Mexican wolf density in the MWEPA to be no higher (and more likely, lower) than it is currently because the area where wolves can occur is larger. We also expect wolf to elk ratios (an indicator of predation pressure) to occur at levels resulting in less than significant biological impacts, suggesting that ungulate populations will not be impacted by Mexican wolves (Service 2014, Chapter 4, p. 12–15). Furthermore, information suggests that wolves tend to prey on unproductive calf elk and older cow elk, whereas hunters are seeking elk with high reproductive potential. Trends in hunter visitation and success rates since 1998 in the areas occupied by Mexican wolves are stable or increasing based on the number of licensed hunters and hunter success rates. We do not have information suggesting these trends would change during the project time period. Further, our final rule allows for the take of Mexican wolves due to unacceptable impacts to wild ungulate herds, which will serve as mitigation for any herds that may suffer heavier predation impacts. Therefore, we do not foresee a significant economic impact to a substantial number of small entities associated with hunting activities.

We also considered impacts to the tourism industry from implementation of our proposed action (Service 2014, Chapter 4, p. 52). In this case, impacts to small businesses would be positive, stemming from increased profits associated with wolf-related outdoor recreation opportunities, such as providing eco-tours in Mexican wolf country. However, we do not have information suggesting that wolf presence will create significant (positive) economic impacts to a substantial number of small entities, as very few eco-tours or other ventures have been identified since 1998. Therefore, we do not foresee a significant economic impact to a substantial number of small entities associated with tourism activities.

We further conclude that no significant direct costs, information collection, or recordkeeping requirements are imposed on small entities by the action and that the rule is not a major rule as defined by 5 U.S.C. 804(2).

In summary, we have considered whether this final rule would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Arizona Game and Fish Department, cooperating agencies, the New Mexico Game and Fish Department, stakeholders, published

literature and reports, and information in our files. For the above reasons and based on currently available information, we certify that this final rule to revise the regulations for the Mexican wolf experimental population would not have a significant economic impact on a substantial number of small business entities. Therefore, a regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule would not ''significantly or uniquely'' affect small governments. We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that, if adopted, this rulemaking would not impose a cost of $100 million or more in any given year on local or State governments or private entities. A Small Government Agency Plan is not required. As explained above, small governments would not be affected because the experimental population designation would not place additional requirements on any city, county, or other local municipalities.

(2) This rule would not produce a Federal mandate of $100 million or greater in any year (*i.e.,* it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act).

Takings—Executive Order 12630

In accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), this rule does not have significant takings implications. When reestablished populations of federally listed species are designated as nonessential experimental populations, the Act's regulatory requirements regarding the reestablished listed species within the experimental population are significantly reduced. In the 1998 Final Rule, we stated that one issue of concern is the depredation of livestock by reintroduced Mexican wolves, but such depredation by a wild animal would not be a taking under the 5th Amendment. One of the reasons for the experimental population is to allow the agency and private entities flexibility in managing Mexican wolves, including the elimination of a wolf when there is a confirmed kill of livestock.

A takings implication assessment is not required because this rule will not effectively compel a property owner to suffer a physical invasion of property and will not deny all economically beneficial or productive use of the land or aquatic resources. Damage to private property caused by protected wildlife does not constitute a taking of that property by a government agency that protects or reintroduces that wildlife. This rule substantially advances a legitimate government interest (conservation and recovery of a listed species) and does not present a barrier to all reasonable and expected beneficial use of private property.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), we have considered whether this final rule has significant Federalism effects and have determined that a Federalism assessment is not required. This rule will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. In keeping with Department of the Interior policy, we requested information from and coordinated development of this final rule with the affected resource agencies in New Mexico and Arizona. Achieving the population objective for the MWEPA will help to ensure a stable population of Mexican wolves in the MWEPA in the future. This stable population will then contribute to the range-wide recovery of the species, which will contribute to its eventual delisting and its return to State management. No intrusion on State policy or administration is expected, roles or responsibilities of Federal or State governments will not change, and fiscal capacity will not be substantially or directly affected. This final rule operates to maintain the existing relationship between the State and the Federal Government. Therefore, this rule does not have significant Federalism effects or implications to warrant the preparation of a Federalism Assessment under the provisions of Executive Order 13132.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (February 7, 1996; 61 FR 4729), the Office of the Solicitor has determined that this rule will not unduly burden the judicial system and meets the requirements of sections (3)(a) and (3)(b)(2) of the Order.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we will notify the Native American tribes within and adjacent to the experimental population area about this final rule. They will be informed through written contact, including informational mailings from the Service, and were provided an opportunity to comment on the draft EIS and proposed rule. If future activities resulting from this rule may affect tribal resources, the Service will communicate and consult on a Government-to-Government basis with any affected Native American tribes in order to find a mutually agreeable solution.

Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), require that Federal agencies obtain approval from OMB before collecting information from the public. This rule does not contain any new collections of information that require approval by OMB. This rule would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. OMB has approved our collection of information associated with reporting the taking of experimental populations (50 CFR 17.84) and assigned control number 1018–0095, which expires October 31, 2017. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We prepared a draft and final EIS pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with the revision to the regulations for the experimental population of the Mexican wolf section 10(j) rule. From October through December 2007, we conducted a public scoping process under NEPA based on our intent to modify the 1998 Final Rule. We developed a final scoping report in April 2008, but we did not propose or finalize any modifications to the 1998 Final Rule at that time. We utilized information collected during that scoping process in the development of a draft EIS for the proposed revision to the regulations for the experimental population of the Mexican wolf. Information about additional scoping opportunities was available on our Web

site, at *http://www.fws.gov/southwest/es/mexicanwolf/NEPA.cfm.* On July 25, 2014 (79 FR 43358), we proposed new revisions to the regulations for the experimental population of the Mexican wolf, and announced the availability of the draft EIS on the proposed revisions. After full consideration of all information and comments received on the proposed rule and the EIS, we made our final determination based on the best available information.

The purpose of the draft and final EISs, prepared under NEPA (42 U.S.C. 4321 *et seq.*), was to identify and disclose the environmental consequences resulting from the proposed action of revising the regulations for the experimental population of the Mexican wolf. The Service has complied with NEPA by completing the final EIS and Record of Decision. The final EIS and Record of Decision are available electronically on the Mexican Wolf Recovery Program's Web site at *http://www.fws.gov/southwest/es/mexicanwolf/.*

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, and use because the actions contemplated in this rule involve the reintroduction of Mexican wolves. Mexican wolves reintroduced in the MWEPA do not change where, when, or how energy resources are produced or distributed. Because this action is not a significant energy action, no Statement of Energy Effects is required.

References Cited

A complete list of all references cited in this final rule is available at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2013–0056, or upon request from the Mexican Wolf Recovery Program, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office (see **ADDRESSES** section).

Authors

The primary authors of this document are the staff members of the Mexican Wolf Recovery Program (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authorities for this action are the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

List of Subjects for 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Final Regulation Promulgation

Accordingly, we 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; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.84 by revising paragraph (k) to read as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(k) Mexican wolf (*Canis lupus baileyi*). This paragraph (k) sets forth the provisions of a rule to establish an experimental population of Mexican wolves.

(1) *Purpose of the rule.* The U.S. Fish and Wildlife Service (Service) finds that reestablishment of an experimental population of Mexican wolves into the subspecies' probable historical range will further the conservation of the Mexican wolf subspecies. The Service found that the experimental population was not essential under § 17.81(c)(2).

(2) *Determinations.* The Mexican wolf population reestablished in the Mexican Wolf Experimental Population Area (MWEPA), identified in paragraph (k)(4) of this section, is one nonessential experimental population. This nonessential experimental population will be managed according to the provisions of this rule. The Service does not intend to change the nonessential experimental designation to essential experimental, threatened, or endangered. Critical habitat cannot be designated under the nonessential experimental classification, 16 U.S.C. 1539(j)(2)(C)(ii).

(3) *Definitions.* Key terms used in this rule have the following definitions:

Active den means a den or a specific site above or below ground that is used by Mexican wolves on a daily basis to bear and raise pups, typically between approximately April 1 and July 31. More than one den site may be used in a single season.

Cross-foster means the removal of offspring from their biological parents and placement with surrogate parents.

Depredation means the confirmed killing or wounding of lawfully present domestic animals by one or more Mexican wolves. The Service, Wildlife Services, or other Service-designated agencies will confirm cases of wolf depredation on lawfully present domestic animals. Cattle trespassing on Federal lands are not considered lawfully present domestic animals.

Designated agency means a Federal, State, or tribal agency designated by the Service to assist in implementing this rule, all or in part, consistent with a Service-approved management plan, special management measure, conference opinion pursuant to section 7(a)(4) of the Act, section 6 of the Act as described in § 17.31 for State game and fish agencies with authority to manage Mexican wolves, or a valid permit issued by the Service through § 17.32.

Disturbance-causing land-use activity means any activity on Federal lands within a 1-mi (1.6-km) radius around release pens when Mexican wolves are in them, around active dens between April 1 and July 31, and around active Mexican wolf rendezvous sites between June 1 and September 30, which the Service determines could adversely affect reproductive success, natural behavior, or persistence of Mexican wolves. Such activities may include, but are not limited to, timber or wood harvesting, prescribed fire, mining or mine development, camping outside designated campgrounds, livestock husbandry activities (*e.g.,* livestock drives, roundups, branding, vaccinating, etc.), off-road vehicle use, hunting, and any other use or activity with the potential to disturb wolves. The following activities are specifically excluded from this definition:

(A) Lawfully present livestock and use of water sources by livestock;

(B) Livestock drives if no reasonable alternative route or timing exists;

(C) Vehicle access over established roads to non-Federal land where legally permitted activities are ongoing if no reasonable alternative route exists;

(D) Use of lands within the National Park or National Wildlife Refuge Systems as safety buffer zones for military activities and Department of Homeland Security border security activities;

(E) Fire-fighting activities associated with wildfires; and

(F) Any authorized, specific land use that was active and ongoing at the time Mexican wolves chose to locate a den or rendezvous site nearby.

Domestic animal means livestock as defined in this paragraph (k)(3) and non-feral dogs.

Federal land means land owned and under the administration of Federal agencies including, but not limited to, the Service, National Park Service, Bureau of Land Management, U.S. Forest Service, Department of Energy, or Department of Defense.

Feral dog means any dog (*Canis familiaris*) or wolf–dog hybrid that, because of absence of physical restraint or conspicuous means of identifying it at a distance as non-feral, is reasonably thought to range freely without discernible, proximate control by any person. Feral dogs do not include domestic dogs that are penned, leashed, or otherwise restrained (*e.g.,* by shock collar) or which are working livestock or being lawfully used to trail or locate wildlife.

Harass means intentional or negligent actions or omissions that create the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering.

In the act of biting, killing, or wounding means grasping, biting, wounding, or feeding upon a live domestic animal on non-Federal land or live livestock on Federal land. The term does not include feeding on an animal carcass.

Initial release means the release of Mexican wolves to the wild within Zone 1, as defined in this paragraph (k)(3), or in accordance with tribal or private land agreements in Zone 2, as defined in this paragraph (k)(3), that have never been in the wild, or releasing pups that have never been in the wild and are less than 5 months old within Zones 1 or 2. The initial release of pups less than 5 months old into Zone 2 allows for the cross-fostering of pups from the captive population into the wild, as well as enables translocation-eligible adults to be re-released in Zone 2 with pups born in captivity.

Intentional harassment means deliberate, preplanned harassment of Mexican wolves, including by less-than-lethal means (such as 12-gauge shotgun rubber-bullets and bean-bag shells) designed to cause physical discomfort and temporary physical injury, but not death. Intentional harassment includes situations where the Mexican wolf or wolves may have been unintentionally attracted—or intentionally tracked, waited for, chased, or searched out—and then harassed. Intentional harassment of Mexican wolves is only allowed under a permit issued by the Service or its designated agency.

Livestock means domestic alpacas, bison, burros (donkeys), cattle, goats, horses, llamas, mules, and sheep, or other domestic animals defined as livestock in Service-approved State and tribal Mexican wolf management plans. Poultry is not considered livestock under this rule.

Mexican Wolf Experimental Population Area (MWEPA) means an area in Arizona and New Mexico including Zones 1, 2, and 3, as defined in this paragraph (k)(3), that lies south of Interstate Highway 40 to the international border with Mexico.

Non-Federal land means any private, State-owned, or tribal trust land.

Occupied Mexican wolf range means an area of confirmed presence of Mexican wolves based on the most recent map of occupied range posted on the Service's Mexican Wolf Recovery Program Web site at *http://www.fws.gov/southwest/es/mexicanwolf/.* Specific to the prohibitions at paragraphs (k)(5)(iii) and (k)(5)(vii)(D) of this section, Zone 3, as defined in this paragraph (k)(3), and tribal trust lands are not considered occupied range.

Opportunistic harassment means scaring any Mexican wolf from the immediate area by taking actions such as discharging firearms or other projectile-launching devices in proximity to, but not in the direction of, the wolf, throwing objects at it, or making loud noise in proximity to it. Such harassment might cause temporary, non-debilitating physical injury, but is not reasonably anticipated to cause permanent physical injury or death. Opportunistic harassment of Mexican wolves can occur without a permit issued by the Service or its designated agency.

Problem wolves mean Mexican wolves that, for purposes of management and control by the Service or its designated agent(s), are:

(A) Individuals or members of a group or pack (including adults, yearlings, and pups greater than 4 months of age) that were involved in a depredation on lawfully present domestic animals;

(B) Habituated to humans, human residences, or other facilities regularly occupied by humans; or

(C) Aggressive when unprovoked toward humans.

Rendezvous site means a gathering and activity area regularly used by Mexican wolf pups after they have emerged from the den. Typically, these sites are used for a period ranging from about 1 week to 1 month in the first summer after birth during the period from June 1 to September 30. Several rendezvous sites may be used in succession within a single season.

Service-approved management plan means management plans approved by the Regional Director or Director of the Service through which Federal, State, or tribal agencies may become a designated agency. The management plan must address how Mexican wolves will be managed to achieve conservation goals in compliance with the Act, this experimental population rule, and other Service policies. If a Federal, State, or tribal agency becomes a designated agency through a Service-approved management plan, the Service will help coordinate their activities while retaining authority for program direction, oversight, guidance, and authorization of Mexican wolf removals.

Take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(19)).

Translocate means the release of Mexican wolves into the wild that have previously been in the wild. In the MWEPA, translocations will occur only in Zones 1 and 2, as defined in this paragraph (k)(3).

Tribal trust land means any lands title to which is either: Held in trust by the United States for the benefit of any Indian tribe or individual; or held by any Indian tribe or individual subject to restrictions by the United States against alienation. For purposes of this rule, tribal trust land does not include land purchased in fee title by a tribe. We consider fee simple land purchased by tribes to be private land.

Unacceptable impact to a wild ungulate herd will be determined by a State game and fish agency based upon ungulate management goals, or a 15 percent decline in an ungulate herd as documented by a State game and fish agency, using their preferred methodology, based on the preponderance of evidence from bull to cow ratios, cow to calf ratios, hunter days, and/or elk population estimates.

Unintentional take means the take of a Mexican wolf by any person if the take is unintentional and occurs while engaging in an otherwise lawful activity, occurs despite the use of due care, is coincidental to an otherwise lawful activity, and is not done on purpose. Taking a Mexican wolf by poisoning or shooting will not be considered unintentional take.

Wild ungulate herd means an assemblage of wild ungulates (bighorn sheep, bison, deer, elk, or pronghorn) living in a given area.

Wildlife Services means the U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Wildlife Services.

Wounded means exhibiting scraped or torn hide or flesh, bleeding, or other evidence of physical damage caused by a Mexican wolf bite.

Zone 1 means an area within the MWEPA in Arizona and New Mexico into which Mexican wolves will be allowed to naturally disperse and occupy and where Mexican wolves may be initially released from captivity or translocated. Zone 1 includes all of the Apache, Gila, and Sitgreaves National Forests; the Payson, Pleasant Valley, and Tonto Basin Ranger Districts of the Tonto National Forest; and the Magdalena Ranger District of the Cibola National Forest.

Zone 2 is an area within the MWEPA into which Mexican wolves will be allowed to naturally disperse and occupy, and where Mexican wolves may be translocated.

(A) On Federal land in Zone 2, initial releases of Mexican wolves are limited to pups less than 5 months old, which allows for the cross-fostering of pups from the captive population into the wild, as well as enables translocation-eligible adults to be re-released with pups born in captivity. On private and tribal land in Zone 2, Mexican wolves of any age, including adults, can also be initially released under a Service- and State-approved management agreement with private landowners or a Service-approved management agreement with tribal agencies.

(B) The northern boundary of Zone 2 is Interstate Highway 40; the western boundary extends south from Interstate Highway 40 and follows Arizona State Highway 93, Arizona State Highway 89/60, Interstate Highway 10, and Interstate Highway 19 to the United States-Mexico international border; the southern boundary is the United States-Mexico international border heading east, then follows New Mexico State Highway 81/146 north to Interstate Highway 10, then along New Mexico State Highway 26 to Interstate Highway 25; the boundary continues along New Mexico State Highway 70/54/506/24; the eastern boundary follows the eastern edge of Otero County, New Mexico, to the north and then along the southern and then eastern edge of Lincoln County, New Mexico, until it intersects with New Mexico State Hwy 285 and follows New Mexico State Highway 285 north to the northern boundary of Interstate Highway 40. Zone 2 excludes the area in Zone 1, as defined in this paragraph (k)(3).

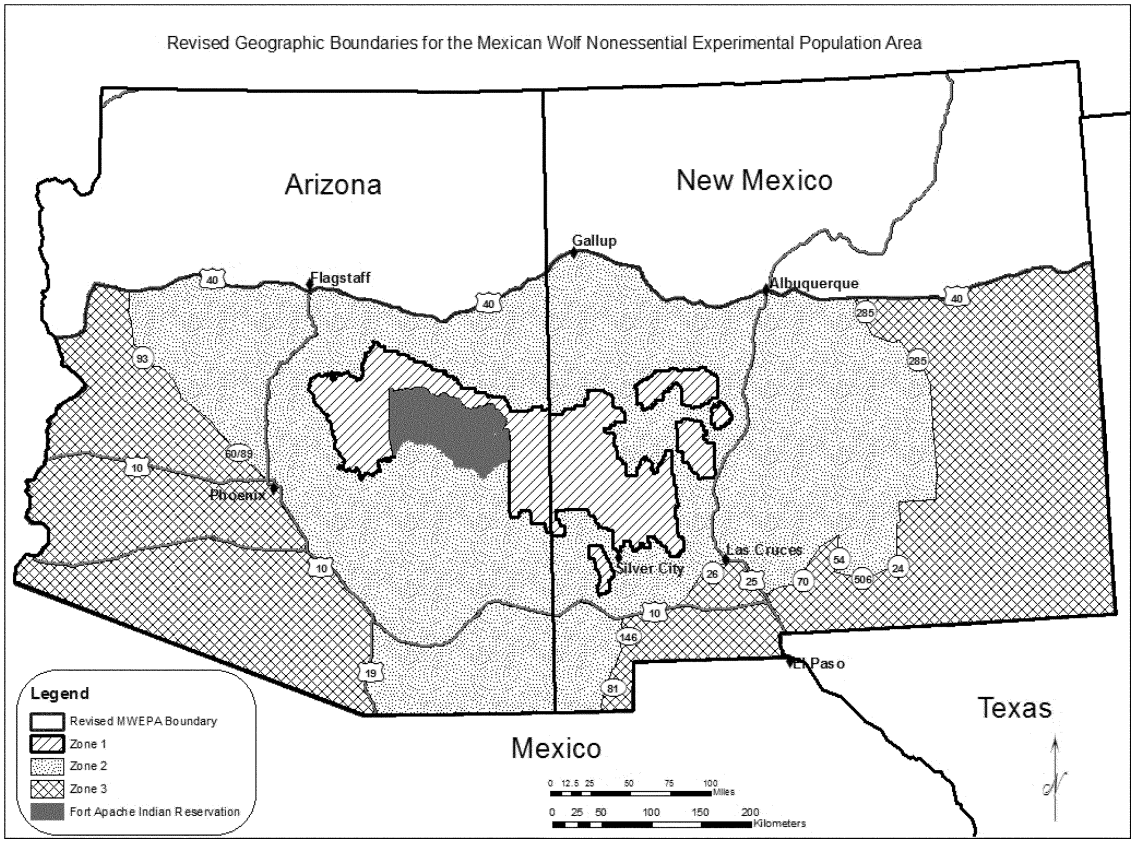
Zone 3 means an area within the MWEPA into which Mexican wolves will be allowed to disperse and occupy, but neither initial releases nor translocations will occur there.

(A) Zone 3 is an area of less suitable Mexican wolf habitat where Mexican wolves will be more actively managed under the authorities of this rule to reduce human conflict. We expect Mexican wolves to occupy areas of suitable habitat where ungulate populations are adequate to support them and conflict with humans and their livestock is low. If Mexican wolves move outside of areas of suitable habitat, they will be more actively managed.

(B) Zone 3 is two separate geographic areas on the eastern and western sides of the MWEPA. One area of Zone 3 is in western Arizona, and the other is in eastern New Mexico. In Arizona, the northern boundary of Zone 3 is Interstate Highway 40; the eastern boundary extends south from Interstate Highway 40 and follows State Highway 93, State Highway 89/60, Interstate Highway 10, and Interstate Highway 19 to the United States–Mexico international border; the southern boundary is the United States–Mexico international border; the western boundary is the Arizona–California State border. In New Mexico, the northern boundary of Zone 3 is Interstate Highway 40; the eastern boundary is the New Mexico–Texas State border; the southern boundary is the United States–Mexico international border heading west, then follows State Highway 81/146 north to Interstate Highway 10, then along State Highway 26 to Interstate Highway 25, the southern boundary continues along State Highway 70/54/506/24; the western boundary follows the eastern edge of Otero County to the north and then along the southern and then eastern edge of Lincoln County until it follows State Highway 285 north to the northern boundary of Interstate Highway 40.

(4) *Designated area.* The designated experimental population area for Mexican wolves classified as a nonessential experimental population by this rule is within the subspecies' probable historical range and is wholly separate geographically from the current range of any known Mexican wolves. The boundaries of the MWEPA are the portions of Arizona and New Mexico that are south of Interstate Highway 40 to the international border with Mexico. A map of the MWEPA follows:

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(5) *Prohibitions.* Take of any Mexican wolf in the experimental population is prohibited, except as provided in paragraph (k)(7) of this section. Specifically, the following actions are prohibited by this rule:

(i) No person may possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any Mexican wolf or wolf part from the experimental population except as authorized in this rule or by a valid permit issued by the Service under § 17.32. If a person kills or injures a Mexican wolf or finds a dead or injured wolf or wolf parts, the person must not disturb them (unless instructed to do so by the Service or a designated agency), must minimize disturbance of the area around them, and must report the incident to the Service's Mexican Wolf Recovery Coordinator or a designated agency of the Service within 24 hours as described in paragraph (k)(6) of this section.

(ii) No person may attempt to commit, solicit another to commit, or cause to be committed, any offense defined in this rule.

(iii) Taking a Mexican wolf with a trap, snare, or other type of capture device within occupied Mexican wolf range is prohibited (except as authorized in paragraph (k)(7)(iv) of this section) and will not be considered unintentional take, unless due care was exercised to avoid injury or death to a wolf. With regard to trapping activities, due care includes:

(A) Following the regulations, proclamations, recommendations, guidelines, and/or laws within the State or tribal trust lands where the trapping takes place.

(B) Modifying or using appropriately sized traps, chains, drags, and stakes that provide a reasonable expectation that the wolf will be prevented from either breaking the chain or escaping with the trap on the wolf, or using sufficiently small traps (less than or equal to a Victor #2 trap) that allow a reasonable expectation that the wolf will either immediately pull free from the trap or span the jaw spread when stepping on the trap.

(C) Not taking a Mexican wolf using neck snares.

(D) Reporting the capture of a Mexican wolf (even if the wolf has pulled free) within 24 hours to the Service as described in paragraph (k)(6) of this section.

(E) If a Mexican wolf is captured, trappers can call the Interagency Field Team (1–888–459–WOLF [9653]) as soon as possible to arrange for radio-collaring and releasing of the wolf. Per State regulations for releasing nontarget animals, trappers may also choose to release the animal alive and subsequently contact the Service or Interagency Field Team.

(6) *Reporting requirements.* Unless otherwise specified in this rule or in a permit, any take of a Mexican wolf must be reported to the Service or a designated agency within 24 hours. We will allow additional reasonable time if access to the site is limited. Report any take of Mexican wolves, including opportunistic harassment, to the Mexican Wolf Recovery Program, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna Road, NE., Albuquerque, NM 87113; by telephone 505–761–4704; or by facsimile 505–346–2542. Additional contact information can also be found on the Mexican Wolf Recovery Program's Web site at *http://www.fws.gov/southwest/es/mexicanwolf/.* Unless otherwise specified in a permit, any wolf or wolf part taken legally must be turned over to the Service, which will determine the disposition of any live or dead wolves.

(7) *Allowable forms of take of Mexican wolves.* Take of Mexican wolves in the experimental population is allowed as follows:

(i) *Take in defense of human life.* Under section 11(a)(3) of the Act and § 17.21(c)(2), any person may take

(which includes killing as well as nonlethal actions such as harassing or harming) a Mexican wolf in self-defense or defense of the lives of others. This take must be reported as specified in accordance with paragraph (k)(6) of this section. If the Service or a designated agency determines that a Mexican wolf presents a threat to human life or safety, the Service or the designated agency may kill the wolf or place it in captivity.

(ii) *Opportunistic harassment.* Anyone may conduct opportunistic harassment of any Mexican wolf at any time provided that Mexican wolves are not purposefully attracted, tracked, searched out, or chased and then harassed. Such harassment of Mexican wolves might cause temporary, non-debilitating physical injury, but is not reasonably anticipated to cause permanent physical injury or death. Any form of opportunistic harassment must be reported as specified in accordance with paragraph (k)(6) of this section.

(iii) *Intentional harassment.* After the Service or its designated agency has confirmed Mexican wolf presence on any land within the MWEPA, the Service or its designated agency may issue permits valid for not longer than 1 year, with appropriate stipulations or conditions, to allow intentional harassment of Mexican wolves. The harassment must occur in the area and under the conditions specifically identified in the permit. Permittees must report this take as specified in accordance with paragraph (k)(6) of this section.

(iv) *Take on non-Federal lands.* (A) On non-Federal lands anywhere within the MWEPA, domestic animal owners or their agents may take (including kill or injure) any Mexican wolf that is in the act of biting, killing, or wounding a domestic animal, as defined in paragraph (k)(3) of this section. After the take of a Mexican wolf, the Service must be provided evidence that the wolf was in the act of biting, killing, or wounding a domestic animal at the time of take, such as evidence of freshly wounded or killed domestic animals. This take must be reported as specified in accordance with paragraph (k)(6) of this section. The take of any Mexican wolf without evidence of biting, killing, or wounding domestic animals may be referred to the appropriate authorities for investigation.

(B) Take of Mexican wolves by livestock guarding dogs, when used to protect livestock on non-Federal lands, is allowed. If such take by a guard dog occurs, it must be reported as specified in accordance with paragraph (k)(6) of this section.

(C) Based on the Service's or a designated agency's discretion and in conjunction with a removal action authorized by the Service, the Service or designated agency may issue permits to domestic animal owners or their agents (*e.g.,* employees, land manager, local officials) to take (including intentional harassment or killing) any Mexican wolf that is present on non-Federal land where specified in the permit. Permits issued under this provision will specify the number of days for which the permit is valid and the maximum number of Mexican wolves for which take is allowed. Take by permittees under this provision will assist the Service or designated agency in completing control actions. Domestic animal owners or their agents must report this take as specified in accordance with paragraph (k)(6) of this section.

(v) *Take on Federal land.* (A) Based on the Service's or a designated agency's discretion and in conjunction with a removal action authorized by the Service, the Service may issue permits to livestock owners or their agents (*e.g.,* employees, land manager, local officials) to take (including intentional harassment or killing) any Mexican wolf that is in the act of biting, killing, or wounding livestock on Federal land where specified in the permit.

(*1*) Permits issued under this provision will specify the number of days for which the permit is valid and the maximum number of Mexican wolves for which take is allowed. Take by permittees under this provision will assist the Service or designated agency in completing control actions. Livestock owners or their agents must report this take as specified in accordance with paragraph (k)(6) of this section.

(*2*) After the take of a Mexican wolf, the Service must be provided evidence that the wolf was in the act of biting, killing, or wounding livestock at the time of take, such as evidence of freshly wounded or killed livestock. The take of any Mexican wolf without evidence of biting, killing, or wounding domestic animals may be referred to the appropriate authorities for investigation.

(B) Take of Mexican wolves by livestock guarding dogs, when used to protect livestock on Federal lands, is allowed. If such take by a guard dog occurs, it must be reported as specified in accordance with paragraph (k)(6) of this section.

(C) This provision for take on Federal land does not exempt Federal agencies and their contractors from complying with sections 7(a)(1) and 7(a)(4) of the Act, the latter of which requires a conference with the Service if they propose an action that is likely to jeopardize the continued existence of the Mexican wolf. In areas within the National Park System and National Wildlife Refuge System, Federal agencies must treat Mexican wolves as a threatened species for purposes of complying with section 7 of the Act.

(vi) *Take in response to unacceptable impacts to a wild ungulate herd.* If the Arizona or New Mexico game and fish agency determines that Mexican wolf predation is having an unacceptable impact to a wild ungulate herd, as defined in paragraph (k)(3) of this section, the respective State game and fish agency may request approval from the Service that Mexican wolves be removed from the area of the impacted wild ungulate herd. Upon written approval from the Service, the State (Arizona or New Mexico) or any designated agency may be authorized to remove (capture and translocate in the MWEPA, move to captivity, transfer to Mexico, or lethally take) Mexican wolves. These management actions must occur in accordance with the following provisions:

(A) The Arizona or New Mexico game and fish agency must prepare a science-based document that:

(*1*) Describes what data indicate that the wild ungulate herd is below management objectives, what data indicate that the impact on the wild ungulate herd is influenced by Mexican wolf predation, why Mexican wolf removal is a warranted solution to help restore the wild ungulate herd to State game and fish agency management objectives, the type (level and duration) of Mexican wolf removal management action being proposed, and how wild ungulate herd response to wolf removal will be measured and control actions adjusted for effectiveness;

(*2*) Demonstrates that attempts were and are being made to identify other causes of wild ungulate herd declines and possible remedies or conservation measures in addition to wolf removal;

(*3*) If appropriate, identifies areas of suitable habitat for Mexican wolf translocation; and

(*4*) Has been subjected to peer review and public comment prior to its submittal to the Service for written concurrence. In order to comply with this requirement, the State game and fish agency must:

(*i*) Conduct the peer review process in conformance with the Office of Management and Budget's most recent Final Information and Quality Bulletin for Peer Review and include in their proposal an explanation of how the bulletin's standards were considered and satisfied; and

(*ii*) Obtain at least three independent peer reviews from individuals with relevant expertise other than staff employed by the State (Arizona or New Mexico) requesting approval from the Service that Mexican wolves be removed from the area of the affected wild ungulate herd.

(B) Before the Service will allow Mexican wolf removal in response to impacts to wild ungulates, the Service will evaluate the information provided by the requesting State (Arizona or New Mexico) and provide a written determination to the requesting State game and fish agency on whether such actions are scientifically based and warranted.

(C) If all of the provisions above are met, the Service will, to the maximum extent allowable under the Act, make a determination providing for Mexican wolf removal. If the request is approved, the Service will include in the written determination which management action (capture and translocate in MWEPA, move to captivity, transfer to Mexico, lethally take, or no action) is most appropriate for the conservation of the Mexican wolf subspecies.

(D) Because tribes are able to request the capture and removal of Mexican wolves from tribal trust lands at any time, take in response to impacts to wild ungulate herds is not applicable on tribal trust lands.

(vii) *Take by Service personnel or a designated agency.* The Service or a designated agency may take any Mexican wolf in the experimental population in a manner consistent with a Service-approved management plan, special management measure, biological opinion pursuant to section 7(a)(2) of the Act, conference opinion pursuant to section 7(a)(4) of the Act, section 6 of the Act as described in § 17.31 for State game and fish agencies with authority to manage Mexican wolves, or a valid permit issued by the Service through § 17.32.

(A) The Service or designated agency may use leg-hold traps and any other effective device or method for capturing or killing Mexican wolves to carry out any measure that is a part of a Service-approved management plan, special management measure, or valid permit issued by the Service under § 17.32, regardless of State law. The disposition of all Mexican wolves (live or dead) or their parts taken as part of a Service-approved management activity must follow provisions in Service-approved management plans or interagency agreements or procedures approved by the Service on a case-by-case basis.

(B) The Service or designated agency may capture; kill; subject to genetic testing; place in captivity; or euthanize any feral wolf-like animal or feral wolf hybrid found within the MWEPA that shows physical or behavioral evidence of: Hybridization with other canids, such as domestic dogs or coyotes; being a wolf-like animal raised in captivity, other than as part of a Service-approved wolf recovery program; or being socialized or habituated to humans. If determined to be a pure Mexican wolf, the wolf may be returned to the wild.

(C) The Service or designated agency may carry out intentional or opportunistic harassment, nonlethal control measures, translocation, placement in captivity, or lethal control of problem wolves. To determine the presence of problem wolves, the Service will consider all of the following:

(*1*) Evidence of wounded domestic animal(s) or remains of domestic animal(s) that show that the injury or death was caused by Mexican wolves;

(*2*) The likelihood that additional Mexican wolf-caused depredations or attacks of domestic animals may occur if no harassment, nonlethal control, translocation, placement in captivity, or lethal control is taken;

(*3*) Evidence of attractants or intentional feeding (baiting) of Mexican wolves; and

(*4*) Evidence that Mexican wolves are habituated to humans, human residences, or other facilities regularly occupied by humans, or evidence that Mexican wolves have exhibited unprovoked and aggressive behavior toward humans.

(D) Wildlife Services will not use M–44's and choking-type snares in occupied Mexican wolf range. Wildlife Services may restrict or modify other predator control activities pursuant to a Service-approved management agreement or a conference opinion between Wildlife Services and the Service.

(viii) *Unintentional take.* (A) Take of a Mexican wolf by any person is allowed if the take is unintentional and occurs while engaging in an otherwise lawful activity. Such take must be reported as specified in accordance with paragraph (k)(6) of this section. Hunters and other shooters have the responsibility to identify their quarry or target before shooting; therefore, shooting a Mexican wolf as a result of mistaking it for another species will not be considered unintentional take. Take by poisoning will not be considered unintentional take.

(B) Federal, State, or tribal agency employees or their contractors may take a Mexican wolf or wolf-like animal if the take is unintentional and occurs while engaging in the course of their official duties. This includes, but is not limited to, military training and testing and Department of Homeland Security border security activities. Take of Mexican wolves by Federal, State, or tribal agencies must be reported as specified in accordance with paragraph (k)(6) of this section.

(C) Take of Mexican wolves by Wildlife Services employees while conducting official duties associated with predator damage management activities for species other than Mexican wolves may be considered unintentional if it is coincidental to a legal activity and the Wildlife Services employees have adhered to all applicable Wildlife Services' policies, Mexican wolf standard operating procedures, and reasonable and prudent measures or recommendations contained in Wildlife Service's biological and conference opinions.

(ix) *Take for research purposes.* The Service may issue permits under § 17.32, and designated agencies may issue permits under State and Federal laws and regulations, for individuals to take Mexican wolves pursuant to scientific study proposals approved by the agency or agencies with jurisdiction for Mexican wolves and for the area in which the study will occur. Such take should lead to management recommendations for, and thus provide for the conservation of, the Mexican wolf.

(8) *Disturbance-causing land-use activities.* For any activity on Federal lands that the Service determines could adversely affect reproductive success, natural behavior, or persistence of Mexican wolves, the Service will work with Federal agencies to use their authorities to temporarily restrict human access and disturbance-causing land-use activities within a 1-mi (1.6-km) radius around release pens when Mexican wolves are in them, around active dens between approximately April 1 and July 31, and around active Mexican wolf rendezvous sites between approximately June 1 and September 30, as necessary.

(9) *Management.* (i) On private land within Zones 1 and 2, as defined in paragraph (k)(3) of this section, of the MWEPA, the Service or designated agency may develop and implement management actions to benefit Mexican wolf recovery in cooperation with willing private landowners, including initial release and translocation of Mexican wolves onto such lands in Zones 1 or 2 if requested by the landowner and with the concurrence of the State game and fish agency.

(ii) On tribal trust land within Zones 1 and 2, as defined in paragraph (k)(3)

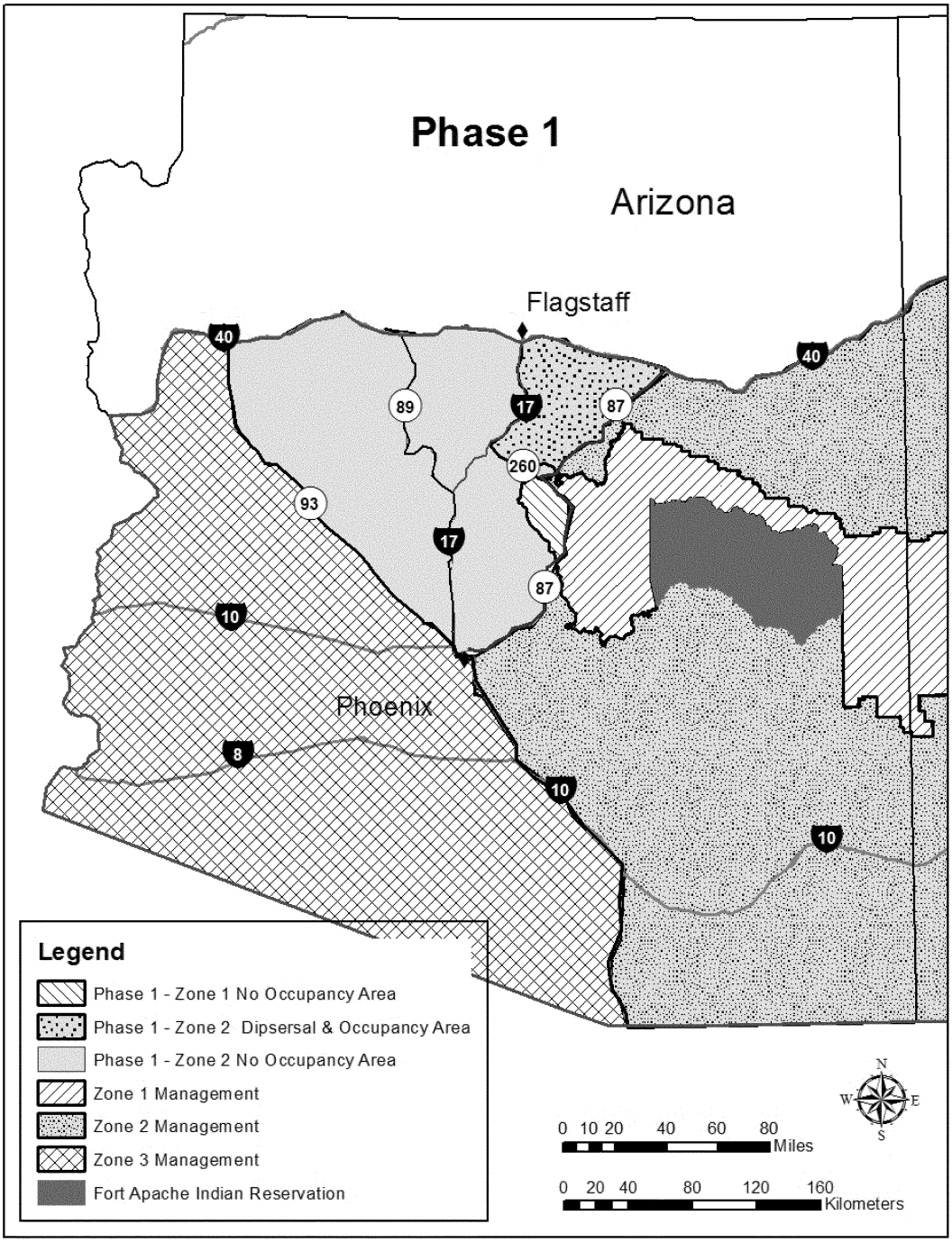
of this section, of the MWEPA, the Service or a designated agency may develop and implement management actions in cooperation with willing tribal governments, including: occupancy by natural dispersal, initial release, and translocation of Mexican wolves onto such lands. No agreement between the Service and a Tribe is necessary for the capture and removal of Mexican wolves from tribal trust lands if requested by the tribal government.

(iii) Based on end-of-year counts, we will manage for a population objective of 300 to 325 Mexican wolves in the MWEPA in Arizona and New Mexico. So as not to exceed this population objective, we will exercise all management options with preference for translocation to other Mexican wolf populations to further the conservation of the subspecies. The Service may change this provision as necessary to accommodate a new recovery plan.

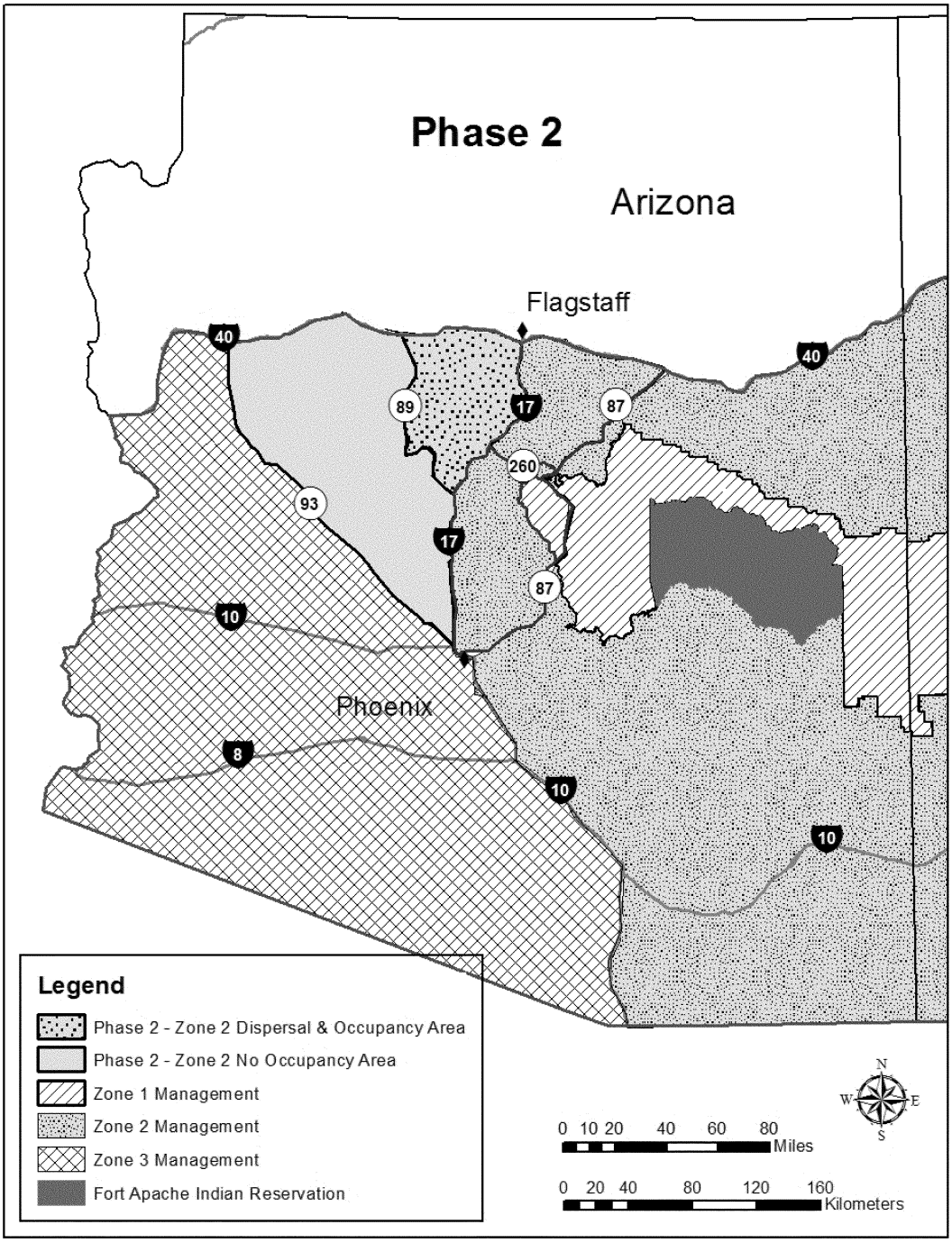
(iv) We are implementing a phased approach to Mexican wolf management within the MWEPA in western Arizona as follows:

(A) Phase 1 will be implemented for the first 5 years following February 17, 2015. During this phase, initial releases and translocation of Mexican wolves can occur throughout Zone 1 with the exception of the area west of State Highway 87 in Arizona. No translocations can be conducted west of State Highway 87 in Arizona in Zone 2. Mexican wolves can disperse naturally from Zones 1 and 2 into, and occupy, the MWEPA (Zones 1, 2, and 3, as defined in paragraph (k)(3) of this section). However, during Phase 1, dispersal and occupancy in Zone 2 west of State Highway 87 will be limited to the area north of State Highway 260 and west to Interstate 17. A map of Phase 1 follows:

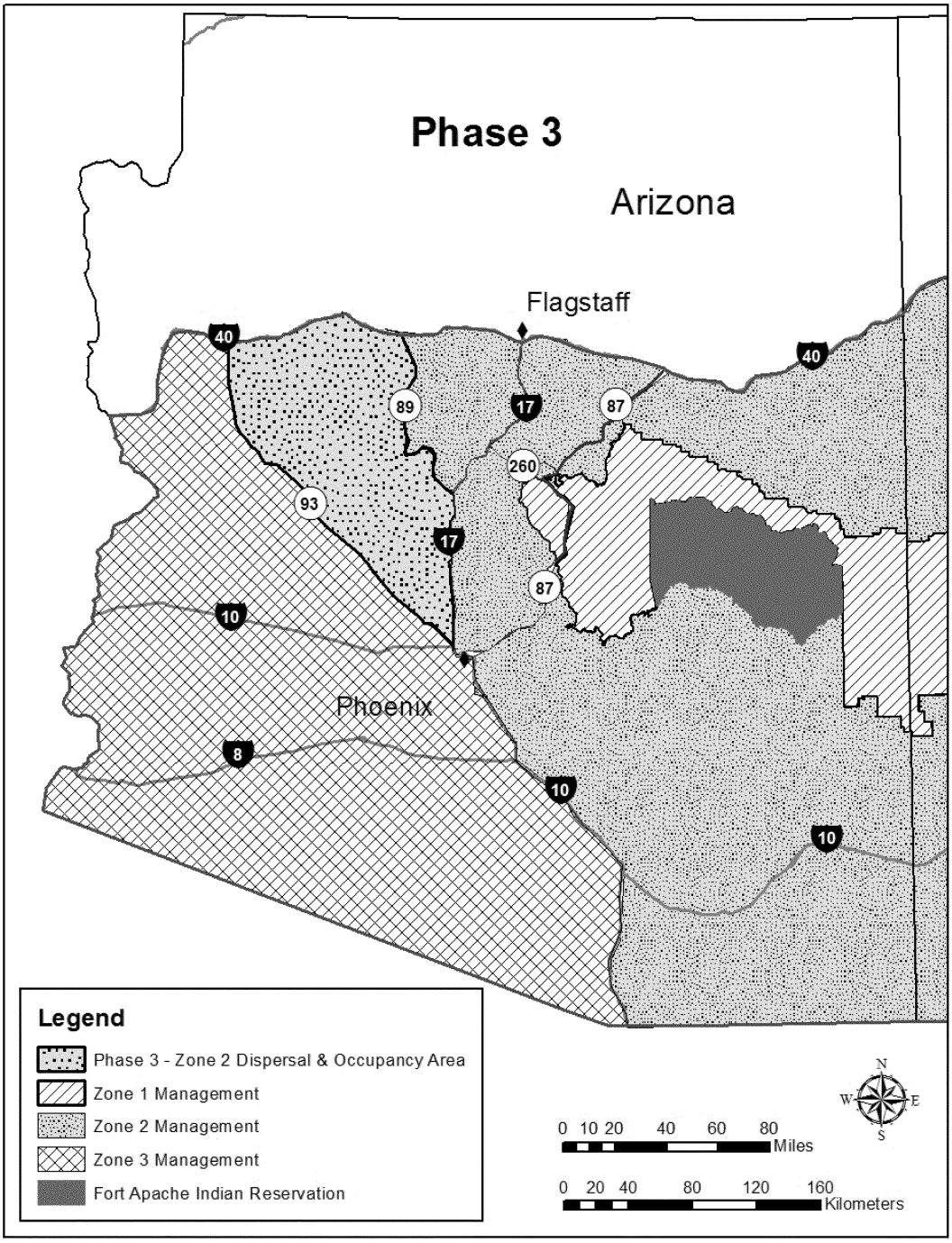
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(B) In Phase 2, initial releases and translocation of Mexican wolves can occur throughout Zone 1 including the area west of State Highway 87 in Arizona. No translocations can be conducted west of Interstate Highway 17 in Arizona. Mexican wolves can disperse naturally from Zones 1 and 2 into, and occupy, the MWEPA (Zones 1, 2, and 3, as defined in paragraph (k)(3) of this section). However, during Phase 2, dispersal and occupancy west of Interstate Highway 17 will be limited to the area west of Highway 89 in Arizona. A map of Phase 2 follows:



(C) In Phase 3, initial release and translocation of Mexican wolves can occur throughout Zone 1. No translocations can be conducted west of State Highway 89 in Arizona. Mexican wolves can disperse naturally from Zones 1 and 2 into, and occupy, the MWEPA (Zones 1, 2, and 3, as defined in paragraph (k)(3) of this section). A map of Phase 3 follows:



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(D) While implementing this phased approach, two evaluations will be conducted: The first evaluation will cover the first 5 years and the second evaluation will cover the first 8 years after February 17, 2015 in order to determine if we will move forward with the next phase.

(*1*) Each phase evaluation will consider adverse human interactions with Mexican wolves, impacts to wild ungulate herds, and whether or not the Mexican wolf population in the MWEPA is achieving a population number consistent with a 10 percent annual growth rate based on end-of-year counts, such that 5 years after February 17, 2015, the population of Mexican wolves in the wild is at least 150, and 8 years after February 17, 2015, the population of Mexican wolves in the wild is at least 200.

(*2*) If we have not achieved this population growth, we will move forward to the next phase. Regardless of the outcome of the two evaluations, by the beginning of year 12 from February 17, 2015, we will move to full implementation of this rule throughout the MWEPA, and the phased management approach will no longer apply.

(E) The phasing may be expedited with the concurrence of participating State game and fish agencies.

(10) *Evaluation.* The Service will evaluate Mexican wolf reestablishment progress and prepare periodic progress reports and detailed annual reports. In addition, approximately 5 years after February 17, 2015, the Service will prepare a one-time overall evaluation of the experimental population program that focuses on modifications needed to

improve the efficacy of this rule, reestablishment of Mexican wolves to the wild, and the contribution the experimental population is making to the recovery of the Mexican wolf.

* * * * *

Dated: January 7, 2015.

Michael J. Bean,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2015–00436 Filed 1–15–15; 8:45 am]

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FEDERAL REGISTER

Vol. 80 Friday,
No. 11 January 16, 2015

Part III

United States Sentencing Commission

Sentencing Guidelines for United States Courts; Notice

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed amendments to sentencing guidelines, policy statements, and commentary. Request for public comment, including public comment regarding retroactive application of any of the proposed amendments. Notice of public hearing.

SUMMARY: Pursuant to section 994(a), (o), and (p) of title 28, United States Code, the United States Sentencing Commission is considering promulgating certain amendments to the sentencing guidelines, policy statements, and commentary. This notice sets forth the proposed amendments and, for each proposed amendment, a synopsis of the issues addressed by that amendment. This notice also sets forth a number of issues for comment, some of which are set forth together with the proposed amendments; one of which is set forth independent of any proposed amendment; and one of which (regarding retroactive application of proposed amendments) is set forth in the Supplementary Information portion of this notice.

The proposed amendments and issues for comment in this notice are as follows:

(1) a proposed amendment to make certain technical changes to the *Guidelines Manual,* including (A) technical changes to reflect the editorial reclassification of certain sections of the United States Code, (B) stylistic and technical changes to the Commentary following § 3D1.5 (Determining the Total Punishment) captioned ''Illustrations of the Operation of the Multiple-Count Rules'' to better reflect its purpose as a concluding commentary to Part D of Chapter Three, and (C) clerical changes to § 2D1.11 (Unlawful Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy) and to the commentary of other guidelines;

(2) a proposed amendment to § 4A1.2 (Definitions and Instructions for Computing Criminal History) to respond to a circuit conflict regarding the meaning of the ''single sentence'' rule and its implications for the career offender guideline and other guidelines that use predicate offenses, and related issues for comment;

(3) a proposed amendment to § 1B1.3 (Relevant Conduct (Factors that Determine the Guideline Range)) to provide more guidance on the use of ''jointly undertaken criminal activity'' in determining relevant conduct under the guidelines, and a related issue for comment on whether the Commission should make changes for policy reasons to the operation of ''jointly undertaken criminal activity'';

(4) a proposed amendment to revise the monetary tables throughout the *Guidelines Manual,* including options for amending the monetary tables in the guidelines to adjust for inflation, conforming changes to other guidelines that refer to monetary tables, and related issues for comment;

(5) a proposed amendment to § 3B1.2 (Mitigating Role) to respond to a circuit conflict regarding what determining the ''average participant'' requires, to revise the Commentary to state that certain individuals who perform limited functions in criminal activity may receive a mitigating role adjustment, and to provide a non-exhaustive list of factors for the court to consider in determining whether to apply a mitigating role adjustment and the amount of the adjustment, and a related issue for comment on the application of the mitigating role adjustment;

(6) a detailed request for comment on offenses in which controlled substances are colored, packaged, or flavored in ways to appear to be designed to attract use by children;

(7) a proposed amendment to § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) to address the new statutory penalty structure for offenses involving hydrocodone and hydrocodone combination products in light of recent administrative actions by the Food and Drug Administration and the Drug Enforcement Administration, and a related issue for comment; and

(8) a proposed amendment to § 2B1.1 (Theft, Property, Destruction, and Fraud), including (A) options to revise the definition of ''intended loss'' at § 2B1.1, comment. (n.3(A)(ii)), (B) options to address the impact of the victims table in § 2B1.1(b)(2), (C) a proposed amendment to revise the specific offense characteristic for sophisticated means in subsection (b)(10)(C), and (D) a proposed amendment to address offenses involving fraud on the market and related offenses, and related issues for comment.

DATES: (1) Written Public Comment.—Written public comment regarding the proposed amendments and issues for comment set forth in this notice, including public comment regarding retroactive application of any of the proposed amendments, should be received by the Commission not later than March 18, 2015.

(2) Public Hearing.—The Commission plans to hold a public hearing regarding the proposed amendments and issues for comment set forth in this notice on March 12, 2015. Further information regarding the public hearing, including requirements for testifying and providing written testimony, as well as the location, time, and scope of the hearing, will be provided by the Commission on its Web site at *www.ussc.gov.*

ADDRESSES: Public comment should be sent to the Commission by electronic mail or regular mail. The email address for public comment is *Public_Comment@ussc.gov.* The regular mail address for public comment is United States Sentencing Commission, One Columbus Circle NE., Suite 2–500, Washington, DC 20002–8002, Attention: Public Affairs.

FOR FURTHER INFORMATION CONTACT: Jeanne Doherty, Public Affairs Officer, (202) 502–4502, *jdoherty@ussc.gov.*

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May each year pursuant to 28 U.S.C. 994(p).

The proposed amendments in this notice are presented in one of two formats. First, some of the amendments are proposed as specific revisions to a guideline or commentary. Bracketed text within a proposed amendment indicates a heightened interest on the Commission's part in comment and suggestions regarding alternative policy choices; for example, a proposed enhancement of [2][4][6] levels indicates that the Commission is considering, and invites comment on, alternative policy choices regarding the appropriate level of enhancement. Similarly, bracketed text within a specific offense characteristic or application note means that the Commission specifically invites comment on whether the proposed provision is appropriate. Second, the Commission has highlighted certain issues for comment and invites

suggestions on how the Commission should respond to those issues.

The Commission requests public comment regarding whether, pursuant to 18 U.S.C. 3582(c)(2) and 28 U.S.C. 994(u), any proposed amendment published in this notice should be included in subsection (c) of § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)) as an amendment that may be applied retroactively to previously sentenced defendants. The Commission lists in § 1B1.10(c) the specific guideline amendments that the court may apply retroactively under 18 U.S.C. 3582(c)(2). The background commentary to § 1B1.10 lists the purpose of the amendment, the magnitude of the change in the guideline range made by the amendment, and the difficulty of applying the amendment retroactively to determine an amended guideline range under § 1B1.10(b) as among the factors the Commission considers in selecting the amendments included in § 1B1.10(c). To the extent practicable, public comment should address each of these factors.

Publication of a proposed amendment requires the affirmative vote of at least three voting members and is deemed to be a request for public comment on the proposed amendment. *See* Rules 2.2 and 4.4 of the Commission's Rules of Practice and Procedure. In contrast, the affirmative vote of at least four voting members is required to promulgate an amendment and submit it to Congress. *See* Rule 2.2; 28 U.S.C. 994(p).

Additional information pertaining to the proposed amendments described in this notice may be accessed through the Commission's Web site at *www.ussc.gov.*

Authority: 28 U.S.C. 994(a), (o), (p), (x); USSC Rules of Practice and Procedure, Rule 4.4.

Patti B. Saris,

Chair.

1. Technical Amendment

Synopsis of Proposed Amendment: This proposed amendment makes certain technical changes to the *Guidelines Manual.*

The proposed amendment contains three parts, as follows.

Part A sets forth technical changes to reflect the editorial reclassification of certain sections in the United States Code. Effective February 2014, the Office of the Law Revision Counsel transferred provisions relating to voting and elections from titles 2 and 42 to a new title 52. It also transferred provisions of the National Security Act of 1947 from one place to another in title 50. To reflect the new section numbers of the reclassified provisions, changes are made to—

(1) the Commentary to § 2C1.8 (Making, Receiving, or Failing to Report a Contribution, Donation, or Expenditure in Violation of the Federal Election Campaign Act; Fraudulently Misrepresenting Campaign Authority; Soliciting or Receiving a Donation in Connection with an Election While on Certain Federal Property);

(2) the Commentary to § 2H2.1 (Obstructing an Election or Registration);

(3) the Commentary to § 2M3.9 (Disclosure of Information Identifying a Covert Agent);

(4) Application Note 5 to § 5E1.2 (Fines for Individual Defendants); and

(5) Appendix A (Statutory Index).

Part B makes stylistic and technical changes to the Commentary following § 3D1.5 (Determining the Total Punishment) captioned ''Illustrations of the Operation of the Multiple-Count Rules'' to better reflect its purpose as a concluding commentary to Part D of Chapter Three.

Part C makes clerical changes to—

(1) the Background Commentary to § 1B1.11 (Use of Guidelines Manual in Effect on Date of Sentencing (Policy Statement)), to correct a typographical error in a U.S. Reports citation;

(2) the Commentary to § 2B4.1 (Bribery in Procurement of Bank Loan and Other Commercial Bribery), to correct certain United States Code citations to correspond with their respective references in Appendix A that were revised by Amendment 769 (effective November 1, 2012);

(3) subsection (e)(7) to § 2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy), to add a missing measurement unit to the line referencing Norpseudoephedrine; and

(4) Application Note 2 to § 2H4.2 (Willful Violations of the Migrant and Seasonal Agricultural Worker Protection Act), to correct a typographical error in an abbreviation.

(A) Reclassification of Sections of United States Code

Proposed Amendment

The Commentary to § 2C1.8 captioned ''Statutory Provisions'' is amended by striking ''2 U.S.C.'' and all that follows through ''441k;'' and after ''18 U.S.C. 607'' inserting ''; 52 U.S.C. 30109(d), 30114, 30116, 30117, 30118, 30119, 30120, 30121, 30122, 30123, 30124(a), 30125, 30126''; and by striking ''Statutory Index (Appendix A)'' and inserting ''Appendix A (Statutory Index)''.

The Commentary to § 2C1.8 captioned ''Application Notes'' is amended in Note 1 by striking ''2 U.S.C. 441e(b)'' and inserting ''52 U.S.C. 30121(b)''; by striking ''2 U.S.C. 431 et seq'' and inserting ''52 U.S.C. 30101 *et seq.'';* and by striking ''(2 U.S.C. 431(8) and (9))'' and inserting ''(52 U.S.C. 30101(8) and (9))''.

The Commentary to § 2H2.1 captioned ''Statutory Provisions'' is amended by striking ''42 U.S.C. 1973i, 1973j(a), (b)'' and inserting ''52 U.S.C. 10307, 10308(a), (b)''.

The Commentary to § 2M3.9 is amended by striking ''§ 421'' each place such term appears and inserting ''§ 3121''; and by striking ''§ 421(d)'' and inserting ''§ 3121(d)''.

The Commentary to § 5E1.2 captioned ''Application Notes'' is amended in Note 5 by striking ''2 U.S.C. 437g(d)(1)(D)'' and inserting ''52 U.S.C. 30109(d)(1)(D)''; and by striking ''2 U.S.C. 441f'' and inserting ''52 U.S.C. 30122''.

Appendix A (Statutory Index) is amended by striking the following line references:

"2 U.S.C. 437g(d)	2C1.8
2 U.S.C. 439a	2C1.8
2 U.S.C. 441a	2C1.8
2 U.S.C. 441a–1	2C1.8
2 U.S.C. 441b	2C1.8
2 U.S.C. 441c	2C1.8
2 U.S.C. 441d	2C1.8
2 U.S.C. 441e	2C1.8
2 U.S.C. 441f	2C1.8
2 U.S.C. 441g	2C1.8
2 U.S.C. 441h(a)	2C1.8
2 U.S.C. 441i	2C1.8
2 U.S.C. 441k	2C1.8",

and inserting at the end the following new line references:

"52 U.S.C. 30109	2C1.8
52 U.S.C. 30114	2C1.8
52 U.S.C. 30116	2C1.8
52 U.S.C. 30117	2C1.8
52 U.S.C. 30118	2C1.8
52 U.S.C. 30119	2C1.8
52 U.S.C. 30120	2C1.8
52 U.S.C. 30121	2C1.8
52 U.S.C. 30122	2C1.8
52 U.S.C. 30123	2C1.8
52 U.S.C. 30124(a)	2C1.8
52 U.S.C. 30125	2C1.8
52 U.S.C. 30126	2C1.8";

by striking the following line references:

"42 U.S.C. 1973i(c)	2H2.1
42 U.S.C. 1973i(d)	2H2.1
42 U.S.C. 1973i(e)	2H2.1
42 U.S.C. 1973j(a)	2H2.1
42 U.S.C. 1973j(b)	2H2.1
42 U.S.C. 1973j(c)	2X1.1
42 U.S.C. 1973aa	2H2.1

42 U.S.C. 1973aa–1	2H2.1
42 U.S.C. 1973aa–1a	2H2.1
42 U.S.C. 1973aa–3	2H2.1
42 U.S.C. 1973bb	2H2.1
42 U.S.C. 1973gg–10	2H2.1'',

and inserting after the line referenced to 50 U.S.C. App. 2410 the following new line references:

''52 U.S.C. 10307(c)	2H2.1
52 U.S.C. 10307(d)	2H2.1
52 U.S.C. 10307(e)	2H2.1
52 U.S.C. 10308(a)	2H2.1
52 U.S.C. 10308(b)	2H2.1
52 U.S.C. 10308(c)	2X1.1
52 U.S.C. 10501	2H2.1
52 U.S.C. 10502	2H2.1
52 U.S.C. 10503	2H2.1
52 U.S.C. 10505	2H2.1
52 U.S.C. 10701	2H2.1
52 U.S.C. 20511	2H2.1'';

and by striking the line referenced to 50 U.S.C. 421 and inserting after the line referenced to 50 U.S.C. 1705 the following new line reference:

''50 U.S.C. 3121	2M3.9''.

(B) Stylistic Changes to the Illustrations of the Operation of the Multiple-Count Rules

Proposed Amendment

The Commentary following § 3D1.5 captioned ''Illustrations of the Operation of the Multiple-Count Rules'' is amended by striking the heading as follows:

'' *Illustrations of the Operation of the Multiple-Count Rules*'',

and inserting the following new heading:

'' *Concluding Commentary to Part D of Chapter Three Illustrations of the Operation of the Multiple-Count Rules*'';

in Examples 1 and 2 by striking ''convicted on'' both places such term appears and inserting ''convicted of'';

in Example 2 by striking ''Defendant C'' and inserting ''Defendant B'';

and in Example 3 by striking ''Defendant D'' and inserting ''Defendant C''; by striking ''$27,000'', ''$12,000'', ''$15,000'', and ''$20,000'' and inserting ''$1,000'' in each place such terms appear; by striking ''$74,000'' and inserting ''$4,000''; and by striking ''16'' both places such term appears and inserting ''9''.

(C) Clerical Changes

Proposed Amendment

The Commentary to § 1B1.11 captioned ''Background'' is amended by striking ''144 S. Ct.'' and inserting ''133 S. Ct.''.

The Commentary to § 2B4.1 captioned ''Statutory Provisions'' is amended by striking ''41 U.S.C. 53, 54'' and inserting ''41 U.S.C. 8702, 8707''.

The Commentary to § 2B4.1 captioned ''Background'' is amended by striking ''41 U.S.C. 51, 53–54'' and inserting ''41 U.S.C. 8702, 8707''.

Section 2D1.11(e)(7) is amended in the line referenced to Norpseudoephedrine by striking ''400'' and inserting ''400 G''.

The Commentary to § 2H4.2 captioned ''Application Notes'' is amended in Note 2 by striking ''*et. seq.*'' and inserting ''*et seq.*''.

2. ''Single Sentence'' Rule

Synopsis of Proposed Amendment: This proposed amendment responds to a circuit conflict regarding the meaning of the ''single sentence'' rule and its implications for the career offender guideline and other guidelines that use predicate offenses.

When the defendant's criminal history includes two or more prior sentences that meet certain criteria specified in § 4A1.2(a)(2), those prior sentences are counted as a ''single sentence'' rather than separately. This operates to reduce the cumulative impact of the prior sentences on the criminal history score. Courts are now divided over whether this ''single sentence'' rule also causes certain prior sentences that ordinarily would qualify as predicates under the career offender guideline to be disqualified from serving as predicates. *See* § 4B1.2, comment. (n.3).

The ''single sentence'' rule in subsection (a)(2) to § 4A1.2 (Definitions and Instructions for Computing Criminal History) provides:

> If the defendant has multiple prior sentences, determine whether those sentences are counted separately or as a single sentence. Prior sentences always are counted separately if the sentences were imposed for offenses that were separated by an intervening arrest (*i.e.,* the defendant is arrested for the first offense prior to committing the second offense). If there is no intervening arrest, prior sentences are counted separately unless (A) the sentences resulted from offenses contained in the same charging instrument; or (B) the sentences were imposed on the same day. Count any prior sentence covered by (A) or (B) as a single sentence. *See also* § 4A1.1(e).
>
> For purposes of applying § 4A1.1(a), (b), and (c), if prior sentences are counted as a single sentence, use the longest sentence of imprisonment if concurrent sentences were imposed. If consecutive sentences were imposed, use the aggregate sentence of imprisonment.

See § 4A1.2(a)(2).

In 2010, in *King* v. *United States,* the Eighth Circuit held that when two or more prior sentences are counted as a single sentence, all the criminal history points attributable to the single sentence are assigned to only one of the prior sentences—specifically, the one that was the longest. *King,* 595 F.3d 844, 852 (8th Cir. 2010). Accordingly, only that prior sentence may be considered a predicate for purposes of the career offender guideline. *Id.* at 849, 852.

In *King,* there were two different sets of prior sentences that each qualified as a single sentence. Each set of prior sentences included a sentence that ordinarily would qualify as a career offender predicate and several other sentences that were not career offender predicates, imposed to run concurrently. The panel indicated that, within a ''single sentence,'' only one sentence receives the criminal history points. For the first set of sentences, one of the non-predicate sentences ''should receive the criminal history point for this group because it was the longest.'' *Id.* at 849. Accordingly, the sentence that ordinarily would qualify as a career offender predicate did not receive criminal history points and therefore did not qualify as a career offender predicate. *Id.* For the second set of sentences, the sentence that ordinarily would qualify as a career offender predicate was the same length as the one of the non-predicate sentences, and longer than any of the other sentences; it was unclear which of the two should be treated as the ''longest.'' Given the uncertainty, the panel applied the rule of lenity and attributed the criminal history points to the sentence that was not a career offender predicate. *Id.* As a result, the sentence that ordinarily would qualify as a career offender predicate did not receive criminal history points and did not qualify as a career offender predicate.

In June 2014, in *United States* v. *Williams,* a panel of the Sixth Circuit considered and rejected *King* as ''nonsensical,'' because it permitted the defendant to ''evade career offender status because he committed *more* crimes.'' *Williams,* 753 F.3d 626, 639 (6th Cir. 2014) (emphasis in original). The facts in *Williams* were similar to the second set of sentences in *King:* The single sentence included one sentence that ordinarily would qualify as a career offender predicate and one sentence that was not a career offender predicate. The two sentences were equally long. Because each of the sentences ordinarily would receive criminal history points, the panel held, the sentence that ordinarily would qualify as a career offender predicate was not disqualified by the single sentence rule; it remained eligible to serve as a career offender predicate. *Id.*

On August 26, 2014, a different panel of the Eighth Circuit agreed with the

Sixth Circuit's analysis in *Williams* but was not in a position to overrule the earlier panel's decision in *King. See Donnell* v. *United States,* 765 F.3d 817, 820 (8th Cir. 2014) (''we are bound by this court's prior decision in *King* even though a majority of the panel believe it should now be overruled to eliminate a conflict with the Sixth Circuit''). Before then, other panels of the Eighth Circuit had followed *King,* applying it to a case involving the firearms guideline rather than the career offender guideline and to a case in which the prior sentences were consecutive rather than concurrent. *See, e.g., Pierce* v. *United States,* 686 F.3d 529, 533 n.3 (8th Cir. 2012) (indicating that the reasoning of *King* would also apply to predicate offenses under the firearms guideline); *United States* v. *Parker,* 762 F.3d 801, 808 (8th Cir. 2014) (''*King*'s logic is equally applicable to consecutive sentences'').

The Eleventh Circuit anticipated this issue in dicta in *United States* v. *Cornog,* a 1991 decision not cited by either *King* or *Williams. See* 945 F.2d 1504 (11th Cir. 1991). The defendant in *Cornog* had two prior sentences, one that ordinarily would qualify as a career offender predicate and another that was not a career offender predicate but was the longer of the two. He argued under the ''related cases'' rule (predecessor to the ''single sentence'' rule) that only the longer sentence should receive criminal history points and therefore the shorter sentence should be disqualified from serving as a career offender predicate. The Eleventh Circuit found this unpersuasive: ''It would be illogical . . . to ignore a conviction for a violent felony just because it happened to be coupled with a nonviolent felony conviction having a longer sentence.'' *See* 945 F.2d at 1506 n.3.

Of the other cases discussing this issue, some have been consistent with the Sixth Circuit's approach in *Williams. See, e.g., United States* v. *Carr,* 2013 WL 4855341 (N.D. Ga. 2013); *United States* v. *Augurs,* 2014 WL 3735584 (W.D. Pa., July 28, 2014). Others have been consistent with the Eighth Circuit's approach in *King. See, e.g., United States* v. *Santiago,* 387 F. App'x 223 (3d Cir. 2010); *United States* v. *McQueen,* 2014 WL 3749215 (E.D. Wash., July 29, 2014).

The proposed amendment generally follows the Sixth Circuit's approach in *Williams.* It amends the commentary to § 4A1.2 to provide that, when multiple prior sentences are counted as a single sentence, the court should treat each of the multiple prior sentences as if it received criminal history points for purposes of determining predicate offenses. As a result, it also states that a prior sentence included in a single sentence may serve as a predicate under the career offender guideline (or other guidelines that involve predicates) if it independently would have received criminal history points.

In addition, the proposed amendment provides two issues for comment. The first issue for comment is on whether the Commission should use a different approach to respond to the *King/Williams* conflict over the ''single sentence'' rule. The second issue for comment is on whether the application issues presented by the ''single sentence'' rule are also presented by other provisions involved in calculating the criminal history score, such as the provision in § 4A1.1(c) (adding 1 point for certain prior offenses up to a total of 4 points).

Proposed Amendment

The Commentary to § 4A1.2 captioned ''Application Notes'' is amended in Note 3 by redesignating Note 3 as Note 3(B), and by inserting at the beginning the following:

''*Counting Multiple Prior Sentences Separately or as a Single Sentence (Subsection (a)(2)).*—

(A) *In General.*—In some cases, multiple prior sentences are counted as a single sentence for purposes of calculating the criminal history score under § 4A1.1(a), (b), and (c). However, for purposes of determining predicate offenses, each of the multiple prior sentences included in the single sentence should be treated as if it received criminal history points, if it independently would have received criminal history points. Therefore, an individual prior sentence may serve as a predicate under the career offender guideline (*see* § 4B1.2(c)) or other guidelines with predicate offenses, such as § 2K1.3(a) and § 2K2.1(a), if it independently would have received criminal history points.

For example, a defendant's criminal history includes one robbery conviction and one theft conviction. The sentences for these offenses were imposed on the same day and are counted as a single sentence under § 4A1.2(a)(2). If the defendant received a one-year sentence of imprisonment for the robbery and a two-year sentence of imprisonment for the theft, to be served concurrently, a total of 3 points is added under § 4A1.1(a). Because this particular robbery met the definition of a felony crime of violence and independently would have received 2 criminal history points under § 4A1.1(b), it may serve as a predicate under the career offender guideline.''.

Issues for Comment

1. The proposed amendment follows the Sixth Circuit's approach in *Williams* regarding the meaning of the ''single sentence'' rule and its implications for guidelines that use predicate offenses. The Commission seeks comment on whether a different approach should be used to respond to the *King/Williams* conflict over the ''single sentence'' rule. For example, should the Commission follow the Eighth Circuit's approach in *King,* and amend the commentary to § 4A1.2 to provide that, if prior sentences are counted as a single sentence, only one of the sentences included in the single sentence is counted (the sentence with the longest term of imprisonment) and any other sentences included in the single sentence cannot serve as a predicate under the career offender guideline (or other guidelines that involve predicates)?

2. The Commission seeks comment on whether the application issues presented by the *King/Williams* conflict over the ''single sentence'' rule are also presented by other provisions involved in calculating the criminal history score and, if so, whether and how they should be addressed.

In particular, there may be cases in which the defendant has more than four sentences that each could qualify for a criminal history point under § 4A1.1(c), which instructs the court to add 1 point for each such sentence, ''up to a total of 4 points.'' In a case in which the defendant has more than four such sentences, and one of the sentences would ordinarily qualify as a career offender predicate, should that sentence (A) always qualify as a career offender predicate, following the reasoning of *Williams*; (B) never qualify as a career offender predicate, following the reasoning of *King*; or (C) qualify as a career offender predicate in some circumstances but not in others? For example, some helpline callers have asked whether the sentences under § 4A1.1(c) should be placed in chronological sequence, with the first four sentences each receiving a point (and being eligible to serve as a career offender predicate) and any remaining sentences not receiving a point (and being ineligible to serve as a career offender predicate). A similar issue may also be presented by the 3-point limitation in § 4A1.1(e), which instructs courts to add 1 point for certain prior sentences ''up to a total of 3 points.''

Are there application issues presented by these provisions, or other provisions in the guidelines, that are similar to the issues presented by the *King/Williams*

conflict over the ''single sentence'' rule? If so, how, if at all, should the Commission address them?

Finally, if the Commission were to address this circuit conflict and/or any similar application issues, what conforming or clarifying changes, if any, should be made to other provisions of the guidelines? In particular, are there places in the guidelines that refer to the ''single sentence'' rule (or, conversely, refer to whether prior sentences are ''counted separately'') that should be revised to clarify how they operate? If so, which ones, and how should the Commission address them?

3. Jointly Undertaken Criminal Activity

Synopsis of Proposed Amendment: This proposed amendment is a result of the Commission's effort to simplify the operation of the guidelines, including, among other matters, the use of relevant conduct in offenses involving multiple participants. *See* United States Sentencing Commission, ''Notice of Final Priorities,'' 79 FR 49378 (Aug. 20, 2014).

This proposed amendment is being published to inform the Commission's consideration of these issues. The Commission seeks comment on revisions that would provide further guidance on the operation of the ''jointly undertaken criminal activity'' provision as well as on possible revisions that would change the operation of the provision.

Proposed Additional Guidance

The proposed amendment would revise § 1B1.3 (Relevant Conduct (Factors that Determine the Guideline Range)) to provide more guidance on the use of ''jointly undertaken criminal activity'' in determining relevant conduct under the guidelines. *See* § 1B1.3(a)(1)(B). Specifically, it restructures the guideline and its commentary to set out more clearly the three-step analysis the court applies to hold the defendant accountable for acts of others in the jointly undertaken criminal activity. The three-step test requires that the court (1) identify the scope of the criminal activity the defendant agreed to jointly undertake; (2) determine whether the conduct of others in the jointly undertaken criminal activity was in furtherance of that criminal activity; and (3) determine whether the conduct of others was reasonably foreseeable in connection with that criminal activity.

Possible Policy Changes

An issue for comment is provided on whether the Commission should make changes for policy reasons to the operation of ''jointly undertaken criminal activity.'' Several options are presented for comment.

Proposed Amendment

Section 1B1.3(a)(1)(B) is amended by striking ''all reasonably foreseeable acts and omissions of others in furtherance of the jointly undertaken criminal activity,'' and inserting the following:

''all acts and omissions of others that were—

(i) within the scope of the criminal activity that the defendant agreed to jointly undertake,

(ii) in furtherance of the jointly undertaken criminal activity, and

(iii) reasonably foreseeable in connection with that criminal activity;''.

The Commentary to § 1B1.3 captioned ''Application Notes'' is amended by striking Note 2 as follows:

''2. A 'jointly undertaken criminal activity' is a criminal plan, scheme, endeavor, or enterprise undertaken by the defendant in concert with others, whether or not charged as a conspiracy.

In the case of a jointly undertaken criminal activity, subsection (a)(1)(B) provides that a defendant is accountable for the conduct (acts and omissions) of others that was both:

(A) in furtherance of the jointly undertaken criminal activity; and

(B) reasonably foreseeable in connection with that criminal activity.

Because a count may be worded broadly and include the conduct of many participants over a period of time, the scope of the criminal activity jointly undertaken by the defendant (the 'jointly undertaken criminal activity') is not necessarily the same as the scope of the entire conspiracy, and hence relevant conduct is not necessarily the same for every participant. In order to determine the defendant's accountability for the conduct of others under subsection (a)(1)(B), the court must first determine the scope of the criminal activity the particular defendant agreed to jointly undertake (*i.e.,* the scope of the specific conduct and objectives embraced by the defendant's agreement). The conduct of others that was both in furtherance of, and reasonably foreseeable in connection with, the criminal activity jointly undertaken by the defendant is relevant conduct under this provision. The conduct of others that was not in furtherance of the criminal activity jointly undertaken by the defendant, or was not reasonably foreseeable in connection with that criminal activity, is not relevant conduct under this provision.

In determining the scope of the criminal activity that the particular defendant agreed to jointly undertake *(i.e.,* the scope of the specific conduct and objectives embraced by the defendant's agreement), the court may consider any explicit agreement or implicit agreement fairly inferred from the conduct of the defendant and others.

Note that the criminal activity that the defendant agreed to jointly undertake, and the reasonably foreseeable conduct of others in furtherance of that criminal activity, are not necessarily identical. For example, two defendants agree to commit a robbery and, during the course of that robbery, the first defendant assaults and injures a victim. The second defendant is accountable for the assault and injury to the victim (even if the second defendant had not agreed to the assault and had cautioned the first defendant to be careful not to hurt anyone) because the assaultive conduct was in furtherance of the jointly undertaken criminal activity (the robbery) and was reasonably foreseeable in connection with that criminal activity (given the nature of the offense).

With respect to offenses involving contraband (including controlled substances), the defendant is accountable for all quantities of contraband with which he was directly involved and, in the case of a jointly undertaken criminal activity, all reasonably foreseeable quantities of contraband that were within the scope of the criminal activity that he jointly undertook.

The requirement of reasonable foreseeability applies only in respect to the conduct (*i.e.,* acts and omissions) of others under subsection (a)(1)(B). It does not apply to conduct that the defendant personally undertakes, aids, abets, counsels, commands, induces, procures, or willfully causes; such conduct is addressed under subsection (a)(1)(A).

A defendant's relevant conduct does not include the conduct of members of a conspiracy prior to the defendant joining the conspiracy, even if the defendant knows of that conduct (*e.g.,* in the case of a defendant who joins an ongoing drug distribution conspiracy knowing that it had been selling two kilograms of cocaine per week, the cocaine sold prior to the defendant joining the conspiracy is not included as relevant conduct in determining the defendant's offense level). The Commission does not foreclose the possibility that there may be some unusual set of circumstances in which the exclusion of such conduct may not adequately reflect the defendant's culpability; in such a case, an upward departure may be warranted.

Illustrations of Conduct for Which the Defendant Is Accountable

(a) *Acts and omissions aided or abetted by the defendant*

(1) Defendant A is one of ten persons hired by Defendant B to off-load a ship containing marihuana. The off-loading of the ship is interrupted by law enforcement officers and one ton of marihuana is seized (the amount on the ship as well as the amount off-loaded). Defendant A and the other off-loaders are arrested and convicted of importation of marihuana. Regardless of the number of bales he personally unloaded, Defendant A is accountable for the entire one-ton quantity of marihuana. Defendant A aided and abetted the off-loading of the entire shipment of marihuana by directly participating in the off-loading of that shipment (*i.e.,* the specific objective of the criminal activity he joined was the off-loading of the entire shipment). Therefore, he is accountable for the entire shipment under subsection (a)(1)(A) without regard to the issue of reasonable foreseeability. This is conceptually similar to the case of a defendant who transports a suitcase knowing that it contains a controlled substance and, therefore, is accountable for the controlled substance in the suitcase regardless of his knowledge or lack of knowledge of the actual type or amount of that controlled substance.

In certain cases, a defendant may be accountable for particular conduct under more than one subsection of this guideline. As noted in the preceding paragraph, Defendant A is accountable for the entire one-ton shipment of marihuana under subsection (a)(1)(A). Defendant A also is accountable for the entire one-ton shipment of marihuana on the basis of subsection (a)(1)(B)(applying to a jointly undertaken criminal activity). Defendant A engaged in a jointly undertaken criminal activity (the scope of which was the importation of the shipment of marihuana). A finding that the one-ton quantity of marihuana was reasonably foreseeable is warranted from the nature of the undertaking itself (the importation of marihuana by ship typically involves very large quantities of marihuana). The specific circumstances of the case (the defendant was one of ten persons off-loading the marihuana in bales) also support this finding. In an actual case, of course, if a defendant's accountability for particular conduct is established under one provision of this guideline, it is not necessary to review alternative provisions under which such accountability might be established.

(b) *Acts and omissions aided or abetted by the defendant; requirement that the conduct of others be in furtherance of the jointly undertaken criminal activity and reasonably foreseeable*

(1) Defendant C is the getaway driver in an armed bank robbery in which $15,000 is taken and a teller is assaulted and injured. Defendant C is accountable for the money taken under subsection (a)(1)(A) because he aided and abetted the act of taking the money (the taking of money was the specific objective of the offense he joined). Defendant C is accountable for the injury to the teller under subsection (a)(1)(B) because the assault on the teller was in furtherance of the jointly undertaken criminal activity (the robbery) and was reasonably foreseeable in connection with that criminal activity (given the nature of the offense).

As noted earlier, a defendant may be accountable for particular conduct under more than one subsection. In this example, Defendant C also is accountable for the money taken on the basis of subsection (a)(1)(B) because the taking of money was in furtherance of the jointly undertaken criminal activity (the robbery) and was reasonably foreseeable (as noted, the taking of money was the specific objective of the jointly undertaken criminal activity).

(c) *Requirement that the conduct of others be in furtherance of the jointly undertaken criminal activity and reasonably foreseeable; scope of the criminal activity*

(1) Defendant D pays Defendant E a small amount to forge an endorsement on an $800 stolen government check. Unknown to Defendant E, Defendant D then uses that check as a down payment in a scheme to fraudulently obtain $15,000 worth of merchandise. Defendant E is convicted of forging the $800 check and is accountable for the forgery of this check under subsection (a)(1)(A). Defendant E is not accountable for the $15,000 because the fraudulent scheme to obtain $15,000 was not in furtherance of the criminal activity he jointly undertook with Defendant D (*i.e.,* the forgery of the $800 check).

(2) Defendants F and G, working together, design and execute a scheme to sell fraudulent stocks by telephone. Defendant F fraudulently obtains $20,000. Defendant G fraudulently obtains $35,000. Each is convicted of mail fraud. Defendants F and G each are accountable for the entire amount ($55,000). Each defendant is accountable for the amount he personally obtained under subsection (a)(1)(A). Each defendant is accountable for the amount obtained by his accomplice under subsection (a)(1)(B) because the conduct of each was in furtherance of the jointly undertaken criminal activity and was reasonably foreseeable in connection with that criminal activity.

(3) Defendants H and I engaged in an ongoing marihuana importation conspiracy in which Defendant J was hired only to help off-load a single shipment. Defendants H, I, and J are included in a single count charging conspiracy to import marihuana. Defendant J is accountable for the entire single shipment of marihuana he helped import under subsection (a)(1)(A) and any acts and omissions in furtherance of the importation of that shipment that were reasonably foreseeable (*see* the discussion in example (a)(1) above). He is not accountable for prior or subsequent shipments of marihuana imported by Defendants H or I because those acts were not in furtherance of his jointly undertaken criminal activity (the importation of the single shipment of marihuana).

(4) Defendant K is a wholesale distributor of child pornography. Defendant L is a retail-level dealer who purchases child pornography from Defendant K and resells it, but otherwise operates independently of Defendant K. Similarly, Defendant M is a retail-level dealer who purchases child pornography from Defendant K and resells it, but otherwise operates independently of Defendant K. Defendants L and M are aware of each other's criminal activity but operate independently. Defendant N is Defendant K's assistant who recruits customers for Defendant K and frequently supervises the deliveries to Defendant K's customers. Each defendant is convicted of a count charging conspiracy to distribute child pornography. Defendant K is accountable under subsection (a)(1)(A) for the entire quantity of child pornography sold to Defendants L and M. Defendant N also is accountable for the entire quantity sold to those defendants under subsection (a)(1)(B) because the entire quantity was within the scope of his jointly undertaken criminal activity and reasonably foreseeable. Defendant L is accountable under subsection (a)(1)(A) only for the quantity of child pornography that he purchased from Defendant K because the scope of his jointly undertaken criminal activity is limited to that amount. For the same reason, Defendant M is accountable under subsection (a)(1)(A) only for the quantity of child pornography that he purchased from Defendant K.

(5) Defendant O knows about her boyfriend's ongoing drug-trafficking activity, but agrees to participate on only one occasion by making a delivery for him at his request when he was ill. Defendant O is accountable under subsection (a)(1)(A) for the drug quantity involved on that one occasion. Defendant O is not accountable for the other drug sales made by her boyfriend because those sales were not in furtherance of her jointly undertaken criminal activity (*i.e.,* the one delivery).

(6) Defendant P is a street-level drug dealer who knows of other street-level drug dealers in the same geographic area who sell the same type of drug as he sells. Defendant P and the other dealers share a common source of supply, but otherwise operate independently. Defendant P is not accountable for the quantities of drugs sold by the other street-level drug dealers because he is not engaged in a jointly undertaken criminal activity with them. In contrast, Defendant Q, another street-level drug dealer, pools his resources and profits with four other street-level drug dealers. Defendant Q is engaged in a jointly undertaken criminal activity and, therefore, he is accountable under subsection (a)(1)(B) for the quantities of drugs sold by the four other dealers during the course of his joint undertaking with them because those sales were in furtherance of the jointly undertaken criminal activity and reasonably foreseeable in connection with that criminal activity.

(7) Defendant R recruits Defendant S to distribute 500 grams of cocaine. Defendant S knows that Defendant R is the prime figure in a conspiracy involved in importing much larger quantities of cocaine. As long as Defendant S's agreement and conduct is limited to the distribution of the 500 grams, Defendant S is accountable only for that 500 gram amount (under subsection (a)(1)(A)), rather than the much larger quantity imported by Defendant R.

(8) Defendants T, U, V, and W are hired by a supplier to backpack a quantity of marihuana across the border from Mexico into the United States. Defendants T, U, V, and W receive their individual shipments from the supplier at the same time and coordinate their importation efforts by walking across the border together for mutual assistance and protection. Each defendant is accountable for the aggregate quantity of marihuana transported by the four defendants. The four defendants engaged in a jointly undertaken criminal activity, the object of which was the importation of the four backpacks containing marihuana (subsection (a)(1)(B)), and aided and abetted each other's actions (subsection (a)(1)(A)) in carrying out the jointly undertaken criminal activity. In contrast, if Defendants T, U, V, and W were hired individually, transported their individual shipments at different times, and otherwise operated independently, each defendant would be accountable only for the quantity of marihuana he personally transported (subsection (a)(1)(A)). As this example illustrates, in cases involving contraband (including controlled substances), the scope of the jointly undertaken criminal activity (and thus the accountability of the defendant for the contraband that was the object of that jointly undertaken activity) may depend upon whether, in the particular circumstances, the nature of the offense is more appropriately viewed as one jointly undertaken criminal activity or as a number of separate criminal activities.'';

by redesignating Notes 3 through 10 as Notes 5 through 12, respectively, and inserting the following new Notes 2, 3 and 4:

''2. *Accountability Under More Than One Provision.*—In certain cases, a defendant may be accountable for particular conduct under more than one subsection of this guideline. If a defendant's accountability for particular conduct is established under one provision of this guideline, it is not necessary to review alternative provisions under which such accountability might be established.

3. *Jointly Undertaken Criminal Activity (Subsection (a)(1)(B)).*—

(A) *In General.*—A 'jointly undertaken criminal activity' is a criminal plan, scheme, endeavor, or enterprise undertaken by the defendant in concert with others, whether or not charged as a conspiracy.

In the case of a jointly undertaken criminal activity, subsection (a)(1)(B) provides that a defendant is accountable for the conduct (acts and omissions) of others that was:

(i) within the scope of the criminal activity that the defendant agreed to jointly undertake;

(ii) in furtherance of the jointly undertaken criminal activity; and

(iii) reasonably foreseeable in connection with that criminal activity.

The conduct of others that was within the scope of, in furtherance of, and reasonably foreseeable in connection with, the criminal activity jointly undertaken by the defendant is relevant conduct under this provision. The conduct of others that was not within the scope of the criminal activity that the defendant agreed to jointly undertake, was not in furtherance of the criminal activity jointly undertaken by the defendant, or was not reasonably foreseeable in connection with that criminal activity, is not relevant conduct under this provision.

(B) *Scope.*—Because a count may be worded broadly and include the conduct of many participants over a period of time, the scope of the criminal activity jointly undertaken by the defendant (the 'jointly undertaken criminal activity') is not necessarily the same as the scope of the entire conspiracy, and hence relevant conduct is not necessarily the same for every participant. In order to determine the defendant's accountability for the conduct of others under subsection (a)(1)(B), the court must first determine the scope of the criminal activity the particular defendant agreed to jointly undertake (*i.e.,* the scope of the specific conduct and objectives embraced by the defendant's agreement). In doing so, the court may consider any explicit agreement or implicit agreement fairly inferred from the conduct of the defendant and others. Accordingly, the accountability of the defendant for the acts of others is limited by the scope of his or her agreement to jointly undertake the particular criminal activity. Acts of others that were not within the scope of the defendant's agreement, even if those acts were known or reasonably foreseeable to the defendant, are not relevant conduct under subsection (a)(1)(B).

In cases involving contraband (including controlled substances), the scope of the jointly undertaken criminal activity (and thus the accountability of the defendant for the contraband that was the object of that jointly undertaken activity) may depend upon whether, in the particular circumstances, the nature of the offense is more appropriately viewed as one jointly undertaken criminal activity or as a number of separate criminal activities.

A defendant's relevant conduct does not include the conduct of members of a conspiracy prior to the defendant joining the conspiracy, even if the defendant knows of that conduct (*e.g.,* in the case of a defendant who joins an ongoing drug distribution conspiracy knowing that it had been selling two kilograms of cocaine per week, the cocaine sold prior to the defendant joining the conspiracy is not included as relevant conduct in determining the defendant's offense level). The Commission does not foreclose the possibility that there may be some unusual set of circumstances in which the exclusion of such conduct may not adequately reflect the defendant's

culpability; in such a case, an upward departure may be warranted.

(C) *In Furtherance.*—The court must determine if the conduct (acts and omissions) of others was in furtherance of the criminal activity that the defendant agreed to jointly undertake.

(D) *Reasonably Foreseeable.*—The court must then determine if the conduct (acts and omissions) of others in furtherance of the jointly undertaken criminal activity was reasonably foreseeable in connection with the criminal activity that the defendant agreed to jointly undertake.

Note that the criminal activity that the defendant agreed to jointly undertake, and the reasonably foreseeable conduct of others in furtherance of that criminal activity, are not necessarily identical. For example, two defendants agree to commit a robbery and, during the course of that robbery, the first defendant assaults and injures a victim. The second defendant is accountable for the assault and injury to the victim (even if the second defendant had not agreed to the assault and had cautioned the first defendant to be careful not to hurt anyone) because the assaultive conduct was within the scope of the criminal activity that the defendant agreed to jointly undertake (the robbery), was in furtherance of that criminal activity (the robbery), and was reasonably foreseeable in connection with that criminal activity (given the nature of the offense).

With respect to offenses involving contraband (including controlled substances), the defendant is accountable under subsection (a)(1)(A) for all quantities of contraband with which he was directly involved and, in the case of a jointly undertaken criminal activity under subsection (a)(1)(B), all reasonably foreseeable quantities of contraband that were within the scope of, and in furtherance of, the criminal activity that he jointly undertook.

The requirement of reasonable foreseeability applies only in respect to the conduct (*i.e.,* acts and omissions) of others under subsection (a)(1)(B). It does not apply to conduct that the defendant personally undertakes, aids, abets, counsels, commands, induces, procures, or willfully causes; such conduct is addressed under subsection (a)(1)(A).

4. *Illustrations of Conduct for Which the Defendant is Accountable under Subsections (a)(1)(A) and (B).*—

(A) *Acts and omissions aided or abetted by the defendant.*—

(i) Defendant A is one of ten persons hired by Defendant B to off-load a ship containing marihuana. The off-loading of the ship is interrupted by law enforcement officers and one ton of marihuana is seized (the amount on the ship as well as the amount off-loaded). Defendant A and the other off-loaders are arrested and convicted of importation of marihuana. Regardless of the number of bales he personally unloaded, Defendant A is accountable for the entire one-ton quantity of marihuana. Defendant A aided and abetted the off-loading of the entire shipment of marihuana by directly participating in the off-loading of that shipment (*i.e.,* the specific objective of the criminal activity he joined was the off-loading of the entire shipment). Therefore, he is accountable for the entire shipment under subsection (a)(1)(A) without regard to the issue of reasonable foreseeability. This is conceptually similar to the case of a defendant who transports a suitcase knowing that it contains a controlled substance and, therefore, is accountable for the controlled substance in the suitcase regardless of his knowledge or lack of knowledge of the actual type or amount of that controlled substance.

In certain cases, a defendant may be accountable for particular conduct under more than one subsection of this guideline. As noted in the preceding paragraph, Defendant A is accountable for the entire one-ton shipment of marihuana under subsection (a)(1)(A). Defendant A also is accountable for the entire one-ton shipment of marihuana on the basis of subsection (a)(1)(B) (applying to a jointly undertaken criminal activity). Defendant A engaged in a jointly undertaken criminal activity that meets all three criteria of subsection (a)(1)(B). First, the criminal activity was within the scope of what the defendant agreed to jointly undertake (the importation of the shipment of marihuana). Second, the off-loading of the shipment of marihuana was in furtherance of the criminal activity, as described above. And third, a finding that the one-ton quantity of marihuana was reasonably foreseeable is warranted from the nature of the undertaking itself (the importation of marihuana by ship typically involves very large quantities of marihuana). The specific circumstances of the case (the defendant was one of ten persons off-loading the marihuana in bales) also support this finding. In an actual case, of course, if a defendant's accountability for particular conduct is established under one provision of this guideline, it is not necessary to review alternative provisions under which such accountability might be established. *See* Application Note 2.

(B) *Acts and omissions aided or abetted by the defendant; acts and omissions in a jointly undertaken criminal activity.*—

(i) Defendant C is the getaway driver in an armed bank robbery in which $15,000 is taken and a teller is assaulted and injured. Defendant C is accountable for the money taken under subsection (a)(1)(A) because he aided and abetted the act of taking the money (the taking of money was the specific objective of the offense he joined). Defendant C is accountable for the injury to the teller under subsection (a)(1)(B) because the assault on the teller was within the scope and in furtherance of the jointly undertaken criminal activity (the robbery), and was reasonably foreseeable in connection with that criminal activity (given the nature of the offense).

As noted earlier, a defendant may be accountable for particular conduct under more than one subsection. In this example, Defendant C also is accountable for the money taken on the basis of subsection (a)(1)(B) because the taking of money was within the scope and in furtherance of the jointly undertaken criminal activity (the robbery), and was reasonably foreseeable (as noted, the taking of money was the specific objective of the jointly undertaken criminal activity).

(C) *Requirements that the conduct of others be within the scope of the jointly undertaken criminal activity, in furtherance of that criminal activity and reasonably foreseeable.*—

(i) Defendant D pays Defendant E a small amount to forge an endorsement on an $800 stolen government check. Unknown to Defendant E, Defendant D then uses that check as a down payment in a scheme to fraudulently obtain $15,000 worth of merchandise. Defendant E is convicted of forging the $800 check and is accountable for the forgery of this check under subsection (a)(1)(A). Defendant E is not accountable for the $15,000 because the fraudulent scheme to obtain $15,000 was not within the scope of the criminal activity he agreed to jointly undertake with Defendant D (*i.e.,* the forgery of the $800 check).

(ii) Defendants F and G, working together, design and execute a scheme to sell fraudulent stocks by telephone. Defendant F fraudulently obtains $20,000. Defendant G fraudulently obtains $35,000. Each is convicted of mail fraud. Defendants F and G each are accountable for the entire amount ($55,000). Each defendant is accountable for the amount he personally obtained under subsection (a)(1)(A). Each defendant is accountable for the amount obtained by his accomplice under subsection (a)(1)(B)

because the conduct of each was within the scope of the criminal activity they agreed to jointly undertake (the scheme to sell fraudulent stocks), was in furtherance of that criminal activity, and was reasonably foreseeable in connection with that criminal activity.

(iii) Defendants H and I engaged in an ongoing marihuana importation conspiracy in which Defendant J was hired only to help off-load a single shipment. Defendants H, I, and J are included in a single count charging conspiracy to import marihuana. Defendant J is accountable for the entire single shipment of marihuana he helped import under subsection (a)(1)(A) and any acts and omissions of others related to the importation of that shipment on the basis of subsection (a)(1)(B) (*see* the discussion in example (A)(i) above). He is not accountable for prior or subsequent shipments of marihuana imported by Defendants H or I because those acts were not within the scope of his jointly undertaken criminal activity (the importation of the single shipment of marihuana).

(iv) Defendant K is a wholesale distributor of child pornography. Defendant L is a retail-level dealer who purchases child pornography from Defendant K and resells it, but otherwise operates independently of Defendant K. Similarly, Defendant M is a retail-level dealer who purchases child pornography from Defendant K and resells it, but otherwise operates independently of Defendant K. Defendants L and M are aware of each other's criminal activity but operate independently. Defendant N is Defendant K's assistant who recruits customers for Defendant K and frequently supervises the deliveries to Defendant K's customers. Each defendant is convicted of a count charging conspiracy to distribute child pornography. Defendant K is accountable under subsection (a)(1)(A) for the entire quantity of child pornography sold to Defendants L and M. Defendant N also is accountable for the entire quantity sold to those defendants under subsection (a)(1)(B) because the entire quantity was within the scope of his jointly undertaken criminal activity (to distribute child pornography with Defendant K), in furtherance of that criminal activity, and reasonably foreseeable. Defendant L is accountable under subsection (a)(1)(A) only for the quantity of child pornography that he purchased from Defendant K because he is not engaged in a jointly undertaken criminal activity with the other defendants. For the same reason, Defendant M is accountable under subsection (a)(1)(A) only for the quantity of child pornography that he purchased from Defendant K.

(v) Defendant O knows about her boyfriend's ongoing drug-trafficking activity, but agrees to participate on only one occasion by making a delivery for him at his request when he was ill. Defendant O is accountable under subsection (a)(1)(A) for the drug quantity involved on that one occasion. Defendant O is not accountable for the other drug sales made by her boyfriend because those sales were not within the scope of her jointly undertaken criminal activity (*i.e.,* the one delivery).

(vi) Defendant P is a street-level drug dealer who knows of other street-level drug dealers in the same geographic area who sell the same type of drug as he sells. Defendant P and the other dealers share a common source of supply, but otherwise operate independently. Defendant P is not accountable for the quantities of drugs sold by the other street-level drug dealers because he is not engaged in a jointly undertaken criminal activity with them. In contrast, Defendant Q, another street-level drug dealer, pools his resources and profits with four other street-level drug dealers. Defendant Q is engaged in a jointly undertaken criminal activity and, therefore, he is accountable under subsection (a)(1)(B) for the quantities of drugs sold by the four other dealers during the course of his joint undertaking with them because those sales were within the scope of the jointly undertaken criminal activity, in furtherance of that criminal activity, and reasonably foreseeable in connection with that criminal activity.

(vii) Defendant R recruits Defendant S to distribute 500 grams of cocaine. Defendant S knows that Defendant R is the prime figure in a conspiracy involved in importing much larger quantities of cocaine. As long as Defendant S's agreement and conduct is limited to the distribution of the 500 grams, Defendant S is accountable only for that 500 gram amount (under subsection (a)(1)(A)), rather than the much larger quantity imported by Defendant R. Defendant S is not accountable under subsection (a)(1)(B) for the other quantities imported by Defendant R because those quantities were not within the scope of his jointly undertaken criminal activity (*i.e.,* the 500 grams).

(viii) Defendants T, U, V, and W are hired by a supplier to backpack a quantity of marihuana across the border from Mexico into the United States. Defendants T, U, V, and W receive their individual shipments from the supplier at the same time and coordinate their importation efforts by walking across the border together for mutual assistance and protection. Each defendant is accountable for the aggregate quantity of marihuana transported by the four defendants. The four defendants engaged in a jointly undertaken criminal activity, the object of which was the importation of the four backpacks containing marihuana (subsection (a)(1)(B)), and aided and abetted each other's actions (subsection (a)(1)(A)) in carrying out the jointly undertaken criminal activity (which under subsection (a)(1)(B) were also in furtherance of, and reasonably foreseeable in connection with, the criminal activity). In contrast, if Defendants T, U, V, and W were hired individually, transported their individual shipments at different times, and otherwise operated independently, each defendant would be accountable only for the quantity of marihuana he personally transported (subsection (a)(1)(A)). As this example illustrates, the scope of the jointly undertaken criminal activity may depend upon whether, in the particular circumstances, the nature of the offense is more appropriately viewed as one jointly undertaken criminal activity or as a number of separate criminal activities. *See* Application Note 3(A).''.

Issues for Comment

1. *Additional Guidance.* The Commission seeks comment on whether additional or different guidance should be provided on the ''jointly undertaken criminal activity'' provision in subsection (a)(1)(B). In particular, should the Commission provide further guidance on how to determine (A) the scope of the jointly undertaken criminal activity, (B) whether the conduct of others was in furtherance of the criminal activity, and (C) whether the conduct of others was reasonably foreseeable in connection with the criminal activity? Does the proposed amendment provide adequate guidance on the operation of ''jointly undertaken criminal activity''?

Should the Commission provide additional or different examples to better explain the operation of ''jointly undertaken criminal activity''? If so, what examples should be provided? Are there examples that are no longer good illustrations of present-day criminal cases? If so, should those examples be deleted or revised, or should they be replaced with more appropriate illustrations of present-day criminal cases?

2. *Possible Policy Changes.* The Commission seeks comment on whether changes should be made for policy reasons to the operation of ''jointly

undertaken criminal activity,'' such as to provide greater limitations on the extent to which a defendant is held accountable at sentencing for the conduct of co-participants that the defendant did not aid, abet, counsel, command, induce, procure, or willfully cause. (Such conduct is covered by § 1B1.3(a)(1)(A).) In particular, but without limitation, the Commission seeks comment on two options for possible changes that could be made to the operation of ''jointly undertaken criminal activity'', as follows.

(A) Option A: Requiring a Higher State of Mind Than ''Reasonable Foreseeability''

This option would revise ''jointly undertaken criminal activity'' by changing the ''reasonable foreseeability'' part of the analysis. The requirement that the other participant's conduct be reasonably foreseeable has been described as a ''negligence'' standard, that is, the defendant should have known or should have foreseen the conduct.

The Commission seeks specific comment on whether ''jointly undertaken criminal activity'' should require a higher state of mind, such as recklessness or deliberate indifference; knowledge; or intent. For example, if a co-participant possessed a weapon, should the defendant be held accountable for the weapon only if he was deliberately indifferent to whether a weapon would be possessed; or only if he knew the weapon would be possessed; or only if he intended that the weapon be possessed?

(B) Option B: Requiring a Conviction for Conspiracy or At Least a ''Pinkerton Conviction''

This option would hold a defendant accountable for a ''jointly undertaken criminal activity'' only when the defendant (1) was convicted of a conspiracy charge related to a co-conspirator's conduct in furtherance of the jointly undertaken criminal activity; or (2) was convicted by a jury that was specifically instructed on Pinkerton liability regarding a substantive offense; or (3) admitted facts sufficient to constitute Pinkerton liability.

The Commission seeks specific comment on what the practical impact of such a change would be on charging and sentencing practices.

Does the current provision on ''jointly undertaken criminal activity'' appropriately further the purposes of sentencing? If not, what changes, if any, should the Commission make to ''jointly undertaken criminal activity'' to more appropriately further the purposes of sentencing? Do any of the options described above more appropriately further the purposes of sentencing? Are there other possible changes, whether or not identified in the options described above, that should be made to ''jointly undertaken criminal activity'' to more appropriately further the purposes of sentencing?

4. Inflationary Adjustments

Synopsis of Proposed Amendment: This proposed amendment is a result of the Commission's work in examining the overall structure of the guidelines post-*Booker. See* United States Sentencing Commission, ''Notice of Final Priorities,'' 79 FR 49378 (Aug. 20, 2014). As part of that work, the Commission is considering whether to adjust monetary tables in the guidelines for inflation. Congress has generally mandated that agencies in the executive branch must, every four years, adjust the civil monetary penalties they impose to account for inflation. *See* Section 4 of the Federal Civil Penalties Inflationary Adjustment Act of 1990 (28 U.S.C. 2461 note). The work of the Commission does not involve civil monetary penalties. It involves establishing appropriate criminal sentences for categories of offenses and offenders, including appropriate amounts for criminal fines. *See, e.g.,* 28 U.S.C. 994(b)(1), (a)(1)(B). While some of the monetary values in the Chapter Two offense guidelines have been revised since they were originally established in 1987 (*e.g.,* the loss table in § 2B1.1 was substantially amended in 2001), they have never been revised specifically to account for inflation. Other monetary values in the Chapter Two offense guidelines, as well as the monetary values in the fine tables for individual defendants and for organizational defendants, have never been revised.

The proposed amendment, including the issues for comment set forth below, are intended to inform the Commission's work across all the relevant guidelines and its examination of rulemaking practices generally. The proposed amendment illustrates one possible approach for implementing an inflationary adjustment during this amendment cycle. Specifically, it sets forth options for amending the monetary tables in the guidelines to adjust for inflation, *i.e.,* the tables in §§ 2B1.1 (Theft, Property, Destruction, and Fraud), 2B2.1 (Burglary), 2B3.1 (Robbery), 2R1.1 (Bid-Rigging, Price-Fixing or Market-Allocation Agreements Among Competitors), 2T4.1 (Tax Table), 5E1.2 (Fines for Individual Defendants), and 8C2.4 (Base Fine). The options are based on changes to the Bureau of Labor Statistics' Consumer Price Index and on different time frames (taking into consideration the year each monetary table was last amended). For each of the seven tables, two options are presented. They are as follows.

Option 1 adjusts the amounts in the monetary tables using a specific multiplier derived from the Consumer Price Index, and then rounds the amounts using the rounding methodology applied when adjusting civil monetary penalties for inflation under section 5(a) of the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note). In effect, this rounds—

amounts greater than $200,000 to the nearest multiple of $25,000;

amounts greater than $100,000 to the nearest multiple of $10,000;

amounts greater than $10,000 to the nearest multiple of $5,000;

amounts greater than $1,000 to the nearest multiple of $1,000;

amounts greater than $100 to the nearest multiple of $100; and

amounts less than or equal to $100 to the nearest multiple of $10.

Option 2 adjusts the amounts in the monetary tables using a specific multiplier derived from the Consumer Price Index, but then rounds the amounts using a different set of rounding rules extrapolated from the methodology used in Option 1. This ''extrapolated'' methodology provides rules that address a wider range of values than Option 1, such as by providing rounder numbers for amounts significantly greater than $200,000. Specifically, this methodology rounds—

amounts greater than $100,000,000 to the nearest multiple of $50,000,000;

amounts greater than $10,000,000 to the nearest multiple of $5,000,000;

amounts greater than $1,000,000 to the nearest multiple of $500,000;

amounts greater than $100,000 to the nearest multiple of $50,000;

amounts greater than $10,000 to the nearest multiple of $5,000;

amounts greater than $1,000 to the nearest multiple of $500; and

amounts of $1,000 or less to the nearest multiple of $50.

For the loss table in § 2B1.1(b)(1) and the tax table in § 2B4.1, the options would adjust for inflation since 2001, the year both tables were last amended. According to the Consumer Price Index, $1.00 in 2001 has the same buying power as $1.34 in 2014. For the loss tables in §§ 2B2.1 (Burglary) and 2B3.1 (Robbery), and the fine table for individual defendants at § 5E1.2(c)(3), the options would adjust for inflation since 1989, the year these tables were last amended. The adjustments would

take into account that $1.00 in 1989 has the same buying power as $1.91 in 2014, according to the Consumer Price Index. The options for the antitrust table in § 2R1.1(b)(2) would adjust for inflation since 2005, the year the table was last amended. According to the Consumer Price Index, $1.00 in 2005 has the same buying power as $1.22 in 2014. And, finally, for the fine table for organizational defendants at § 8C2.4(d), the options would adjust for inflation since 1991, as the table has not been substantially amended since it was promulgated. The adjustments would take into account that, according to the Consumer Price Index, $1.00 in 1991 has the same buying power as $1.74 in 2014.

Each of the tables shows the initial multiplier used to make the adjustments for inflation taken from the Consumer Price Index. In addition, the proposed amendment includes conforming changes to other Chapter Two guidelines that refer to the monetary tables.

Finally, the proposed amendment sets forth a series of issues for comment related to additional changes to the monetary tables that could be considered instead of, or in conjunction with, the proposed amendment.

Proposed Amendment

Section 2B1.1(b)(1) is amended—

[Option 1:

By striking $5,000 each place such term appears and inserting $7,000;

by striking $10,000 and inserting $15,000;

by striking $30,000 and inserting $40,000;

by striking $70,000 and inserting $95,000;

by striking $120,000 and inserting $160,000;

by striking $200,000 and inserting $275,000;

by striking $400,000 and inserting $525,000;

by striking $1,000,000 and inserting $1,350,000;

by striking $2,500,000 and inserting $3,350,000;

by striking $7,000,000 and inserting $9,375,000;

by striking $20,000,000 and inserting $26,800,000;

by striking $50,000,000 and inserting $67,000,000;

by striking $100,000,000 and inserting $134,000,000;

by striking $200,000,000 and inserting $268,000,000; and

by striking $400,000,000 and inserting $536,000,000.]

[Option 2:

By striking $5,000 each place such term appears and inserting $6,500;

by striking $10,000 and inserting $15,000;

by striking $30,000 and inserting $40,000;

by striking $70,000 and inserting $95,000;

by striking $120,000 and inserting $150,000;

by striking $200,000 and inserting $250,000;

by striking $400,000 and inserting $550,000;

by striking $1,000,000 and inserting $1,500,000;

by striking $2,500,000 and inserting $3,500,000;

by striking $7,000,000 and inserting $9,500,000;

by striking $20,000,000 and inserting $30,000,000;

by striking $50,000,000 and inserting $70,000,000;

by striking $100,000,000 and inserting $150,000,000;

by striking $200,000,000 and inserting $300,000,000; and

by striking $400,000,000 and inserting $550,000,000.]

Section 2B1.4(b)(1) is amended—

[Option 1:

By striking $5,000 and inserting $7,000.]

[Option 2:

By striking $5,000 and inserting $6,500.]

Section 2B1.5(b)(1) is amended—

[Option 1:

By striking $2,000 and inserting $3,000; and

by striking $5,000 both places such term appears and inserting $7,000.]

[Option 2:

By striking $2,000 and inserting $2,500; and

by striking $5,000 both places such term appears and inserting $6,500.]

Section 2B2.1(b)(2) is amended—

[Option 1:

By striking $2,500 each place such term appears and inserting $5,000;

by striking $10,000 and inserting $20,000;

by striking $50,000 and inserting $95,000;

by striking $250,000 and inserting $475,000;

by striking $800,000 and inserting $1,525,000;

by striking $1,500,000 and inserting $2,875,000;

by striking $2,500,000 and inserting $4,775,000;

by striking $5,000,000 and inserting $9,550,000.]

[Option 2:

By striking $2,500 each place such term appears and inserting $5,000;

by striking $10,000 and inserting $20,000;

by striking $50,000 and inserting $95,000;

by striking $250,000 and inserting $500,000;

by striking $800,000 and inserting $1,500,000;

by striking $1,500,000 and inserting $3,000,000;

by striking $2,500,000 and inserting $5,000,000;

by striking $5,000,000 and inserting $9,500,000.]

Section 2B2.3(b)(3) is amended—

[Option 1:

By striking $2,000 and inserting $3,000; and

by striking $5,000 both places such term appears and inserting $7,000.]

[Option 2:

By striking $2,000 and inserting $2,500; and

by striking $5,000 both places such term appears and inserting $6,500.]

Section 2B3.1(b)(7) is amended—

[Option 1:

By striking $10,000 each place such term appears and inserting $20,000;

by striking $50,000 and inserting $95,000;

by striking $250,000 and inserting $475,000;

by striking $800,000 and inserting $1,525,000;

by striking $1,500,000 and inserting $2,875,000;

by striking $2,500,000 and inserting $4,775,000;

by striking $5,000,000 and inserting $9,550,000.]

[Option 2:

By striking $10,000 each place such term appears and inserting $20,000;

by striking $50,000 and inserting $95,000;

by striking $250,000 and inserting $500,000;

by striking $800,000 and inserting $1,500,000;

by striking $1,500,000 and inserting $3,000,000;

by striking $2,500,000 and inserting $5,000,000;

by striking $5,000,000 and inserting $9,500,000.]

Section 2B3.2(b)(2) is amended by striking $10,000 and inserting $20,000.

Sections 2B3.3(b)(1), 2B4.1(b)(1), 2B5.1(b)(1), 2B5.3(b)(1), and 2B6.1(b)(1) are each amended—

[Option 1:

By striking $2,000 and inserting $3,000; and

by striking $5,000 both places such term appears and inserting $7,000.]

[Option 2:

By striking $2,000 and inserting $2,500; and

by striking $5,000 both places such term appears and inserting $6,500.]

Sections 2C1.1(b)(2), 2C1.2(b)(2), and 2C1.8(b)(1) are each amended—

[Option 1:

By striking $5,000 and inserting $7,000.]

[Option 2:

By striking $5,000 and inserting $6,500.]

Sections 2E5.1(b)(2) and 2Q2.1(b)(3) are each amended—

[Option 1:

By striking $2,000 and inserting $3,000; and

by striking $5,000 both places such term appears and inserting $7,000.]

[Option 2:

By striking $2,000 and inserting $2,500; and

by striking $5,000 both places such term appears and inserting $6,500.]

Section 2R1.1(b)(2) is amended—

[Option 1:

By striking $1,000,000 each place such term appears and inserting $1,225,000;

by striking $10,000,000 and inserting $12,200,000;

by striking $40,000,000 and inserting $48,800,000;

by striking $100,000,000 and inserting $122,000,000;

by striking $250,000,000 and inserting $305,000,000;

by striking $500,000,000 and inserting $610,000,000;

by striking $1,000,000,000 and inserting $1,220,000,000;

by striking $1,500,000,000 and inserting $1,830,000,000.]

[Option 2:

By striking $1,000,000 each place such term appears and inserting $1,000,000;

by striking $10,000,000 and inserting $10,000,000;

by striking $40,000,000 and inserting $50,000,000;

by striking $100,000,000 and inserting $100,000,000;

by striking $250,000,000 and inserting $300,000,000;

by striking $500,000,000 and inserting $600,000,000;

by striking $1,000,000,000 and inserting $1,200,000,000;

by striking $1,500,000,000 and inserting $1,850,000,000.]

Section 2T3.1(a) is amended—

[Option 1:

By striking $1,000 both places such term appears and inserting $2,000;

by striking $100 both places such term appears and inserting $200.]

[Option 2:

By striking $1,000 both places such term appears and inserting $1,500;

by striking $100 both places such term appears and inserting $200.]

Section 2T4.1 is amended—

[Option 1:

By striking $2,000 both places such term appears and inserting $3,000;

by striking $5,000 and inserting $7,000;

by striking $12,500 and inserting $15,000;

by striking $30,000 and inserting $40,000;

by striking $80,000 and inserting $110,000;

by striking $200,000 and inserting $275,000;

by striking $400,000 and inserting $525,000;

by striking $1,000,000 and inserting $1,350,000;

by striking $2,500,000 and inserting $3,350,000;

by striking $7,000,000 and inserting $9,375,000;

by striking $20,000,000 and inserting $26,800,000;

by striking $50,000,000 and inserting $67,000,000;

by striking $100,000,000 and inserting $134,000,000;

by striking $200,000,000 and inserting $268,000,000; and

by striking $400,000,000 and inserting $536,000,000.]

[Option 2:

By striking $2,000 both places such term appears and inserting $2,500;

by striking $5,000 and inserting $6,500;

by striking $12,500 and inserting $15,000;

by striking $30,000 and inserting $40,000;

by striking $80,000 and inserting $100,000;

by striking $200,000 and inserting $250,000;

by striking $400,000 and inserting $550,000;

by striking $1,000,000 and inserting $1,500,000;

by striking $2,500,000 and inserting $3,500,000;

by striking $7,000,000 and inserting $9,500,000;

by striking $20,000,000 and inserting $25,000,000;

by striking $50,000,000 and inserting $65,000,000;

by striking $100,000,000 and inserting $150,000,000;

by striking $200,000,000 and inserting $250,000,000; and

by striking $400,000,000 and inserting $550,000,000.]

Section 5E1.2(c)(3) is amended—

[Option 1:

In Column A—

by striking $100 and inserting $200;

by striking $250 and inserting $500;

by striking $500 and inserting $1,000;

by striking $1,000 and inserting $2,000;

by striking $2,000 and inserting $4,000;

by striking $3,000 and inserting $6,000;

by striking $4,000 and inserting $8,000;

by striking $5,000 and inserting $10,000;

by striking $6,000 and inserting $10,000;

by striking $7,500 and inserting $15,000;

by striking $10,000 and inserting $20,000;

by striking $12,500 and inserting $25,000;

by striking $15,000 and inserting $30,000;

by striking $17,500 and inserting $35,000;

by striking $20,000 and inserting $40,000;

by striking $25,000 and inserting $50,000;

and in Column B—

by striking $5,000 each place such term appears and inserting $10,000;

by striking $10,000 and inserting $20,000;

by striking $20,000 and inserting $40,000;

by striking $30,000 and inserting $55,000;

by striking $40,000 and inserting $75,000;

by striking $50,000 and inserting $95,000;

by striking $60,000 and inserting $110,000;

by striking $75,000 and inserting $140,000;

by striking $100,000 and inserting $190,000;

by striking $125,000 and inserting $250,000;

by striking $150,000 and inserting $275,000;

by striking $175,000 and inserting $325,000;

by striking $200,000 and inserting $375,000; and

by striking $250,000 and inserting $475,000.]

[Option 2:

In Column A—

by striking $100 and inserting $200;

by striking $250 and inserting $500;

by striking $500 and inserting $1,000;

by striking $1,000 and inserting $2,000;

by striking $2,000 and inserting $4,000;

by striking $3,000 and inserting $5,500;

by striking $4,000 and inserting $7,500;

by striking $5,000 and inserting $10,000;

by striking $6,000 and inserting $10,000;

by striking $7,500 and inserting $15,000;
by striking $10,000 and inserting $20,000;
by striking $12,500 and inserting $25,000;
by striking $15,000 and inserting $30,000;
by striking $17,500 and inserting $35,000;
by striking $20,000 and inserting $40,000;
by striking $25,000 and inserting $50,000;
and in Column B—
by striking $5,000 each place such term appears and inserting $9,500;
by striking $10,000 and inserting $20,000;
by striking $20,000 and inserting $40,000;
by striking $30,000 and inserting $55,000;
by striking $40,000 and inserting $75,000;
by striking $50,000 and inserting $95,000;
by striking $60,000 and inserting $100,000;
by striking $75,000 and inserting $150,000;
by striking $100,000 and inserting $200,000;
by striking $125,000 and inserting $250,000;
by striking $150,000 and inserting $300,000;
by striking $175,000 and inserting $350,000;
by striking $200,000 and inserting $400,000; and
by striking $250,000 and inserting $500,000.]

Section 8C2.4(d) is amended—

[Option 1:

By striking $5,000 and inserting $9,000;
by striking $7,500 and inserting $15,000;
by striking $10,000 and inserting $15,000;
by striking $15,000 and inserting $25,000;
by striking $20,000 and inserting $35,000;
by striking $30,000 and inserting $50,000;
by striking $40,000 and inserting $70,000;
by striking $60,000 and inserting $100,000;
by striking $85,000 and inserting $150,000;
by striking $125,000 and inserting $225,000;
by striking $175,000 and inserting $300,000;
by striking $250,000 and inserting $425,000;
by striking $350,000 and inserting $600,000;
by striking $500,000 and inserting $875,000;
by striking $650,000 and inserting $1,125,000;
by striking $910,000 and inserting $1,575,000;
by striking $1,200,000 and inserting $2,100,000;
by striking $1,600,000 and inserting $2,775,000;
by striking $2,100,000 and inserting $3,650,000;
by striking $2,800,000 and inserting $4,875,000;
by striking $3,700,000 and inserting $6,450,000;
by striking $4,800,000 and inserting $8,350,000;
by striking $6,300,000 and inserting $10,950,000;
by striking $8,100,000 and inserting $14,100,000;
by striking $10,500,000 and inserting $18,275,000;
by striking $13,500,000 and inserting $23,500,000;
by striking $17,500,000 and inserting $30,450,000;
by striking $22,000,000 and inserting $38,275,000;
by striking $28,500,000 and inserting $49,600,000;
by striking $36,000,000 and inserting $62,650,000;
by striking $45,500,000 and inserting $79,175,000;
by striking $57,500,000 and inserting $100,050,000;
by striking $72,500,000 and inserting $126,150,000.]

[Option 2:

by striking $5,000 and inserting $8,500;
by striking $7,500 and inserting $15,000;
by striking $10,000 and inserting $15,000;
by striking $15,000 and inserting $25,000;
by striking $20,000 and inserting $35,000;
by striking $30,000 and inserting $50,000;
by striking $40,000 and inserting $70,000;
by striking $60,000 and inserting $100,000;
by striking $85,000 and inserting $150,000;
by striking $125,000 and inserting $200,000;
by striking $175,000 and inserting $300,000;
by striking $250,000 and inserting $450,000;
by striking $350,000 and inserting $600,000;
by striking $500,000 and inserting $850,000;
by striking $650,000 and inserting $1,000,000;
by striking $910,000 and inserting $1,500,000;
by striking $1,200,000 and inserting $2,000,000;
by striking $1,600,000 and inserting $3,000,000;
by striking $2,100,000 and inserting $3,500,000;
by striking $2,800,000 and inserting $5,000,000;
by striking $3,700,000 and inserting $6,500,000;
by striking $4,800,000 and inserting $8,500,000;
by striking $6,300,000 and inserting $10,000,000;
by striking $8,100,000 and inserting $15,000,000;
by striking $10,500,000 and inserting $20,000,000;
by striking $13,500,000 and inserting $25,000,000;
by striking $17,500,000 and inserting $30,000,000;
by striking $22,000,000 and inserting $40,000,000;
by striking $28,500,000 and inserting $50,000,000;
by striking $36,000,000 and inserting $65,000,000;
by striking $45,500,000 and inserting $80,000,000;
by striking $57,500,000 and inserting $100,000,000;
by striking $72,500,000 and inserting $150,000,000.]

Issues for Comment

1. The Commission seeks comment on whether the monetary tables in the guidelines should be adjusted for inflation. The monetary tables set forth in the proposed amendment relate to a variety of different offenses and apply to a number of different criminal statutes. Given the difference between the types of offenses, should all monetary tables be adjusted for inflation in the same way? Does the type of offenses or statutory provisions related to any of the monetary tables suggest that it should not be adjusted for inflation?

2. As set forth in the proposed amendment, should an adjustment for inflation be made during the 2014–2015 amendment cycle? Should the Commission make it a practice to make, or consider making, an inflationary adjustment at periodic intervals, such as every four or ten years, or at particular inflationary measures, such as when $1.00 in the year the table was last adjusted has the same buying power as $1.25 or $1.33 or $1.50 in the current year? Should the Commission

incorporate directly into the guidelines a mechanism for automatically adjusting for inflation?

3. In each of the options presented above, the amounts associated with the offense level increases in the monetary tables would be adjusted for inflation. The Commission seeks comment on whether the changes, if any, to account for inflation should be made using a different methodology than the options presented above. Should the changes be based on a different indicator than the changes to the Consumer Price Index? Should the changes be based on different time frames than the ones provided? Should the changes be rounded using a different method than presented in the options above?

4. The Commission seeks comment on whether, in addition to or instead of any of the options above, the Commission should consider any other changes to the monetary tables, such as to promote proportionality or to reduce complexity.

5. There are 18 other Chapter Two guidelines that refer to the loss table at § 2B1.1(b)(1) (*see* §§ 2B1.4, 2B1.5, 2B2.3, 2B3.3, 2B4.1, 2B5.1, 2B5.3, 2B6.1, 2C1.1, 2C1.2, 2C1.8, 2E5.1, 2G2.2, 2G3.1, 2G3.2, 2Q2.1, 2S1.1, 2S1.3); 1 other Chapter Two guideline that refers to the loss table at § 2B3.1(b)(7) (*see* § 2B3.2); and 8 other Chapter Two guidelines that refer to the tax table at § 2T4.1 (*see* §§ 2E4.1, 2T1.1, 2T1.4, 2T1.6, 2T1.7, 2T1.9, 2T2.1, 2T3.1). If the Commission were to adjust the monetary tables in the guidelines, should the revised tables apply to these other guidelines as well? In the alternative, should the Commission provide separate, alternative monetary tables specifically for these other guidelines? If so, which ones?

6. Are there other places in the guidelines that refer to monetary values that should be adjusted, if the Commission were to adjust the tables in the guidelines?

5. Mitigating Role

Synopsis of Proposed Amendment: This proposed amendment is a result of the Commission's study of the operation of § 3B1.2 (Mitigating Role) and related provisions in the *Guidelines Manual. See* United States Sentencing Commission, ''Notice of Final Priorities,'' 79 FR 49378 (Aug. 20, 2014).

First, there are differences among the circuits about what determining the ''average participant'' requires. The Seventh and Ninth Circuits have concluded that the ''average participant'' means only those persons who actually participated in the criminal activity at issue in the defendant's case, so that the defendant's relative culpability is determined only by reference to his or her co-participants. *See, e.g., United States* v. *Benitez,* 34 F.3d 1489, 1498 (9th Cir. 1994) (explaining that ''the relevant comparison . . . is to the conduct of co-participants in the case at hand.''); *United States* v. *Cantrell,* 433 F.3d 1269, 1283 (9th Cir. 2006) (''While a comparison to the conduct of a hypothetical average participant may be appropriate in determining whether a downward adjustment is warranted at all, the relevant comparison in determining which of the § 3B1.2 adjustments to grant a given defendant is to the conduct of co-participants in the case at hand.'') (internal quotations omitted); *United States* v. *DePriest,* 6 F.3d 1201, 1214 (7th Cir. 1993) (''The controlling standard for an offense level reduction under [§ 3B1.2] is whether the defendant was substantially less culpable than the conspiracy's other participants.''). The First and Second Circuits have concluded that the ''average participant'' also includes typical offenders who commit similar crimes. *See, e.g., United States* v. *Santos,* 357 F.3d 136, 142 (1st Cir. 2004) (''[A] defendant must prove that he is both less culpable than his cohorts in the particular criminal endeavor and less culpable than the majority of those within the universe of persons participating in similar crimes.''); *United States* v. *Rahman,* 189 F.3d 88, 159 (2d Cir. 1999) (''A reduction will not be available simply because the defendant played a lesser role than his co-conspirators; to be eligible for a reduction, the defendant's conduct must be 'minor' or 'minimal' as compared to the average participant in such a crime.''). Under this latter approach, courts will ordinarily consider the defendant's culpability relative both to his co-participants and to the typical offender. The proposed amendment would generally adopt the approach of the Seventh and Ninth Circuits.

Second, the Commentary to § 3B1.2 provides that certain individuals who perform limited functions in criminal activity are not precluded from consideration for a mitigating role adjustment. The proposed amendment would revise this language to state that such an individual may receive a mitigating role adjustment.

Third, the proposed amendment provides a non-exhaustive list of factors for the court to consider in determining whether to apply a mitigating role adjustment and, if so, the amount of the adjustment.

An issue for comment is also included.

Proposed Amendment

The Commentary to § 3B1.2 captioned ''Application Notes'' is amended in Note 3(A) by inserting after ''that makes him substantially less culpable than the average participant'' the following: ''in the criminal activity'', by striking ''concerted'' and inserting ''the'', by striking ''is not precluded from consideration for'' each place such term appears and inserting ''may receive'', by striking ''role'' both places such term appears and inserting ''participation'', and by striking ''personal gain from a fraud offense and who had limited knowledge'' and inserting ''personal gain from a fraud offense or who had limited knowledge'';

in Note 3(C) by inserting at the end the following new paragraph:

''In determining whether to apply subsection (a) or (b), or an intermediate adjustment, the court should consider the following non-exhaustive list of factors:

(i) the degree to which the defendant understood the scope and structure of the criminal activity;

(ii) the degree to which the defendant participated in planning or organizing the criminal activity; and

(iii) the degree to which the defendant stood to benefit from the criminal activity.'';

in Note 4 by striking ''concerted'' and inserting ''the criminal'';

and in Note 5 by inserting after ''than most participants'' the following: ''in the criminal activity''.

Issue for Comment

1. The Commission seeks comment on the application of the mitigating role adjustment. Are there application issues relating to this adjustment that the Commission should address and, if so, how should the Commission address them?

The proposed amendment would provide additional guidance on applying the mitigating role adjustment. Is the additional guidance in the proposed amendment appropriate? What additional or different guidance should the Commission provide on applying mitigating role adjustments?

6. Flavored Drugs

Issue for Comment

1. The Commission seeks comment on offenses in which controlled substances are colored, packaged, or flavored in ways that appear to be designed to attract use by children. How prevalent are these offenses, and do the guidelines adequately address these offenses?

The Commission has received comment, for example, that drugs are

being flavored with additives to make them taste like candy, with flavors such as strawberry, lemon, coconut, cinnamon and chocolate, and are being marketed in smaller amounts, making them cheaper and more accessible to children. The Commission has also received comment about incidents in which candy and soft drinks were laced with marijuana and packaged to look like well-known, brand-name products.

Under the Controlled Substances Act, a person who distributes a controlled substance to a person under 21 years of age is generally subject to twice the statutory maximum term of imprisonment that would otherwise apply, and a statutory minimum term of imprisonment of one year, unless a higher statutory minimum applies. *See* 21 U.S.C. 859(a). If such a person already has a prior conviction under section 859, he or she is generally subject to three times the statutory maximum term of imprisonment that would otherwise apply. *See* 21 U.S.C. 859(b). Notably, these provisions apply only to the distribution of the controlled substance, not to the manufacture of the controlled substance.

The Commission seeks comment on whether the guidelines provide appropriate penalties for offenders who manufacture or create drugs that are packaged or modified by coloring or flavoring with the intent of appealing to children, or who combine drugs with candy or soft drinks with the intent of appealing to children. If not, how should the Commission revise the guidelines to provide appropriate penalties in such cases? Should the Commission provide new departure provisions, enhancements, adjustments, or minimum offense levels to account for such offenses? If so, what provision or provisions should the Commission provide, and what penalty increase should be provided?

If the Commission were to provide such a provision, what specific offense conduct, harm, or other factor should be the basis for applying the provision? For example, should the provision apply to any type of manufacturing conduct as long as the defendant had the specific intent to appeal to children? Or should the provision apply without regard to specific intent, as long as a specific type of offense conduct was involved, such as (1) combining with soft drinks or candy, (2) marketing or packaging to look like soft drinks or candy, or (3) flavoring or coloring?

Should the provision take the form of a specific instruction to apply a vulnerable victim adjustment under subsection (b) of § 3A1.1 (Hate Crime Motivation or Vulnerable Victim)? For example, should the Commission provide a specific instruction at § 2D1.1(d)(2) stating that, if a specific objective of the offense was to manufacture a controlled substance product for marketing to, or use by, minors, an adjustment under § 3A1.1(b) would apply?

7. Hydrocodone

Synopsis of Proposed Amendment: This proposed amendment addresses the new statutory penalty structure for offenses involving hydrocodone and hydrocodone combination products in light of two recent administrative actions. As a result of those actions, all hydrocodone products are now schedule II controlled substances rather than schedule III controlled substances.

A. Until Recently, the Scheduling of Hydrocodone Has Depended on Whether It Is a Single-Entity Product (Schedule II) or a Combination Product (Schedule III)

Products featuring hydrocodone in combination with one or more unscheduled active pharmaceutical ingredients have been schedule III controlled substances, until recently. Such ''hydrodocone combination'' products are the most frequently prescribed opioids in the United States, with nearly 137 million prescriptions for such products dispensed in 2013, according to the Drug Enforcement Administration. *See* Drug Enforcement Administration, ''Schedules of Controlled Substances: Rescheduling of Hydrocodone Combination Products From Schedule III to Schedule II,'' 79 FR 49661 (August 22, 2014). There are several hundred hydrocodone combination products on the market. The hydrocodone combination products that were most frequently prescribed in 2013 were combinations of hydrocodone and acetaminophen, with brand names such as Vicodin and Lortab as well as generics. *Id.*

In contrast, single-entity, or ''standalone,'' hydrocodone products have been, and continue to be, schedule II controlled substances. However, there have been no single-entity hydrocodone products on the United States market, until recently.

B. All Hydrocodone Products Are Now Schedule II Controlled Substances

Two recent administrative actions have had the effect of moving all offenses involving hydrocodone (whether in combination or standing alone) to schedule II.

First, in October 2013 the Food and Drug Administration approved a single-entity hydrocodone product (brand name Zohydro), the first such product to be approved for the United States market. According to the Food and Drug Administration, Zohydro is ''an opioid analgesic medication for the management of moderate to severe chronic pain when a continuous, around-the-clock opioid analgesic is needed for an extended period of time.'' It is marketed in extended-release capsules and formulated in dose strengths up to 50 milligrams. *See* Food and Drug Administration, ''Anesthetic and Analgesic Drug Products Advisory Committee: Notice of Meeting,'' 77 FR 67380 (November 9, 2012). As mentioned above, such a product is a schedule II controlled substance. Other single-entity hydrocodone products are also being considered for the U.S. market.

Second, the Drug Enforcement Administration published a final rule that moved all hydrocodone combination products from schedule III to schedule II. *See* Drug Enforcement Administration, ''Schedules of Controlled Substances: Rescheduling of Hydrocodone Combination Products From Schedule III to Schedule II,'' 79 FR 49661 (August 22, 2014). This action imposes stronger regulatory controls and administrative and civil sanctions on persons who handle hydrocodone combination products. As discussed in more detail below, it also changes the statutory and guideline penalty structure for offenses involving hydrocodone combination products.

C. The Statutory and Guideline Penalty Structures

By statute, an offense involving a schedule III controlled substance has a statutory maximum term of imprisonment of 10 years, unless certain aggravating factors are present (such as a prior conviction for a felony drug offense or the use of the substance resulting in death or bodily injury). *See* 21 U.S.C. 841(b)(1)(E). An offense involving a schedule II controlled substance, in contrast, has a statutory maximum term of imprisonment of 20 years, unless such an aggravating factor is present. *See* 21 U.S.C. 841(b)(1)(C).

Under the guidelines, an offense involving ''schedule III hydrocodone'' generally has a base offense level determined by the number of pills, tablets, or capsules, without regard to the weight of the pills, tablets, or capsules or the quantity of hydrocodone in them. The base offense levels for schedule III hydrocodone range from a minimum of level 6 to a maximum of level 30, and quantity is determined by a marijuana equivalency under which 1

''unit'' (*i.e.,* 1 pill, tablet, or capsule) equals 1 gram of marijuana.

An offense involving schedule II hydrocodone generally has a base offense level determined by the weight of the entire pill, tablet, or capsule involved. The base offense levels for schedule II hydrocodone range from a minimum of level 12 to a maximum of level 38, and quantity is determined by a marijuana equivalency under which 1 gram of the pills, tablets, or capsules equals 500 grams of marijuana.

D. The Proposed Amendment Deletes the Reference to ''Schedule III Hydrocodone'' and Proposes a Marijuana Equivalency Using ''Hydrocodone (Actual)''

The proposed amendment responds to the administrative actions in two ways. First, the proposed amendment deletes references in the guidelines to ''Schedule III Hydrocodone.'' In light of the rescheduling of hydrocodone combination products from schedule III to schedule II, the references to schedule III hydrocodone are obsolete.

Second, the proposed amendment provides a single marijuana equivalency for hydrocodone offenses, whether single-entity or in combination, that is based on the actual weight of the hydrocodone involved rather than the number of pills involved or the weight of an entire pill. Specifically, a marijuana equivalency under which 1 gram of ''hydrocodone (actual)'' equates to [4,467]/[6,700] grams of marijuana is proposed.

The use of an ''actual'' approach for hydrocodone in the proposed amendment is informed by the Commission's decision in 2003 to use an ''actual'' approach for oxycodone. *See* USSG App. C, amend. 657 (effective November 1, 2003). Oxycodone is an opium alkaloid found in certain prescription pain relievers such as Percocet and OxyContin, generally sold in pill form. The Commission determined that a penalty structure based on the weight of the entire pill resulted in proportionality issues because (1) products come in different pill sizes and formulations and (2) products of the same size and formulation come in different dosages, containing different amounts of oxycodone. The Commission remedied these proportionality issues by adopting a penalty structure for oxycodone offenses using the weight of the actual oxycodone instead of the weight of the entire pill. *See* USSG App. C, amend. 657 (Reason for Amendment).

Such proportionality issues may also arise with offenses involving hydrocodone products, to the extent those products come in different pill sizes, formulations, or dosages. The proposed use of an ''actual'' approach for hydrocodone would address these proportionality issues by providing sentences for hydrocodone offenses using the weight of the actual hydrocodone instead of the number of pills or the weight of an entire pill.

The rescheduling of hydrocodone combination products also raises severity issues, and the proposed amendment addresses the severity issues by bracketing two possible severity levels, one that assigns hydrocodone (actual) the same marijuana equivalency as oxycodone (actual), and one that assigns a lower marijuana equivalency. The higher severity level (6,700 gm) is based on a 1:1 ratio of hydrocodone to oxycodone in marijuana equivalency, which would reflect a view that equivalent amounts of hydrocodone and oxycodone cause the same pharmacological effects on the body. The lower severity level (4,467 gm) is based on a 3:2 ratio of hydrocodone to oxycodone in marijuana equivalency, which would reflect a view that it takes more hydrocodone than oxycodone to achieve the same pharmacological effects on the body. *Compare* ''Dosing Data for Clinically Employed Opioid Analgesics'' in *Goodman and Gilman's The Pharmacological Basis of Therapeutics,* 12th edition (2011), p. 496 (recommending equivalent amounts of hydrocodone and oxycodone) *with* University of Chicago Department of Palliative Care, Opioid Analgesic Chart, *available at http://champ.bsd.uchicago.edu/documents/Pallpaincard2009update.pdf* (recommending 15 milligrams of hydrocodone as equivalent to 10 milligrams of oxycodone).

A multi-part issue for comment is also provided, seeking comment on hydrocodone offenses and offenders and how the proportionality and severity issues raised by the administrative actions should be addressed, either by the approach taken in the proposed amendment or some other manner.

Proposed Amendment

Sections 2D1.1(c) is amended in subdivisions (5), (6), (7), (8) and (9) by striking the lines referenced to Schedule III Hydrocodone;

and in subdivisions (10), (11), (12), (13), (14), (15), (16) and (17) by striking the lines referenced to Schedule III Hydrocodone, and in the lines referenced to Schedule III substances (except Ketamine or Hydrocodone) by striking ''or Hydrocodone''.

The annotation to § 2D1.1(c) captioned ''Notes to Drug Quantity Table'' is amended in Note (B) in the last paragraph by striking ''The term 'Oxycodone (actual)' refers'' and inserting ''The terms 'Hydrocodone (actual)' and 'Oxycodone (actual)' refer''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 8(D), under the heading relating to Schedule I or II Opiates, by striking the line referenced to Hydrocodone/Dihydrocodeinone and inserting the following:

''1 gm of Hydrocodone (actual) = [4467]/[6700] gm of marihuana'';

in the heading relating to Schedule III Substances (except ketamine and hydrocodone) by striking ''and hydrocodone'' both places such term appears;

and in the heading relating to Schedule III Hydrocodone by striking the heading and subsequent paragraphs as follows:

''*Schedule III Hydrocodone* * * *

1 unit of Schedule III hydrocodone = 1 gm of marihuana

* * * Provided, that the combined equivalent weight of all Schedule III substances (except ketamine), Schedule IV substances (except flunitrazepam), and Schedule V substances shall not exceed 2,999.99 kilograms of marihuana.'';

and in Note 27(C) by inserting after ''methamphetamine,'' the following ''hydrocodone,''.

Issue for Comment

1. The Commission seeks comment on how, if at all, the guidelines for hydrocodone trafficking should be changed, such as to address the administrative actions described in the synopsis above, and the severity and proportionality issues that may result from those actions.

A. Proportionality

The proposed amendment would provide a marijuana equivalency for hydrocodone based on the actual weight of the controlled substance rather than on the number of pills or the weight of an entire pill. As discussed in the synopsis above, the Commission has used such an ''actual'' approach for offenses involving oxycodone. Is the use of an ''actual'' approach for hydrocodone offenses appropriate to address the proportionality issues that arise from differing pill sizes, formulations, and dosages?

In the alternative, should the Commission continue to provide a marijuana equivalency for hydrocodone based on the entire weight of the pill?

If so, how, if at all, should the Commission address the proportionality issues that arise to the extent there are differing pill sizes, formulations, or dosages? For example, should the guidelines continue to distinguish between single-entity hydrocodone products and hydrocodone combination products? What distinctions, if any, should be made?

B. Severity

Whether the Commission continues to provide a marijuana equivalency for hydrocodone based on the entire weight of the pill or provides a marijuana equivalency using an ''actual'' approach (as proposed by the proposed amendment), the Commission seeks comment on what marijuana equivalency or equivalencies should be provided for hydrocodone trafficking, in light of the first-ever approval of a hydrocodone single-entity product and the rescheduling of hydrocodone combination products from schedule III to schedule II.

Under the current guidelines, a schedule III hydrocodone product has a marijuana equivalency based on the number of pills, at 1 unit = 1 gram marijuana, and a schedule II hydrocodone product has a marijuana equivalency based on the weight of the entire pill, at 1 gram = 500 grams marijuana. In light of the rescheduling, the entry for schedule III hydrocodone products is obsolete, and all hydrocodone combination products are schedule II controlled substances, with a marijuana equivalency based on the weight of the entire pill, at 1 gram = 500 grams marijuana.

If the Commission were to continue to use the entire weight of the pill for all hydrocodone offenses, is this severity level (1 gram = 500 grams marijuana) appropriate? Should the Commission establish a different equivalency for all hydrocodone offenses, or several equivalencies, such as one equivalency for single-entity products and another for combination products? If so, what equivalency or equivalencies should the Commission provide?

In the alternative, if the Commission were to use the ''actual'' approach in the proposed amendment, what marijuana equivalency should be used? Should 1 gram of hydrocodone (actual) equate to [4,467] grams of marijuana, or to [6,700] grams of marijuana? Or should the Commission establish a different equivalency than either of these? If so, what equivalency should the Commission provide?

C. General Comment on Hydrocodone Offenses and Offenders

In determining the marijuana equivalencies for controlled substances, the Commission has considered, among other things, the chemical structure, the pharmacological effects, the potential for addiction and abuse, the patterns of abuse and harms associated with abuse, and the patterns of trafficking and harms associated with trafficking.

The Commission invites general comment on hydrocodone offenses and hydrocodone offenders and how these offenses and offenders compare with other drug offenses and drug offenders. For example, how is hydrocodone manufactured, distributed, and marketed? How is it diverted? Once diverted, how is it distributed, possessed, and used? What are the characteristics of the offenders involved in these various activities? What harms are posed by these activities?

Is the chemical structure of hydrocodone substantially similar to the chemical structure of a any other controlled substance referenced in § 2D1.1? If so, to what substance?

Is the effect on the central nervous system of hydrocodone substantially similar to the effect of any other controlled substance referenced in § 2D1.1? If so, to what substance? Is the quantity of hydrocodone needed to produce that effect lesser or greater than the quantity needed of the other such substance? If so, what is the difference in relative potency?

The Commission specifically invites comment on whether hydrocodone is similar to oxycodone. If so, should the Commission provide a marijuana equivalency for hydrocodone on this basis, *e.g.,* by specifying a marijuana equivalency for hydrocodone (actual) equal to the marijuana equivalency for oxycodone (actual), which is 1 gram oxycodone (actual) = 6700 grams of marijuana?

8. Economic Crime

Synopsis of Proposed Amendment: This proposed amendment is a result of the Commission's multi-year study of § 2B1.1 (Theft, Property, Destruction, and Fraud), and related guidelines, including examination of the loss table, the definition of loss, role in the offense, and offenses involving fraud on the market. *See* United States Sentencing Commission, ''Notice of Final Priorities,'' 79 FR 49378 (Aug. 20, 2014).

The proposed amendment contains four parts. The Commission is considering whether to promulgate any one or more of these parts, as they are not necessarily mutually exclusive. They are as follows:

Part A revises the definition of ''intended loss'' at § 2B1.1, comment. (n.3(A)(ii)). Two options are presented, one of which would reflect certain principles discussed in the Tenth Circuit's decision in *United States* v. *Manatau,* 647 F.3d 1048 (10th Cir. 2011). Issues for comment on intended loss are also provided.

Part B addresses the impact of the victims table in § 2B1.1(b)(2). It proposes to establish a new enhancement for cases where one or more victims suffered substantial [financial] hardship and to reduce the levels of enhancement that apply based solely on the number of victims. Two options are provided. It includes issues for comment on the victims table and other provisions relating to victims.

Part C revises the specific offense characteristic for sophisticated means in subsection (b)(10)(C) in several ways. An issue for comment is also included.

Part D addresses offenses involving fraud on the market and related offenses. Issues for comment are also included.

(A) Intended Loss

Synopsis of Proposed Amendment: This part of the proposed amendment revises the definition of ''intended loss'' at § 2B1.1, comment. (n.3(A)(ii)). While the current definition for intended loss was added as part of the Economic Crime Package in 2001, *see* USSG App. C, amend. 617 (eff. Nov. 1, 2001), the concept of intended loss has been included in the fraud and theft guidelines since the inception of the guidelines, *see* USSG § 2F1.1, comment. (n.7) (1987). Note 3(A)(ii) states that ''intended loss''—

(I) means the pecuniary harm that was intended to result from the offense; and (II) includes intended pecuniary harm that would have been impossible or unlikely to occur (*e.g.,* as in a government sting operation, or an insurance fraud in which the claim exceeded the insured value).

The Commission has received comment expressing concern regarding the operation of intended loss, including suggestions that the Commission consider certain revisions to better reflect a defendant's culpability. In addition to these comments, the Commission has observed some disagreement in the case law regarding whether intended loss requires a subjective or objective inquiry. In *United States* v. *Manatau,* 647 F.3d 1048 (10th Cir. 2011), the Tenth Circuit held that a subjective inquiry is required, which is similar to holdings in the Second, Third and Fifth Circuits. *See United States* v. *Confredo,*

528 F.3d 143, 152 (2d Cir. 2008) (remanding for consideration of whether defendant had ''proven a subjective intent to cause a loss of less than the aggregate amount'' of fraudulent loans); *United States* v. *Kopp,* 951 F.2d 521 (3d Cir. 1991) (holding that intended loss is the loss the defendant subjectively intended to inflict on the victim); *United States* v. *Diallo,* 710 F.3d 147, 151 (3d Cir. 2013) (''To make this determination, we look to the defendant's subjective expectation, not to the risk of loss to which he may have exposed his victims.''); *United States* v. *Sanders,* 343 F.3d 511, 527 (5th Cir. 2003) (''our case law requires the government prove by a preponderance of the evidence that the defendant had the subjective intent to cause the loss that is used to calculate his offense level''). On the other hand, the First and the Seventh Circuits have issued decisions that support a more objective inquiry. *See United States* v. *Innarelli,* 524 F.3d 286, 291 (1st Cir. 2008) (''we focus our loss inquiry for purposes of determining a defendant's offense level on the objectively reasonable expectation of a person in his position at the time he perpetrated the fraud, not on his subjective intentions or hopes''); *United States* v. *Lane,* 323 F.3d 568, 590 (7th Cir. 2003) (''The determination of intended loss under the Sentencing Guidelines therefore focuses on the conduct of the defendant and the objective financial risk to victims caused by that conduct'').

The Commission is publishing this proposed amendment and issues for comment to inform the Commission's consideration of these issues. Two options are bracketed for comment. They are as follows:

Option 1 would state that intended loss means the pecuniary harm ''that the defendant purposely sought to inflict'' and that the defendant's purpose may be inferred from all available facts. This would reflect certain principles discussed in the Tenth Circuit's decision in *United States* v. *Manatau,* 647 F.3d 1048 (10th Cir. 2011). In *Manatau,* the defendant was convicted of bank fraud and aggravated identity theft. The district court determined that the intended loss should be determined by adding up the credit limits of the stolen convenience checks, because a loss up to those credit limits was ''both possible and potentially contemplated by the defendant's scheme.'' 647 F.3d at 1049–1050. On appeal, the Tenth Circuit reversed, holding that ''intended loss'' contemplates ''a loss the defendant purposely sought to inflict,'' and that the appropriate standard was one of ''subjective intent to cause the loss.'' 647 F.3d at 1055. Such an intent, the court held, may be based on making ''reasonable inferences about the defendant's mental state from the available facts.'' 647 F.3d at 1056.

Option 2 is similar to Option 1, but would also encompass the pecuniary harm that any other participant purposely sought to inflict, if the defendant was accountable under § 1B1.3(a)(1)(A) for the other participant.

Issues for comment on intended loss are also provided.

Proposed Amendment

[Option 1:

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 3(A)(ii) by striking ''(I) means the pecuniary harm that was intended to result from the offense; and'' and inserting ''(I) means the pecuniary harm that the defendant purposely sought to inflict; and''; and by adding at the end the following new paragraph:

''The defendant's purpose may be inferred from all available facts, including the defendant's actions, the actions and intentions of other participants, and the natural and probable consequences of those actions.''.]

[Option 2:

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 3(A)(ii) by striking ''(I) means the pecuniary harm that was intended to result from the offense; and'' and inserting ''(I) means (a) the pecuniary harm that the defendant purposely sought to inflict and (b) the pecuniary harm that any other participant purposely sought to inflict, if the defendant was accountable under § 1B1.3(a)(1)(A) for the other participant; and''; and by adding at the end the following new paragraph:

''An individual's purpose may be inferred from all available facts, including the individual's actions, the actions and intentions of other participants, and the natural and probable consequences of those actions.''.]

Issues for Comment

1. The Commission seeks comment on whether the definition of ''intended loss'' should be revised or refined, in the manner contemplated by the proposed amendment or in some other manner, to clarify or simplify guideline operation or for other reasons consistent with the purposes of sentencing. What changes, if any, should the Commission make to the definition of ''intended loss''?

How should the definition of ''intended loss'' interact with other parts of the guidelines? For example:

(A) Should intended loss be limited to the amount the defendant personally intended, or should it also include amounts intended by other participants, such as participants (i) that the defendant aided and abetted, and/or (ii) that were in a jointly undertaken criminal activity with the defendant?

(B) How should intended loss interact with the commentary relating to partially completed offenses in § 2B1.1, Application Note 18 (providing that, in the case of a partially completed offense, the offense level is to be determined in accordance with the provisions of § 2X1.1 (Attempt, Solicitation, or Conspiracy))?

2. Section 2B1.1 provides that for the determination of loss under subsection (b)(1), the court shall use the greater of ''actual loss'' or ''intended loss.'' Should intended loss be limited in some manner?

(B) Victims Table

Synopsis of Proposed Amendment: This part of the proposed amendment addresses issues relating to the impact of the victims table in § 2B1.1(b)(2) as well as other provisions relating to victims in § 2B1.1.

The victims table provides a tiered enhancement based on the number of victims. It provides an enhancement of 2 levels if the offense involved 10 or more victims or was committed through mass-marketing; 4 levels if the offense involved 50 or more victims; and 6 levels if the offense involved 250 or more victims.

First, the proposed amendment provides a new enhancement at subsection (b)(3)(A) that applies if the offense resulted in substantial [financial] hardship to one or more victims. Two options are presented. Under Option 1, the enhancement applies if there are one or more such victims and the amount of the enhancement is bracketed at [2][3][4] levels. Option 2 provides a tiered enhancement based on the number of such victims. Specifically, if there is at least [one] such victim, the enhancement is [1][2] levels; if there are at least [five] such victims, the enhancement is [2][4] levels; and if there are at least [25] such victims, the enhancement is [3][6] levels. The proposed amendment also provides factors for the court to consider in determining whether substantial [financial] hardship resulted. Several of those factors, bracketed in the proposed amendment, are non-monetary and are derived from the upward departure

provision at Application Note 20(A)(vi). The proposed amendment also brackets the possibility of deleting Application Note 20(A)(vi).

Both options also bracket the possibility of a ''cap'' that limits the cumulative impact of subsection (b)(2) and the new (b)(3)(A) to [6] levels.

Second, the proposed amendment revises the impact of the victims table by reducing the enhancements in the table from 2, 4, and 6 levels to 1, 2, and 3 levels, respectively.

Third, the proposed amendment deletes prong (iii) of subsection (b)(16)(B), relating to an offense that substantially endangered the solvency or financial security of 100 or more victims.

Finally, the proposed amendment includes issues for comment on other possible changes to the operation and impact of the victims table and other provisions relating to victims in § 2B1.1.

Proposed Amendment

Section 2B1.1 is amended in subsection (b)(2) by striking ''2 levels'', ''4 levels'', and ''6 levels'' and inserting ''1 level'', ''2 levels'', and ''3 levels'', respectively;

by redesignating subsections (b)(3) through (b)(16) as (b)(4) through (b)(17), respectively (and conforming references to those subsections accordingly);

by inserting after subsection (b)(2) the following new subsection (b)(3):

[Option 1:

''(3)(A) If the offense resulted in substantial [financial] hardship to one or more victims, increase by [2][3][4] levels.

[(B) The cumulative adjustments from application of both subsections (b)(2) and (b)(3)(A) shall not exceed [6] levels.'']];

[Option 2:

''(3)(A) (Apply the greatest) If the offense resulted in substantial [financial] hardship to—

(i) [one] or more victims, increase by [1][2] levels;

(ii) [five] or more victims, increase by [2][4] levels; or

(iii) [25] or more victims, increase by [3][6] levels.

[(B) The cumulative adjustments from application of both subsections (b)(2) and (b)(3)(A) shall not exceed [6] levels.'']]; and

in subsection (b)(17) (as so redesignated) by inserting ''or'' at the end of subdivision (B)(i); by striking ''; or (iii) substantially endangered the solvency or financial security of 100 or more victims''; and by striking ''(b)(16)(B)'' and inserting ''(b)(17)(B)''.

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended by redesignating Notes 5 through 20 as Notes 6 through 21, respectively; by inserting after Note 4 the following new Note 5:

''5. *Enhancement for Substantial [Financial] Hardship (Subsection (b)(3)).*—In determining whether the offense resulted in substantial [financial] hardship to a victim, the court shall consider, among other factors, whether the offense resulted in the victim—

(A) becoming insolvent;

(B) filing for bankruptcy under the Bankruptcy Code (title 11, United States Code);

(C) suffering substantial loss of a retirement, education, or other savings or investment fund;

(D) making substantial changes to his or her employment, such as postponing his or her retirement plans;

(E) making substantial changes to his or her living arrangements, such as relocating to a less expensive home;

[(F) suffering substantial harm to his or her reputation or credit record, or a substantial inconvenience related to repairing his or her reputation or a damaged credit record;]

[(G) being erroneously arrested or denied a job because an arrest record has been made in his or her name;]

[(H) having his or her identity assumed by someone else.]''; and

in Note 21 (as so redesignated) [by striking subdivision (A)(vi)].

Issues for Comment

1. The Commission seeks comment on whether the victims table and other parts of § 2B1.1 adequately address the harms to victims. If not, what if any additional enhancements or other provisions should the Commission provide to address those harms?

Alternatively, should the Commission amend § 2B1.1 to limit the impact of the victims table if no victims were substantially harmed by the offense? For example, should the Commission provide that the 4-level and 6-level prongs of the victim table apply only if the offense substantially endangered the solvency or financial security of at least one victim?

2. The proposed amendment would establish a new enhancement if the offense resulted in substantial [financial] hardship to one or more victims, and provides factors for the court to consider in determining whether the enhancement applies.

The Commission seeks comment on the scope of the enhancement and the factors provided. Should the new enhancement encompass non-monetary harms? If so, what non-monetary harms should it encompass? Should any factors be deleted or changed? Should any additional factors be added? If so, what factors?

How should this new enhancement interact with other provisions in § 2B1.1 that account for harm to victims? For example, how should this new enhancement interact with the victims table in subsection (b)(2), the enhancement for theft from the person of another in subsection (b)(3), the enhancement for means of identification in subsection (b)(11), and the enhancement for unauthorized public dissemination of personal information in subsection (b)(17)(B)? Should this new enhancement be fully cumulative with the victims table and the other enhancements, or should the Commission reduce the cumulative impact of these various provisions?

3. Section 2B1.1(b)(16)(B)(iii) provides a 4-level enhancement if the offense ''substantially endangered the solvency or financial security of 100 or more victims.'' The Commission seeks comment on whether subsection (b)(16)(B)(iii) should be eliminated (as reflected in the proposed amendment) or, in the alternative, whether the number of victims required by subsection (b)(16)(B)(iii) should be reduced. If the number of victims should be reduced, what number of victims should be required?

(C) Sophisticated Means

Synopsis of the Proposed Amendment: As part of its overall examination of § 2B1.1, the Commission is considering issues relating to the application of the sophisticated means enhancement set forth in subsection (b)(10)(C). In doing so, the Commission identified two issues that are the subject of this part of the proposed amendment.

First, the existing enhancement applies if ''the offense otherwise involved sophisticated means.'' Applying this language, courts have applied this enhancement without a determination of whether the defendant's own conduct was ''sophisticated.'' *See, e.g., United States* v. *Bishop-Oyedepo,* 480 Fed. App'x 431, 433–34 (7th Cir. 2012) (affirming enhancement for mortgage loan officer who submitted three fraudulent applications because the other schemer's actions were ''reasonably foreseeable''; stating that ''because [the defendant] knew of the scheme and the scheme as a whole was sophisticated, the adjustment was appropriate regardless of the sophistication of her individual actions''). Relatedly, courts have varied in their analysis as to whether a scheme must be ''sophisticated'' in comparison to any

fraud that could be sentenced under § 2B1.1 or if, instead, the scheme must be sophisticated in comparison to a scheme of the type at issue. *Compare United States* v. *Jones,* 530 F.3d 1292, 1307 (10th Cir. 2008) (affirming application of enhancement because scheme at issue was ''readily distinguishable from less sophisticated means by which the myriad crimes within the ambit of § 2B1.1 may be committed''), *with United States* v. *Wayland,* 549 F.3d 526, 529 (7th Cir. 2008) (affirming application of enhancement because the ''scheme required a greater level of planning or concealment than the typical health care fraud case'') *and United States* v. *Hance,* 501 F.3d 900, 909 (8th Cir. 2007) (stating that the sophisticated means enhancement is appropriate when the ''mail fraud, viewed as a whole, was notably more intricate than that of the garden-variety mail fraud scheme'').

The Commission is publishing this part of the proposed amendment to inform its consideration of whether the enhancement should be revised such that it applies based only on the defendant's conduct rather than offense as a whole, and whether the conduct should be compared only to similar frauds or to all frauds that could fall within the scope of § 2B1.1.

The proposed amendment revises the specific offense characteristic for sophisticated means in subsection (b)(10)(C) in several ways.

Specifically, it specifies that sophisticated means is determined relative to offenses of the same kind, and it narrows the scope of the specific offense characteristic to cases in which the defendant used (rather than the offense involved) sophisticated means.

An issue for comment is also included.

Proposed Amendment

Section 2B1.1(b)(10)(C) is amended by inserting after ''otherwise involved sophisticated means'' the following: ''and the defendant engaged in or caused the conduct constituting sophisticated means''.

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 9 by striking ''Sophisticated Means Enhancement under'' in the heading and inserting ''Application of''; and by striking subdivision (B) as follows:

''(B) *Sophisticated Means Enhancement under Subsection (b)(10)(C).*—For purposes of subsection (b)(10)(C), 'sophisticated means' means especially complex or especially intricate offense conduct pertaining to the execution or concealment of an offense. For example, in a telemarketing scheme, locating the main office of the scheme in one jurisdiction but locating soliciting operations in another jurisdiction ordinarily indicates sophisticated means. Conduct such as hiding assets or transactions, or both, through the use of fictitious entities, corporate shells, or offshore financial accounts also ordinarily indicates sophisticated means.''; and inserting the following new subdivision (B):

''(B) *Sophisticated Means Enhancement under Subsection (b)(10)(C).*—For purposes of subsection (b)(10)(C), 'sophisticated means' means especially complex or especially intricate offense conduct that displays a significantly greater level of planning or employs significantly more advanced methods in executing or concealing the offense than a typical offense of the same kind. Conduct that is common to offenses of the same kind ordinarily does not constitute sophisticated means.

In addition, application of subsection (b)(10)(C) requires not only that the offense involve conduct constituting sophisticated means but also that the defendant engaged in or caused such conduct, *i.e.,* the defendant committed such conduct or the defendant aided, abetted, counseled, commanded, induced, procured, or willfully caused such conduct. *See* § 1B1.3(a)(1)(A).''.

Issue for Comment

1. The proposed amendment would specify that ''sophisticated means'' is determined relative to other offenses of the same kind. What guidance, if any, should the Commission provide for determining what offenses are of the same kind, for purposes of determining sophisticated means? For example, are all telemarketing fraud offenses of the same kind, or should distinctions be made among different kinds of telemarketing fraud offenses, or—conversely—are all telemarketing fraud offenses in fact a subset of a broader category? Similarly, are all theft offenses of the same kind, or are there broader or narrower distinctions that should be made?

(D) Fraud on the Market and Related Offenses

Synopsis of Proposed Amendment: This part of the proposed amendment addresses offenses involving the fraudulent inflation or deflation in the value of a publicly traded security or commodity. The proposed new guideline is a result of the Commission's continued work on fraud offenses and, in particular, in the area of securities fraud and ''fraud on the market'' offenses. *See* 79 FR 49379 (August 20, 2014) (identifying as a Commission priority for the current amendment cycle the continuation of its work on economic crimes, including among other things a study of offenses involving fraud on the market).

The proposed amendment also involves the Commission's past work in implementing the directive in section 1079A(a)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203.

Specifically, section 1079A(a)(1)(A) directed the Commission to ''review and, if appropriate, amend'' the guidelines and policy statements applicable to ''persons convicted of offenses relating to securities fraud or any other similar provision of law, in order to reflect the intent of Congress that penalties for the offenses under the guidelines and policy statements appropriately account for the potential and actual harm to the public and the financial markets from the offenses.''

In addition, section 1079A(a)(1)(B) provided that, in promulgating any such amendment, the Commission shall—

(i) ensure that the guidelines and policy statements, particularly section 2B1.1(b)(14) and section 2B1.1(b)(17) (and any successors thereto), reflect—

(I) the serious nature of the offenses described in subparagraph (A);

(II) the need for an effective deterrent and appropriate punishment to prevent the offenses; and

(III) the effectiveness of incarceration in furthering the objectives described in subclauses (I) and (II);

(ii) consider the extent to which the guidelines appropriately account for the potential and actual harm to the public and the financial markets resulting from the offenses;

(iii) ensure reasonable consistency with other relevant directives and guidelines and Federal statutes;

(iv) make any necessary conforming changes to guidelines; and

(v) ensure that the guidelines adequately meet the purposes of sentencing, as set forth in section 3553(a)(2) of title 18, United States Code.

Securities fraud is prosecuted under 18 U.S.C. 1348 (Securities and commodities fraud), which makes it unlawful to knowingly execute, or attempt to execute, a scheme or artifice (1) to defraud any person in connection with a security or (2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any money or property in connection with the purchase or sale of a security. The statutory maximum term of imprisonment for an offense under section 1348 is 25 years. Offenses under section 1348 are referenced in Appendix

A (Statutory Index) to § 2B1.1 (Theft, Property Destruction, and Fraud).

Securities fraud is also prosecuted under 18 U.S.C. 1350 (Failure of corporate officers to certify financial reports), violations of the provisions of law referred to in 15 U.S.C. 78c(a)(47), and violations of the rules, regulations, and orders issued by the Securities and Exchange Commission pursuant to those provisions of law. *See* § 2B1.1, comment. (n.14(A)). In addition, there are cases in which the defendant committed a securities law violation but is prosecuted under a general fraud statute. In general, these offenses are likewise referenced to § 2B1.1.

Under the proposed amendment, the court is directed to use gain, rather than loss, for purposes of subsection (b)(1) if the offense involved (i) the fraudulent inflation or deflation in the value of a publicly traded security or commodity and (ii) the submission of false information in a public filing with the Securities and Exchange Commission or similar regulator. However, the enhancement under subsection (b)(1) shall be not less than [14]–[22] levels. While cases involving this conduct occur infrequently (the Commission identified seven such cases in fiscal years 2012 and 2013), the Commission has received comment that these cases are complex, resulting in courts applying a variety of methods to determine the appropriate enhancement under subsection (b)(1). In such cases in fiscal years 2012 and 2013, the median enhancement under subsection (b)(1) was 14 levels and the average sentence was 48 months.

As a conforming change, the special rule at Application Note 3(F)(ix), relating to the calculation of loss in cases involving the fraudulent inflation in the value of a publicly traded security or commodity, is deleted.

Issues for comment are also included.

Proposed Amendment

Section 2B1.1 is amended in subsection (b)(1) by adding after subparagraph (P) the following proviso to subsection (b)(1):

''*Provided,* that if the offense involved (i) the fraudulent inflation or deflation in the value of a publicly traded security or commodity and (ii) the submission of false information in a public filing with the Securities and Exchange Commission or similar regulator, the enhancement determined above shall be based on the gain that resulted from the offense rather than the loss. However, the enhancement under subsection (b)(1) shall be not less than [14]–[22] levels.''.

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 3(F) by deleting subdivision (ix).

Issues for Comment

1. In 2012, the Commission responded to directives in the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, by providing, among other things, a special rule for determining actual loss in cases involving the fraudulent inflation or deflation in the value of a publicly traded security or commodity, *see* § 2B1.1, comment. (n.3(F)(ix)), and departure provisions for cases in which there was risk of a significant disruption of a national financial market, *see* § 2B1.1, comment. (n.20(A)(iv)), and cases in which there was a securities fraud involving a fraudulent statement made publicly to the market, *see* § 2B1.1, comment. (n.20(C)).

The Commission seeks comment on the operation of these provisions and whether they adequately address ''fraud on the market'' cases and similar types of cases involving the financial markets. Should the Commission revise these provisions to better address these types of cases? If so, how? Should the Commission make any other changes to the guidelines to address these types of cases? If so, what changes should the Commission make? For example, should the Commission provide a separate guideline for these cases? In the alternative, should these cases be sentenced under § 2B1.4 (Insider Trading) instead of § 2B1.1, and if so, what if any changes should be made to § 2B1.4 to address these cases?

2. The Commission seeks comment on whether gain, rather than loss, is a more appropriate method for determining the harm accountable to the defendant in ''fraud on the market'' cases. What are the advantages and disadvantages of using gain to measure harm in such cases? Are there application issues that would arise in determining gain in such cases? If so, what are the issues and how, if at all, should the Commission address them?

3. The Commission has heard concerns that gain and loss are difficult to measure in ''fraud on the market'' cases and may not effectively address the role of market forces and other factors. Accordingly, it has been argued, the use of gain or loss may over-punish some defendants and under-punish others. How, if at all, should the Commission address this issue?

In particular, the Commission seeks comment on whether ''fraud on the market'' offenses should be structured to include a minimum level of enhancement of [14]–[22] levels (as bracketed in the proposed amendment) under subsection (b)(1). Would such an approach be consistent with the purposes of sentencing and the directives to the Commission in the Dodd-Frank Wall Street Reform and Consumer Protection Act? Should the Commission consider such an approach? If so, what minimum level of enhancement should be provided?

If the Commission were to provide such a minimum enhancement for such cases, should the Commission also specify that certain other specific offense characteristics in the guideline should not apply in such cases?

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